12–12–95
Vol. 60 No. 238
Pages 63609–63896

federal register

Tuesday
December 12, 1995

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[Two Sessions]

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New Feature in the Reader Aids!

Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the Federal Register called ''Reminders''. The Reminders will have two sections: ''Rules Going Into Effect Today'' and ''Comments Due Next Week''. Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect ''today''. Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the Federal Register will be eligible for inclusion in the Reminders.

The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.

The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

Electronic Bulletin Board

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV95–955–2FIR]

Vidalia Onions Grown in Georgia; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that generated funds to pay those expenses under Marketing Order No. 955 for the 1995–96 fiscal period. Authorization of this budget enables the Vidalia Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: September 16, 1995, through September 15, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Aleck J. Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 941–299–4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Vidalia onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1995–96 fiscal period, which began September 16, 1995, and ends September 15, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 240 producers of Georgia Vidalia onions under this marketing order, and approximately 145 handlers. Since the interim final rule was issued, information regarding a reduction in the number of producers from approximately 250 to 240 was received. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Vidalia onion producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the Vidalia Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met July 20, 1995, and unanimously recommended a 1995–96 budget of $343,000, $11,000 more than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Dues and subscriptions, $2,500 ($2,000), equipment maintenance, $1,600 ($750), office overhead, $6,000 ($3,000), office supplies, $3,500 ($3,000), telephone, $5,000 ($4,000), printing, $2,200 ($2,000), postage and courier, $6,000 ($5,000), employee salaries, $65,000 ($60,000), miscellaneous general and administrative, $1,700 ($1,000), marketing, $146,500 ($132,000), $6,500 for retirement, which was included in the employee benefits category last year, and $25,400 for a newly created compliance category. Items which have decreased compared to those budgeted

for 1994–95 (in parentheses) are: Equipment purchases, $2,000 ($3,000), FICA employer, $3,100 ($4,250), employee benefits (health and dental), $7,000 ($13,500), research, $48,500 ($80,000), and ($8,000) for contract outside labor, for which no funding was recommended this year.

The Committee also unanimously recommended an assessment rate of $0.10 per 50-pound bag or equivalent of Vidalia onions, the same as last year. This rate, when applied to anticipated shipments of 3,017,500 50-pound bags or equivalents of Vidalia onions, would yield $301,750. The Committee also anticipates shipments of 50,000 50-pound bags of previously unassessed Vidalia onions which have been in storage, which will yield an additional $5,000 in assessment income. This, along with $4,250 in interest income and $32,000 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve as of September 15, 1995, amounted to over $173,000 and were within the maximum permitted by the order of three fiscal periods' expenses. However, at its September 21, 1995, meeting the Committee voted to refund $100,000 of this amount pro rata to handlers who paid assessments during the 1992–93, 1993–94, and 1994–95 fiscal periods. To determine each handler's proportionate share, the Committee plans to total the excess funds for each of these fiscal periods, divide this excess by the total assessments levied on all handlers during this period, and apply the resulting percentage to the assessments paid by each individual handler during the three-year period. Funds remaining in the reserve will be adequate for administrative operating expenses, if needed.

An interim final rule was published in the Federal Register on September 19, 1995 (60 FR 48361). That interim final rule added § 955.208 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through October 19, 1995. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal period began on September 16, 1995. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period. In addition, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the Federal Register as an interim final rule.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

Accordingly, the interim final rule amending 7 CFR part 955 which was published at 60 FR 48361 on September 19, 1995, is adopted as a final rule without change.

Dated: December 6, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–30234 Filed 12–11–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 959

[Docket No. FV95–959–2IFR; Amendment 1]

Onions Grown in South Texas; Increased Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amended interim final rule with request for comments.

SUMMARY: This interim final rule amends a previous interim final rule which authorized administrative expenses for the South Texas Onion Committee (Committee) under M.O. No. 959. This interim final rule increases the level of authorized expenses and establishes an assessment rate to generate funds to pay those expenses. Authorization of this increased budget enables the Committee to incur additional expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective August 1, 1995, through July 31, 1996. Comments received by January 11, 1996 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210–682–2833.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This amended interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1995–96 fiscal period, which began August 1, 1995, and ends July 31, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before

parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 89 producers of South Texas onions under this marketing order, and approximately 35 handlers. Since the interim final rule was issued, information regarding an increase in the number of producers from approximately 70 to 89 was received. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the South Texas Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of $239,250 for personnel, office, and compliance expenses were recommended in a mail vote. The assessment rate and funding for the research and promotion projects were to be recommended at a later Committee meeting. The Committee administrative expenses of $239,250 were published in the Federal Register as an interim final rule August 17, 1995 (60 FR 42774). That interim final rule added § 959.236, authorizing expenses for the Committee, and provided that interested persons could file comments through September 18, 1995. No comments were filed.

The Committee subsequently met on November 14, 1995, and unanimously recommended an increase of $1,000 for insurance in the recently approved 1995–96 budget. The Committee also unanimously recommended $246,000 for promotion and $99,000 for onion breeding research. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Manager's salary, $19,094 ($15,172), office salaries, $24,000 ($22,000), payroll taxes, $4,000 ($3,100), insurance, $8,000 ($6,250), rent and utilities, $6,500 ($5,000), supplies, $2,000 ($1,500), postage, $1,500 ($1,000), telephone and telegraph, $4,000 ($2,500), furniture and fixtures, $2,000 ($1,000), equipment rental and maintenance, $3,500 ($2,500), contingencies, $6,706 ($3,978), manager travel, $5,000 ($3,000), Canadian onion promotion, $5,000 ($4,450), $226,000 for the Thacker Group for promotion ($200,000), onion breeding research, $99,000 ($88,028), and $3,750 for deferred compensation (manager's retirement), and $5,000 for miscellaneous promotion expenses, which were not line item expenses last year. All other items are budgeted at last year's amounts.

The initial 1995–96 budget, published on August 17, 1995, did not establish an assessment rate. Therefore, by a vote of 11 to 1, the Committee also recommended an assessment rate of $0.10 per 50-pound container or equivalent of onions, $0.06 more than last year's assessment rate. The no vote came from a grower who thought increasing the assessment rate from $0.04 to $0.10 cents was too great an increase. This rate, when applied to anticipated shipments of approximately 6,000,000 million 50-pound containers or equivalents, will yield $600,000 in assessment income, which, will be adequate to cover budgeted expenses. Funds in the reserve as of October 31, 1995, were $408,314, which is within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period began on August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period; (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to that taken for the 1994–95 fiscal period; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 959.236 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 959.236 Expenses and assessment rate.

Expenses of $585,250 by the South Texas Onion Committee are authorized and an assessment rate of $0.10 per 50-pound container or equivalent of onions is established for the fiscal period ending July 31, 1996. Unexpended funds may be carried over as a reserve.

Dated: December 6, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–30232 Filed 12–11–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1004

[Docket No. AO–160–A71; DA–93–30]

Milk in the Middle Atlantic Marketing Area; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document removes the suspension action (DA–95–24) issued on August 17, 1995, and published in the Federal Register on August 24, 1995 (60 FR 43953) in effect under the Middle Atlantic order through February 1996. The suspension is no longer needed because an amended order for that market became effective on December 1, 1995 (60 FR 55309).

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 690–1366.

SUPPLEMENTARY INFORMATION:

Background

This correction ensures that a suspension scheduled to continue through February 1996 will be removed. The suspension was issued August 17, 1995, and published in the August 24, 1995, Federal Register (60 FR 43953). The provisions affected by the suspension (sections 1004.7 and 1004.12) have been amended, making the suspension unnecessary.

This document removes the suspension action (60 FR 43953) and ensures that the Code of Federal Regulations will reflect only the amended language (and not the suspended language in the two aforementioned sections of the Middle Atlantic order).

Therefore, under the authority of 7 U.S.C. 601–674, the suspension of provisions of 7 CFR part 1004, published in the Federal Register on August 24, 1995 (60 FR 43953), is lifted effective December 12, 1995.

Dated: December 6, 1995.

Shirley R. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–30231 Filed 12–11–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1099

[DA–95–27]

Milk in the Paducah, KY, Marketing Area; Termination of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document terminates the remaining administrative provisions of the Paducah, Kentucky, Federal milk marketing order (Order 99), effective upon publication in the Federal Register. All of the monthly operating provisions were terminated as of November 1, 1995, since the terms and provisions of the order no longer effectuated the declared policy of the Act.

EFFECTIVE DATE: December 22, 1995.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Termination Order: Issued October 23, 1995; published October 31, 1995 (60 FR 55179).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule terminates the remaining administrative provisions of the Paducah, Kentucky, order.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

A comment period was not provided since there were no interested parties affected by the termination order.

It is hereby found and determined that § 1099.1 of the Paducah, Kentucky, order does not effectuate the declared policy of the Act.

Statement of Consideration

This rule terminates the remaining administrative provisions of the Paducah, Kentucky, Federal milk order. There currently are no handlers regulated under the Paducah, Kentucky, order. Turner Dairies, the one handler that was regulated under Order 99, became regulated under the Southeast order on September 1, 1995, because of its greater sales into that marketing area. Producers who ship their milk to Turner's Fulton, Kentucky, plant now have their milk pooled under the adjacent Southeast Federal milk order.

Since there were no plants regulated under the Paducah, Kentucky, order, all of the monthly operating provisions were terminated as of November 1, 1995. However, the termination order left intact certain administrative provisions that were embodied, by reference, in § 1099.1 of the order.

The market administrator, in his capacity as the order's liquidating agent, has completed the disbursement of all of the money remaining in the administrative, producer-settlement, and marketing service funds established under the order. Hence, the remaining provisions of the order should be terminated.

Therefore, the aforesaid provisions of § 1099.1 of the order are hereby terminated.

For good cause shown, this rule shall be effective December 22, 1995. Neither a comment period nor a 30-day effective date is provided in that all other provisions of the order were terminated effective November 1, 1995, and no parties are affected by this action.

List of Subjects in 7 CFR Part 1099

Milk marketing orders.

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA [REMOVED]

For the reasons set forth in the preamble and under the authority 7 U.S.C. 601–674, 7 CFR part 1099 is removed

Dated: December 4, 1995.

Shirley R. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–30095 Filed 12–11–95; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Technical Amendments; Organization and Operation of Federal Credit Unions; Correction

AGENCY: National Credit Union Administration (NCUA).

ACTION: Correction to final regulation.

SUMMARY: This document corrects an inadvertent error in an amendatory instruction to the final regulations which were published Tuesday, November 28, 1995 (60 FR 58502). The regulations consolidated all current regulations and requirements that apply to federally insured state-chartered credit unions in one place, the regulations on requirements for insurance. The error occurred in one of the conforming technical amendments.

EFFECTIVE DATE: January 29, 1996.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Special Counsel to the General Counsel, 1775 Duke Street, Alexandria, VA 22314, or telephone (703) 518–6544.

SUPPLEMENTARY INFORMATION: In the Federal Register published on November 28, 1995, there was an inadvertent error in an amendatory instruction to the final regulation. The final regulations concern requirements for insurance. However, the error was contained in the instruction for a technical amendment to § 701.21—Loans to members and lines of credit to members. This correction is being made in order to ensure that the final regulation is published correctly in the Code of Federal Regulations.

Correction of Publication

Accordingly, the publication on November 28, 1995 of the final regulations which were the subject of FR Doc. 95–28703, is corrected as follows:

§ 701.21 [Corrected]

On page 58504, column one, the second line of amendatory instruction 3., the word ''fourth'' is corrected to read ''fifth''.

Becky Baker,

Secretary, NCUA Board.

[FR Doc. 95–30178 Filed 12–11–95; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–236–AD; Amendment 39–9457; AD 95–25–11]

Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; Request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all EMBRAER Model EMB–120 series airplanes. This action requires revising the FAA-approved Airplane Flight Manual (AFM) to limit the revolutions per minute (RPM) of the propeller during ground operation, and removing and installing a new placard. This AD also requires revising the FAA-approved maintenance program to limit the maximum RPM of the propeller during ground operations. This amendment is prompted by reports of failures of in-service propellers and subsequent testing, which revealed that operating the propeller at or near certain nominal propeller RPM produces high vibration stress. The actions specified in this AD are intended to limit exposure to high vibration stresses during ground operations under certain weather conditions; this situation could accelerate fatigue cracking if corrosion is present in the propeller, which could lead to the failure of the propeller and subsequent reduced controllability of the airplane.

DATES: Effective December 27, 1995.

Comments for inclusion in the Rules Docket must be received on or before February 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–236–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information concerning this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia.

FOR FURTHER INFORMATION CONTACT: Carla J.W. Worthey, Aerospace Engineer, Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7364; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: The FAA has received reports of failures of in-service Hamilton Standard 14RF, 14SF, and 6/5500/F series propellers. Result of inspections have revealed internal corrosion in the taper bore and external damage to the shank section on these propellers. Such internal corrosion or external damage reduces the design allowable stress levels of the propeller material. Further inspections revealed that the corrosion and damage is evenly distributed amongst the subject propellers. However, fracturing has occurred predominately on the Hamilton Standard 14RF series propellers installed on EMBRAER Model EMB–120 series airplanes. This disparity has prompted an investigation into operational differences between the airplanes utilizing these propellers.

A vibration/loads survey and analysis was conducted by Hamilton Standard on the Hamilton Standard 14RF series propellers installed on EMBRAER Model EMB–120 series airplanes. The survey and analysis results verified that high vibration stresses could occur on

all Hamilton Standard propeller installations during ground operation in tail and cross winds (adverse winds) when the propeller is operated at or near 73% of the nominal propeller revolutions per minute (RPM). For EMBRAER Model EMB–120 series airplanes equipped with Hamilton Standard 14RF series propellers, operation at 73% RPM is coincident with a propeller natural frequency at exactly twice the RPM (denoted as 2P), which produces high vibration stresses. For all other airplanes equipped with this propeller, the 2P natural frequency is below the normal propeller operating speed and, therefore, a resonant vibration could not occur.

Subsequent propeller vibration survey testing on a Model EMB–120 series airplane revealed a possible small downward shift in the 2P frequency RPM on these airplanes relative to the original 1983 certification test data. Such a shift could increase cyclic stress on the propeller blade during normal ground operations. The possible cause of such a shift could be attributed to wear and normal changes in the propeller mass properties while in-service.

Operation of Hamilton Standard 14RF series propellers installed on EMBRAER Model EMB–120 series airplanes at or near 73% of the nominal propeller RPM, if not corrected, could result in high stresses on the propeller. Such high stresses subsequently could accelerate fatigue cracking at existing internal corrosion pits in the propeller, which could lead to the failure of the propeller and subsequent reduced controllability of the airplane.

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to limit ground operation of Hamilton Standard 14RF series propellers installed on EMBRAER Model EMB–120 series airplanes at or near 73% of the nominal propeller RPM, which could result in high stresses on the propeller; this condition could accelerate fatigue cracking at existing internal corrosion pits in the propeller, which could lead to the failure of the propeller and subsequent reduced controllabilty of the airplane. This AD requires revising the Limitations and Normal Procedures Sections of the AFM to reduce ground operating RPM to MIN RPM (approximately 50%), except for brief excursions as needed to maneuver the airplane, which will limit exposure to high cyclic stresses on the propeller. This AD also requires removal of a placard and installation of a new placard on the instrument panel of the cockpit. Additionally, this AD requires revising the FAA-approved maintenance program to limit the maximum RPM for ground operations.

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

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–236–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–25–11 Embraer: Amendment 39–9457. Docket 95–NM–236–AD.

Applicability: All Model EMB–120 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the propeller and subsequent reduced controllability of the airplane due to high stresses on the propeller at certain nominal propeller revolutions per minute (RPM), accomplish the following:

(a) Within 14 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Revise the Limitations Section (under ''Propeller'') of the FAA-approved Airplane Flight Manual (AFM) (in the basic AFM and in AFM Supplement 4) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

''Condition Levers must be in the MIN RPM position during all ground operations, except when cleared for takeoff or during landing roll.

''Power Levers must remain at or below Flight Idle during all ground operations, except for brief (approximately 5 seconds) excursions as needed to maneuver the airplane.

''*CAUTION:* Ground operation above Flight Idle significantly increases propeller stress under certain adverse wind conditions (e.g., tailwinds or rear crosswinds). Operation in this RPM range must be avoided to the maximum extent practicable.''

(2) Revise the Normal Procedures Section (under ''CLEARED INTO POSITION'') of the FAA-approved AFM to separate the current procedures listed under the ''CLEARED INTO POSITION'' heading into two separate headings, as follows, to delay movement of condition levers until cleared for takeoff. This may be accomplished by inserting a copy of this AD into the AFM.

''CLEARED INTO POSITION	
Landing Lights Switches	ON.
STROBE Light Switch	ON.
Transponder	ON.
''CLEARED FOR TAKEOFF	
Condition Levers	MAX RPM.
Multiple Alarm Panel Lights	CHECK EXTINGUISHED''.

(b) Within 14 days after the effective date of this AD, remove the placard having part number (P/N) 120–30915–001 on the instrument panel of the cockpit.

(c) Within 30 days after the effective date of this AD, install a new placard having P/N 120–61757–001 on the instrument panel of the cockpit.

(d) Within 14 days after the effective date of this AD, revise the FAA-approved maintenance program to incorporate the following into Chapter 61–00–00, ''Propeller System Operating Limitations,'' and Chapter 71–00–00, ''Propeller Operating Limitations,'' of the airplane maintenance manual:

''To prevent excessive propeller stress, do not operate above 60% Np *UNLESS:*

The wind is less than 10 knots, OR

The airplane is headed into the wind +/−45 degrees.

Wind direction must be monitored locally at the run up site.''

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on December 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30252 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–213–AD; Amendment 39–9446; AD 95–25–02]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes. This action requires inspection(s) to detect cracks of the fuselage-mounted half of hinge assemblies of the small cargo door, and replacement of any cracked hinge assembly with a new hinge assembly. This amendment is prompted by a report that the hinges of the small cargo door on these airplanes are made of a material that is sensitive to stress corrosion cracking. The actions specified in this AD are intended to prevent failure of the hinges of the small cargo door due to stress corrosion cracking, which could result in opening and/or separation of the door while the airplane is in flight, and resultant rapid decompression and/or structural damage to the airplane.

DATES: Effective December 27, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 27, 1995.

Comments for inclusion in the Rules Docket must be received on or before February 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–213–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Model F28 Mark 0100 series

airplanes. The RLD advises that the hinges of the small cargo door on these airplanes are made of aluminum AL2024–T4, which is a material that is sensitive to stress corrosion cracking. Stress corrosion cracking in the hinge of the small cargo door could result in the failure of the hinge. If the hinge fails, the small cargo door could open and/or separate while the airplane is in flight, which could result in rapid decompression and/or structural damage to the airplane.

Fokker has issued Service Bulletin SBF100–52–048, dated March 5, 1993, which describes procedures for performing a one-time high-frequency eddy current (HFEC) inspection to detect cracks in the fuselage mounted half of the hinge assemblies, having part numbers (P/N) A28410–405 and P/N A28410–407, of the small cargo door. Fokker has also issued Service Bulletin SBF100–52–055, dated July 20, 1994, which describes inspection procedures identical to those specified in Service Bulletin SBF100–52–048; however, the inspections would be conducted repetitively, if no cracks are detected. Additionally, Fokker has issued Service Bulletin SBF100–52–043, dated June 12, 1995, which describes procedures for replacement of any cracked hinge assembly with a new hinge assembly having P/N D28410–409. These new hinges are made of aluminum AL7075–T73, which is much less sensitive to stress corrosion cracking than the material used in the existing hinges. In addition, the radii between the lugs were increased, and the web plate thickness was increased for the door-mounted part, to provide better fatigue resistance. The RLD classified these service bulletins as mandatory and issued Dutch airworthiness directive BLA 93–036/2 (A) in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent separation or opening of the small cargo door while the airplane is in flight, which could result in rapid decompression and/or structural damage to the airplane. This AD requires HFEC inspection(s) to detect cracks of the fuselage-mounted half of certain hinge assemblies of the small cargo door, and replacement of any cracked hinge assembly with a certain new hinge assembly. The actions are required to be accomplished in accordance with the service bulletins described previously.

None of the Model F28 Mark 0100 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 2 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Based on these figures, the cost impact of this AD would be $120 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the Federal Register.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–213–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–25–02 Fokker: Amendment 39–9446. Docket 94–NM–213–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11244 through 11408 inclusive, equipped with small cargo doors having hinges with part numbers (P/N) A28410–405 and/or P/N A28410–407; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the hinges of the small cargo door due to stress corrosion cracking, which could result in rapid decompression and/or structural damage to the airplane, accomplish the following:

(a) Within 36 months since date of manufacture of the airplane or within 3 months after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection to detect cracks of the fuselage-mounted half of the hinge assemblies of the small cargo doors, in accordance with Fokker Service Bulletin SBF100–52–048, dated March 5, 1993.

(1) If no cracks are detected, thereafter repeat the HFEC inspections at intervals not to exceed 6 months, in accordance with Fokker Service Bulletin SBF100–52–055, dated July 20, 1994.

(2) If any crack is detected during any inspection required by paragraph (a) or (a)(1) of this AD, prior to further flight, except as provided in the ''NOTE'' of paragraph 2.C. of the Accomplishment Instructions of Fokker Service Bulletin SBF100–52–055, dated July 20, 1994, replace the hinge assembly with a new hinge assembly having P/N D28410–409. The replacement shall be done in accordance with Fokker Service Bulletin SBF100–52–043, dated June 12, 1995.

(b) Replacement of the hinge assembly with a new hinge assembly having P/N D28410–409, in accordance with Fokker Service Bulletin SBF100–52–043, dated June 12, 1995, constitutes terminating action for the requirements of this AD for that small cargo door.

(c) As of the effective date of this AD, no person shall install a hinge assembly having P/N A28410–405 or –407, on any airplane, unless it has been previously inspected and found to be crack-free, in accordance with Fokker Service Bulletin SBF100–52–055, dated July 20, 1994.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections shall be done in accordance with Fokker Service Bulletin SBF100–52–048, dated March 5, 1993, and Fokker Service Bulletin SBF100–52–055, dated July 20, 1994. The replacement shall be done in accordance with Fokker Service Bulletin SBF100–52–043, dated June 12, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on November 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29301 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–209–AD; Amendment 39–9447; AD 95–25–03]

Airworthiness Directives; Learjet Model 23, 24, 25, 35, and 36 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Learjet Model 23, 24, 25, 35, and 36 airplanes. This action requires repetitive inspections to detect deterioration of both flapper valves of the tip tank in each wing of the airplane, and various follow-on actions. This AD action also requires replacing the flapper valves with new flapper valves, and repetitively performing certain other follow-on actions. This amendment is prompted by reports of imbalance of the fuel loads in the wings of the airplane due to failed or cracked flapper valves. The actions specified in this AD are intended to prevent significant reduction in the lateral control of the airplane due to imbalance of the fuel loads in the wings of the airplane.

DATES: Effective December 27, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 27, 1995.

Comments for inclusion in the Rules Docket must be received on or before February 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffrey Janusz, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4148; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: Recently, the FAA has received several reports of imbalance of the fuel loads in the wings of Learjet Model 23, 24, 25, 35, and 36 airplanes. Investigation reveals that the

flapper valves in the fuel tanks may deteriorate over a period of time, which may result in failure of the valve hinge or cracking of the circular portion of the valve. Further investigation indicates that such failures and cracking may allow fuel to enter into the tip tanks in the wings of the airplane. This condition, if not corrected, could result in imbalance of the fuel loads in the wings of the airplane, which can significantly reduce lateral control of the airplane.

The FAA has reviewed and approved Learjet Service Bulletins SB 23/24/25–28–2 (for Model 23, 24, and 25 airplanes) and SB 35/36–28–10 (for Model 35 and 36 airplanes), both dated October 6, 1995, which describe procedures for a one-time inspection to detect deterioration of both flapper valves of the tip tank in each wing of the airplane, and various follow-on actions (which include inspecting the flapper valve to ensure proper positioning of the valve, inspecting the conditions of the screws that retain the flapper valve to the plate assembly, and ensuring that the flapper valve completely covers the opening of the tube and is seated against the tube). The service bulletins also describe procedures for replacement of both flapper valves of the tip tank in each wing with new flapper valves, and inspecting to verify free movement of the flapper valve.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent imbalance of fuel loads in the wings of the airplane, which can significantly reduce lateral control of the airplane. This AD requires that operators perform repetitive inspections to detect deterioration of both flapper valves of the tip tank in each wing of the airplane, and various follow-on actions (such as, inspecting the flapper valve to ensure proper positioning of the valve, inspecting the conditions of the screws that retain the flapper valve to the plate assembly, ensuring that the flapper valve completely covers the opening of the tube and is seated against the tube, and inspecting to verify free movement of the flapper valve). The AD requires that operators replace both flapper valves of the tip tank in each wing of the airplane with new flapper valves, and repetitively performing certain other follow-on actions. The actions are required to be accomplished in accordance with the procedures in the service bulletins described previously.

Operators should note that, although the service bulletins recommend that certain follow-on actions be accomplished only once, the FAA has determined that accomplishing these follow-on actions just one time would not address the identified unsafe condition over the long term. In developing the appropriate actions for this proposed AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the potential catastrophic consequences of the unsafe condition, and the numerous reported incidents of unbalanced fuel loads. In light of all of these factors, the FAA finds that certain follow-on actions must be performed repetitively at intervals of 600 hours time-in-service to ensure continued operational safety of the fleet.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–209–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–25–03 Learjet: Amendment 39–9447. Docket 95–NM–209–AD.

Applicability: Model 23, 24, and 25 airplanes, as listed in Learjet Service Bulletin SB 23/24/25–28–2, dated October 6, 1995, and Model 35 and 36 airplanes, as listed in Learjet Service Bulletin 35/36–28–10, dated October 6, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

Note 2: This AD references certain Learjet service bulletins for applicability information, and inspection and replacement procedures. This AD requires performing certain follow-on actions repetitively, although the service bulletins specify accomplishing these actions just once. Where there are differences between the AD and the service bulletins, the AD prevails.

To prevent imbalance of the fuel loads in the wings of the airplane, which can significantly reduce lateral control of the airplane, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD or prior to the accumulation of 600 hours time-in-service since installation of the flapper valve, whichever occurs later: Perform an inspection to detect deterioration (such as cracks, cuts, breaks, splits, or warpage) of both flapper valves of the tip tank in each wing, in accordance with either Learjet Service Bulletin SB 23/24/25–28–2, dated October 6, 1995 (for Model 23, 24, and 25 airplanes), or Learjet Service Bulletin SB 35/36–28–10, dated October 6, 1995 (for Model 35 and 36 airplanes); as applicable. Repeat this inspection thereafter at intervals not to exceed 600 hours time-in-service.

(1) If no deterioration of the flapper valve is detected, prior to further flight, inspect the flapper valve to ensure proper positioning, inspect the condition of the screws that retain the flapper valve to the plate assembly to ensure that the flapper valve is secure, inspect to ensure that the flapper valve completely covers the opening of the tube and is seated against the tube, and inspect the flapper valve to verify that it moves freely; and accomplish the follow-on corrective actions, if any discrepancy is found. These actions shall be accomplished in accordance with the applicable service bulletin.

(2) If any flapper valve is found to be deteriorated, prior to further flight, replace it with a new flapper valve in accordance with the applicable service bulletin.

(b) Except as provided in paragraph (c) of this AD, at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD: Replace both flapper valves of the tip tank in each wing with new flapper valves in accordance with either Learjet Service Bulletin SB 23/24/25–28–2, dated October 6, 1995 (for Model 23, 24, and 25 airplanes), or Learjet Service Bulletin SB 35/36–28–10, dated October 6, 1995 (for Model 35 and 36 airplanes); as applicable.

(1) Within 5 years since date of installation of the flapper valve, or prior to the accumulation of 2,400 total hours time-in-service on the flapper valve, whichever occurs earlier.

(2) Within 50 hours time-in-service after the effective date of this AD.

(c) For airplanes on which the age and time-in-service of the flapper valve cannot be determined: Within 50 hours time-in-service after the effective date of this AD, replace both flapper valves of the tip tank in each wing in accordance with either Learjet Service Bulletin SB 23/24/25–28–2, dated October 6, 1995 (for Model 23, 24, and 25 airplanes), or Learjet Service Bulletin SB 35/36–28–10, dated October 6, 1995 (for Model 35 and 36 airplanes); as applicable.

(d) Within 600 hours time-in-service following replacement of any flapper valve in accordance with the requirements of this AD, and thereafter at intervals not to exceed 600 hours time-in-service: Accomplish the requirements of paragraph (a) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with either Learjet Service Bulletin SB 23/24/25–28–2, dated October 6, 1995; or Learjet Service Bulletin SB 35/36–28–10, dated October 6, 1995; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on November 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29300 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 88G–0318]

Glyceryl Palmitostearate; Affirmation of GRAS Status of Direct Food Substance

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to affirm that glyceryl palmitostearate is generally recognized as safe (GRAS) for use as a formulation aid in excipient mixtures used in tablets. This action is in response to a petition filed on behalf of Gattefossé, S.A.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Dennis M. Keefe, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3090.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulatory History

In accordance with the procedures described in 21 CFR 170.35, a petition was submitted (GRASP 8G0344) on behalf of Gattefossé, S.A., 36 Chemin de Genas, Saint Priest, France, requesting that glyceryl palmitostearate be affirmed as GRAS for use as an excipient in tablets.

FDA published a notice of filing of this petition in the Federal Register of October 20, 1988 (53 FR 41241), and gave interested parties an opportunity to submit comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm.1–23, 12420 Parklawn Dr., Rockville, MD 20857. FDA received no comments in response to that notice.

B. Standards for GRAS Affirmation

Under § 170.30 (21 CFR 170.30), general recognition of safety may be based only on the views of experts qualified by scientific training and

experience to evaluate the safety of food substances. The basis of such views may be either scientific procedures, or in the case of a substance used in food before January 1, 1958, through experience based on common use in food. General recognition of safety based upon scientific procedures shall require the same quantity and quality of scientific evidence as is required to obtain approval of a food additive regulation, and ordinarily is to be based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)).

The subject petition relies on scientific procedures evidence to support GRAS affirmation of glyceryl palmitostearate as an excipient in tablets.

C. Manufacturing Process and Identity

According to information contained in the petition, glyceryl palmitostearate is manufactured by heating a mixture of glycerin (glycerol) and a mixture of fatty acids of vegetable origin composed of roughly equal amounts (48 to 50 percent) of palmitic and stearic acid, and 4 percent myristic acid.

Glyceryl palmitostearate prepared in this way is a mixture of mono-, di-, and triglycerides of palmitic and stearic acids. It contains primarily di- and triglycerides (>78.5 percent), a small amount of monoglycerides (8 to 17 percent), and trace amounts of free glycerin (<1.0 percent) and free palmitic and stearic acid moieties (<3.0 percent).

D. Use and Exposure

The proposed use of the substance is as a lubricating agent in excipient mixtures for preparation of tablets (vitamin and related products). The technical properties of the substance in excipient formulations are similar to those of other fatty acid glycerides. The petitioner asserts that the normal use level of the substance will be 6 to 40 percent of the total tablet weight and that the 40 percent level is typical for long-duration timed-release formulations. The petitioner also estimates that although the typical dosage is approximately two tablets per day, some individuals may take as many as six tablets per day.

Based on a typical dose of two 600-milligram (mg) tablets per person per day, FDA estimates that the typical intake of glyceryl palmitostearate would be from 72 to 480 mg per person per day (Ref. 2). The petitioner estimates that on the basis of 2,000 to 2,700 calories per person per day total food intake and 35 percent fat in the diet (one-third of all ingested fat being fully saturated), the intake of saturated fat per person per day is between 20 and 30 grams. This estimate is consistent with dietary data compiled by the United States Department of Agriculture (1985). Based on this information, FDA concludes that the proposed use of glyceryl palmitostearate will increase the dietary intake of saturated fat by 2.4 percent per person per day (Ref. 2).

II. Safety

The notice of filing in this proceeding used the name ''glyceryl palmitostearate'' to represent the substance that is the subject of the petition. The agency considers this name to be appropriate, although the substance is actually not a single chemical entity, but rather a mixture of di- and triglycerides with a small amount of monoglycerides.

Triglycerides (triacylglycerols) are the most abundant form of fat in the human diet (Ref. 1). Their component fatty acids are the major energy reserve of plant and animal cells (Ref. 1). When ingested, triglycerides are initially digested into free fatty acids and diglycerides. Diglycerides are further digested into a mixture of monoglycerides, glycerol, and free fatty acids. Monoglycerides, glycerol, and free fatty acids are the chemical forms in which dietary fats are absorbed into the body (Ref. 1). Thus, all of the components of glyceryl palmitostearate are present as components of fats found in foods or are generated in large amounts in the human digestive tract during the digestion of fat (Ref. 1). As previously stated, the proposed use of glyceryl palmitostearate will not result in a material increase in exposure to these substances (Ref. 2).

The agency has previously examined the safety of the components of glyceryl palmitostearate. Glycerin is listed as a multipurpose GRAS substance in 21 CFR 182.1320. Mono- and diglycerides prepared from fats, oils, or fat-forming acids derived from edible sources, including palmitic and stearic acids, are affirmed as GRAS in 21 CFR 184.1505. Stearic and palmitic acid are approved as multipurpose food additives in 21 CFR 172.860. Glyceryl tristearate, a component of glyceryl palmitostearate, is approved as a multipurpose food additive in 21 CFR 172.811. Glyceryl monostearate is affirmed as GRAS (21 CFR 184.1324).

The Select Committee on GRAS Substances (SCOGS) reviewed all available toxicological studies on mono- and diglycerides and concluded:

> There is no evidence in the available information on mono- and diglycerides of fat-forming fatty acids that demonstrates or suggests reasonable grounds to suspect a hazard to the public when they are used at levels that are now current or that might reasonably be expected in the future. (Ref. 4, p. 23.)

The Joint Expert Committee on Food Additives (JECFA) of the Food and Agriculture Organization and the World Health Organization (FAO/WHO) has also reviewed the safety of mono- and diglycerides. Based on its review, JECFA has concluded that no limit on the acceptable daily intake of mono- and diglycerides need be established (Ref. 5).

III. Conclusion

FDA concludes that there is no meaningful difference between the components of glyceryl palmitostearate and dietary fats or the products of digestion of fats. The agency further concludes that there will not be a materially significant increase in exposure to these substances from the petitioned use of glyceryl palmitostearate. The safety of the mono- and diglyceride components of glyceryl palmitostearate has been reviewed by independent bodies of experts qualified by training and experience to evaluate the safety of food ingredients. These experts have concluded that mono- and diglycerides are safe. The information that the agency used to arrive at these conclusions is publicly available in published form (Refs. 1, 3, 4, and 5).

FDA, therefore, concludes that the petitioned use of glyceryl palmitostearate fully meets the requirements outlined in § 170.30(b) for GRAS affirmation based on scientific procedures. Therefore, in accordance with 21 CFR 184.1(b)(1), the agency is affirming that the use of glyceryl palmitostearate as a formulation aid in excipients for tablets is GRAS with no limitations other than current good manufacturing practice. The agency is listing the specific use as a formulation aid in excipients for tablets in the regulation solely to reflect that the affirmation of GRAS status is based on the evaluation of this use.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(7) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Economic Impact

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub.

L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact on small entities. Because no current activity is prohibited by this final rule, the compliance cost to firms is zero. Because no increase in the health risks faced by consumers will result from this final rule, total costs are also zero. Potential benefits include wider use of this substance because of reduced uncertainty concerning its GRAS status, and any resources saved by eliminating the need to prepare further petitions to affirm the GRAS status of this substance for this use. The agency certifies, therefore, that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. References

The following references have been placed on display in the Dockets Management (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Gurr, M. I., and A. T. James, *Lipid Biochemistry: An Introduction*, John Wiley and Sons, Inc., New York, 1975.

2. Memorandum dated September 6, 1988, from M. Dinovi to J. Ziyad, ''GRP 8G0344—Parexel Int. Corp. (PI) for Gattefossé, SA. Glyceryl Palmitostearate.''

3. Park, Y. K., and E. A. Yetley ''Trend Changes in Use and Current Intakes of Tropical Oils in The United States'' *American Journal of Clinical Nutrition* 51:738–748, 1990.

4. Select Committee on GRAS Substances. ''Evaluation of the Health Aspects of Glycerin and Glycerides as Food Ingredients'' (SCOGS–30) PB–254 536, 1975.

5. Food and Agriculture Organization of the United Nations, ''Toxicological Evaluation of Some Food Additives Including Anticaking Agents, Antimicrobials, Antioxidants, Emulsifiers and Thickening Agents.'' FAO Nutrition Meetings Report Series No. 53A, Rome, 1974.

List of Subjects in 21 CFR Part 184

Food additives, Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. New § 184.1329 is added to subpart B to read as follows:

§ 184.1329 Glyceryl palmitostearate.

(a) Glyceryl palmitostearate is a mixture of mono-, di-, and triglyceryl esters of palmitic and stearic acids made from glycerin, palmitic acid, and stearic acid.

(b) The ingredient meets the following specifications:

(1) The substance is a mixture of mono-, di-, and triglycerides of palmitic acid and stearic acid.

(2) Heavy metals (as lead): Not more than 10 parts per million.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a formulation aid, as defined in § 170.3(o)(14) of this chapter.

(2) The ingredient is used in excipient formulations for use in tablets at levels not to exceed good manufacturing practice.

Dated: November 16, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–30125 Filed 12–11–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 510, 520, and 522

Animal Drugs, Feeds, and Related Products; Diphenylhydantoin Sodium Capsules, et al.

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations that reflect approval of one new animal drug application (NADA) held by Parke-Davis, Division of Warner-Lambert Co., three held by Akorn, Inc., and one held by Veterinary Research and Development, Inc. All of the sponsors submitted written requests that the agency withdraw approval of the NADA's. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: December 22, 1995.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0159.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the following NADA's:

NADA No.	Drug name	Sponsor name and address
6–032	Diphenylhydantoin sodium capsules	Parke-Davis, Division of Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950
12–444	Sterile prednisolone suspension	Akorn, Inc., 100 Akorn Dr., Abita Springs, LA 70420
94–978	Phenylbutazone injection	Do.
110–046	Dexamethasone injection	Do.
140–904	Copper disodium edetate injection	Veterinary Research and Development, Inc., P.O. Box 1299, Truckee, CA 95734

The sponsors requested withdrawal of approval of the NADA's because the drug products are no longer being marketed. This final rule removes 21 CFR 520.704, 522.514, and 522.1880, and amends 21 CFR 522.540 and 522.1720 to reflect the withdrawal of approval of these NADA's.

In addition, 21 CFR 510.600(c) is amended to remove the entries for the three sponsors from the list of approved drug sponsors because they no longer hold any approved NADA's.

List of Subjects

21 CFR Part 510

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

21 CFR Parts 520 and 522

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, 520, and 522 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 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entries for ''Akorn, Inc.,'' ''Parke-Davis, Division of Warner-Lambert Co.,'' and ''Veterinary Research and Development, Inc.'' and in the table in paragraph (c)(2) by removing the entries for ''000071,'' ''017478,'' and ''057428.''

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. 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).

§ 520.704 [Removed]

4. Section 520.704 *Diphenylhydantoin sodium capsules* is removed.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

5. The authority citation for 21 CFR part 522 continues to read as follows:

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

§ 522.514 [Removed]

6. Section 522.514 *Copper disodium edetate injection* is removed.

§ 522.540 [Amended]

7. Section 522.540 *Dexamethasone injection* is amended by removing paragraph (d)(2)(ii) and by redesignating paragraph (d)(2)(iii) as paragraph (d)(2)(ii).

§ 522.1720 [Amended]

8. Section 522.1720 *Phenylbutazone injection* is amended in paragraph (b)(1) by removing the phrase ''000031, 017220, 015579, and 017478'' and adding in its place ''000031, 017220, and 015579''.

§ 522.1880 [Removed]

9. Section 522.1880 *Sterile prednisolone suspension* is removed.

Dated: December 4, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–30123 Filed 12–11–95; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin

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 a supplemental new animal drug application (NADA) filed by Elanco Animal Health, Division of Eli Lilly and Co. The supplemental NADA provides for use of an approved monensin Type A medicated article to make a revised formulation of a monensin Type C medicated feed/free-choice mineral granule fed to pasture cattle for increased rate of weight gain.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2701.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, filed supplemental NADA 95–735, which provides for use of 80 grams(g) per pound monensin Type A articles to make a monensin Type C medicated feed/free-choice mineral granule containing 1,620 g per ton monensin. The Type C feed/free-choice mineral granules are fed to pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers) for increased rate of weight gain. The supplemental NADA provides for a revised formulation Type C free-choice mineral granule. The revised formulation does not affect the safety or effectiveness data and information upon which the application is approved. The supplemental NADA is approved as of December 12, 1995, and the regulations are amended in 21 CFR 558.355 by adding new paragraph (f)(3)(x) to reflect the approval.

Use of a Type A medicated article to make a free-choice Type C medicated feed/ mineral granule requires an approved Form FDA 1900 as in 21 CFR 510.455.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval does not qualify for marketing exclusivity because the supplement does not contain reports of new clinical or field investigations or new human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

A freedom of information summary for this approval is not required because it involves approval of a revised formulation which does not affect the basis of approval of the product. A summary of the data and information submitted to support the original approval 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 determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.355 is amended by adding new paragraph (f)(3)(x) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(3) * * *

(x) *Amount per ton.* Monensin, 1,620 grams as monensin sodium (810 milligrams per pound).

(a) Indications for use. For increased rate of weight gain.

(b) Specifications. Use as free-choice Type C medicated feed formulated as mineral granules as follows:

Ingredient	Percent	International feed no.
Monocalcium phosphate (21% phosphorus, 15% calcium)	29.49	6–01–080
Sodium chloride (salt)	24.25	6–04–152
Dried cane molasses	20.0	4–04–152
Ground limestone (33% calcium)	13.75	6–02–632
Cane molasses	3.0	4–04–696
Processed grain by-products (as approved by AAFCO)	5.0	
Vitamin/trace mineral premix[1]	2.5	
Monensin Type A article, 80 grams per pound	1.01	
Antidusting oil	1.0	

[1]Content of the vitamin/trace mineral premix may be varied. However, they should be comparable to those used for other free-choice feeds. Formulation modifications require FDA approval prior to marketing. The amount of selenium and ethylenediamine dihydroiodide (EDDI) must comply with the published requirements. (For selenium see 21 CFR 573.920; for EDDI see 51 FR 11483 (April 3, 1986).)

(c) Limitations. Medicated mineral granules to be fed free-choice to pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers) weighing more than 400 pounds. Feed continuously on a free-choice basis at the rate of 50 to 200 milligrams per head per day. During the first 5 days of feeding, cattle should receive no more than 100 milligrams per day. Do not feed additional salt or minerals. Do not mix with grain or other feeds. Monensin is toxic to cattle when consumed at higher than approved levels. Stressed and/or water deprived cattle should be adapted to the pasture and to unmedicated mineral supplement before using this product. Do not feed to lactating dairy cattle. Do not allow horses, other equines, mature turkeys, or guinea fowl access to feed containing monensin. Ingestion of monensin by horses and guinea fowl has been fatal. The product's effectiveness in cull cows and bulls has not been established. Each use of this free-choice Type C feed must be the subject of an approved medicated feed application (MFA or Form FDA 1900) or supplemental MFA as required by § 510.455 of this chapter.

* * * * *

Dated: November 22, 1995.

Nicholas E. Weber,

Director, Division of Chemistry, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 95–30124 Filed 12–11–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD–94–026]

RIN 2115–AE78

Inland Waterways Navigation Regulations; Wrangell Narrows, AK

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is increasing the maximum width allowable for single barge tows transiting Wrangell Narrows, Alaska. In accordance with the goals of the Presidential Regulatory Reinvention Initiative, this action is being taken to better meet maritime industry needs in Southeast Alaska. The current size restriction for single barge tows in Wrangell Narrows is 80 feet in width overall. An increase in the maximum barge width to 100 feet in width overall will allow barge operators to carry more cargo on each barge to meet the increasing needs of their Alaskan consumers. Increasing the restriction to 100 feet in width overall will have no adverse effects on navigation and marine safety in Wrangell Narrows.

EFFECTIVE DATE: January 11, 1996.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–026), 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: Diane Schneider Appleby, Project Manager, (202) 267–0352.

SUPPLEMENTARY INFORMATION:

Regulatory History

On September 15, 1995, the Coast Guard published a notice of proposed rulemaking entitled Inland Waterways Navigation Regulations: Wrangell Narrows, Alaska in the Federal Register (60 FR 179). The Coast Guard received four comments on the proposal. No public meeting was requested, and none was held.

Background and Purpose

Wrangell Narrows is a navigable waterway of the United States located in Southeast Alaska. It connects Frederick Sound on the north end to Sumner Strait on the south. It is approximately 24 miles long and narrows to 300 feet in five places. The longest of the 300 foot wide sections is approximately 5.5 nautical miles in length. The other four sections vary from approximately 600 yards to approximately 1.3 nautical miles in length.

The primary users of Wrangell Narrows are passenger ferries, log carriers, pleasure craft and container barges. Container barges are used to transport consumer goods throughout South East Alaska which is vital to the every day life of Alaskan citizens.

The increased demand for consumer goods in Southeast Alaska has created a greater demand on providers of these goods. The current regulations limit the width of single barge tows allowed to

transit Wrangell Narrows to no more than 80 feet in width overall. Increasing the maximum barge width which can transit Wrangell Narrows from 80 to 100 feet will allow barge operators to carry more containers per transit and enable them to more efficiently meet the needs of their Alaskan customers.

Approximately 95,000 containers are shipped through Southeast Alaska each year on approximately 200 transits of Wrangell Narrows. Consumer goods are the primary cargo.

Barges larger than 80 feet in width overall, cannot transit Wrangell Narrows without a waiver of the size restriction. If they cannot use Wrangell Narrows, they must transit through Chatham Strait around Cape Decision which increases the transit distance to the Gulf of Alaska by over 170 miles. Inclement weather, common in Southeast Alaska, often causes delays of as many as two or three days while barge operators wait for better weather to make the passage around Cape Decision. The risk of a marine casualty increases when transporting cargo in severe weather.

Wrangell Narrows is wide enough, even in its narrowest sections, to allow for the safe transit of 100 foot wide barges. Alaska Marine Lines has been safely operating 100 foot wide single barge tows on Wrangell Narrows with as Coast Guard waiver since May 1994. Southeast Alaska relies heavily upon container barges to deliver consumer goods essential to the every day life of its residents. Allowing 100 foot wide single barge tows in Wrangell Narrows will eliminate all current requests for waivers from the width restriction and will reduce unnecessary weather-related delays of consumer good shipments to Alaska residents. It will also allow most single barge tows to operate in the protected waters of Wrangell Narrows during inclement weather.

Discussion of Comments

The Coast Guard received four comments following the publication of the NPRM. Three comments were from barge operators and one was from a national trade association for the inland and coastal barge and towing industry. All of the comments received were in support of the proposed regulation for the following reasons:

(1) The barge width increase will reduce the number of transits, improving marine safety in the Wrangell Narrows;

(2) Barge freight will reach customers in a more timely manner since tow operators will be able to transit the Narrows rather than going the extra 170 miles around Cape Decision; and

(3) The need to transit by way of Cape Decision during bad weather will be eliminated, avoiding the risk of weather-related accidents.

Regulatory Evaluation

This final rule is not a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard has determined that a Regulatory Evaluation is unnecessary because of the minimal impact expected.

Small Entities

Because the impact of this regulatory action is minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulatory action contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

This rule has been analyzed in accordance with Executive Order No. 12612 on Federalism (October 26, 1987), which requires Executive departments and agencies to be guided by certain fundamental federalism principles in formulating and implementing policies. These policies have been fully considered in the development of the proposed regulation. This final rule does not have 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 this action is Categorically Excluded in accordance with section 2.B.2.e(34)(g) of the NEPA Implementing Procedures, COMDTINST M16475.2B. A copy of the categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 162

Navigation (water), Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 162 as follows:

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

1. The authority citation for part 162 continues to read as follows:

Authority: 3 U.S.C. 1231; 49 CFR 1.46.

2. In section 162.255, paragraph (e)(2) is revised to read as follows:

§ 162.255 Wrangell Narrows, Alaska; use, administration, and navigation.

* * * * *

(e) * * *

(2) Raft and barge tows of more than one unit shall not exceed 65 feet in width overall. Single barge tows shall not exceed 100 feet in width overall.

* * * * *

Dated: December 5, 1995.

J.A. Creech,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–30262 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5333–5]

RIN 2060–AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correcting amendments.

SUMMARY: This action corrects several errors in cross-referencing provisions and clarifies regulatory text of the ''National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks,'' which was issued as a final rule on April 22, 1994 and June 6, 1994. This rule is commonly known as the Hazardous Organic NESHAP or the HON.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Janet S. Meyer, Coatings and Consumer Products Group, Emissions Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5254.

SUPPLEMENTARY INFORMATION: On April 22, 1994 (59 FR 19402) and June 6, 1994 (59 FR 29196), the EPA promulgated the

national emission standards for hazardous air pollutants (NESHAP) for the synthetic organic chemical manufacturing industry (SOCMI), and for several other processes subject to the equipment leaks portion of the rule. These regulations were promulgated as subparts F, G, H, and I in 40 CFR part 63, and are commonly referred to as the Hazardous Organic NESHAP or the HON. On September 20, 1994, the EPA published in the Federal Register a notice of corrections to typographical and cross-referencing errors in subparts F, H, and I of the final regulations. The notice also included a few editorial changes to clarify the intent of certain provisions in those subparts. This notice contains additional corrections to typographical and cross-referencing errors, as well as additional editorial changes to clarify the intent of certain provisions in subparts F, G, and H of the final regulations.

Corrections are being made to § 63.100(f)(1) and the definition of ''batch operation'' in § 63.101 of subpart F to clarify that the process vent provisions of the rule apply only to continuous vents, and the definition of batch operation was intended to apply to unit operations. This correction is necessary to avoid confusion over the applicability of the process vent control requirements. The definition of ''batch operation'' is being revised to clarify that the term ''batch operation'' refers to a unit operation within the chemical manufacturing process unit rather than to the entire chemical manufacturing process unit operation. To improve consistency with the definition of ''unit operation,'' the definition of ''batch operation'' under § 63.101 of subpart F is being revised to cover all operations, including but not limited to, extraction, drying, condensation, filtration, absorption, distillation, and reaction. This same revision is being made to the definition of ''batch operation'' under § 63.111 of subpart G.

Section 63.104(b)(1)(i)(C) is being revised to correct a drafting error. The restrictive clause ''If monitoring for speciated HAP'' is being deleted from that paragraph because it was the EPA's intention in the final rule that under the provisions for monitoring cooling water, whether a source chooses to monitor for total hazardous air pollutants (HAP), total volatile organic compounds (VOC), or speciated HAP, the source is required to monitor for only those HAP that are present in the process fluid in concentrations greater than 5 percent by weight.

A few revisions are being made to subpart F to improve consistency in terminology and consistency among the provisions in subparts A, F, and H. To improve consistency among the subpart A, F, and H provisions, and to correct an error in cross-referencing subpart A, § 63.100(k)(3) of subpart F is being revised to cross-reference the compliance extension provisions in § 63.182(a)(6) of subpart H and § 63.6(i) of subpart A which indicates that sources granted extensions as provided in subparts A and F are not required to meet the schedule requirements under subpart H. Additionally, § 63.102(c)(1) is being revised to correct errors in cross-referencing 40 CFR parts 70 and 71, and § 63.105(a) is being revised to correct an error in cross-referencing subpart G.

A few corrections are being made to subpart G to improve consistency in terminology. The term ''vapor pressure'' in table 10, which is not defined in the HON provisions, is being changed to ''maximum true vapor pressure,'' which is the defined term in the HON provisions. The definition of ''hard-piping'' is being changed to make it consistent with an earlier revision to the definition of this term in subpart H. The definition of the term ''rack-weighted average partial pressure'' is being changed to clarify that the mole fraction of the compound is used in calculating the individual HAP maximum true vapor pressure, and to clarify the definition of the term G_i. Footnote ''d'' for tables 14b and 15b, and footnote ''e'' for table 16 are being corrected to be consistent with the reporting requirements specified in those tables.

Various sections in subpart G are being revised to correct drafting errors in the usage of terms and in cross-referencing. Several typographical errors in Figure 7, table 6, the definition of ''incinerator'' in § 63.111, and in §§ 63.144, 63.145, and 63.152 are being corrected. Various cross-referencing errors in table 15a, table 15b, the definition of ''average flow rate'' in § 63.111, and in §§ 63.138, 63.147, 63.150, and 63.175 are being corrected.

Changes are being made to § 63.150 (k) and (k)(1) to correct a drafting error. The rule should have referred to ''operating permit authority'' instead of the ''Administrator.'' As discussed in the April 22, 1994 Federal Register, the decision on the hazard/risk evaluation is to be made by the State or local permit authority, not by the EPA.

The reference to § 63.6(i)(6) of subpart A in § 63.151(a)(6)(ii) is being revised to reflect the general provisions as issued in the final rule (59 FR 12408). The reference made to § 63.6 of subpart A in § 63.151(a)(6)(ii) of the final HON rule had reflected an earlier draft of the general provisions. This same cross-reference correction is being made to § 63.182(a)(6)(ii) of subpart H. Section 63.182(d)(2)(vii) is being corrected to cross-reference both § 63.173(a) and (b). Nitrobenzene is being added to table 9 because nitrobenzene was inadvertently not included in table 9 of the version of the HON sent to the Federal Register for printing.

Corrections are being made to several sections in subpart G to clarify the intent of the provisions. The ''knowledge of the wastewater'' option for determining average volatile organic hazardous air pollutant (VOHAP) concentration is being amended to clarify that water concentrations of HAP must be multiplied by the appropriate f_m factors from table 34 to obtain the volatile HAP fraction. The drafting in § 63.148(j) is being corrected to clarify the relationship between those requirements and the reporting requirements of §§ 63.152(c) and 63.182(b).

The Implementation Plan requirements in § 63.151(a)(2) and § 63.151 (c) are being corrected to clarify that for existing sources, the information required in the implementation plan need not be submitted earlier than 12 months prior to the compliance date for sources not using emissions averaging or 18 months prior to the compliance date for sources using emissions averaging. This clarification is necessary to make the regulation consistent with the EPA's intent to allow 18 or 24 months for preparation of the required information. Due to a drafting error, the final rule could be interpreted to require earlier submittal of this information for any source required to submit an operating permit application before these dates. The intent of § 63.151(c)(1) is to avoid duplicative submissions of implementation plan information, not to require submission of such information earlier than 12 or 18 months prior to the compliance date.

By promulgating these technical corrections directly as a final rule, the EPA is foregoing an opportunity for public comment on a notice of proposed rulemaking. Section 553(b) of title 5 of the United States Code and Section 307(b) of the Clean Air Act permit an agency to forego notice and comment when ''the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The EPA finds that notice and comment regarding these minor technical corrections are unnecessary due to their noncontroversial nature and because they do not substantively

change the requirements of the HON. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b) for a determination that the issuance of a notice of proposed rulemaking is unncessary.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 8, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, Title 40, chapter I, part 63, of the Code of Federal Regulations is corrected as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

Subpart F—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

2. Section 63.100 is amended by revising paragraph (f)(1) and revising the first sentence of paragraph (k)(3) introductory text to read as follows:

§ 63.100 Applicability and designation of source.

* * * * *

(f) * * *

(1) Process vents from batch operations;

* * * * *

(k) * * *

(3) Existing sources shall be in compliance with subpart H of this part no later than the dates specified in paragraphs (k)(3)(i) through (k)(3)(v) of this section, except as provided for in paragraphs (k)(4) through (k)(8) of this section, unless an extension has been granted by the Administrator as provided in § 63.182(a)(6) of subpart H of this part or granted by the operating permit authority as provided in § 63.6(i) of subpart A of this part. * * *

* * * * *

3. Section 63.101 is amended by revising the definition of ''batch operation'' in paragraph (b) to read as follows:

§ 63.101 Definitions.

* * * * *

(b) * * *

Batch operation means a noncontinuous operation in which a discrete quantity or batch of feed is charged into a unit operation within a chemical manufacturing process unit and processed at one time. Batch operation includes noncontinuous operations in which the equipment is fed intermittently or discontinuously. Addition of raw material and withdrawal of product do not occur simultaneously in a batch operation. After each batch operation, the equipment is generally emptied before a fresh batch is started.

* * * * *

4. Section 63.102 is amended by revising paragraph (c)(1) to read as follows:

§ 63.102 General standards.

* * * * *

(c) * * *

(1) If the EPA has approved a State operating permit program under 40 CFR Part 70, the permit shall be obtained from the State authority. If the State operating permit program has not been approved, the source shall apply to the EPA Regional Office.

* * * * *

5. Section 63.104 is amended by revising paragraph (b)(1)(i)(C) to read as follows:

§ 63.104 Heat exchange system requirements.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) Only HAP that are present in the process fluid in concentrations greater than 5 percent by weight are required to be measured in the cooling water.

* * * * *

§ 63.105 [Amended]

6. Section 63.105 is amended by revising the reference in paragraph (a) from ''table 2 of this subpart'' to read ''table 9 of subpart G of this part''.

Subpart G—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater

7. Section 63.111 is amended by revising the definitions of ''average flow rate,'' ''batch operation,'' ''hard-piping,'' ''incinerator,'' ''mass flow rate,'' and ''rack-weighted average partial pressure'' to read as follows:

§ 63.111 Definitions.

* * * * *

Average flow rate, as used in the wastewater provisions, means the annual average flow rate, as determined according to the procedures specified in § 63.144(c).

Batch operation means a noncontinuous operation in which a discrete quantity or batch of feed is charged into a unit operation within a chemical manufacturing process unit and distilled or reacted at one time. Batch operation includes noncontinuous operations in which the equipment is fed intermittently or discontinuously. Addition of raw material and withdrawal of product do not occur simultaneously in a batch operation. After each batch operation, the equipment is generally emptied before a fresh batch is started.

* * * * *

Hard-piping means pipe or tubing that is manufactured and properly installed using good engineering judgment and standards such as American National Standards Institute (ANSI) B31–3.

Incinerator means an enclosed combustion device that is used for destroying organic compounds. Auxiliary fuel may be used to heat waste gas to combustion temperatures. Any energy recovery section present is not physically formed into one manufactured or assembled unit with the combustion section; rather, the energy recovery section is a separate section following the combustion section and the two are joined by ducts or connections carrying flue gas. The above energy recovery section limitation does not apply to an energy recovery section used solely to preheat the incoming vent stream or combustion air.

* * * * *

Mass flow rate, as used in the wastewater provisions, means the rate at which the mass of a constituent in a wastewater stream flows past a point, determined by multiplying the average concentration of that constituent in the wastewater stream by the average flow rate (annual average volumetric flow rate) and density of the wastewater stream, as determined according to the procedures specified in §§ 63.144 (e)(2) and (e)(3).

* * * * *

Rack-weighted average partial pressure means the throughput weighted average of the average maximum true vapor pressure of liquids containing organic HAP transferred at a transfer rack. The rack-weighted average partial pressure shall be calculated using the equation below:

Where:

P = Rack-weighted average partial pressure, kilopascals.

$$P = \frac{\sum P_i G_i}{\sum G_i}$$

P_i = Individual HAP maximum true vapor pressure, kilopascals, = X_i*P, where X_i is the mole fraction of compound i in the liquid.

G_i = Yearly volume of each liquid that contains organic HAP that is transferred at the rack, liters.

i = Each liquid that contains HAP that is transferred at the rack.

* * * * *

8. Section 63.138 is amended by revising the second sentence in paragraph (h) introductory text to read as follows:

§ 63.138 Process wastewater provisions—treatment processes.

* * * * *

(h) * * * The requirements of this paragraph are illustrated in Figure 10 of this subpart.

* * * * *

9. Section 63.144 is amended by adding a sentence to the end of paragraph (b)(3), and by revising paragraphs (b)(5)(i)(B), (b)(5)(i)(D), and (b)(5)(i)(E) to read as follows:

§ 63.144 Process wastewater provisions—test methods and procedures for determining applicability and Group 1/Group 2 determinations.

* * * * *

(b) * * *

(3) * * *. If the water concentration of an individual HAP present in the wastewater is used to develop a total VOHAP average concentration or average VOHAP concentration for that individually speciated HAP, it shall be multiplied by the HAP-specific f_m factor in table 34 of this subpart to obtain the volatile portion of that HAP.

* * * * *

(5) * * *

(i) * * *

(B) Total VOHAP concentration (stream) can be determined by summing the VOHAP concentrations of all individually speciated organic HAP in the wastewater.

$$C_{stream} = \sum_{i=1}^{n} C_i$$

Where:

C_{stream} = Total VOHAP concentration of wastewater stream.

n = Number of organic HAP in the wastewater stream.

C_i = VOHAP concentration of individual organic HAP (i) calculated according to the procedures in paragraph (b)(5)(i)(A) of this section.

* * * * *

(D) If the wastewater stream has a steady flow rate throughout the year, the total VOHAP average concentration for HAP listed on table 9 of this subpart of the wastewater stream shall be calculated by averaging the values calculated in paragraph (b)(5)(i)(B) for the individual samples:

$$C_{stream,\,avg} = \frac{\sum_{j=1}^{m} C_{stream,\,j}}{m}$$

Where:

$C_{stream,avg}$ = Total VOHAP average concentration for HAP listed on table 9 of this subpart of the wastewater stream.

m = Number of samples.

$C_{stream,j}$ = Total VOHAP concentration of wastewater stream as measured in sample j, calculated according to the procedures in paragraph (b)(5)(i)(B) of this section.

(E) The average VOHAP concentration for each individually speciated organic HAP (i) listed on table 8 of this subpart shall be calculated by averaging the values calculated in paragraph (b)(5)(i)(A) of this section for the individual samples:

$$C_{i,\,avg} = \frac{\sum_{j=1}^{m} C_{i,\,j}}{m}$$

Where:

$C_{i,avg}$ = Average VOHAP concentration for each individually speciated organic HAP i listed on table 8 of this subpart.

m = Number of samples.

$C_{i,j}$ = VOHAP concentration of an individual organic HAP i as measured in sample j.

* * * * *

§ 63.145 [Amended]

10. Section 63.145 is amended by revising paragraphs (c)(2)(ii)(E), (f) introductory text, and (g) introductory text to read as follows: § 63.145 Process wastewater provisions—test methods and procedures to determine compliance.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(E) The HAP mass flow rates of each individual HAP compound entering and exiting the treatment process are calculated as follows:

$$E_b = \frac{K}{n \times 10^6}\left(\sum_{p=1}^{n} V_{bp} C_{bp}\right)$$

$$E_a = \frac{K}{n \times 10^6}\left(\sum_{p=1}^{n} V_{ap} C_{ap}\right)$$

Where:

E_b = HAP mass flow rate of an individually speciated HAP compound entering the treatment process, kilograms per hour.

E_a = HAP mass flow rate of an individually speciated HAP compound exiting the treatment process, kilograms per hour.

K = Density of the wastewater stream, kilograms per cubic meter.

n = Number of runs.

V_{bp} = Average volumetric flow rate of wastewater entering the treatment process during each run p, cubic meters per hour.

V_{ap} = Average volumetric flow rate of wastewater exiting the treatment process during each run p, cubic meters per hour.

C_{bp} = Average HAP concentration of an individually speciated HAP in the wastewater stream entering the treatment process during each run p, parts per million by weight.

C_{ap} = Average HAP concentration of an individually speciated HAP in the wastewater stream exiting the treatment process during each run p, parts per million by weight.

* * * * *

(f) A performance test to demonstrate compliance with the mass removal provision for new sources in § 63.138(b)(1)(iii)(C) shall consist of a determination of mass removal required to be achieved, and a determination of mass removal actually achieved. Actual mass removal and compliance shall be determined by the procedure in paragraph (h) of this section. The required mass removal for each Group 1 wastewater stream prior to combination of the streams for treatment shall be determined using the following equation:

$$RMR = \left(\frac{K}{10^6} V \sum_{j=1}^{n} C_{j,\,avg}\right) 0.99 * 60$$

Where:

RMR = Required mass removal of organic HAP listed in table 8 of this subpart in a Group 1 wastewater stream, in kilograms per hour.

K = Density of the Group 1 wastewater stream, kilograms per liter.

V = Annual average wastewater flow rate of the Group 1 wastewater stream, liters per minute.

n = Number of organic HAP listed in table 8 of this subpart in stream.

$C_{j,avg}$ = Average HAP concentration of each organic HAP j listed in table 8 of this subpart in the Group 1 wastewater stream at the point of generation, parts per million by weight.

0.99 = Required fraction removed of organic HAP listed in table 8 of this subpart.

* * * * *

(g) A performance test to demonstrate compliance with the mass removal provisions for new and existing sources in § 63.138(c)(1)(iii)(D) shall consist of a determination of mass removal required to be achieved, and a determination of mass removal actually achieved. Actual mass removal and compliance shall be determined by the procedure in paragraph (h) of this section. The required mass removal for each Group 1 wastewater stream prior to combination of the streams for treatment shall be determined using the following equation:

$$RMR = \frac{K}{10^6} V \sum_{j=1}^{n} \left(C_{j,avg} * Fr \right) * 60$$

Where:

RMR = Required mass removal of table 9 of this subpart organic HAP in a Group 1 wastewater stream, prior to combination with other Group 1 wastewater streams, kilograms per hour.

K = Density of the Group 1 wastewater stream, kilograms per liter.

V = Annual average wastewater flow rate of the Group 1 wastewater stream, liters per minute.

n = Number of table 9 of this subpart organic HAP compounds in stream.

$C_{j,avg}$ = Average HAP concentration of each organic HAP j listed in table 9 of this subpart in the Group 1 wastewater stream at the point of generation, parts per million by weight.

Fr = Required fraction removed of each compound j (target removal efficiency from table 9 of this subpart).

* * * * *

11. Section 63.147 is amended by revising paragraph (b) to read as follows:

§ 63.147 Process wastewater provisions—recordkeeping.

* * * * *

(b) The owner or operator transferring a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream in accordance with § 63.132(j) shall keep a record of the notice sent to the treatment operator stating that the wastewater stream or residual contains organic HAP that are required to be managed and treated in accordance with the provisions of this subpart.

* * * * *

12. Section 63.148 is amended by revising paragraph (j) introductory text to read as follows:

§ 63.148 Leak inspection provisions.

* * * * *

(j) The owner or operator shall submit with the reports required by § 63.182(b) of subpart H of this part or with the reports required by § 63.152(c) of this subpart, the information specified in paragraphs (j)(1) through (j)(3) of this section.

* * * * *

13. Section 63.150 is amended by revising paragraphs (g)(5)(i) introductory text, (k) introductory text, and (k)(1) introductory text to read as follows:

§ 63.150 Emissions averaging provisions.

* * * * *

(g) * * *

(5) * * *

(i) The following equation shall be used for each wastewater stream i to calculate EWW_{ic}:

$$EWW_{ic} = \left(6.0 * 10^{-8}\right) Q_i \; H_i \sum_{m=1}^{s} \left(1 - Fr_m\right) Fe_m HAP_{im} + (0.05) \left(6.0 * 10^{-8}\right) Q_i \; H_i \sum_{m=1}^{s} \left(Fr_m HAP_{im}\right)$$

Where:

EWW_{ic} = Monthly wastewater stream emission rate if wastewater stream i is controlled by the reference control technology, megagrams per month.

Q_i = Average flow rate for wastewater stream i, as determined by the procedure in § 63.144(c)(3), liters per minute.

H_i = Number of hours during the month that wastewater stream i was generated, hours per month.

s = Total number of organic HAP in wastewater stream i.

Fr_m = Fraction removed of organic HAP m in wastewater, from table 9 of this subpart, dimensionless.

Fe_m = Fraction emitted of organic HAP m in wastewater, from table 34 of this subpart, dimensionless.

HAP_{im} = Average concentration of organic HAP m in wastewater stream i, parts per million by weight.

* * * * *

(k) The owner or operator must demonstrate that the emissions from the emission points proposed to be included in the average will not result in greater hazard or, at the option of the operating permit authority, greater risk to human health or the environment than if the emission points were controlled according to the provisions in §§ 63.113 through 63.148.

(l) This demonstration of hazard or risk equivalency shall be made to the satisfaction of the operating permit authority.

* * * * *

14. Section 63.151 is amended by revising paragraphs (a)(2) introductory text and (a)(6)(ii) and by revising the first sentences in paragraphs (c) introductory text, (c)(1)(i), and (c)(1)(ii) to read as follows:

§ 63.151 Initial notification and implementation plan.

(a) * * *

(2) An Implementation Plan, unless an operating permit application has been submitted prior to the date the Implementation Plan is due and the owner or operator has elected to include the information specified in § 63.152(e) in that application.

* * * * *

(6) * * *

(ii) A request for an extension of compliance must include the data described in § 63.6(i)(6)(i) (A), (B), and (D) of subpart A of this part.

* * * * *

(c) Each owner or operator of an existing or new source subject to this subpart must submit an Implementation Plan to the Administrator by the dates specified in paragraphs (c)(1) and (c)(2) of this section unless an operating permit application accompanied by the information specified in § 63.152(e) has been submitted. * * *

(1) * * *

(i) Each owner or operator of an existing source subject to this subpart who elects to comply with § 63.112 by using emissions averaging for any emission points, and who has not submitted an operating permit

application accompanied by the information specified in § 63.152(e) at least 18 months prior to the compliance dates specified in § 63.100 of subpart F of this part, shall develop an Implementation Plan for emissions averaging. * * *

(ii) Each owner or operator of an existing source subject to this subpart who elects to comply with § 63.112 of this subpart by complying with the provisions of §§ 63.113 to 63.148 of this subpart, rather than emissions averaging, for any emission points, and who has not submitted an operating permit application accompanied by the information specified in § 63.152(e) at least 12 months prior to the compliance dates specified in § 63.100 of subpart F of this part, shall develop an Implementation Plan. * * *

* * * * *

15. Section 63.152 is amended by revising paragraph (c)(4) introductory text to read as follows:

§ 63.152 General reporting and continuous records.

* * * * *

(c) * * *

(4) Periodic Reports shall include the information in paragraphs (c)(4)(i) through (c)(4)(iii) of this section, as applicable:

* * * * *

Appendix to Subpart G—[Amended]

Table 6—[Amended]

16. Table 6 in the appendix of subpart G is amended by revising the vapor pressure for vessel capacity entry ''38≤capacity<151'' from ''13.1'' to ≥13.1.''

Table 9—[Amended]

17. Table 9 in the appendix to subpart G is amended by adding, in alphabetical order, an entry for ''nitrobenzene'' with its CAS number of ''98953'' and its Fr of ''0.80''.

Table 10—[Amended]

18. Table 10 in the appendix to subpart G is amended by revising the term ''vapor pressure (kPa)'' to read ''Maximum true vapor pressure (kPa)'' in the middle column heading.

Table 14b—[Amended]

19. Table 14b in the appendix to subpart G is amended by revising the footnote ''[d]'' to read as follows:

* * * * *

[d] Except when § 63.132(c) is used, annual average total VOHAP concentration in wastewater stream at point of generation, parts per million by weight (ppmw).

* * * * *

Table 15a—[Amended]

20. Table 15a in the appendix to subpart G is amended by revising the footnote ''[i]'' to read as follows:

* * * * *

[i] If the stream is being treated in accordance with the requirements of § 63.138(b), give identification code of treatment unit(s) treating stream. Identification codes should correspond to entries in table 17 of this subpart.

* * * * *

Table 15b—[Amended]

21. Table 15b in the appendix to subpart G is amended by revising the footnotes ''[d]'' and ''[i]'' to read as follows:

* * * * *

[d] Except when § 63.132(c) is used, annual average total VOHAP concentration in wastewater stream at point of generation, parts per million by weight (ppmw).

* * * * *

[i] If stream is being treated in accordance with § 63.138(c), give identification code of treatment unit(s) treating stream. Identification codes should correspond to entries in table 17 of this subpart.

* * * * *

Table 16—[Amended]

22. Table 16 in the appendix to subpart G is amended by revising the footnote [e] to read as follows:

* * * * *

[e] Flow-weighted annual average total VOHAP concentration of individual or combined stream before exposure to the atmosphere and before combination with streams other than process wastewater from the specific process unit, parts per million by weight (ppmw).

* * * * *

Figure 7—[Amended]

23. Figure 7 in the appendix to subpart G is revised to read as follows:

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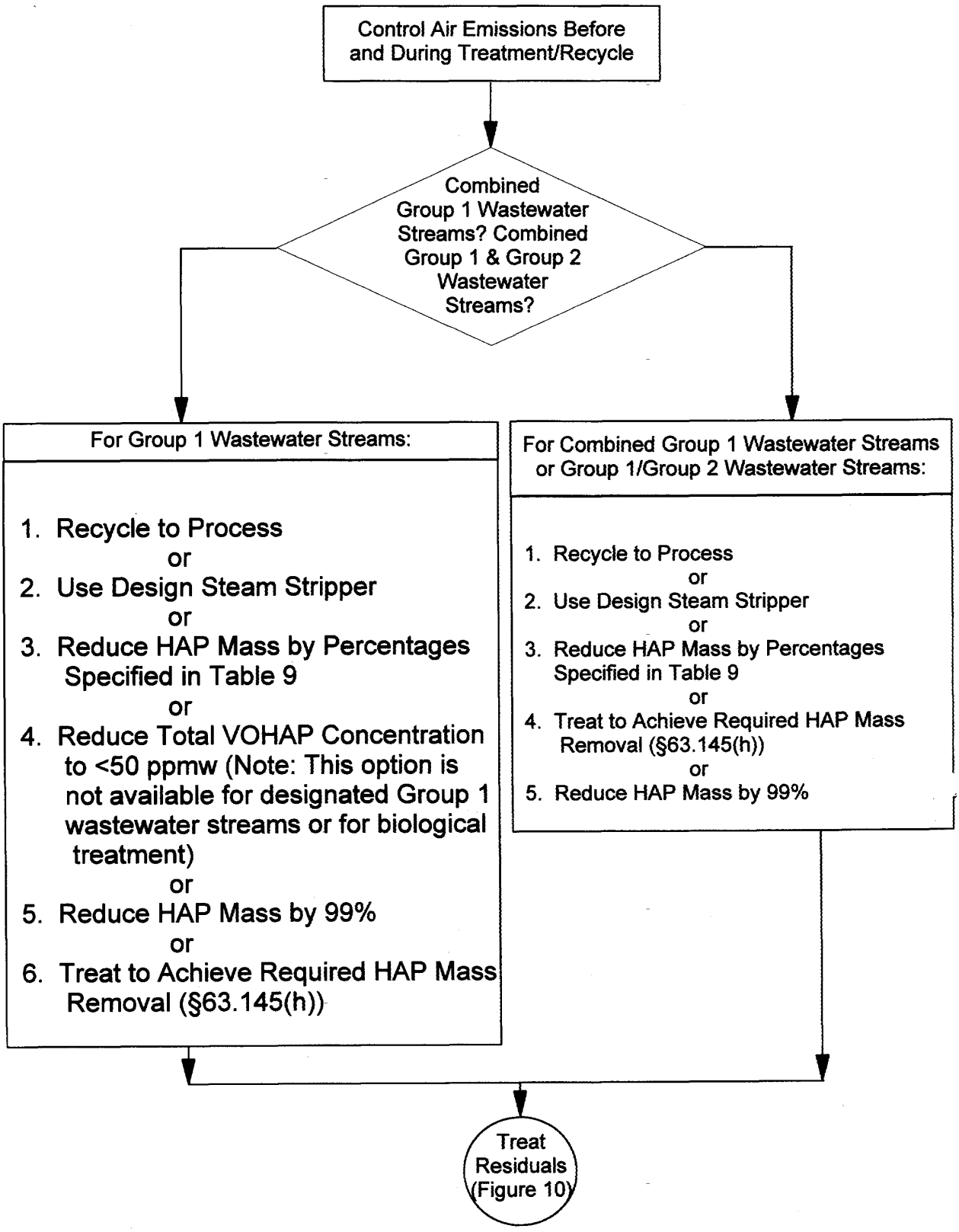

Figure 7. Compliance Options for Control of Table 9 HAP's (Refer to §63.138(c))

BILLING CODE 6560–50–C

Subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

24. Section 63.175 is amended by revising paragraph (d)(4) introductory text to read as follows:

§ 63.175 Quality improvement program for valves.

* * * * *

(d) * * *

(4) The owner or operator must demonstrate progress in reducing the percent leaking valves each quarter the process unit is subject to the requirements of paragraph (d) of this section, except as provided in paragraphs (d)(4)(ii) and (d)(4)(iii) of this section.

* * * * *

25. Section 63.182 is amended by revising paragraphs (a)(6)(ii) and (d)(2)(vii) to read as follows:

§ 63.182 Reporting requirements.

(a) * * *

(6) * * *

(ii) A request for an extension of compliance must include the data described in § 63.6(i)(6)(i) (A), (B), and (D) of subpart A of this part.

* * * * *

(d) * * *

(2) * * *

(vii) The number of agitators for which leaks were detected as described in § 63.173(a) and (b) of this subpart;

* * * * *

[FR Doc. 95–28382 Filed 12–11–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[AD–FRL–5344–9]

Clean Air Act Final Interim Approval of the Operating Permits Program; Nevada Division of Environmental Protection; Nevada

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Final Interim Approval.

SUMMARY: The EPA is promulgating interim approval of the title V operating permits program submitted by the Nevada Division of Environmental Protection (''NDEP'' or ''State'') for the purpose of complying with federal requirements that mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

EFFECTIVE DATE: January 11, 1996.

ADDRESSES: A copy of NDEP's submittal and other supporting information used in developing the final approval are available for inspection (docket number NV–DEP–95–1–OPS) during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (telephone 415/744–1249), Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''Act'')), and implementing regulations at 40 Code of Federal Regulations (''CFR'') part 70, require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

On August 7, 1995, EPA proposed interim approval of the operating permits program for NDEP (''NPRM''). *See* 60 FR 40140. In that Federal Register document, EPA also proposed approval of NDEP's interim mechanism for implementing section 112(g) and its program for delegation of section 112 standards as promulgated as they apply to title V and non-title V sources. Public comment was solicited on the three proposed actions, and EPA is responding to those comments in this document and in a separate ''Response to Comments'' document that is available in the docket at the Regional office.

II. Final Action and Implications

A. Analysis of State Submission and Response to Public Comments

The August 7, 1995 Federal Register notice proposed interim approval of NDEP's title V operating permits program as submitted on February 8, 1995. EPA is aware that NDEP has revised its implementing regulations since the February 8, 1995 submission; however, those revisions have not been submitted to EPA for approval and are not part of the program being approved in today's final action.

EPA received comments on the NPRM from two commenters: the National Mining Association (''NMA'') and NDEP. With one exception, the program deficiencies identified in the NPRM remain unchanged as a result of public comment. Based on public comment and further analysis, the deficiency identified in section II.B.1.(2) of the NPRM has been removed; i.e., NDEP's definition of ''regulated air pollutant'' is fully approvable. See section II.A.4. below for further discussion. The commenters also provided a few program clarifications which are discussed below. Furthermore, please note that an issue raised as a deficiency in the context of ''insignificant activities'' and discussed in section II.A.2.c. of the proposed notice has become a separate interim approval issue as a result of public comment. See section II.A.1. for more information. No adverse public comment was received on the proposed approvals of NDEP's program for delegation of section 112 standards as promulgated or transition mechanism for implementing section 112(g), and hence, those approvals have not been altered as a result of public comment.

1. Applicability

In response to a program deficiency identified by EPA in section II.B.1.(10) of the NPRM, NDEP commented that it does not plan to permit *any source* that is subject to the New Source Performance Standard (''NSPS'') for new residential wood heaters or the National Emissions Standard for Hazardous Air Pollutants (''NESHAP'') for asbestos demolition because the State has not accepted delegation for such standards.

In order to have a fully approvable program, a state must have authority to permit *all major sources* and to write permits that assure compliance with all federal applicable requirements. If under State law NDEP must receive delegation of a federal requirement before it can write that requirement into a permit or assure compliance with that requirement, then NDEP must seek and receive delegation in sufficient time to issue the permit. It is possible for Nevada to obtain delegation of an NSPS or NESHAP requirement solely for title V sources.

In the NPRM, EPA relied on the Nevada Attorney General's legal opinion (dated November 15, 1993) that NDEP has authority to issue permits to all

sources required to have permits pursuant to section 502(a) of the Act and § 70.3 of part 70 (p. 2 of legal opinion), and authority to ''require that all applicable requirements be incorporated into an operating permit'' (p. 8 of legal opinion). In addition, NDEP has committed to implement all applicable requirements, including those that would necessitate State rule adoption prior to incorporation into the permit. (*See* Program Submittal, Section II.A.2., pp. II–1 to II–2.) EPA expects NDEP to issue permits to all major sources and to include all applicable requirements in those permits. If a regulatory impediment exists outside of the submitted program, then NDEP must eliminate it in order to have a fully approvable program.

In response to EPA's discussion in the NPRM (section II.A.2.c.) on insignificant activities, NDEP commented that two of the listed insignificant activities, agricultural land use and equipment or contrivances used for food processing, are ''unpermittable activities.'' EPA regards this comment as ambiguous given that NAC 445B.293.1 (previously NAC 445.705.1) requires, and the Attorney General's legal opinion confirms, that all major sources (with the two exceptions noted above) must obtain operating permits. Furthermore, EPA assumed that if information is provided in the application because it is needed to ''establish the basis for the applicability of standards'' (section 445B.295.2(b), previously 445.7054.2(b)), then the units subject to such standards (i.e., applicable requirements) would be contained in the permit. EPA expects NDEP to implement its insignificant activities provisions in a manner consistent with both part 70 and the provisions of the NAC relied upon in the NPRM, that is: (1) Emissions from insignificant activities must be considered in applicability determinations; (2) Class I permit applications may not omit any information needed to determine or impose any applicable requirement; and (3) if an applicable requirement applies to a unit at a major source, that unit must be permitted. In order to have a fully approvable program, NDEP must remove all ambiguity regarding the permitting of agricultural and food processing activities and clearly require all major sources to obtain Class I permits. If a regulatory impediment exists outside of the submitted program, then NDEP must eliminate that impediment prior to full program approval.

Also, in the NPRM, EPA noted that NDEP's program contains inconsistencies with regard to the applicability of nonmajor sources to title V. (*See* 60 FR 40141–40142, section II.A.2.a. ''applicability.'') EPA requested a letter from NDEP clarifying how it intends to carry out the applicability requirements in its program.

In the comment letter received from NDEP on September 6, 1995, the State informed EPA that it has already corrected the ambiguity regarding whether or not nonmajor sources subject to a section 111 or 112 standard are subject to title V. NDEP revised the Nevada Administrative Code on April 4, 1995 to clearly state that ''major,'' and not ''minor,'' new sources subject to sections 111 and 112 will be permitted as Class I–B sources.

2. Insignificant Activities

One commenter asserted that EPA's position in the NPRM regarding insignificant activities is inconsistent with the July 10, 1995 ''White Paper,'' which gives states flexibility in designating insignificant activities. EPA disagrees that the NPRM is inconsistent with the ''White Paper'' with regard to insignificant activities. EPA is not questioning the State's authority to identify insignificant activities; rather, EPA is rejecting the unbounded nature of some of the listed activities.

The meaning of the term ''insignificant'' as used in section 70.5(c) is that information is unessential for determining whether and how an applicable requirement applies at a source. If emissions at an activity are extremely low, that activity is unlikely to be subject to an applicable requirement. That is why EPA suggested that NDEP create an across-the-board emissions threshold above which activities could not qualify as insignificant. Without an across-the-board threshold or unit-specific limits, activities on NDEP's list, such as ''agricultural land use'' and ''equipment or contrivances used exclusively for the processing of food'' could be construed as being ''insignificant'' even if subject to an applicable requirement. Where there is a chance that an activity is subject to an applicable requirement (e.g., food processing activities may be subject to the yeast manufacturing NESHAP), EPA needs additional criteria, such as an emissions threshold, to ensure that the activity is insignificant for part 70 permitting purposes.

The commenter further contended that NDEP's regulation already prohibits activities subject to an applicable requirement from qualifying as insignificant. Nevertheless, the commenter asked whether the following language would resolve EPA's concerns: ''[N]o source subject to an applicable requirement may qualify as an insignificant activity.''

EPA disagrees that NDEP's regulation clearly prohibits activities subject to an applicable requirement from qualifying as insignificant. In fact, NDEP's list of insignificant activities contains activities, such as air-conditioning equipment, that are almost certainly subject to an applicable requirement. Unless NDEP removes from the list of insignificant activities those activities that are likely to be subject to a unit-specific applicable requirement, the language proposed by the commenter might only cause confusion. However, the language proposed by the commenter would help clarify that insignificant activities provisions do not exempt sources from title V and do not relieve sources from having to comply with any applicable requirements.

Another comment received on insignificant activities is that EPA's recommended emissions thresholds are arbitrary and unnecessary. The commenter pointed out that other state programs have allowed emission thresholds that are higher than EPA's recommended limits for HAP emissions.

As stated in the proposed notice, EPA will review and evaluate any emissions thresholds proposed by NDEP. Emissions thresholds should reflect state-specific circumstances. Part 70 specifically provides that the permitting authority is responsible for providing the ''criteria used to determine insignificant activities or emission levels.'' NDEP may use levels approved in other state programs as guidance.

3. Reporting of Permit Deviations

Both commenters disagreed with EPA's statement that each permit must define ''prompt'' for purposes of prompt reporting of deviations. According to the commenters, ''prompt'' is already defined in NAC 445B.232.4 (previously 445.667.4) as reporting any excess emissions within 24 hours. In addition, NAC 445B.326 (previously 445.7133) defines prompt for emergencies.

The purpose of defining ''prompt'' in either the title V program or the title V permit is to notify the source of its exact reporting obligation. While NAC 445B.232.4 defines ''prompt'' in an acceptable manner, it is not currently part of NDEP's title V program. However, NAC 445B.326 was submitted as part of NDEP's title V program, and EPA agrees that ''prompt'' has already been defined for emergencies covered by that provision.

Given that permits must contain ''all applicable reporting requirements'' and that the definition of ''applicable

requirement'' in NDEP's program includes State-only requirements, EPA believes that sources are adequately notified of their reporting obligation for the interim period. Therefore, during the interim period, NDEP may rely on NAC 445B.232.4 to define ''prompt'' rather than defining it in each individual permit. For full approval, however, NDEP must either submit NAC 445B.232.4 for inclusion in its approved program, or define ''prompt'' in each permit.

4. Regulated Air Pollutant

Both commenters disagreed with EPA's position that the definition of ''regulated air pollutant'' in NAC 445B.153 (previously 445.5905) is deficient. EPA identified NDEP's definition of ''regulated air pollutant'' as a program deficiency because it appeared to be inconsistent with the part 70 definition. Specifically, NDEP's definition seemed to exclude pollutants that are subject to requirements of the Act (such as title VI and sections 112(g), 112(j), and 112(r)), but are not subject to promulgated standards. This apparent inconsistency is not an issue, however, for Class I and Class II pollutants since they are all currently subject to promulgated requirements (57 FR 31242, July 14, 1992). It is also not an issue for section 112 requirements since NDEP's definition of ''regulated air pollutant'' can be interpreted broadly to include pollutants regulated by sections 112(g), 112(j), and 112(r) of the Act.

5. Duty to Apply

One commenter asked EPA to clarify what application trigger is missing from the State's title V program. In order to understand the deficiency, one must look at the language in part 70 which states that an initial title V application is due ''within 12 months after the source *becomes subject* to the permit program'' (section 70.5(a)(1)). As is the case in NDEP's regulation, a source may ''become subject'' upon the effective date of the program or after commencing operation of a new source. However, these two situations are not the only scenarios that would make a source subject to title V for the first time. For instance, a source may become subject to title V upon promulgation of a MACT standard that does not exempt nonmajor sources to obtain title V permits. Similarly, the Administrator could designate a category of nonmajor sources to be subject to title V. Finally, facility modifications may increase a source's potential to emit to above the major source level, thus making a source newly subject to title V. For these reasons, NDEP's regulation must be revised for full approval.

6. Permit Shield

NDEP disputed EPA's comment in the NPRM that the program's permit shield provisions are deficient. Because a permit shield may insulate a source from enforcement, it is essential for EPA and the public to know when a permit shield is in the permit and exactly which conditions the permit shield is covering. According to NDEP's regulation, permits may be written to provide the benefits of a permit shield without expressly stating that a permit shield exists. This approach is plainly inconsistent with § 70.6(f)(2) which states that: ''[a] part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.'' NDEP must make all the changes identified in the proposed notice in order to have fully approvable permit shield provisions.

7. Emissions Trading

NDEP commented that it does not intend to provide the emissions trading opportunity specified in § 70.6(a)(10) and that it intends to remove the existing provisions for trading under a federally enforceable emissions cap, which are now located in NAC 445B.316.1(g) (previously NAC 445.7114.1(g)) and which satisfy the requirements of § 70.4(b)(12)(iii). Consequently, NDEP indicated that it will not correct the regulatory deficiencies with regard to trading identified in the proposed approval notice under section II.B.1.(9). NDEP noted, however, that it will allow trading as an alternative operating scenario.

The federal part 70 regulation does not give states discretion about whether to allow the emissions trading provisions of §§ 70.6(a)(10) and 70.4(b)(12)(iii). First, § 70.6(a)(10) says that the permitting authority cannot deny trading opportunities where such opportunities are provided by the underlying applicable requirement. For instance, if NDEP permits a source subject to the Hazardous Organic NESHAP (HON), which allows for trading without a case-by-case approval, and the source requests to take advantage of the trading provisions of the HON, then NDEP must establish trading terms and conditions in the source's permit. Second, § 70.4(b)(12)(iii) states that the permitting authority ''shall'' allow for trading under a federally enforceable emissions cap. In the proposed approval, EPA relied on NAC 445.7114.1(g) to satisfy the requirements for trading under a federally enforceable emissions cap. If NDEP removes such trading provisions from its program, the program will become deficient with regard to operational flexibility. Moreover, EPA is not convinced that NDEP's alternative operating scenario provisions provide an adequate framework for these types of trading opportunities.

B. Final Action

1. Title V Operating Permits Program

The EPA is promulgating interim approval of NDEP's title V operating permits program as submitted on February 8, 1995. In order to receive full approval, NDEP must correct the ten program deficiencies listed in the proposed interim approval document under section II.B.1.(1, 3–11)[1] as well as one additional deficiency regarding the unpermittable status of agricultural and food processing activities which was identified as a result of public comment and is discussed above in section II.A.1.

The scope of NDEP's part 70 program approved in this notice applies to all sources under NDEP's jurisdiction. It does not apply to any sources of air pollution over which an Indian tribe has jurisdiction. *See, e.g.,* 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the Act; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until January 12, 1998. The specific conditions of the interim approval, NDEP's obligation to submit a complete corrective program, and the potential use of sanctions were set out in the proposed notice (60 FR 40140, August 7, 1995, section I.B.) and will not be repeated in this document.

2. State Preconstruction Permit Program Implementing Section 112(g)

EPA is approving the use of NDEP's integrated preconstruction/operating permit program as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and adoption by NDEP of rules specifically designed to implement section 112(g).

[1] Please see the proposed interim approval document (60 FR 40143–40144, August 7, 1995) for a list of changes that must be made in order for NDEP's program to be fully approvable.

EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

3. Program for Delegation of Section 112 Standards as Promulgated

EPA is promulgating approval under section 112(l)(5) and 40 CFR section 63.91 of NDEP's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. EPA is approving NDEP's delegation mechanism for part 70 and non-part 70 sources.

III. Administrative Requirements

A. Docket

Copies of NDEP's submittal and other information relied upon for the final interim approval, including public comment letters received and reviewed by EPA on the proposal, are contained in docket number NV–DEP–95–1–OPS maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small 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 approval 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. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. sections 7401–7671q.

Dated: December 1, 1995.

Felicia Marcus,

Regional Administrator.

* * * * *

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Appendix A to part 70 is amended by adding paragraph (a) to the entry for Nevada:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

The following state program was submitted by the Nevada Division of Environmental Protection:

(a) *Nevada Division of Environmental Protection:* submitted on February 8, 1995; interim approval effective on January 11, 1996; interim approval expires January 12, 1998.

* * * * *

[FR Doc. 95–30261 Filed 12–11–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1004

RIN 0991–AA73

Health Care Programs: Fraud and Abuse; Revisions to the PRO Sanctions Process

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises and updates the procedures governing the imposition and adjudication of program sanctions predicated on recommendations of State Utilization and Quality Control Peer Review Organizations (PROs). These changes are being made as a result of statutory revisions designed to address health care fraud and abuse issues and the OIG sanctions process. In addition, this final rule sets forth new appeal and reinstatement procedures for practitioners and other persons excluded by the OIG based on a PRO recommendation.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT:

Joe J. Schaer, Office of Management and Policy, (202) 619–3270

Joanne Lanahan, Office of Civil Fraud and Administrative Adjudication, (410) 786–9609.

SUPPLEMENTARY INFORMATION:

I. Background

A. The PRO Sanctions Process

Section 1156 of the Social Security Act imposes specific statutory obligations on practitioners and other persons to furnish necessary services to Medicare and State health care program beneficiaries that meet professionally recognized standards, and authorizes the Secretary—based on a PRO's recommendation—to impose sanctions on those who fail to comply with these statutory obligations.

Under the PRO sanctions process, no practitioner or other person is recommended for an exclusion or a monetary penalty until the practitioner or other person has an opportunity to provide additional information and have an extensive discussion with the PRO. After the receipt of a recommendation from a PRO, the OIG excludes or imposes a monetary penalty only after a careful review of all submitted documents and a separate determination that the practitioner or

other person (1) violated the statutory obligations to render medically necessary and appropriate care or failed to provide evidence of medical necessity and quality, and (2) was unwilling or unable to comply with these obligations. A practitioner or other person who is excluded from Medicare and any State health care programs, or assessed a monetary penalty, on the basis of a PRO finding is entitled to administrative and judicial review after such sanction is assessed.

B. Summary of Recent Statutory Changes

A number of recent statutory changes have resulted in revisions to section 1156 of the Act—

Public Law 100–93: Section 6 of the Medicare and Medicaid Patient and Program Protection Act extended the obligation to provide appropriate and medically necessary care that meets professionally recognized standards of quality, and the obligation to ensure that the care is appropriately documented, to encompass *all* health care services for which payment may be made under the Act, and not just Medicare. In addition, the exclusion authority under section 1156 of the Social Security Act was extended to encompass violations occurring in, and exclusions from, the State health care programs.

Public Law 100–203: Section 4095 of the Omnibus Budget Reconciliation Act (OBRA) of 1987 provided that an exclusion of a practitioner or other person who practices in a county of less than 70,000 people or in a rural health professional shortage area (HPSA) cannot be effectuated until an opportunity for a preliminary administrative hearing is provided and, if requested, the administrative law judge (ALJ) determines that the practitioner or other person will pose a serious risk to beneficiaries if permitted to continue furnishing services during the appeals process.

Public Law 101–508: Section 4205 of OBRA 1990 set forth new statutory requirements for PROs, where appropriate, to offer a corrective action plan (CAP) to practitioners and other persons prior to making a finding; and, in determining whether a practitioner or other person is willing and able to comply with his or her obligations, require the Secretary to consider whether they entered into and successfully completed a CAP prior to the PRO's submission of a recommendation and report to the Secretary.

Public Law 103–432: Section 156 of the Social Security Act Amendments of 1994 set forth the requirement that if a PRO, after reasonable notice and opportunity for discussion with the physician or practitioner concerned, finds that the physician or practitioner has furnished services in violation of section 1156(a) of the Act and determines that the physician or practitioner should enter into a CAP under section 1156(b)(1), the PRO will notify the State board(s) responsible for the licensing or disciplining of the physician or practitioner of its finding and of any action taken as a result of the finding. (See discussion regarding § 1004.70 under the Response to the Public Comments section regarding use of the term ''physician and practitioner.'')

II. Summary of the Proposed Regulations

On February 28, 1994, the OIG published a notice of proposed rulemaking in the Federal Register that set forth a comprehensive rewrite of 42 CFR part 1004 consistent with the statutory revisions and other proposed procedures and recommendations. The proposed regulations were specifically designed to revise and update the administrative procedures for the imposition and adjudication of the PRO sanctions process. The proposed regulations addressed revisions in three broad areas: (1) Procedural changes resulting from the OBRA 1990 provisions, (2) the establishment of preliminary hearings for practitioners and other persons in rural areas or counties, and (3) an alternative sanctions notification process.

A. The OBRA 1990 Provisions Relating to PRO's

Among other things, the proposed regulations provided for—

- The elimination of the procedural distinction between ''substantial'' violations and ''gross and flagrant'' violations.
- The use of any violations of the obligations identified during a CAP period in support of the PRO's recommendation regarding a practitioner's or other person's unwillingness or inability to comply with statutory obligations.[1]
- The inclusion of a provision that no physician member of the PRO panel may be in direct competition with, or have a substantial bias for or against, the practitioner or other person being considered for sanction.
- The revision of § 1004.30(e) by setting forth instructions to PROs on the actions to be taken when a physician relocates after receiving a sanction notice.
- The inclusion of any prior problems that any State health care program has had with a practitioner or other person as an additional factor to be considered by the OIG in imposing an exclusion.

B. Preliminary Hearings

The proposed regulations also set forth provisions to allow a practitioner or other person in specified rural areas or counties of a specified population to request a preliminary hearing when notified by the OIG of an exclusion from participation in the Medicare program resulting from a PRO recommendation. The preliminary hearing would be solely on the issue of whether such practitioner's or other person's continued participation in the program during the appeal to an ALJ would place program beneficiaries at serious risk.

Entitlement to such a preliminary hearing would apply to practitioners and other persons for whom an exclusion is proposed who practice in a rural HPSA for their specialty or in a county with a population of less than 70,000. A practitioner's or other person's practice was considered to be where over 50 percent of his, her or its services were rendered. The proposed regulations provided that a practitioner's or other person's request for a preliminary hearing must be received within 15 days of receipt of an OIG exclusion notice.

C. Sanctions Notification Process

The proposed regulations set forth an alternative sanctions notification process that would allow sanctioned practitioners and other persons the option of informing all their patients *directly* of the sanction action taken against them. If they selected this option and complied with its requirements in a timely fashion, sanctioned practitioners and other persons would be exempted from current requirement for public notice.

Under this proposed option, practitioners and other persons would be required to certify to the Department that they have taken action to inform all their patients of the sanction and, in the case of exclusion, that they would notify new patients before furnishing services. Each sanctioned practitioner or other person opting for this alternative notice procedure would have to alert both existing patients and all new patients through written notification based on a suggested, non-mandatory model that would be provided by the OIG. For

[1] If a PRO decides to use any of the violations identified during a corrective action plan as a basis for a pending recommendation for sanction, instead of a basis to support unwillingness or inability, the PRO must send out a notification on these violations in accordance with § 1004.40.

those sanctioned practitioners or other persons not electing this alternative method or failing to return the required certification form within the proposed 30-day period, the OIG would follow its standard procedure for public notification.

III. Response to the Public Comments

As a result of the proposed rulemaking published on February 28, 1994, the OIG received a total of 12 timely-filed public comments from various practitioners and providers, medical and professional associations, third party payers, peer review organizations and other interested parties.

Set forth below is a summary of those comments and our response to the issues and concerns raised.

Section 1004.1—Scope and Definitions

Comment: Three commenters stated that the term ''gross and flagrant'' was confusing, and as currently defined, has been erroneously interpreted to permit the Department and the PROs to focus on the outcome of the procedure and not on the degree of the violation. The commenters believed that under the existing definition the PROs have been given broad authority to arbitrarily determine that any given quality concern is potentially sanctionable, and that this, in turn, has lead to the initiation of the sanction process in some questionable cases.

Response: We believe it is important to retain the present definition and classification for the term ''gross and flagrant'' so that the severity of the violation can be demonstrated. While we have considered alternative definitions for defining this term, we believe that the current classification adequately and properly reflects the severity of the violation of the obligation(s) and the risk to the patient(s) which has already been identified. As to one commenter's suggestion that the patient must be ''harmed'' before a violation can be considered gross and flagrant, we disagree. We believe that a gross and flagrant violation includes those situations where a patient is placed in danger or in a high-risk situation, whether or not the patient is harmed. Thus, we are retaining the current definition.

Comment: While agreeing that there needs to be a definition for the term ''pattern of care,'' one commenter was concerned that the definition for ''substantial violation in a substantial number of cases''—which encompasses the requirement that there be an inappropriate pattern of care—has been interpreted to support a finding of a substantial violation exclusively on the basis of multiple allegations of treatment deficiencies in a single patient. The commenter believes this is unfair since, while a physician's course of treatment with respect to one patient may be alleged to be negligent, the treatment of a single individual does not indicate the ''pattern'' of professional negligence that the law was designed to address.

Response: We agree with the commenter's concern and have revised the definition of ''pattern of care'' in substantial violation cases to mean that the care under question has been demonstrated in more than 3 instances, which must involve different *admissions.* Under this revised definition, the instances could involve the same patient but reflect problems with the treatment occurring at different times. This is in contrast with the definition of gross and flagrant violations in which multiple violations may be found within the same admission.

Comment: One commenter objected to our defining the term ''practice area'' as ''the location where over 50 percent of the practitioner's or other person's patients are seen,'' and requested that the definition be deleted. The commenter believed that a practitioner who has *any* amount of practice in a rural area should be entitled to a preliminary hearing on the issue of whether that person's continued participation during the appeal of the exclusion would place program beneficiaries at serious risk.

Response: We are rejecting this comment since we believe it is not consistent with the statutory provision and congressional intent in providing for such preliminary hearings. If Congress wanted to extend the right to a preliminary hearing to *all,* or virtually all, practitioners and other persons, it would have done so in the statutory language. Rather, the statute and these regulations are targeted only to those who ''practice'' in a HPSA or a county with a population of less than 70,000, and not those who may occasionally see a patient in a rural area. In order to carry out the intent of the statutory provision, we believe that the definition for the term ''practice area'' is appropriate, fair and reasonable.

Section 1004.40—Action on Identification of a Violation

Comment: While several commenters strongly supported the OIG's proposal to eliminate the distinction between ''substantial'' violations and ''gross and flagrant'' violations, one commenter believed that the elimination of this distinction would result in less due process by removing the physician's right to receive two notices and two hearings for any violation.

Response: As noted in the proposed rule, the second meeting in substantial violation cases has proven simply to be a repeat of the initial or 20-day meeting. This, in turn, has increased the risk of serious patient harm due to this procedural delay. Experience has shown that this dual meeting process has tended to be cumbersome, time-consuming and confusing to both the physician responding to substantial violations issues and the physician members of the PRO's sanction panel. The OIG believes that this approach to eliminating the violations' distinction will serve program beneficiaries well while still continuing to provide adequate due process to all practitioners and other persons.

Comment: One commenter strongly agreed with the additional safeguards under § 1004.40 that state that the notice must contain information regarding the meeting, that an attorney may represent the practitioner, and that the attorney may make opening and closing remarks, ask clarifying questions at the meeting and assist the practitioner in presenting testimony of expert witnesses who may appear on behalf of the practitioner. However, the commenter believed that the notice should also contain a provision stating that the attorney may also cross-examine any physician or other expert who provided evidence upon which the PRO relied in identifying a potential violation under § 1004.10.

Response: We do not agree with the commenter's recommendation under § 1004.40 that notice should also include a provision that would allow attorney cross-examination. The meeting between the PRO and the practitioner or other person is not a formal adversarial hearing or trial. Rather, this meeting serves only as a medical dialogue to afford the practitioner or other person an opportunity to discuss medical issues.

Comment: Under § 1004.40, when a PRO identifies a violation, it must send a notice to the practitioner or provider identifying the specific concerns. One commenter stated that, while traditionally it has been up to the provider or practitioner to initiate a CAP before the PRO would consider it, this rule change places the obligation on the PRO to initiate resolution through a CAP. The commenter questioned whether the absence of a CAP in the notice constituted a determination by the PRO that the case cannot, at that

time, be resolved with a CAP, and opined that if a CAP is *not* considered appropriate, perhaps the notice should state this along with the reasons why. The commenter also wanted the practitioner or provider to be given an opportunity to submit additional information within 15 days of receipt of notice without, at the same time, having to decide to request a meeting.

Response: With regard to the use of a CAP, we believe that there are times when the PRO will not know if, or what type of, a CAP is appropriate until they have met with or heard from the practitioner or other person in response to the letter. We are, therefore, dissuaded by the comment raised. With regard to the commenter's second point, before the PRO sends out a notice under this regulatory process, the practitioner or other person is given at least one and, in most instances, two opportunities to present clarifying information. Therefore, we do not believe that another opportunity such as that proposed by the commenter would be necessary.

Comment: One commenter indicated concern with the proposed language in § 1004.40(b)(5) that stated the PRO must advise the practitioner or other person of ''the sanction that the PRO could recommend to the OIG *if the violation continues*'' (italic added). The phrase ''if the violation continues'' is not contained in the current ''gross and flagrant'' notice, and the commenter believed that the use of these words in the regulations would prevent an exclusion recommendation by the PRO in the most egregious of circumstances if the PRO cannot document that the violation continues. The commenter specifically recommended that this phrase be deleted.

Response: We agree with the commenter and are deleting this wording from § 1004.40(b)(5).

Section 1004.50—Meeting With a Practitioner or Other Person

Comment: Several commenters strongly agreed with the codification of the requirement that no physician member of the PRO panel may be in direct competition with, or have a substantial bias against, the practitioner or other person being considered for sanction. One commenter urged, however, that this section be expanded to include specific reference to the right of the practitioner's attorney to cross-examine any reviewing physician who has made recommendations to the PRO regarding the quality of care rendered by the practitioner under review. The commenter also raised concern over the lack of a requirement that physicians providing expertise to the PRO in regard to the sanction investigation or other proceedings be in the same specialty as the practitioner under review.

Response: As discussed above, we do not believe that it is necessary that the physician's attorneys have the opportunity to cross-examine physician panel members. The meeting between the PRO and the physician or other person is *not* a formal adversarial hearing or trial. Rather, it is intended to remain merely a medical dialogue designed to afford the practitioner or other person an opportunity to discuss medical issues. With respect to the suggestion that the medical professional providing expertise be of the same or closely related specialty and be practicing in similar circumstances to the practitioner under review, we believe that proposed section (d) of this section satisfies this specific concern. Specifically, § 1004.50(d) states that at least one member of the PRO panel meeting with the practitioner or other person should practice in a similar geographic area, and at least one member of the panel must be in the same specialty. Both requirements can be met by a single individual.

Comment: One commenter asked that the composition of the sanctions panel be expanded to include persons trained and experienced in ''hospital issues'' before any hospital can be appropriately subject to a sanction.

Response: Since the obligations with regard to any violation involve medical quality of care issues, necessary services and medical documentation, we remain unclear as to what unique ''hospital issues'' are involved. As set forth, we believe that the changes contained in the rulemaking adequately remove any bias from addressing the pertinent issues in the ongoing sanction process.

Comment: Section 1004.50(g) provides that, when a practitioner or other person requests a meeting with the PRO, ''[t]he PRO may allow the practitioner or other person 5 working days after the meeting to provide the PRO additional relevant information that may affect its decision * * *.'' One commenter suggested that 5 working days was not adequate time for a practitioner to provide additional information to the PRO, and that 14 days would be a more reasonable amount of time.

Response: We believe that the 5-day period granted to provide additional information after the meeting is adequate. We believe that the practitioner or other person has been afforded several opportunities up to this point to provide additional information, and that 5 days, consistent with the American Medical Association (AMA) understanding, is sufficient in this instance.

Comment: One commenter indicated that the terms ''determination,'' ''decision'' and ''finding'' are used interchangeably in §§ 1004.40 and 1004.50, and requested that the terms ''determination'' and ''decision'' be eliminated and the term ''finding'' be used consistently throughout.

Response: We agree with the commenter's concern, and to be consistent throughout these sections, we are deleting the terms ''decision'' and ''determination'' by a PRO and inserting the word ''finding'' in its place.

Section 1004.60—PRO Finding of a Violation

Comment: One commenter requested that we specifically clarify the term ''issue'' in this section, and specify when it has been resolved since no clear distinction is made between a ''issue,'' a ''determination'' and a ''finding.'' In addition, the commenter asked that the last sentence in § 1004.60(a) be eliminated and a new sentence to paragraph (b) stating that ''(T)he PRO may, on the basis of the additional information, modify either its finding or recommendation or close the case.''

Response: While we have agreed to replace the term ''issue'' with the word ''finding,'' there remain numerous ways for a ''finding'' to be resolved by a PRO and believe it would not be appropriate in these regulations to attempt to attempt further clarification of this term. With regard to the commenter's second point, we have agreed instead to modify the language in paragraph (a). As revised, the language in § 1004.60(a) will state that ''(I)f the finding has been resolved to the PRO's satisfaction, the PRO may modify its initial finding or recommendation or close the case.''

Section 1004.70—PRO Action on Final Finding of a Violation

Comment: A commenter stated that in § 1004.70(c) the word ''physician'' should be replaced with the phrase ''physician or other person'' to be consistent with other references found elsewhere in these regulations.

Response: We agree that a revision to this section is appropriate. In addition, a technical correction is being made over language in section 1154(a)(9)(B) of the Act resulting from Pub. L. 103–432. With regard to the requirement that the PRO notify licensure boards for practitioners *other than physicians* when it submits a report and recommendation to the OIG, section 1154(a)(9)(B) of the Social Security Act, as recently amended by Pub. L. 103–

432, provides that if a PRO finds that a ''physician or practitioner has furnished services in violation of section 1156(a) and the organization determines that the physician or practitioner should enter into a corrective action plan under section 1156(b)(1), the organization shall notify the State board or boards responsible for the licensing or disciplining of the physician or practitioner of its finding and of any action taken as a result of the finding.''

The Secretary may require by regulation that the PRO notify appropriate licensure boards for non-physician practitioners when those practitioners are found in violation. Accordingly, we are revising § 1004.70(c) to include notification by the PRO of appropriate licensure boards when it sends a report to the OIG regarding a physician or other person.

Section 1004.100—Acknowledgement and Review of Report

Comment: While a number of respondents concurred with the content of this section, one commenter stated that if the OIG believes that a particular sanction recommendation is not warranted, procedures should be in place for the OIG to discuss the matter with the PRO before making a final decision. Accordingly, the commenter requested that we add a provision requiring the OIG physician advisor to communicate with one or more of the physicians on the PRO panel.

Response: We disagree with the need for this added requirement. We believe such communication on the part of the OIG physician advisor could raise specific concerns of due process. There would be no clear way for the practitioner or other person to be made aware of the questions raised and the responses made by the PRO through such communication. In addition, since the PRO has provided all the documentation on which it has based its recommendation, we believe that it is unnecessary for such discussion to occur prior to the OIG making a decision.

Section 1004.110—Notice of Sanction

Comment: Two commenters strongly opposed any alternative notification process for sanctions. One of the commenters indicated that an option of allowing the physician to notify privately both his or her existing and new patients does not adequately protect the public interest. While acknowledging the OIG's concerns that the current public notification may not be effectively reaching all of the physician's patients, the commenter stated that the same risk exists with private notification and, therefore, suggested that private notification be mandatory and that it be used in addition to the current public notification process.

Response: We believe that the present public notification process has not yielded the most effective results of informing affected parties and program beneficiaries of a specific sanction action taken under the program. As a result of preliminary discussions with the AMA, the American Association of Retired Persons (AARP) and the Health Care Financing Administration, we believe that this approach, with built-in safeguards such as the certification of patient notice, would afford both the provider community and the patient community with an alternative for disseminating information regarding program sanctions. By definition, this alternative approach will offer a second options for public notification. Any effort to require both newspaper publication *and* direct notice to a physician's patients would, in effect, not offer an alternative as we have contemplated, but rather impose an additional layer of burden on the practitioner or other person. Our intent is for such notice to be both effective and cost-efficient, and we believe that this approach will meet those objectives. In addition, as indicated in the preamble to the proposed rule, where the OIG receives reliable evidence that a practitioner or other person has not adequately informed his, her or its new and existing patients of the sanction, the OIG reserves the right to follow existing procedures for public notification. Failure by the practitioner or other person to comply with the alternative method of notification once he, she or it has elected to do so will be adversely considered by the OIG at the time of application for reinstatement.

Comment: While supportive of the alternative notification process, two commenters requested that the regulations also include a requirement that the OIG receive a copy of the notice sent to each patient to determine its adequacy, or include in the regulations certain minimum requirements for the content of such notice. One commenter recommended that if providers are allowed to create their own letters, then it should be required that the letters be reviewed and approved first by the OIG prior to the provider sending them to the patients.

Response: We believe that the requirements that were set forth in proposed § 1004.110(d) with regard to patient notification and certification are adequate. As indicated, the OIG will provide the sanctioned practitioner or other person a suggested model letter designed to address the nature of the sanction, as well as the exclusion's effective date and duration. In turn, the practitioner or other person is to specifically certify to the OIG that the information provided is truthful and accurate. Failure to properly inform one's patients and return to the required certification to the OIG within 30 days, or the obtaining of reliable evidence by the OIG that the practitioner or other person failed to adequately inform patients of the sanction, will result in the publication of a public notice and will be considered an aggravating factor at the time of the practitioner's or other person's application for reinstatement. As a result, we do not believe that the use of additional OIG staff time in reviewing such individuals letters is necessary.

Comment: In order to have each practitioner or other person in full compliance with the alternative notification approach, one commenter asked that the term ''all existing patients'' be cleared defined. In addition, the commenter questioned how notice to a new patient presenting himself or herself for emergency care would be handled, and whether such required notice would impede the provision or quality of care to such patients.

Response: We agree that the term ''all existing patients'' could be interpreted in different ways. In doing so, we believe it is necessary to balance our intent of assuring that proper notice is provided to the largest possible spectrum of program beneficiaries that may be affected by this sanction, without insurmountable burdens being placed on practitioners and other persons to contact their affected patient base. For this reason, we have agreed to define the term ''all existing patients'' to include *all* patients currently under active treatment with the practitioner or other person, as well as *all* patients who have been treated by the practitioner or other person within the last three years. We believe that this definition will provide adequate notification of the sanction to those most likely to be affected by it while assuring that this alternative approach remains a viable, effective option.

Patients being treated in an emergency situation could be notified verbally at the point they seek treatment, and since excluded physicians and others can be paid for emergency services, we do not believe this to result in a significant quality of care problem.

Comment: One commenter believed that effective monitoring and validation of timely and complete compliance with this notice option by the OIG would be very difficult. A second commenter stated that monitoring this option should include a signed statement of completion by the sanctioned provider and a follow-up mail survey of a sample of patients to determine if the requirements were met.

Response: The issue of ensuring that direct patient notification is enforced was given full consideration during the development of the alternative notification process. Specifically, we do not foresee expending and designating an excessive amount of staff time to directly monitor the alternative notification process. Rather, when the OIG learns through patient complaints or other methods that the practitioner or other person has not fully complied, it will at that point taken an action to remedy the situation, such as pursuing penalties for the filing of a false statement.

Comment: One commenter recommended that since PRO activity relates only to Medicare patients, the alternative notification process should be limited to Medicare patients only.

Response: Our rationale for selecting notification to all patients rests with the statutory requirement for ''reasonable notice to the *public*'' (underlining added). U.S.C. 1320c–5(b)(2). We believe that such proper public notice would not be met by having sanctioned parties limit notice to only their program-eligible patients. This selected option is designed to protect both Medicare program beneficiaries and future beneficiaries, and to ensure that the statutorily-required notice to the public of a sanction action is as effective as possible. As a result, in an effort to achieve proper notification and public awareness in an effective manner, we have opted to require that alternative notification be given to *all* patients.

Comment: While supportive of the alternative sanctions notification process, one commenter believed that the requirement that hospitals post a sign ''in all affiliated entities'' needs to be clarified to indicate what would be required of a hospital electing this alternative approach.

Response: We agree with the commenter over the need to define this term. Accordingly, we are defining in § 1004.110(d)(1)(i) the term ''in all affiliated entities'' to encompass all entities and properties which provide services and in which the hospital has a direct or indirect ownership interest of 5 percent or more and any management, partnership or control of the entity.

Comment: One commenter was concerned with the timeframes provided for in § 1004.110(b). That section provides that ''the sanction is effective 15 days from the date of receipt of the notice. The date of receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary.'' The commenter believed that in order for the provisions of this rule to be consistent, the effective date of a sanction should be 30 days from the date of the receipt of the notice in order to allow the sanctioned practitioner's patients adequate time to make other arrangements.

Response: Section 1156(b)(2) of the Social Security Act requires the effective date of the sanction to be consistent with section 1128(c) of the Act. Therefore, we are retaining the effective date as 20 days from the date of notice.

Section 1004.140—Appeal Rights

Comment: The proposed regulations provided that a request for a preliminary hearing must be received within 15 days of receipt of an OIG exclusion notice. Two commenters indicated that they did not believe 15 days is sufficient time to request a preliminary hearing, with one of these commenters suggesting that providers be given 30 days, rather than 15 days, to request such a preliminary hearing of a sanction.

Response: The OIG's concern remains with the protection of program beneficiaries and with decisions being reached in a timely and efficient manner. Accordingly, we believe that since the practitioner or other person continues to participate in the program until the time period for requesting a preliminary hearing has expired or a decision is made after a preliminary hearing, this process must be expeditious. Since all notices of exclusion under § 1004.110 are sent by overnight mail, we continue to believe that 15 days is sufficient time to request a preliminary hearing when desired.

Comment: The proposed regulations provided for a preliminary hearing prior to exclusion ''if the location where services are rendered to over 50 percent of the practitioner's or other person's patients at the time of the exclusion notice is in a rural HPSA or in a county where the population is less than 70,000.'' Citing that it is contrary to the public's interest to impose a specific, quantitative requirement on the amount of services that a practitioner provides in a rural area as a condition for eligibility for a hearing, one commenter disagreed with limiting the right to a preliminary hearing to physicians where over 50 percent of their practice is located in such a rural area.

Further, a second commenter indicated that they believe it would be difficult in many instances for the PRO to determine where 50 percent of the practitioner's practice is located.

Response: Section 1156(a) of the Act specifically limits the right to a preliminary hearing to those physicians who practice in a county with a population of less than 70,000 or those practicing in a HPSA. The statutory language was intentionally limiting and did not provide the right to such a hearing to every practitioner or other person who may occasionally provide a service in a rural HPSA. We believe that the ''over 50 percent'' standard is reasonable and is in keeping with the statutory intent.

Comment: One commenter believed that there should be an additional regulatory requirement that the OIG notify the PRO when a sanction appeal is made. The commenter believed that they should have this knowledge so that they can participate with and assist the OIG through the administrative appeal process.

Response: The OIG does not receive specific notification when a sanction is being appealed and, therefore, it cannot routinely notify the PRO of such action. In most cases, it is the Regional Counsel's office that notifies the PRO so that it can prepare the defense of the practitioner's or other person's exclusion action.

IV. Technical Revisions to 42 CFR Part 1004

In addition to the public comments received on the proposed rulemaking, the OIG received a number of internal technical comments from two of the Department's Regional Counsel's offices. These comments and recommendations for change were designed to further clarify specific aspects of the regulatory language set forth in 42 CFR part 1004, and are technical, non-substantive and editorial in nature. We have adopted a number of these suggestions and have incorporated them into the revised text for part 1004 set forth below.

V. Regulatory Impact Statement

The Office of Management and Budget has reviewed this final rule in accordance with the provisions of Executive Order 12866. As indicated above, the revisions contained in this final rule are intended to revise and update administrative procedures governing the imposition and adjudication of program sanctions, based on PRO recommendations, against practitioners and other persons who

violate the statute. We believe that the great majority of practitioners and other persons do not engage in such prohibited activities and practices, and that the aggregate economic impact of these provisions should, in effect, be minimal, affecting only those who have engaged in prohibited behavior in violation of statutory intent. As such, these regulations should have no direct effect on the economy or on Federal or State expenditures.

In addition, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Secretary certifies that this final rulemaking will not have a significant economic impact on a substantial number of small entities. While some sanctions and penalties may have an impact on small entities, we do not anticipate that a substantial number of these small entities would be significantly affected by this rulemaking. Therefore, we have determined, and the Secretary certifies, that this final rule should not have a significant economic impact on a number of small business entities.

List of Subjects in 42 CFR Part 1004

Administrative practice and procedure, Health facilities, Health professions, Medicare, Peer Review Organizations, Penalties, Reporting and recordkeeping requirements.

Part 1004 is revised to read as follows:

PART 1004—IMPOSITION OF SANCTIONS ON HEALTH CARE PRACTITIONERS AND PROVIDERS OF HEALTH CARE SERVICES BY A PEER REVIEW ORGANIZATION

Subpart A—General Provisions

Sec.
1004.1 Scope and definitions.

Subpart B—Sanctions Under the PRO Program; General Provisions

1004.10 Statutory obligations of practitioners and other persons.
1004.20 Sanctions.

Subpart C—PRO Responsibilities

1004.30 Basic responsibilities.
1004.40 Action on identification of a violation.
1004.50 Meeting with a practitioner or other person.
1004.60 PRO finding of a violation.
1004.70 PRO action on final finding of a violation.
1004.80 PRO report to the OIG.
1004.90 Basis for recommended sanction.

Subpart D—OIG Responsibilities

1004.100 Acknowledgement and review of report.
1004.110 Notice of sanction.

Subpart E—Effect and Duration of Exclusion

1004.120 Effect of an exclusion on program payments and services.
1004.130 Reinstatement after exclusion.

Subpart F—Appeals

1004.140 Appeal rights.

Authority: 42 U.S.C. 1302 and 1320c–5.

Subpart A—General Provisions

§ 1004.1 Scope and definitions.

(a) *Scope.* This part implements section 1156 of the Act by—

(1) Setting forth certain obligations imposed on practitioners and providers of services under Medicare;

(2) Establishing criteria and procedures for the reports required from peer review organizations (PROs) when there is failure to meet those obligations;

(3) Specifying the policies and procedures for making determinations on violations and imposing sanctions; and

(4) Defining the procedures for appeals by the affected party and the procedures for reinstatements.

(b) *Definitions.* As used in this part, unless the context indicates otherwise—

Dentist is limited to licensed doctors of dental surgery or dental medicine.

Economically means the services are provided at the least expensive, medically appropriate type of setting or level of care available.

Exclusion means that items and services furnished or ordered (or at the medical direction or on the prescription of a physician) by a specified health care practitioner, provider or other person during a specified period are not reimbursed under titles V, XVIII, XIX, or XX of the Social Security Act and all other Federal non-procurement programs.

Gross and flagrant violation means a violation of an obligation has occurred in one or more instances which presents an imminent danger to the health, safety, or well-being of a program patient or places the program patient unnecessarily in high-risk situations.

Health care service or services means services or items for which payment may be made (in whole or in part) under the Medicare or State health care programs.

Health professional shortage area (HPSA) means an area designated by the Secretary and defined in 42 CFR 5.2.

Metropolitan Statistical Area means an area as defined by the Executive Office of Management and Budget.

Obligation means any of the obligations specified at section 1156(a) of the Act.

Other person means a hospital or other health care facility, an organization or an agency that provides health care services or which payment may be made (in whole or in part) under the Medicare or State health care programs.

Pattern or care means that the care under question has been demonstrated in more than three instances, each of which involved different admissions.

Pharmacy professional is a term limited to individuals who are licensed or registered to provide pharmaceutical services.

Podiatric professional is a term limited to licensed doctors of podiatric medicine.

Practice area means the location where over 50 percent of the practitioner's or other person's patients are seen.

Practitioner means a physician or other health care professional licensed under State law to practice his or her profession.

Primary medical care professional is a term limited to:

(i) Licensed doctors of medicine and doctors of osteopathy providing direct patient care who practice in the fields of general or family practice, general internal medicine, pediatrics, obstetrics and gynecology, surgery, and any other specialty that is not accommodated by the remaining specialty HPSA designator, or

(ii) Those facilities where care and treatment is provided to patients with health problems other than mental disorders.

Pro area means the geographic area subject to review by a particular PRO.

Provider means a hospital or other health care facility, agency, or organization.

Psychiatric professional is a term limited to licensed doctors of medicine who limit their practice to psychiatry or to those facilities where care and treatment is limited to patients with mental disorders.

Rural means any area outside an urban area.

Rural health professional shortage area means any health professional shortage area located outside a Metropolitan Statistical Area.

Sanction means an exclusion or monetary penalty that the Secretary may impose on a practitioner or other person as a result of a recommendation from a PRO.

Serious risk includes situations that may involve the risk of unnecessary treatment, prolonged treatment, lack of treatment, incorrect treatment, medical complication, premature discharge, physiological or anatomical impairment, disability, or death.

State health care program means a State plan approved under title XIX, any

program receiving funds under title V or from an allotment to a State under such title, or any program receiving funds under title XX or from an allotment to a State under such title.

Substantial violation in a substantial number of cases means a pattern of providing care, as defined in this section, that is inappropriate, unnecessary, or does not meet recognized professional standards of care, or is not supported by the necessary documentation of care as required by the PRO.

Urban means a Metropolitan Statistical Area as defined by the Executive Office of Management and Budget.

Vision care professional is a term limited to licensed doctors of medicine who limit their practice to ophthalmology and to doctors of optometry.

Subpart B—Sanctions Under the PRO Program; General Provisions

§ 1004.10 Statutory obligations of practitioners and other persons.

It is the obligation of any health care practitioner or other person who furnishes or orders health care services that may be reimbursed under the Medicare or State health care programs to ensure, to the extent of his or her or its authority, that those services are—

(a) Provided economically and only when, and to the extent, medically necessary;

(b) Of a quality that meets professionally recognized standards of health care; and

(c) Supported by evidence of medical necessity and quality in the form and fashion and at such time that the reviewing PRO may reasonably require (including copies of the necessary documentation and evidence of compliance with pre-admission or pre-procedure review requirements) to ensure that the practitioner or other person is meeting the obligations imposed by section 1156(a) of the Act.

§ 1004.20 Sanctions.

In addition to any other sanction provided under law, a practitioner or other person may be—

(a) Excluded from participating in programs under titles V, XVIII, XIX, and XX of the Social Security Act; or

(b) In lieu of exclusion and as a condition for continued participation in titles V, XVIII, XIX, and XX of the Act, if the violation involved the provision or ordering (or at the medical direction or the prescription of a physician) of health care services that were medically improper or unnecessary, required to pay an amount not in excess of the cost of the improper or unnecessary services that were furnished or ordered (and prescribed, if appropriate). The practitioner or other person will be required either to pay the monetary assessment within 6 months of the date of notice or have it deducted from any sums the Federal government owes the practitioner or other person.

Subpart C—PRO Responsibilities

§ 1004.30 Basic responsibilities.

(a) The PRO must use its authority or influence to enlist the support of other professional or government agencies to ensure that each practitioner or other person complies with the obligations specified in § 1004.10.

(b) When the PRO identifies situations where an obligation specified in § 1004.10 is violated, it will afford the practitioner or other person reasonable notice and opportunity for discussion and, if appropriate, a suggested method for correcting the situation and a time period for a corrective action in accordance with §§ 1004.40 and 1004.60.

(c) The PRO must submit a report to the OIG after the notice and opportunity provided under paragraph (b) of this section and, if appropriate, the opportunity to enter into and complete a corrective action plan (CAP) if the PRO finds that the practitioner or other person has—

(1) Failed substantially to comply with any obligation in a substantial number of admissions; or

(2) Grossly and flagrantly violated any obligation in one or more instances.

(d) The PRO report to the OIG must comply with the provisions of § 1004.80.

(e) If a practitioner or other person relocates to another PRO area prior to a finding of a violation or sanction recommendation, and the originating PRO—

(1) Is able to make a finding, the originating PRO must, as appropriate, close the case or forward a sanction recommendation to the OIG; or

(2) Cannot make a finding, the originating PRO must forward all documentation regarding the case to the PRO with jurisdiction, and notify the practitioner or other person of this action.

(f) The PRO must deny payment for services or items furnished or ordered (or at the medical direction or on the prescription of an excluded physician) by an excluded practitioner or other person when the PRO identifies the services or items. It must report the findings to the Health Care Financing Administration.

§ 1004.40 Action on identification of a violation.

When a PRO identifies a violation, it must—

(a) Indicate whether the violation is a gross and flagrant violation or is a substantial violation in a substantial number of cases; and

(b) Send the practitioner or other person written notice of the identification of a violation containing the following information—

(1) The obligation(s) involved;

(2) The situation, circumstances or activity that resulted in a violation;

(3) The authority and responsibility of the PRO to report violations of any obligation under section 1156(a) of the Act;

(4) A suggested method for correcting the situation and a time period for corrective action, if appropriate;

(5) The sanction that the PRO could recomment to the OIG;

(6) The right of the practitioner or other person to submit to the PRO within 30 days of receipt of the notice additional information or a written request for a meeting with the PRO to review and discuss the finding, or both. The date of receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary. The notice will also state that if a meeting is requested—

(i) It will be held within 30 days of receipt by the PRO of the request, but may be extended for good cause;

(ii) The practitioner or other person may have an attorney present; and

(iii) The attorney, if present, will be permitted to make opening and closing remarks, ask clarifying questions at the meeting and assist the practitioner or other person in presenting the testimony of expert witnesses who may appear on the practitioner's or other person's behalf; and

(7) A copy of the material used by the PRO in arriving at its finding except for PRO deliberations, as set forth in § 476.139 of this part.

§ 1004.50 Meeting with a practitioner or other person.

If the practitioner or other person requests a meeting with the PRO—

(a) The PRO panel that meets with the practitioner or other person must consist of a minimum of 3 physicians;

(b) No physician member of the PRO panel may be in direct economic competition with the practitioner or other person being considered for sanction;

(c) The PRO must ensure that no physician member of the PRO panel has

a substantial bias for or against the practitioner or other person being considered for sanction;

(d) At least one member of the PRO panel meeting with the practitioner or other person should practice in a similar area, e.g., urban or rural, and at least one member of the panel must be in the same specialty (both requirements could be met by a single individual);

(e) If the practitioner or other person has an attorney present, that attorney will be permitted to make opening and closing remarks, ask clarifying questions and assist the practitioner or other person in presenting the testimony of expert witnesses who may appear on the practitioner's or other person behalf;

(f) The physician who recommends to the PRO that a practitioner or other person be sanctioned may not vote on that recommendation at the meeting;

(g) The PRO may allow the practitioner or other person 5 working days after the meeting to provide the PRO additional relevant information that may affect its finding; and

(h) A verbatim record must be made of the meeting and must be made available to the practitioner or other person promptly.

§ 1004.60 PRO finding of a violation.

(a) On the basis of any additional information received, the PRO will affirm or modify its finding. If the PRO affirms its finding, it may suggest in writing a method for correcting the situation and a time period for corrective action. This CAP could correspond with, or be a continuation of, a prior CAP or be a new proposal based on additional information received by the PRO. If the finding has been resolved to the PRO's satisfaction, the PRO may modify its initial finding or recommendation or close the case.

(b) The PRO must give written notice to the practitioner or other person of any action it takes as a result of the additional information received, as specified in § 1004.70.

(c) At least one member of the PRO participating in the process which resulted in a recommendation to the OIG that a practitioner or other person be sanctioned should practice in a similar geographic area, e.g. urban or rural, and at least one member of the panel must be in the same medical specialty. Both requirements can be met by a single individual. In addition, no one at the PRO who is a participant in such a finding may be in direct economic competition with, or have a substantial bias for or against, that practitioner or other person being recommended for sanction.

§ 1004.70 PRO action on final finding of a violation.

If the finding is not resolved to the PRO's satisfaction as specified in § 1004.60(a), the PRO must—

(a) Submit its report and recommendation to the OIG;

(b) Send the affected practitioner or other person a concurrent final notice, with a copy of all the material that is being forwarded to the OIG, advising that—

(1) The PRO recommendation has been submitted to the OIG;

(2) The practitioner or other person has 30 days from receipt of this final notice to submit any additional written material or documentary evidence to the OIG at its headquarters location. The date of receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary; and

(3) Due to the 120-day statutory requirement specified in § 1004.100(e), the period for submitting additional information will not be extended and any material received by the OIG after the 30-day period will not be considered; and

(c) Provide notice to the State medical board or to other appropriate licensing boards for other practitioner types when it submits a report and recommendations to the OIG with respect to a physician or other person whom the board is responsible for licensing.

§ 1004.80 PRO report to the OIG.

(a) *Manner of reporting.* If the violation(s) identified by the PRO have not been resolved, it must submit a report and recommendation to the OIG at the field office with jurisdiction.

(b) *Content of report.* The PRO report must include the following information—

(1) Identification of the practitioner or other person and, when applicable, the name of the director, administrator or owner of the entity involved;

(2) The type of health care services involved;

(3) A description of each failure to comply with an obligation, including specific dates, places, circumstances and other relevant facts;

(4) Pertinent documentary evidence;

(5) Copies of written correspondence, including reports of conversations with the practitioner or other person regarding the violation and, if applicable, a copy of the verbatim transcript of the meeting with the practitioner or other person;

(6) The PRO's finding that an obligation under section 1156(a) of the Act has been violated and that the violation is substantial and has occurred in a substantial number of cases or is gross and flagrant;

(7) A case-by-case analysis and evaluation of any additional information provided by the practitioner or other person in response to the PRO's initial finding;

(8) A copy of the CAP that was developed and documentation of the results of such plan or an explanation of why such the CAP will be used to support the PRO's recommendation regarding inability or unwillingness in accordance with § 1004.80(c)(6) and not as a basis for the sanction;

(9) The number of admissions by the practitioner or other person reviewed by the PRO during the period in which the violation(s) were identified;

(10) The professional qualifications of the PRO's reviewers; and

(11) The PRO's sanction recommendation.

(c) *PRO recommendation.* The PRO must specify in its report—

(1) The sanction recommended;

(2) The amount of the monetary penalty recommended, if applicable;

(3) The period of exclusion recommended, if applicable;

(4) The availability of alternative sources of services in the community, with supporting information;

(5) The county or counties in which the practitioner or other person furnishes services; and

(6) A recommendation, with supporting documentation, as to whether the practitioner or other person is unable or unwilling substantially to comply with the obligation that was violated and the basis for that recommendation.

§ 1004.90 Basis for recommended sanction.

The PRO's specific recommendation must be based on documentation provided to the OIG showing its consideration of—

(a) The type of offense involved;

(b) The severity of the offense;

(c) The deterrent value;

(d) The practitioner's or other person's previous sanction record;

(e) The availability of alternative sources of services in the community; and

(f) Any other factors that the PRO considers relevant, such as the duration of the problem.

Subpart D—OIG Responsibilities

§ 1004.100 Acknowledgement and review of report.

(a) *Acknowledgement.* The OIG will inform the PRO of the date it received the PRO's report and recommendation.

(b) *Review*. The OIG will review the PRO report and recommendation to determine whether—

(1) The PRO has followed the regulatory requirements of part 1004;

(2) A violation has occurred; and

(3) The practitioner or other person has demonstrated an unwillingness or lack of ability substantially to comply with an obligation.

(c) *Rejection of the PRO recommendation*. If the OIG decides that a sanction is not warranted, it will notify the PRO that recommended the sanction, the affected practitioner or other person, and the licensing board informed by the PRO of the sanction recommendation that the recommendation is rejected.

(d) *Decision to sanction*. If the OIG decides that a violation of obligations has occurred, it will determine the appropriate sanction by considering—

(1) The recommendation of the PRO;

(2) The type of offense;

(3) The severity of the offense;

(4) The previous sanction record of the practitioner or other person;

(5) The availability of alternative sources of services in the community;

(6) Any prior problems the Medicare or State health care programs have had with the practitioner or other person;

(7) Whether the practitioner or other person is unable or unwilling to comply substantially with the obligations, including whether he, she or it entered into a CAP—where such plan was deemed appropriate by the PRO—prior to the PRO's recommendation and, if so, whether he, she or it successfully completed such CAP; and

(8) Any other matters relevant to the particular case.

(e) *Exclusion sanction*. If the PRO submits a recommendation for exclusion to the OIG, and a determination is not made by the 120th day after actual receipt by the OIG, the exclusion sanction recommended will become effective and the OIG will provide notice in accordance with § 1004.110(f).

(f) *Monetary penalty*. If the PRO recommendation is to assess a monetary penalty, the 120-day provision does not apply and the OIG will provide notice in accordance with § 1004.110 (a)–(e).

§ 1004.110 Notice of sanction.

(a) The OIG must notify the practitioner or other person of the adverse determination and of the sanction to be imposed.

(b) The sanction is effective 20 days from the date of the notice. Receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary.

(c) The notice must specify—

(1) The legal and factual basis for the determination;

(2) The sanction to be imposed;

(3) The effective date and, if appropriate, the duration of the exclusion;

(4) The appeal rights of the practitioner or other person;

(5) The opportunity and the process necessary to provide alternative notification as set forth in paragraphs (d) and (e) of this section; and

(6) In the case of exclusion, the earliest date on which the OIG will accept a request for reinstatement.

(d) *Patient notification*. (1)(i) The OIG will provide a sanctioned practitioner or other person an opportunity to elect to inform each of their patients of the sanction action. In order to elect this option, the sanctioned practitioner or other person must, within 30 calendar days from receipt of the OIG notice, inform both new and existing patients through written notification—based on a suggested (non-mandatory) model provided to the sanctioned individual by the OIG—of the sanction and, in the case of an exclusion, its effective date and duration. Receipt of the OIG notice is presumed to be 5 days after the date of the notice, unless there is a reasonable showing to the contrary. Within this time period, the practitioner or other person must also sign and return the certification that the OIG will provide with the notice. For purposes of this section, the term ''all existing patients'' includes all patients currently under active treatment with the practitioner or other person, as well as all patients who have been treated by the practitioner or other person within the last 3 years. In addition, the practitioner or other person must notify all prospective patients orally at the time such persons request an appointment. If the sanctioned party is a hospital, it must notify all physicians who have privileges at the hospital, and must post a notice in its emergency room, business office and in all affiliated entities regarding the exclusion. In addition, for purposes of this section, the term ''in all affiliated entities'' encompasses all entities and properties in which the hospital has a direct or indirect ownership interest of 5 percent or more and any management, partnership or control of the entity.

(ii) The certification will provide that the practitioner or other person—

(A) Has informed each of his, her or its patients in writing that the practitioner or other person has been sanctioned, or if a hospital, has informed all physicians having privileges at the hospital that it has been sanctioned;

(B) If excluded from Medicare and the State health care programs, has informed his, her or its existing patients in writing that the programs will not pay for items and services furnished or ordered (or at the medical direction or on the prescription of an excluded physician) by the practitioner or other person until they are reinstated, or if a hospital, has provided this information to all physicians having privileges at that hospital;

(C) If excluded from Medicare and State health care programs, will provide prospective patients—or if a hospital, physicians requesting privileges at that hospital prior to furnishing or ordering (or in the case of an excluded physician, medically directing or prescribing) services—oral information of both the sanction and that the programs will not pay for services provided and written notification of the same at the time of the provision of services;

(D) If excluded from Medicare and State health care programs and is an entity such as a hospital, has posted a notice in its emergency room, business office and in all affiliated entities that the programs will not pay for services provided; and

(E) Certifies to the truthfulness and accuracy of the notification and the statements in the certification.

(2) If the sanctioned practitioner or other person does not inform his, her or its patients *and* does not return the required certification within the 30-day period, or if the sanctioned practitioner or other person returns the certification within the 30-day period but the OIG obtains reliable evidence that such person nevertheless has not adequately informed new and existing patients of the sanction, the OIG—

(i) Will see that the public is notified directly of the identity of the sanctioned practitioner or other person, the finding that the obligation ha been violated, and the effective date and duration of any exclusion; and

(ii) May consider this failure to adhere to the certification obligation as an adverse factor at the time the sanctioned practitioner or other person requests reinstatement.

(3) If the sanctioned practitioner or other person is entitled to a preliminary hearing in accordance with § 1004.140(a) and requests such a preliminary hearing, and if the administrative law judge (ALJ) decides that he, she or it poses a risk to program beneficiaries, the sanctioned practitioner or other person would have 30 days from the date of receipt of the ALJ's decision to provide certification to

the OIG in accordance with § 1004.110(d)(1). The date of receipt is presumed to be 5 days after the date of the ALJ's decision, unless there is a reasonable showing to the contrary.

(e) Notice of the sanction is also provided to the following entities as appropriate—

(1) The PRO that originated the sanction report;

(2) PROs in adjacent areas;

(3) State Medicaid fraud control units and State licensing and accreditation bodies;

(4) Appropriate program contractors and State agencies;

(5) Hospitals, including the hospital where the sanctioned individual's case originated and where the individual currently has privileges, if known; skilled nursing facilities, home health agencies, and health maintenance organizations and Federally-funded community health centers where the practitioner or other person works;

(6) Medical societies and other professional organizations; and

(7) Medicare carriers and fiscal intermediaries, health care prepayment plans and other affected agencies and organizations.

(f) If an exclusion sanction is effectuated because a decision was not made within 120 days after receipt of the PRO recommendation, notification is as follows—

(1) As soon as possible after the 120th day, the OIG will issue a notice to the practitioner or other person, in compliance with the requirements of paragraph (c) of this section, affirming the PRO recommendation or modifying the recommendation based on the OIG's review of the case, and that the exclusion is effective 20 days from the date of the notice; and

(2) Notice of the sanction is also provided as specified in paragraph (e) of this section; and

* * * * *

Subpart E—Effect and Duration of Exclusion

§ 1004.120 Effect of an exclusion on program payments and services.

The effect of an exclusion is set forth in § 1001.1901 of this chapter.

§ 1004.130 Reinstatement after exclusion.

(a) A practitioner or other person who has been excluded in accordance with this part may apply for reinstatement at the end of the period of exclusion. The OIG will consider any request for reinstatement in accordance with provisions of §§ 1001.3001 through 1001.3005 of this chapter.

(b) The OIG may also consider a practitioner's or other person's compliance with the certification obligation in § 1004.110(d) at the time of reinstatement.

Subpart F—Appeals

§ 1004.140 Appeal rights.

(a) *Right to preliminary hearing.* (1)(i) A practitioner or other person excluded from participation in Medicare and any State health care programs under section 1156 of the Act may request a preliminary hearing if the location where services are rendered to over 50 percent of the practitioner's or other person's patients at the time of the exclusion notice is in a rural HPSA or in a county with a population of less than 70,000.

(ii) Unless the practitioner's or other person's practice meets the definition for psychiatric professional, vision care professional, dental professional, podiatric professional or pharmacy professional, the HPSA used by the OIG for determination of entitlement to a preliminary hearing will be the HPSA list for primary medical care professional.

(iii) Information on the population size of a county in order to determine entitlement to a preliminary hearing will be obtained by the OIG from the responsible officials of that county.

(2)(i) A request for a preliminary hearing must be made in writing and received by the Departmental Appeals Board (DAB) no later than the 15th day after the notice of exclusion is received by a practitioner or other person. The date of receipt of the notice of exclusion by the practitioner or other person is presumed to be 5 days after the date appearing on the notice, unless there is a reasonable showing to the contrary.

(ii) A request for a preliminary hearing will stay the effective date of the exclusion pending a decision of the ALJ at the preliminary hearing, and all the parties informed by the OIG of the exclusion will be notified of the stay.

(iii) A request for a preliminary hearing received after the 15-day period has expired will be treated as a request for a hearing before an ALJ in accordance with paragraph (b) of this section.

(iv) If the practitioner or other person exercises his, her or its right to a preliminary hearing, such a hearing must be held by the ALJ in accordance with paragraph (a)(3)(i) of this section unless the OIG waives it in accordance with paragraph (a)(6)(i) of this section.

(v) The ALJ cannot consolidate the preliminary hearing with a full hearing without the approval of all parties to the hearing.

(3)(i) The preliminary hearing will be conducted by an ALJ of the DAB in a city that the ALJ deems equitable to all parties. The ALJ will conduct the preliminary hearing and render a decision no later than 45 days after receipt of the request for such a hearing by the DAB. Unless there is a reasonable showing to the contrary, date of receipt by the DAB is presumed to be 5 days after the date on the request for a preliminary hearing or, if undated, the date of receipt will be the date the DAB actually received the request. A reasonable extension to the 45-day period of up to 15 days may be requested by any party to the preliminary hearing and such a request may be granted upon concurrence by all parties to the preliminary hearing. Such request must be received no later than 15 days prior to the scheduled date of the preliminary hearing.

(ii) The only issue to be heard and decided on by the ALJ at the preliminary hearing, based on the preponderance of the evidence, is whether the practitioner's or other person's continued participation in the Medicare and State health care programs during the appeal of the exclusion before an ALJ would place program beneficiaries at serious risk. The ALJ's decision is to be based on the preponderance of the evidence.

(iii) In the interest of time, the ALJ may issue an oral decision to be followed by a written decision.

(iv) In those cases where the ALJ has stayed an exclusion after a preliminary hearing, a full hearing must be held and a decision rendered by the ALJ within 6 months. If, for any reason, the request for a full hearing before the ALJ is withdrawn or dismissed, the practitioner or other person will be excluded effective 5 days after the notice of the withdrawal or dismissal is received in the OIG headquarters.

(4) The preliminary hearing decision is not appealable or subject to further administrative or judicial review.

(5) A practitioner or other person found at the preliminary hearing not to place program beneficiaries at serious risk, but later determined to have been properly excluded from program participation after a full hearing before an ALJ, is not entitled to have the exclusion stayed further during an appeal to the DAB. Exclusions in such instances will be effective 5 days after receipt of the ALJ decision in the OIG headquarters.

(6)(i) After notice of a timely request for a preliminary hearing, the OIG may determine that the practitioner's or other person's continued program participation during the appeal before

the ALJ will not place program beneficiaries at serious risk and waive the preliminary hearing. Under these circumstances, the exclusion will be stayed pending the decision of the ALJ after a full hearing. the hearing must be held, and a decision reached, within 6 months.

(ii) If the OIG decides to waive the preliminary hearing, the request for the preliminary hearing will be considered a request for a hearing before the ALJ in accordance with paragraph (b) of this section.

(b) *Right to administrative review.* (1) A practitioner or other person dissatisfied with an OIG determination, or an exclusion that results from a determination not being made within 120 days, is entitled to appeal such sanction in accordance with part 1005 of this chapter.

(2) Due to the 120-day statutory requirement specified in § 1004.100(e), the following limitations apply—

(i) The period of time for submitting additional information will not be extended.

(ii) Any material received by the OIG after the 30-day period allowed will not be considered by the ALJ or the DAB.

(3) The OIG's determination continues in effect unless reversed by a hearing.

(c) *Rights to judicial review.* Any practitioner or other person dissatisfied with a final decision of the Secretary may file a civil action in accordance with the provisions of section 205(g) of the Act.

Approved: October 23, 1995.

June Gibbs Brown,

Inspector General.

[FR Doc. 95–30130 Filed 12–11–95; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–76; RM–8611]

Radio Broadcasting Services; Homestead and North Miami Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 239C2 for Channel 239C1 at Homestead, Florida, reallots the channel to North Miami Beach, Florida, and modifies the license for Station WXDJ(FM) accordingly, in response to a petition filed by New Age Broadcasting, Inc. *See* 60 FR 31278, June 14, 1995. The coordinates for Channel 239C2 at North Miami Beach, Florida, are 25–42–55 and 80–09–17. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 22, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 95–76, adopted November 24, 1995, and released December 6, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 239C1 and adding Channel 239C2 at Homestead, removing Channel 239C2 at Homestead and adding North Miami Beach, Channel 239C2.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–30218 Filed 12–11–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 90–163; RM–7170]

Radio Broadcasting Services; Bay St. Louis and Poplarville, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 300C from Poplarville, Mississippi to Bay St. Louis and modifies the license for Station WZKX(FM) accordingly, in response to a petition filed by Dowdy and Dowdy Partnership. See 55 FR 1913, April 3, 1990. The coordinates for Channel 300C at Bay St. Louis, MS are 30–44–48 and 89–03–30. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 22, 1996.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 90–163, adopted November 25, 1995, and released December 6, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 300C from Poplarville, Mississippi and adding Bay St. Louis, Channel 300C.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–30219 Filed 12–11–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AB08

Acquisition Regulation; Legislative Lobbying Cost Prohibition

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The Department amends the Department of Energy Acquisition Regulation (DEAR) to clarify its

provision on legislative lobbying cost prohibition. To avoid any misunderstandings or disagreements between contractors and the Department, the criteria for cost allowability are being revised to provide clear direction on when and under what circumstances management and operating contractors will be reimbursed for costs of providing information or expert advice to Congress or a State legislature. While contractors may incur the costs of responding to a request for information from Congressional Members or staff, reimbursement of travel costs will require the additional step of a written request signed by a Member of Congress.

EFFECTIVE DATE: January 11, 1996.

FOR FURTHER INFORMATION CONTACT: Michael L. Righi, Office of Policy (HR–51), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202–586–8175).

SUPPLEMENTARY INFORMATION:

I. Background
A. Discussion
B. Disposition of Comments
II. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12778
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. National Environmental Policy Act

I. Background

A. Discussion

The proposed rule was published on October 18, 1994, at 59 FR 52505 to amend the DEAR standard clause on legislative lobbying cost prohibition, DEAR 970.5204–17, which is applicable to all DOE management and operating (M&O) contracts. It included a new requirement that the contractor notify the Department as soon as practicable when providing information or expert advice to Congress or a State legislature. It also included a new requirement that the contractor provide a disclaimer that the information or expert advice represents the views of the contractor and not the Department.

Five sets of comments were received from organizations outside of the Department.

B. Disposition of Comments

1. Statutory Treatment of Laboratories (Pub. L. 100–202)

Two of the commenters referred to language contained in Pub. L. 100–202, Section 305 of the Energy and Water Development Appropriation Act for 1988. A variation of the same language was enacted in the National Defense Authorization Act for Fiscal Years 1988 and 1989, Pub. L. 100–180, Section 3131. The language from the authorization act extends beyond treatment of just laboratories and was codified at 42 U.S.C. 7256a(b)(2).

As a practical matter, neither the 1988 Appropriations Act nor the 1988/1989 Defense Authorization Act prohibits the Department from issuing clarifying regulations on the circumstances under which lobbying costs will be reimbursed. In fact, both prohibitions specifically contemplate implementing regulations. Further, neither of these Acts prohibit the Department from defining the parameters for reimbursement or imposing documentation requirements on the contractor for reimbursement of these costs. Rather, these Acts appear simply to prohibit the Department from making a blanket prohibition of unallowability. Since the language in this rulemaking describes the parameters for reimbursement of this category of cost, we do not believe it violates the prohibition contained in 42 U.S.C. 7256a(b)(2).

2. Distinction Between Requests From Congress and State Legislatures

Two of the commenters questioned creating different treatment for costs depending on whether they were incurred in response to a Congressional request or a request from a State legislature. More specifically, unlike Congressional requests, a request for information or expert advice from a State legislator would be required to be written and signed by the legislator (not staff) in advance, in all cases, to justify any reimbursement of costs.

The U.S. Congress has oversight responsibility over the Department and its operations, and appropriates funds for its use. This authority and responsibility are not delegated to, or shared by, the State legislatures. Thus, we believe that the difference in treatment between Congressional requests and requests from State legislatures is justified because of the higher level of responsibility and responsiveness owed by the Department to the U.S. Congress.

3. Deletion of Reference to Congressional Record Notice

One commenter questioned the deletion of the parenthetical reference ''(* * * including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) * * *.'' This language referred to types of requests where the response costs would be allowable.

A general request or invitation for ''interested parties'' to present views or testimony to Congress on a particular issue, such as that appearing in a Congressional Record notice, is open to the public at large and is usually general in nature. Members of the public whose views are specifically sought are individually invited. It is not unreasonable for the Department to require its contractors be specifically invited in writing to testify before providing for reimbursement of travel costs.

4. Record Keeping Requirements and Proposed Deletion of FAR 31.205–22(f)

Two commenters disagreed with the Department's conclusion that the NOPR contained no new record keeping requirements. These commenters felt that the burden under this initiative ran counter to the current streamlining efforts in the Federal government.

The Department believes that the additional documentary burden, compared to that currently imposed on the Department's contractors, is not unreasonable and is consistent with FAR Part 31, generally, and FAR 31.205–22, specifically. It is also consistent with Office of Management and Budget Circular A–21 paragraph 24, and a recently proposed amendment to FAR 31.201–2, Determining allowability (59 FR 47776, September 16, 1994, FAR Case 93–20). The proposal to amend FAR 31.201–2 will make it clear that the contractor is to be responsible for maintaining records to support its cost claims and authorizes the contracting officer to disallow costs which are inadequately supported. While the proposed rulemaking to amend FAR 31.201–2 has not been finalized, 41 U.S.C. 256(f)(2) now provides that the FAR shall require that a contracting officer may not resolve any questioned costs until the contracting officer has obtained adequate documentation, and the opinion of the contract auditor, with respect to such costs. The amendment to 41 U.S.C. 256 resulted from Section 2151 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355.

Another commenter pointed out that the Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) have published a proposal to delete paragraph (f) of FAR 31.205–22 (See 59 FR 47776, September 16, 1994, FAR Case 93–6). Paragraph (f) of the DEAR clause parallels paragraph (f) of FAR 31.205–22. The language proposed for deletion provides that time logs,

calendars and other records shall not be required to be created when the lobbying employee engages in lobbying less than 25% of the employee's compensated hours, or when the contractor has not materially misstated its allowable or unallowable costs, of any nature, within the last 5 years.

When the two proposed rules amending FAR Part 31 discussed above are put together, the result is that the specific requirement of record keeping is no longer stated, but the contractor is made responsible for maintaining adequate records to support its cost claims for all categories of cost. The Department will review the issue of deleting paragraph (f) of the DEAR clause once the rulemaking amending FAR 31.205–22 is finalized.

5. Distinction Between Oral and Written Requests

One commenter objected to the bifurcated system for cost allowability which provides that oral requests are adequate to support some costs while written requests are required to support others. In particular, the rulemaking places a greater burden to support costs associated with travel.

Both FAR 31.205–22 and OMB Circular A–21 paragraph 24 place a higher burden on the contractor to support costs of transportation, lodging and meals. When costs of transportation, lodging or meals are associated with responding to a request for information from Congress or a State legislature, the costs are likely to increase dramatically. Additionally, these are the areas of cost probably most vulnerable to abuse.

6. Advance Notification Requirement

One commenter objected to the bifurcated requirement in the newly proposed paragraph (h). While acknowledging that the contracting officer should be made aware of all requests for information or expert advice regardless of how the request was communicated, the commenter disagreed with the requirement that the contracting officer be notified in advance of responding in the case of a written request. As pointed out by that commenter, the contractor could conceivably receive the request by facsimile or mail with less than a 48-hour turnaround. (There was also some confusion by a different commenter whether the contractor would have to have the contracting officer's acknowledgement before responding to the request for information.)

The commenter recommended deleting the language ''in the case of a written request.'' The language in paragraph (h) is revised to require the contractor to ''advise the contracting officer in advance or as soon as practicable.''

II. Procedural Requirements

A. Review Under Executive Order 12866

The Department of Energy has determined that today's regulatory action is not a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. This final rule will have no preemptive effect; will not have any effect on existing Federal laws; and will only clarify the existing regulations on this subject. The revised clauses apply only to contracts which would be awarded after the effective date of the final rule and, thus, have no retroactive effect. Therefore, DOE certifies that this final rule meets the requirements of Sections 2(a) and (b)(2) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, that requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

This rule will require only an insignificant addition to the data collection required for the Standard Forms 294 and 295. Accordingly, no OMB clearance is required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, and in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's final rule will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under the National Environmental Policy Act

DOE has concluded that this rule falls into a class of actions that are categorically excluded from the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331–4335, 4341–4347 (1976)) under 10 CFR Part 1021, Appendix A to Subpart D as rulemakings that are strictly procedural, such as rulemakings establishing contracting practices (Exclusion A6). Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 48 CFR Part 970

Government procurement.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

2. Section 970.5204–17 is amended by revising clause paragraph (b)(1), redesignating paragraphs (b)(2) and

(b)(3) as (b)(3) and (b)(4), adding a new paragraph (b)(2), and adding paragraph (h) to read as follows:

970.5204–17 Legislative lobbying cost prohibition.

* * * * *

(b) * * *

(1) Providing Members of Congress, their staff members, or staff of cognizant legislative committees, in response to a request (written or oral, prior or contemporaneous) from Members of Congress, their staff members, or staff of cognizant legislative committees, or as otherwise directed by the Contracting Officer, information or expert advice of a factual, technical, or scientific nature, with respect to topics directly related to the performance of the contract or proposed legislation. In providing this information or expert advice, the contractor shall indicate to the recipient that it is not presenting the views of DOE. Reasonable costs for transportation, lodging, or meals incurred by contractor employees for the purpose of providing such information or advice shall also be reimbursable, provided the request for information or expert advice is a prior written request signed by a Member of Congress, and provided such costs also comply with the allowable cost provisions of the contract.

(2) Providing State legislatures or subdivisions thereof, their staff members, or staff of cognizant legislative committees, in response to a prior written request from a State legislator, or as otherwise directed by the Contracting Officer, information or expert advice of a factual, technical, or scientific nature, with respect to topics directly related to the performance of the contract or proposed legislation. In providing this information or expert advice, the contractor shall indicate to the recipient that it is not presenting the views of DOE. Reasonable costs for transportation, lodging, or meals incurred by contractor employees shall also be reimbursable, provided such costs also comply with the allowable costs provision of the contract.

* * * * *

(h) In providing information or expert advice under paragraphs (b)(1) and (b)(2) of this clause, the contractor shall advise the Contracting Officer in advance or as soon as practicable.

[FR Doc. 95–30236 Filed 12–11–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–275]

Organization and Delegation of Powers and Duties Delegations of Authority to the Maritime Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) hereby delegates to the Maritime Administrator authority to carry out the provisions of sections 10 through 13 of the National Maritime Heritage Act of 1994, Public Law 103–451. These sections authorize the Secretary to convey all rights, title and interests of the United States Government in specified and non-specified vessels, and vessel equipment and spare parts, for various specified purposes and subject to specified conditions which vary among the recipients. This amendment to 49 CFR Part 1 adds a new paragraph 1.66(p) to reflect the delegation of authority to the Maritime Administrator.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Linda Somerville, Chief, Division of Vessel Transfer and Disposal, Office of Ship Operations, Maritime Administration, MAR–631, Room 7324, 400 Seventh Street SW, Washington, DC, 20590, (202) 366–5821, or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (C–50), Department of Transportation, Room 10424, 400 Seventh Street SW, Washington, DC 20590, (202) 366–9306.

SUPPLEMENTARY INFORMATION: Sections 10 through 13 of Public Law 103–451, 108 Stat. 4769, 4778–4782, cited as the ''National Maritime Heritage Act of 1994,'' authorize the Secretary of Transportation to convey a specified vessel, or a vessel of comparable size and class, as well as unneeded vessel equipment, to the Battle of the Atlantic Historical Society; an unspecified vessel, including related spare parts and vessel equipment, to the City of Warsaw, Kentucky; three specified vessels, including related spare parts and vessel equipment, to Assistance International, Inc.; and a specified vessel, as well as unneeded vessel equipment, to the Rio Grande Military Museum. The conveyance of one or more vessels to each specified recipient is for one or more specified purposes, respectively, a merchant marine memorial, historical preservation, and educational activities; the promotion of economic development and tourism; use in emergencies, vocational training, and economic development programs; and use as a military museum. Conveyances to each recipient are subject to specified common financial requirements and other conditions relating to the use and redelivery of the vessels. This amendment to 49 CFR 1.66 adds the subject authority to those already delegated to the Maritime Administrator. Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment are unnecessary, and the rule may become effective in fewer than 30 days after publication in the Federal Register.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.66 is amended by adding a new paragraph (p), to read as follows:

§ 1.66 Delegations to Maritime Administrator.

* * * * *

(p) Carry out the provisions of sections 10 through 13 of Public Law 103–451, the National Maritime Heritage Act of 1994, 108 Stat. 4769, 4778–4782;

* * * * *

Issued at Washington, DC this 5th day of December 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–30144 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

49 CFR Part 553

[Docket No. 90–25; Notice 2]

RIN 2127–AD78

Rulemaking Procedures

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: NHTSA is amending its procedural regulations that apply to judicial review of regulations issued under Chapters 301, 325, 329, and 331 of Title 49 of the United States Code. The provisions at issue address the time within which affected persons may seek judicial review of a final rule issued by NHTSA under those statutes if a petition for agency reconsideration of that rule has been filed. The amendment will make the regulation consistent with the judicial review provisions of the statutes and with recent judicial decisions.

EFFECTIVE DATE: The amendments made in this rule are effective January 11, 1996.

Any petitions for reconsideration must be received by NHTSA no later than January 26, 1996.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4:00 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Kenneth N. Weinstein, Assistant Chief Counsel for Litigation, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590. Telephone: (202) 366–5263.

SUPPLEMENTARY INFORMATION: Certain provisions of the former Motor Vehicle Information and Cost Savings Act (''Cost Savings Act'') and the former National Traffic and Motor Vehicle Safety Act (''Safety Act'') provide for judicial review of rules and standards issued thereunder. These statutes were recently recodified, ''without substantive change,'' as various chapters of Title 49 of the U.S. Code. Section 6 of Pub. L. 103–272.

With respect to Chapter 301, ''Motor Vehicle safety,'' 49 U.S.C. 30161(a) (formerly section 105(a) of the Safety Act) provides that any person adversely affected by an order prescribing a motor vehicle safety standard under chapter 301 may file a petition for judicial review of the order in an appropriate United States Court of Appeals ''not later than 59 days after the order is issued.''

With respect to Chapter 325, ''Bumper Standards,'' 49 U.S.C. 32503(a) (formerly section 103(a) of the Cost Savings Act) provides that any person who may be adversely affected by a standard issued under section 32502 may file a petition for judicial review of the standard in an appropriate United States Court of Appeals ''not later than 59 days after the standard is prescribed.''

With respect to Chapter 329, ''Automobile Fuel Economy,'' 49 U.S.C. 32909 (formerly section 504(a) of the Cost Savings Act) provides that any person who may be adversely affected by a regulation prescribed under sections 30901–30904, 32908, or 32912(c)(1) may file a petition for judicial review of the regulation in an appropriate United States Court of Appeals ''not later than 59 days after the regulation is prescribed.''

With respect to Chapter 331, ''Theft Prevention,'' 49 U.S.C. 33117 (formerly section 610 of the Cost Savings Act) provides that a person who may be adversely affected by any regulation prescribed under that chapter may obtain judicial review of that regulation in accordance with 49 U.S.C. 32909, as described in the previous paragraph.

None of these statutory provisions require parties to seek administrative reconsideration before filing a petition for judicial review. However, NHTSA has authorized the filing of petitions for reconsideration of standards and regulations issued under the Chapters 301, 325, 329, and 331. 49 CFR 553.35. Time limits and other procedures applicable to such petitions are set forth in 49 CFR 553.35–553.39.

Section 553.39 currently provides as follows:

> The filing of a timely petition for reconsideration of any rule issued under this part postpones the expiration of the 60-day period in which to seek judicial review of that rule, as to every person adversely affected by the rule. Such person may file a petition for judicial review at any time from the issuance of the rule in question until 60 days after publication in the Federal Register of the Administrator's disposition of any timely petitions for reconsideration.

Unfortunately, this regulatory provision contains several erroneous statements. First, the applicable time period for filing petitions for judicial review under these chapters is actually 59 days rather than 60 days. Prior to the recent recodification, the statutory language provided that petitions for review had to be filed ''prior to the sixtieth day'' after the order in question was issued. Each of the courts that considered the issue had ruled that this language required petitions to be filed not later than 59 days after the issuance of the order. The recodified language in each of the four chapters explicitly states that the applicable review period is 59 days.

Second, recent judicial decisions construing the judicial review provisions of the Administrative Procedure Act and similar statutory review provisions have made it clear that a person who files a petition for agency reconsideration of a regulation may not simultaneously seek judicial review of that regulation, since the original decision is rendered ''nonfinal'' as to that person. See, *e.g.*, *Wade* v. *F.C.C.*, 986 F.2d 1433 (D.C. Cir. 1993); *United Transp. Union* v. *I.C.C.*, 871 F.2d 1114 (D.C. Cir. 1989); *West Penn Power Co.* v. *U.S. EPA*, 860 F.2d 581 (3rd Cir. 1988). See generally *I.C.C.* v. *Brotherhood of Locomotive Engineers*, 482 U.S. 270 (1987); *Bellsouth Corp.* v. *F.C.C.*, 17 F.3d 1487 (D.C. Cir. 1994).

Third, these decisions also demonstrate that the filing of a petition for agency reconsideration by one person does not affect the judicial review rights of other persons affected by the rule. See *ICG Concerned Workers Ass'n* v. *United States*, 888 F.2d 1455 (D.C. Cir. 1989); *West Penn, supra; Winter* v. *I.C.C.*, 851 F.2d 1056 (8th Cir.), *cert. denied*, 109 S. Ct. 308 (1988) [GET U.S. CITATION]; *Petroleum Communications, Inc.* v. *F.C.C.*, 22 F.3d 1164, 1171 n.6 (D.C. Cir. 1994).

Finally, contrary to NHTSA's current regulation, a person who files a petition for reconsideration may not file a petition for judicial review ''at any time'' prior to the expiration of the statute of limitations. Rather, a petition for review that is filed by a party prior to the agency's action on his or her petition for reconsideration is ''incurably premature'' and does not ''ripen'' when the ruling on reconsideration is issued. *TeleSTAR, Inc.* v. *F.C.C.*, 888 F.2d 132 (D.C. Cir. 1989).

On the basis of its review of the case law, NHTSA issued a Notice of Proposed Rulemaking (''NPRM'') to correct the erroneous portions of section 553.39. 55 FR 45825 (October 31, 1990). First, the agency proposed to eliminate the inaccurate reference to a 60-day limitations period for judicial review. The proposal did not refer to a 59-day period, however, since Part 553 applies to regulations issued under statutes other than the four chapters identified above that have statutory 59-day limitations periods. *See, e.g.*, 49 U.S.C. Chapters 323 and 327.

In addition, the agency proposed language to clarify that the filing of a petition for reconsideration tolls the limitations period for judicial review only as to the petitioner, and not as to other interested persons, and that such a petitioner may not seek judicial review until the agency acts on the petition for reconsideration.

Discussion of Comments

Three commenters responded to the NPRM: Chrysler Corporation (Chrysler), the Association of International Automobile Manufacturers (AIAM), and the Motor Vehicle Manufacturers Association (MVMA). (MVMA has subsequently changed its name to the American Automobile Manufacturers Association.)

None of the commenters objected to the elimination of the erroneous reference to 60 days as the time period within which a petition for judicial review may be filed. However, Chrysler

and MVMA sought clarification as to what constituted final agency action upon a petition for reconsideration and asked when ''a petitioner [is] presumed to have notice of that action.''

In the absence of a petition for reconsideration, regulations and standards promulgated under Chapters 301, 325, 329, and 331 are deemed final for purposes of judicial review when they are ''issued'' (49 U.S.C. § 30161(a)) or ''prescribed'' (49 U.S.C. §§ 32503(a) and 32909(b)). (In this context, NHTSA interprets the word ''prescribed'' to be synonymous with the word ''issued.'') The agency deems a decision in response to a petition for reconsideration, which usually will be either a denial of the petition or a revision to the regulation or standard that generated the petition, to be final for judicial review purposes on the date that it is issued or prescribed.

A petitioner is presumed to have notice of the agency's action when it is published in the Federal Register. See 44 U.S.C. § 1507; *Federal Crop Insurance Corp.* v. *Merrill*, 332 U.S. 380 (1947). However, the language of each of these statutes indicates that the time period for judicial review does not begin to run on the publication date; rather it runs from the date that the regulation, standard, or decision on reconsideration is ''issued'' or ''prescribed'' by the agency.

MVMA and AIAM opposed the remainder of the proposed amendment, arguing that one party's petition for reconsideration should stay the statute of limitations for judicial review for all interested parties, not merely for the petitioner. They asserted that the proposed amendment was not compelled by the case law described in the NPRM. They also suggested that the amendment would increase paperwork and reduce efficiency and could lead to the filing of unnecessary petitions for reconsideration and/or protective petitions for review.

None of the commenters dispute the agency's conclusion that the filing of a petition for reconsideration stays the running of the limitations period for the petitioner because the filing of the petition renders the prior decision ''nonfinal'' as to that petitioner. (In this regard, NHTSA is aware that in a recent case, the Supreme Court ruled that a petition to reopen a decision of the Board of Immigration Appeals does not toll the limitations period or otherwise affect judicial review of the Board's decision. *Stone* v. *I.N.S.*, 115 S. Ct. 1537 (1995). However, the Court based its ruling on the specific language of the judicial review provisions of the Immigration and Nationality Act and policy considerations arising under that statute. Indeed, the Court explicitly confirmed that, in general, the filing of a request for agency reconsideration renders the underlying order nonfinal for purposes of judicial review and that the petitioning party cannot seek judicial review until the reconsideration is concluded. 115 S. Ct. at 1543.)

The commenters also agreed that persons who have not sought agency reconsideration may seek judicial review immediately, without waiting for the completion of the reconsideration process. However, in suggesting that such other persons should be able, at their option, to await the agency's decision on reconsideration before seeking judicial review, the commenters lose sight of the fact that the reason such persons may seek judicial review promptly is that the regulation is final as to them. ''If a party has sought only judicial review, agency action can be deemed final and hence reviewable as to that party, regardless of whether other parties have moved for administrative reconsideration.'' *ICG Concerned Workers*, 888 F.2d at 1457.

Given that the regulation is final as to all persons not seeking reconsideration, there is no basis on which the agency (or the courts) could legally extend the limitations period applicable to those parties beyond the 59 days provided by statute. The case law clearly demonstrates that ''finality with respect to agency action is a party-based concept.'' *IGC Concerned Workers*, 888 F.2d at 1457, citing *West Penn*, 860 F.2d at 586–87; *Winter*, 851 F.2d at 1062; and *American Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 541 (1970).

It is true that the cases on this subject have focussed primarily on whether a nonpetitioning party may seek judicial review of an agency action while another party's petition for reconsideration of that action is pending, rather than on whether such a party must seek such review within the statutory limitations period. However, in the agency's view, the latter principle necessarily follows from the fact that the original decision is final as to all nonpetitioning parties.

NHTSA recognizes that under this amendment, some parties may feel compelled to file protective petitions for reconsideration or judicial review that might ultimately be withdrawn depending on the agency's response to another party's petition for reconsideration. However, to the extent that this is ''wasteful,'' it is not the fault of the amendment; it is required by the case law. As noted in the NPRM, an agency's regulations may not expand the jurisdiction of the Federal courts beyond that established by Congress. *City of Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. 320, 336 (1957); *City of Rochester* v. *Bond*, 603 F.2d 927 (D.C. Cir. 1979).

The agency believes the public interest would be disserved by a regulation that erroneously purported to confer Federal court jurisdiction that does not exist, since a person might improperly rely on the regulation to his or her detriment. To further reduce the possibility of confusion or misunderstanding, NHTSA is adding a phrase at the end of the first sentence of the amended regulation that explicitly states that the expiration of the review period is not postponed for persons who have not sought agency reconsideration.

Chrysler requested clarification as to the amended rule's impact upon associations composed of various member companies. Chrysler suggested that an association's petition for reconsideration should stay the limitations period for judicial review for the members of the association as well as for the association itself.

NHTSA realizes that some individual members of an association might want to wait for the agency's response to their association's petition for reconsideration before deciding whether to seek judicial review. However, as MVMA emphasized in its comments, other members might want to seek such review immediately. Consistent application of the principle of finality requires that if individual members of an association are permitted to seek judicial review of the original regulatory action following disposition of the association's petition for reconsideration, they must be precluded from seeking immediate judicial review during the pendency of that petition.

Thus, when an association files a petition for reconsideration solely in its own name, such a petition would only extend the right of the association itself to seek judicial review following reconsideration. Under those circumstances, the members would not have any right to an extended period for seeking judicial review derived from the association's petition. However, if the association explicitly files its petition for reconsideration on behalf of all of its members, or some specifically identified members, those members would each be deemed as having filed a petition. Of course, under that scenario, none of the identified members could individually seek judicial review while the petition for reconsideration is pending.

The purpose of the amended rule is not to encourage pre-mature requests for judicial review; rather, the amendment seeks to provide notice of the applicable

law. Thus, each person who considers himself or herself to be aggrieved by a NHTSA rule or standard must file a timely petition for reconsideration or a timely petition for judicial review in order to preserve his or her ability to challenge the underlying rule.

NHTSA wishes to emphasize two additional points. First, this amendment does not preclude any person who is aggrieved by the agency's action in response to a petition for reconsideration from seeking judicial review of that response, since such a response is itself a reviewable agency action. Second, a person who files a petition for reconsideration may obtain judicial review of all aspects of the original order, not merely the portion of that order on which he or she sought reconsideration. See *Bellsouth Corp.*, 17 F.3d at 1489–90. However, persons who did not seek timely reconsideration or timely judicial review of the original agency action may only challenge the actions taken by the agency in response to the petition for reconsideration. All other issues were final as to the nonpetitioning parties at the time of the original action. Therefore, any court challenge by nonpetitioning parties to agency actions not affected by the response to the petition for reconsideration must be made within 59 days of the original agency action.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking was not reviewed under E.O. 12866. NHTSA has analyzed this rulemaking determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. Because the changes are only procedural in nature, they will not have any cost impacts.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. For reasons discussed above, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

There are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment. No State laws will be affected.

Civil Justice Reform

This final rule does not have any retroactive or preemptive effect.

List of Subjects in 49 CFR Part 553

Administrative practice and procedure.

PART 553—RULEMAKING PROCEDURES

In consideration of the foregoing, 49 CFR part 553 is amended as follows:

1. The authority citation for part 553 of title 49 is revised to read as follows:

Authority: 49 U.S.C. 322, 1657, 30103, 30122, 30124, 30125, 30127, 30146, 30162, 32303, 32502, 32504, 32505, 32705, 32901, 32902, 33102, 33103, and 33107; delegation of authority at 49 CFR 1.50.

2. Section 553.39 is revised to read as follows:

§ 553.39 Effect of petition for reconsideration on time for seeking judicial review.

The filing of a timely petition for reconsideration of any rule issued under this part postpones the expiration of the statutory period in which to seek judicial review of that rule only as to the petitioner, and not as to other interested persons. For the petitioner, the period for seeking judicial review will commence at the time the agency takes final action upon the petition for reconsideration.

Issued on: December 5, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–30034 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–59–P

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49 CFR Part 571

[Docket No. 74–09; Notice 43]

RIN 2127–AF02

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petitions for reconsideration, delay of compliance date.

SUMMARY: This document delays until September 1, 1996, the date on which manufacturers of add-on (portable) child restraint systems must comply with a final rule that was published July 6, 1995 (60 FR 35126), and corrected September 29, 1995 (60 FR 50477). The rule amended Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child Restraint Systems,'' to add a greater array of sizes and weights of test dummies for use in compliance tests. Today's document responds to those requests in petitions for reconsideration of the rule relating to the compliance date. It provides needed leadtime to manufacturers of add-on (portable) child restraint systems to make necessary design changes to conform to the new requirements.

The agency will respond to the remaining requests in the petitions for reconsideration in another document that will be published in the Federal Register in the near future.

DATES: The effective date (i.e., the date on which the text of the CFR is changed) of the final rule published July 6, 1995 (60 FR 35126) and corrected September 29, 1995 (60 FR 50477), remains January 3, 1996.

For manufacturers of built-in child restraint systems, the compliance date for the amendments remains September 1, 1996.

However, for manufacturers of add-on child restraint systems, the compliance date for the amendments made by those rules (i.e., the date on which these manufacturers must begin complying with the amendments) is changed to September 1, 1996.

Petitions for reconsideration of the rule must be received by January 11, 1996.

ADDRESSES: Petitions for reconsideration should refer to the docket and number of this document and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, D.C., 20590.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Dr. George Mouchahoir, Office of Vehicle Safety Standards (telephone 202–366–4919).

For legal issues: Ms. Deirdre Fujita, Office of the Chief Counsel (202–366–2992). Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

I. Background

This document delays until September 1, 1996, the date on which manufacturers of add-on (portable) child

restraint systems must begin complying with the amendments made by a final rule that was published Thursday, July 6, 1995 (60 FR 35126), and corrected September 29, 1995 (60 FR 50477). The July 1995 final rule amended Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child Restraint Systems,'' by adding a greater array of sizes and weights of test dummies for use in compliance tests. The rule, which completed a substantial upgrade of the standard long envisioned by the agency, also responded to the NHTSA Authorization Act of 1991 (sections 2500–2509 of the Intermodal Surface Transportation Efficiency Act (''ISTEA'')). That Act directed NHTSA to initiate rulemaking on child seat safety. The notice of proposed rulemaking (NPRM) for the rule was published March 16, 1994 (59 FR 12225).

Current Requirements

Standard 213 applies to any device, except Type I (lap) or Type II (lap/shoulder) seat belts, designed for use in a motor vehicle or aircraft to restrain, seat, or position children whose mass is 23 kilograms (kg) (50 pounds) or less. The standard evaluates the performance of child restraint systems in dynamic tests under conditions simulating a frontal crash of an average automobile at 48 kilometers per hour (kph) (30 miles per hour (mph)).

The dynamic tests are conducted using a test dummy. Currently, Standard 213 (S7) specifies that a dummy representing a 6-month-old child be used for testing a child restraint system that is recommended by its manufacturer for use by children in a mass range that includes children whose mass is 9 kg or less (weighing 20 pounds or less). That dummy, which is not instrumented, is specified in subpart D of 49 CFR part 572. A dummy whose mass is 15 kg (weighing 33 pounds), representing a 3-year-old child, is used for testing a child restraint system that is recommended for children whose mass is 9 kg or more (weighing 20 or more pounds). This dummy is instrumented with accelerometers for measuring accelerations in the head and chest during impacts, and is specified in 49 CFR Part 572, subpart C.

The requirements to be met by a child restraint in the dynamic testing include maintaining its structural integrity, retaining portions of the dummy within specified excursion limits (limits on how far specified portions of the body may move forward), and in the case of the 3-year-old dummy, limiting the forces exerted on the head and chest of the dummy in the crash. These requirements reduce the likelihood that the child using a child seat will be injured by the collapse or disintegration of the seat, by contact with the interior of the vehicle, or by imposition of intolerable forces by the seat.

July 1995 Final Rule

The July 1995 final rule amended Standard 213 to add three dummies, representing a newborn infant, 9-month-old and 6-year-old child, for use in compliance testing under the standard. The rule removed the 6-month-old child dummy currently used, since the need for it was eliminated by the addition of the new dummies.

The additional dummies provide a better evaluation of the ability of child restraint systems to restrain and protect the range of children recommended for those systems. As a result of the rule, child restraints must meet the performance requirements of the standard while tested with dummies more representative of the range of children for whom the restraints are recommended. As a result, the performance of child restraints is more thoroughly evaluated. A dummy representing children at the lower end of the weight ranges recommended for a restraint evaluates the ability of the restraint to restrain its occupant. In other words, it evaluates the ability of a restraint to prevent a smaller child from slipping out of the restraint. A dummy at the higher end approximates the heaviest load that the restraint will have to bear in a crash and thus is particularly useful in evaluating the structural integrity of the restraint.

The rule adopted the following provisions specifying which of the new dummies NHTSA will use in the compliance testing of child restraint systems:

If the range of children recommended by a child restraint's manufacturer includes any children in the following range	The following dummy(ies) is(are) used in the compliance testing of that restraint
Birth—5 kg or less (Birth—11 lb or less).	Newborn.
More than 5 kg–10 kg (22 lb).	Newborn. 9-month-old.
More than 10 kg–18 kg (40 lb).	9-month-old.* 3-yr-old.
More than 18 kg or 40 lb	6-yr-old.

*This dummy is not to be used to test booster seats.

Compliance Dates

The rule was drafted to have one compliance date for add-on child restraint systems, and another for built-in systems. The compliance date for add-on child restraint systems was January 3, 1996 (which is 180 days after the publication date of the rule), and for built-in systems, September 1, 1996.

Rationale for Different Dates

Different compliance dates were established due to NHTSA's belief, at the time, that add-on restraint manufacturers did not need so much time to comply with the amendments as did built-in restraint manufacturers. In the apparent absence of comments objecting to the proposed 180 day effective date, the agency concluded that manufacturers of add-on systems could comply with the proposed period of 180 days. In contrast, there were comments indicating that a 180-day effective date would be insufficient for built-in restraint manufacturers. In commenting on the NPRM, an individual built-in restraint manufacturer (Ford) and a association of built-in restraint manufacturers (American Automobile Manufacturers Association) requested a September 1, 1996 compliance date for amending the standard with regard to built-in systems. Ford stated that the proposed 180-day period would not provide enough time for it to test all its built-in systems to the adopted requirements and make any needed design changes. Ford also said that 180 days is insufficient to enable it to modify the labeling of its built-in restraints, or to change the vehicle owner's guides of the vehicles equipped with built-in systems, in accordance with the rule. Ford indicated that a September 1, 1996 compliance date would better allow it to incorporate necessary changes in the vehicle owner's manual, since the manuals are usually printed in June or July of the model year. NHTSA concluded that a September 1, 1996 compliance date for built-in restraints ''gives motor vehicle manufacturers sufficient leadtime to evaluate their products and make any necessary changes to them, and prepare the labels and owners manuals for the new model vehicles without unnecessary burdens.'' 60 FR 35138.

Correction of Effective Date

As noted above, the agency drafted the rule so that the ''effective date'' for add-on child restraint systems was January 3, 1996, and the ''effective date'' for built-in systems was September 1, 1996. This wording did not conform to the drafting practices of the Federal Register. Based on the language of 49 U.S.C. 30101 *et seq.* (formerly the National Traffic and Motor Vehicle Safety Act), NHTSA has traditionally used the term ''effective date'' to mean

the date on and after which any vehicle or item of equipment subject to a rule must comply with the requirements of the rule. The Federal Register uses different terminology. It calls this date the rule's ''compliance date,'' not its ''effective date.'' For Federal Register purposes, the ''effective date'' of a rule is the date on which the Code of Federal Regulations (CFR) is amended to reflect the changes set forth in the rule. Since the amendments of a rule appear in the CFR on the ''effective date'' of the rule, amendments cannot vary in effective date by subject matter, e.g., a rule cannot have one effective date for add-on systems and another for built-in systems.

On September 29, 1995 (60 FR 50477), NHTSA corrected the error by correcting the **DATES** section of the final rule to specify that the rule is effective (as the Federal Register uses that term) on January 3, 1996, with two provisos. The provisos, relating to the compliance dates of the rule, are as follows:

> However, manufacturers of built-in child restraint systems may comply with existing requirements for built-in systems (as of July 6, 1995) until September 1, 1996.
>
> Manufacturers of add-on child restraint systems may comply with existing requirements for add-on systems (as of July 6, 1995) until January 3, 1996.

The correction conformed the wording of the **DATES** section to Federal Register drafting practices. It did not affect the compliance date of the amendments made by the rule. Thus, beginning January 3, 1996, each add-on restraint would have to meet the performance criteria and labeling requirements specified in the standard when tested with the test dummies specified by the rule, including, if appropriate for a particular restraint, the newly-adopted dummies.

Petitions for Reconsideration of Compliance Date

Cosco Inc. and Gerry Baby Products Company, two manufacturers of add-on child restraint systems, petitioned for reconsideration of the January 3, 1996 compliance date for add-on restraints. Both manufacturers requested NHTSA to change the date to September 1, 1996, to make the compliance date the same as that for built-in restraint manufacturers.

In support of its petition, Cosco said it needs a leadtime longer than 180 days to test its products and make needed design and tooling changes. Cosco disagreed with NHTSA's statement in the final rule that ''No comment was received on leadtime for add-on restraints.'' (60 FR at 35137) Cosco said it had commented on the issue, and quoted a statement in its comment which stated: ''Whatever changes are made to the standard, Cosco reminds NHTSA that manufacturers need enough time to deplete inventories of printed materials (at least 6 months) or develop complying designs (up to 2 years).'' In its petition, Cosco said that:

> While this two year time period may be compressed to some degree, certain critical elements of the design, development, tooling and testing of a new add-on child restraint cannot be accelerated. For instance, the tooling time for the mold for an add-on child restraint shell is approximately six months. This does not include time for fine tuning the tool after it is completed and for testing the first production adequately to ensure that safety guidelines and compliance with FMVSS 213 are met. * * *

Cosco believed there is no reason to have a compliance date for add-on systems that differed from that for built-in systems. It stated:

> The discussion in the final rule regarding Ford's comments essentially reflects the same concerns that Cosco raised in response to the NPRM. * * * This arbitrary distinction will have an unnecessary, negative impact on add-on restraint manufacturers and should be amended as requested.

Gerry Baby Products raised similar concerns in its petition. Gerry said that 180 days does not provide enough time for it to sufficiently test its products to the new requirements and implement any necessary design changes. Gerry also stated:

> This short phase-in time period may result in Gerry Baby and other child restraint manufacturers pulling a significant percentage of shield type booster seats (for which head excursion limits may be an issue) from the market. Thus, the end result of the 180-day effective date could be a significant time period in which the retail market would have minimal, if any, shield-type booster seats available. Consumers with Type I seat belt systems in the rear seats of their vehicles would thus probably have no child restraints available to restrain their 40 to 60 pound children.

Gerry requested that the compliance date for add-on restraints and built-in restraints be the same, September 1, 1996.

Agency Decision

NHTSA has reviewed the petitions and has decided that, for add-on systems, the compliance date for the July rule should be changed to September 1, 1996. NHTSA adopted a 180-day compliance date, as proposed, for the rule for add-on systems because a longer leadtime did not seem necessary. In its petition for reconsideration, Cosco and Gerry have provided information explaining why they believe that the rule's original compliance date ''is not practicable, is unreasonable, or is not in the public interest.'' 49 CFR 553.35. The agency agrees that, similar to built-in restraint manufacturers, manufacturers of add-on systems need sufficient time to evaluate their products and make any necessary changes to them. As noted by Gerry, shield boosters, in particular, will likely need to be redesigned to meet Standard 213's head excursion requirement when tested with the 6-year-old dummy. Shield boosters, used for older children who have outgrown a convertible or toddler seat, enables a Type I (lap only) vehicle belt to more properly fit the child by preventing the belt from riding up across the child's stomach.

NHTSA is therefore extending the compliance date for add-on systems to ensure that adequate time is provided add-on restraint manufacturers to test their seats and implement necessary design changes. This will also ensure the continued availability of shield booster seats. The compliance date of the July 1995 final rule, as corrected September 29, 1995, is delayed to September 1, 1996 for add-on restraints.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' The agency has considered the impacts of this rulemaking action and has determined that this action is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has further determined that the effects of this rulemaking are so minimal that preparation of a full preliminary regulatory evaluation is not warranted. The agency believes that manufacturers will be minimally affected by this rulemaking because it only extends the compliance date of the July 6, 1995 final rule, which amended Standard 213. There will be no additional costs associated with this final rule.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Since this document simply extends the compliance date of a previously-issued rule, no costs are associated with it. Accordingly, the agency has not prepared a regulatory flexibility analysis.

Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on December 7, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–30233 Filed 12–7–95; 2:11 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 950905226–5282–02; I.D. 083095A]

RIN 0648–AH00

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Extension of Allocations to Inshore and Offshore Components

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

ACTION: Final rule.

SUMMARY: NMFS is implementing Amendment 38 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 40 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA). Amendment 38 implements an allocation of pollock for processing by the inshore and offshore components in the BSAI management area from January 1, 1996, through December 31, 1998. Amendment 40 implements an allocation of Pacific cod for processing by the inshore and offshore components, and an allocation of pollock for processing by the inshore component in the GOA from January 1, 1996 through December 31, 1998. It also continues the Western Alaska Community Development Quota (CDQ) Program for pollock for the same period of time. This action is necessary to continue the management measures that were contained in Amendments 18 and 23 to the BSAI and GOA FMPs, respectively. The intended effect of this final rule is to promote management and conservation of groundfish, enhance the stability in the fisheries, and further the goals and objectives contained in the FMPs that govern these fisheries.

EFFECTIVE DATE: January 1, 1996.

ADDRESSES: Copies of Amendments 38 and 40, and the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) prepared for Amendments 38 and 40 are available from the North Pacific Fishery Management Council, 605 West 4th Avenue, room 306, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: David Ham, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed under the BSAI and GOA FMPs. Both FMPs were prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The BSAI FMP is implemented by regulations appearing at 50 CFR 611.93, 50 CFR part 675, and 50 CFR part 676; for the GOA FMP, regulations are found at 50 CFR 611.92, 50 CFR part 672, and 50 CFR part 676. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620. The fisheries for pollock (*Theragra chalcogramma*) and Pacific cod (*Gadus macrocephalus*) and the affected human environment are described in the FMPs, in the environmental impact statements prepared by the Council for each FMP, and in the EA/RIR/FRFA prepared for this action.

Amendments 38 and 40 will extend the provisions of Amendment 18 to the BSAI FMP and Amendment 23 to the GOA FMP, respectively.

Amendments 18 and 23 and their implementing regulations expire on December 31, 1995. The Council has not yet completed development of its comprehensive plan to address problems caused by the open access nature of the Alaska groundfish fisheries. Therefore, the Council voted unanimously at its June 1995 meeting to extend the provisions of the expiring amendments through December 31, 1998, by Amendments 38 and 40. A notice of availability of Amendments 38 and 40 was published at 60 FR 46572 (September 7, 1995).

Amendments 38 and 40 are essentially the same as amendments 18 and 23, with minor changes. A full discussion of these changes is listed in the proposed rule for amendments 38 and 40 (60 FR 48087, September 18, 1995).

Amendments 38 and 40 were approved by NMFS on November 28, 1995, under section 304(b) of the Magnuson Act. Upon reviewing the reasons for Amendments 38 and 40 and the comments on the proposed rule to implement it, NMFS has determined that this final rule extending the allocation between inshore and offshore components is necessary for fishery conservation and management.

Changes in the Final Rule From the Proposed Rule

This final rule includes the following changes from the proposed rule:

1. In § 675.27(e)(1)(iii), the date that the annual budget reconciliation report

is due to NMFS from each CDQ group is changed from May 15 to May 30 to provide more time for the CDQ groups to comply with this requirement.

2. The definition of ''inshore component'' at §§ 672.2 and 675.2 is revised as follows. The requirement for an owner of a processor vessel to declare on the annual application for a Federal fishery permit (NOAA Form 88–155) whether it will be part of the inshore component has been deleted from paragraphs (2) and (3) of the definition. This definition is revised for clarity and is not fundamentally different from the current definition.

3. The definitions of ''inshore component'' and ''offshore component'' at §§ 672.2 and 675.2 are revised as follows. The phrase ''any processor vessel'' that appears in both definitions is changed to ''vessels''. This change was made to simplify and clarify the definition. The definition already refers to vessels that ''process'', therefore, further reference to a ''processor vessel'' is redundant.

4. For clarity, NMFS revises the definitions of Community Development Quota Reserve and Community Development Quota at § 675.2.

5. For clarity, NMFS combines paragraphs (*1*) and (*2*) of § 675.27(e)(3)(i)(F) into one paragraph 675.27(e)(3)(i)(F). Also, NMFS revises this paragraph (e)(3)(i)(F) of § 675.27 to give the Secretary of Commerce (Secretary) acting through NMFS, in addition to the Governor of the State of Alaska, the authority to deem a change to a Community Development Plan (CDP) to be a material change. This will give NMFS the ability to make a determination that a proposed change to a CDP is a material change.

6. Paragraph § 675.22(g)(2) is removed. This permissive statement is unnecessary.

7. The phrase ''processor vessels'' in paragraphs § 675.22(g) (3), (4), and (5) is changed to ''vessels'' to be consistent with the definition of ''offshore component.''

Response to Comments

Fourteen letters of comment were received within the public comment period. Two letters had no comment, eight were supportive of the proposed action and are summarized in comment 1, and four were received with comments that are summarized and responded to in comments two through ten below:

Comment 1. Continuation of the inshore-offshore program through Amendments 38 and 40 provides the industry with stability while the Council proceeds with developing a comprehensive rationalization plan. This program is needed by fishery-dependent coastal communities to ensure continuing access to fisheries resources. These fishery resources provide revenue to local communities through raw fish taxes, municipal sales taxes from goods and services, fuel tax revenues from sales to the fishing fleet, corporate income tax revenues, and real and personal property tax revenues. Much of this tax revenue has gone into community infrastructure that has been a great benefit to rural Alaskan coastal communities. The inshore-offshore program slows the pace of harvesting activity and allows NMFS to improve its monitoring of the fisheries. The CDQ program has been a success and has accomplished the positive results that were intended.

Response. NMFS notes this comment.

Comment 2. Amendments 38 and 40 will not maintain stability in the fishery, safeguard capital investments, prevent preemption, or protect coastal communities that are dependent on a local fleet. The derby-style fishing that will continue to characterize these fisheries under Amendments 38 and 40 is unstable. Fishing seasons will continue to shorten, capital investments will continue to be at risk as a result of increased inter-sector competition and capital investment. Local fishing fleets will continue to be preempted by other nonlocal inshore fleets.

Response. NMFS recognizes some limitations of these amendments, but the inshore/offshore allocation is not intended to be a substitute for comprehensive rationalization planning. This allocation extension is a continuation of a temporary solution and as such will provide 3 additional years for completing the development and implementation of a permanent solution.

Comment 3. The analysis for Amendments 38 and 40 should examine environmental issues, such as the water quality problems that have continued to plague shoreside processing operations in Dutch Harbor.

Response. Pages 214 and 215 of the EA/RIR/FRFA for Amendments 38 and 40 address water quality problems in Dutch Harbor. The analysis concluded that it is unlikely that Amendments 38 and 40 will have a negative impact on the water quality in this area.

Comment 4. The analysis did not evaluate the market structure in key seafood markets to determine whether there might be anti-competitive effects by giving shoreside processing plants an increased share of the pollock resource. For example, is there a transfer pricing risk? Or, did the inshore-offshore allocation result in the price collapse of offshore surimi that occurred during the first inshore-offshore allocation in 1993?

Response. The EA/RIR/FRFA for inshore-offshore examined several issues related to this comment. Page 124 shows that the inshore price for surimi collapsed at about the same rate as the offshore price for surimi from 1992 through 1993. This overall price drop may or may not have been influenced by the inshore-offshore allocation at that time. The price drop was experienced by both sectors, though it was slightly more severe for the offshore sector. The analysis indicates that this may not have been a price collapse at all, but a return to normal prices after 2 years (1991 and 1992) of inordinately high prices. Pages 119 to 123 of the analysis contain a detailed discussion of price factors, though the analysis is not specific to the issue of the collapse of 1993 surimi prices. In an issue related to the collapse of the 1993 surimi prices, Appendix V of the analysis contains further analysis of the structural breakdown of surimi prices relative to exvessel prices paid. The analysis in Appendix V is unable to attribute this phenomenon to the inshore-offshore allocation. Furthermore, the price collapse issue raised in this comment is more relevant to the original inshore-offshore decision than to Amendments 38 and 40, because the inshore-offshore allocations have been in place for 3 years and their continuance now represents the status quo.

Comment 5. Proponents of the inshore-offshore allocation program claim that allocating more fish to large shoreside processors will provide jobs and economic opportunity for local residents. However, the analysis did not address this question. On the other hand, Akutan has petitioned the Council to be included in the pollock CDQ program because the Akutan Trident plant is not part of the community and local residents rarely work at the plant. The logic on these two issues is inconsistent.

Response. The Akutan plant is not necessarily reflective of other shoreside plants, in terms of local employment. The social impact analysis focused primarily on Dutch Harbor, Kodiak, St. Paul, and Ballard/Seattle. The community impact study in the analysis looked at total and distributional income indices, of which direct employment is only a part. The relevant point is not just one of direct employment. There are other non-quantifiable benefits derived from the inshore/offshore allocation system. The availability of alternative economic activity was also an important

consideration. Maintenance of cultural stability, social impacts, and other impacts were also considered.

Comment 6. The proposed regulations at § 675.23(e)(2)(ii) preclude pollock catcher vessels from participating in the yellowfin sole fishery prior to January 26 if they want to harvest pollock roe for processing by the offshore component starting on January 26. Vessels that participate in the yellowfin sole fishery before January 26 cannot enter the pollock fishery for processing by the offshore component until February 5. Yellowfin sole is an abundant species and its harvest should be encouraged, not discouraged. Therefore, there should be no restriction on fishing for yellowfin sole prior to the January 26 start of the pollock fishery for processing by the offshore component.

Response. NMFS acknowledges that limitations on the participation in the yellowfin sole fishery prior to the opening of the pollock fishery for processing by the offshore component could reduce potential revenues of vessels. NMFS approved this limitation after considering the intent of the Council to minimize the preemptive impact on other fisheries that could result from the delay of the pollock roe fishery for processing by the offshore component until January 26. Additionally, if vessels were allowed to harvest yellowfin sole before January 26, those vessel operators could have an unfair advantage by potentially prospecting for pollock stocks just prior to the opening of the pollock fishery for processing by the offshore component.

Comment 7. The proposed CDQ regulations require that an annual budget reconciliation report be submitted to NMFS by May 15 of the year following the year for which the annual budget applies. However, due to other CDQ reporting requirements during May, a burden on the CDQ groups would be relieved if the May 15 due date were changed to May 30. This would allow the CDQ groups more time to prepare the annual budget reconciliation report for NMFS.

Response. NMFS concurs. The regulations at § 675.27(e)(1)(iii) are changed to require the annual budget reconciliation report to be due to NMFS on May 30 instead of May 15.

Comment 8. The focus of the CDQ program needs to remain on long-term development projects, not short-term projects such as job creation. The CDQ regulations need to be more clear in describing the types of CDQ projects that would be acceptable. The CDQ regulations should direct a portion of CDQ resources to be used to construct and maintain public infrastructure in CDQ communities.

Response. Job creation is part of some CDPs and is usually associated with training and job creation in commercial fisheries. Training and job creation in commercial fisheries will increase the number of skilled fishermen. This will enable CDQ communities to become more self-sufficient in regional fisheries related development, which is a valid long-term goal of the CDQ program. The CDQ regulations allow the CDQ group's board of directors, along with their constituents, to choose their own CDQ projects because each CDQ group is more familiar with the needs of its communities and would be the best judge of whether a project would succeed or fail due to the local conditions. Additionally, by choosing their own projects and succeeding or failing on their own business skills, the CDQ groups can best learn the skills for developing a viable business. This will assist the CDQ groups in becoming self-sufficient in the future. Viable, ongoing businesses are a long-term goal of the CDQ program.

Comment 9. The proposed annual budget and annual budget reconciliation process is burdensome, and NMFS and State budget reporting requirements should be integrated so that separate reports to NMFS and the State are not necessary. CDQ groups should be allowed to submit existing business records to NMFS instead of separately prepared documents whose contents are based on NMFS' criteria.

Response. The Secretary, through NMFS, is obliged to ensure that the funds derived from CDQ activity are used as directed in each CDP for the benefit of the western Alaska communities. The annual budget and annual budget reconciliation report requirements were developed in conjunction with the State of Alaska because the existing reporting requirements were not sufficient to track the financial transactions of the CDQ groups. NMFS is requesting basic business information that should have already been developed for the CDQ board of directors. NMFS requires that each CDQ group submit reports based on NMFS' criteria because NMFS must ensure that the report contains the necessary information to evaluate any financial transactions.

Comment 10. Clarification is requested as to whether § 675.27(e)(3)(i)(F) (*1*) and (*2*) are intended to constitute substantial amendments because their contents are already covered under paragraphs § 675.27(e)(3)(i) (A) through (E). Clarification is requested as to the meaning of the term ''material change'' in paragraph § 675.27(e)(3)(i)(F). The CDQ regulations should contain solid guidance so that a CDQ group can determine from the regulations whether an amendment is a substantial amendment or a technical amendment. The proposed requirement for written notification of technical amendments to be sent to NMFS before the change occurs is burdensome. This requirement could be met equally well with a quarterly reporting requirement.

Response. Paragraphs (e)(3)(i)(F)(*1*) and (*2*) of § 675.27 are part of the definition for a substantial amendment to a CDP. NMFS agrees that this is not clear and revises paragraphs (F)(*1*) and (*2*) to create a new paragraph (F). Paragraph (F) is necessary because it would be impossible to list every change to the present or future CDPs that could be a substantial amendment. NMFS did not want to burden the CDQ groups with a long list of CDP changes that would constitute substantial amendments. On the other hand, NMFS did not want to omit any change that could be a substantial amendment. NMFS decided to list the most important general changes that would be substantial in paragraphs (A) through (E), and then give the Governor of Alaska the discretion to recommend to the Secretary other changes to be substantial amendments, based on the Governor's decision as to what constitutes a ''material change.'' NMFS must approve the Governor's recommendations for substantial amendments. A technical amendment is any change to a CDP that is not a substantial amendment. NMFS must be notified of any such change before the change is effected because the Governor and the Secretary must ensure that the change is not a substantial amendment. The burden of notification is slight because it can be accomplished by fax, and, in most cases, the response can be rapid.

Classification

The Director, Alaska Region, NMFS, determined that these FMP amendments are necessary for the conservation and management of the BSAI and GOA fisheries and that they are consistent with the Magnuson Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork

Reduction Act unless that collection of information displays a currently valid OMB control number. This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of information has been approved by The Office of Management and Budget (OMB), OMB control number 0646–0269. The public reporting burden for each year of this collection is estimated to average 40 hours per response for completing annual reports, 40 hours per response for completing annual budget reconciliation reports, 30 hours per response for completing substantial amendments, and 4 hours per response for completing technical amendments. For the first year of the CDQ program, completion of CDP applications is estimated to average 160 hours per response. For each of the last 2 years of the program, completion of annual budget reports is expected to average 40 hours per response. OMB approval has been obtained under OMB control number 0648–0269 for the CDQ-managing organization representative requirement to inform NMFS within 24 hours after the CDQ has been reached and fishing ceased. This requirement has an estimated response time of 2 minutes per response.

All reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The Assistant Administrator for Fisheries, NOAA (AA) finds, good cause, pursuant to authority at 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date of this final rule. The inshore-offshore and CDQ programs have been in effect for the last 3 years, and the fishing industry is relying upon their continuation. A lapse in the effective regulations for these programs would confuse and destabilize the industry. Further, to the extent that this final rule continues regulations that currently are in effect, a delayed effectiveness period is unnecessary because the fishing industry does not need additional time to plan or prepare for compliance with these regulations. Therefore, the AA is waiving the 30-day delayed effectiveness period and making these regulations effective January 1, 1996, to coincide with the start of the fishing year.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: December 6, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, the definitions of ''Inshore component'' and ''Offshore component'' are revised to read as follows:

§ 672.2 Definitions.

* * * * *

Inshore component (applicable through December 31, 1998) means the following three categories of the U.S. groundfish fishery that process pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, or both:

(1) Shoreside processing operations;

(2) Vessels less than 125 ft (38.1 m) in length overall, that process no more than 126 mt per week in round-weight equivalents of an aggregate amount of those fish; and

(3) Vessels that process those fish at a single geographic location in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) during a fishing year. For the purposes of this definition, NMFS will determine the single geographic location in a fishing year for an individual processor from the geographic coordinates the vessel operator reports on the check-in notice (§§ 672.5(c)(1) and 675.5(c)(1)) of this chapter when that vessel first engages in processing those fish.

* * * * *

Offshore component (applicable through December 31, 1998) means all vessels in the U.S. groundfish fisheries not included in the definition of ''inshore component'' that process pollock caught in directed fisheries for pollock, or Pacific cod caught in directed fisheries for Pacific cod in the Gulf of Alaska, or both.

* * * * *

3. In § 672.7, paragraph (h) heading, and paragraph (h)(2) are revised to read as follows:

§ 672.7 Prohibitions.

* * * * *

(h) *Applicable through December 31, 1998.* * * *

(2) Operate any vessel under both the ''inshore component'' and ''offshore component'' definitions at §§ 672.2 and 675.2 of this chapter during the same fishing year.

* * * * *

§ 672.20 [Amended]

4. In § 672.20, the headings of paragraphs (a)(2)(v), (c)(1)(ii), and (c)(2)(ii) are revised to read: ''*Applicable through December 31, 1998.*''.

5. In § 672.20, the headings of paragraphs (c)(1)(i) and (c)(2)(i) are revised to read: ''*Applicable after December 31, 1998.*''.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

6. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

7. In § 675.2, a definition for ''Catcher vessel operational area'' is added, in alphabetical order, and the definitions for ''Community Development Plan,'' ''Community Development Quota,'' ''Community Development Quota Program,'' ''Community Development Quota Reserve,'' ''Inshore component,'' and ''Offshore component'' are revised to read as follows:

§ 675.2 Definitions.

* * * * *

Catcher vessel operational area (CVOA) (applicable through December 31, 1998) means that part of the Bering Sea subarea south of 56°00′ N. lat. and between 163°00′ and 167°30′ W. long.

Community Development Plan (CDP) (applicable through December 31, 1998) means a plan for a specific Western Alaska community or group of communities approved by the Governor of the State of Alaska and recommended to NMFS under § 675.27.

Community Development Quota (CDQ) (applicable through December 31, 1998) means a percentage of the CDQ reserve for a BSAI subarea or district as defined at § 675.20(a)(3)(ii) that is allocated to a CDP.

Community Development Quota Program (CDQ Program) (applicable through December 31, 1998) means the Western Alaska Community Development Program implemented under § 675.27.

Community Development Quota Reserve (CDQ Reserve) (applicable through December 31, 1998) means one half of the pollock TAC that is placed into the reserve for each subarea and district of the BSAI as specified at

§ 675.20(a)(3) and that is set aside for the CDQ program.

* * * * *

Inshore component (applicable through December 31, 1998) means the following three categories of the U.S. groundfish fishery that process pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, or both:

(1) Shoreside processing operations;

(2) Vessels less than 125 ft (38.1 m) in length overall, that process no more than 126 mt per week in round-weight equivalents of an aggregate amount of those fish; and

(3) Vessels that process those fish at a single geographic location in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) during a fishing year. For the purposes of this definition, NMFS will determine the single geographic location in a fishing year for an individual processor from the geographic coordinates the vessel operator reports on the check-in notice (§§ 672.5(c)(1) of this chapter and 675.5(c)(1)) when that vessel first engages in processing those fish.

* * * * *

Offshore component (applicable through December 31, 1998) means all vessels not included in the definition of ''inshore component'' that process pollock caught in directed fisheries for pollock, or Pacific cod caught in directed fisheries for Pacific cod in the Gulf of Alaska, or both.

* * * * *

8. In § 675.7, paragraph (i) heading, paragraph (i)(2), and paragraph (j) heading are revised to read as follows:

§ 675.7 Prohibitions.

* * * * *

(i) *Applicable through December 31, 1998.* * * *

(2) Operate any vessel under both the ''inshore component'' and ''offshore component'' definitions at § 672.2 of this chapter and § 675.2 during the same fishing year.

(j) *Applicable through December 31, 1998.*

* * * * *

9. In § 675.20, the headings of paragraphs (a)(2)(iii), (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) are revised to read as follows:

§ 675.20 General limitations.

(a) * * *

(2) * * *

(iii) Applicable through December 31, 1998.

* * * * *

(3) * * *

(i) Applicable through December 31, 1998. * * *

(ii) Applicable through December 31, 1998. * * *

(iii) Applicable through December 31, 1998; application for approval of a CDP and CDQ allocation. * * *

* * * * *

10. In § 675.22, paragraphs (g) and (h)(2) are revised to read as follows:

§ 675.22 Time and area closures.

* * * * *

(g) *Catcher vessel operational area (applicable through December 31, 1998).* (1) The Catcher Vessel Operational Area is established annually from the beginning of the second season of directed fishing for pollock (defined at § 675.23(e)) until either the date that NMFS determines that the pollock quota for processing by the inshore component has been harvested or December 31, whichever is earlier.

(2) Vessels in the offshore component are prohibited from conducting directed fishing for pollock in the CVOA unless they are operating under a CDP approved by NMFS.

(3) Vessels in the offshore component that do not catch groundfish but do process pollock caught in a directed fishery for pollock may operate within the CVOA to process pollock.

(4) Vessels that catch or process groundfish in directed fisheries for species other than pollock may operate within the CVOA.

(h) * * *

(2) If the Regional Director determines that 42,000 nonchinook salmon have been caught by vessels using trawl gear during August 15 through October 14 in the CVOA, NMFS will prohibit fishing with trawl gear for the remainder of the period September 1 through October 14 in the Chum Salmon Savings Area defined under paragraph (h)(1) of this section.

11. In § 675.23, paragraph (e)(2) heading is revised to read as follows:

§ 675.23 Seasons.

* * * * *

(e) * * *

(2) *Applicable through December 31, 1998.* * * *

* * * * *

12. In § 675.27, the section heading is revised, introductory text is added, and paragraphs (b)(1)(i), (b)(1)(vii), (b)(2)(vii), (b)(3)(ii)(B), (e), and the heading of paragraph (f) are revised to read as follows:

§ 675.27 Western Alaska Community Development Quota Program (applicable through December 31, 1998).

The goals and purpose of the CDQ program are to allocate pollock from the CDQ reserve to eligible Western Alaska communities to provide the means for starting or supporting commercial seafood activities that will result in ongoing, regionally based, commercial seafood or related businesses.

* * * * *

(b) * * *

(1) * * *

(i) A description of the CDP projects that are proposed to be funded by the CDQ and how the CDP projects satisfy the goals and purpose of the CDQ program;

* * * * *

(vii) Description of how the CDP would generate new capital or equity for the applicant's fishing and/or processing operations;

* * * * *

(2) * * *

(vii) A general budget for implementing the CDP. A general budget is a general account of estimated income and expenditures for each CDP project that is described at paragraph (b)(1)(i) of this section for the total number of calendar years that the CDP is in effect. An annual budget is required to be submitted with a CDP as described at paragraph (e)(1)(ii) of this section;

* * * * *

(3) * * *

(ii) * * *

(B) Documentation of a legal relationship between the CDP applicant and the managing organization (if the managing organization is different from the CDP applicant), which clearly describes the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement; and

* * * * *

(e) *Monitoring of CDPs—(1) CDP reports.* The following reports must be submitted to NMFS:

(i) *Annual progress reports.* CDP applicants are required to submit annual progress reports to the Governor by June 30 of the year following allocation. Annual progress reports will include information describing how the CDP has met its milestones, goals, and objectives. On the basis of those reports, the Governor will submit an annual progress report to NMFS and recommend whether CDPs should be continued. NMFS must notify the Governor in writing within 45 days of receipt of the Governor's annual progress report, accepting or rejecting

the annual progress report and the Governor's recommendations on multiyear CDQ projects. If NMFS rejects the Governor's annual progress report, NMFS will return it for revision and resubmission. The report will be deemed approved if NMFS does not notify the Governor in writing within 45 days of the report's receipt.

(ii) *Annual budget report.* An annual budget report is a detailed estimation of income and expenditures for each CDP project as described in paragraph (b)(1)(i) of this section for a calendar year. The first annual budget report shall be included in the CDP. Each subsequent annual budget report must be submitted to NMFS by December 15 preceding the year for which the annual budget applies. Annual budget reports are approved upon receipt by NMFS unless disapproved in writing by December 31. If disapproved, the annual budget report may be revised and resubmitted to NMFS. NMFS will approve or disapprove a resubmitted annual budget report in writing.

(iii) *Annual budget reconciliation report.* A CDQ group must reconcile each annual budget by May 30 of the year following the year for which the annual budget applied. Reconciliation is an accounting of the annual budget's estimated income and expenditures with the actual income and expenditures, including the variance in dollars and variance in percentage for each CDP project that is described in paragraph (b)(1)(i) of this section. If a general budget as described at paragraph (b)(2)(vii) of this section is no longer correct due to the reconciliation of an annual budget, then the general budget must also be revised to reflect the annual budget reconciliation, and the revised general budget must be included in the annual budget reconciliation report.

(2) *CDQ increase.* If an applicant requests an increase in a CDQ under a multiyear CDP, the applicant must submit a new CDP application for review by the Governor and approval by NMFS as described in paragraphs (b) and (c) of this section.

(3) *Substantial amendments.* A CDP is a working business plan and must be kept up to date. Substantial amendments to a CDP will require written notification to the Governor and subsequent approval by the Governor and NMFS before any change in a CDP can occur. The Governor may recommend to NMFS that the request for an amendment be approved. NMFS may notify the Governor in writing of approval or disapproval of the amendment within 30 days of receipt of the Governor's recommendation. The Governor's recommendation for approval of an amendment will be deemed approved if NMFS does not notify the Governor in writing within 30 calendar days of receipt of the Governor's recommendation. If NMFS determines that the CDP, if changed, would no longer meet the criteria under paragraph (d) of this section, or if any of the requirements under this section would not be met, NMFS shall notify the Governor in writing of the reasons why the amendment cannot be approved.

(i) For the purposes of this section, substantial amendments are defined as changes in a CDP, including, but not limited to, the following:

(A) Any change in the applicant communities or replacement of the managing organization;

(B) A change in the CDP applicant's harvesting or processing partner;

(C) Funding a CDP project in excess of $100,000 that is not part of an approved general budget;

(D) More than a 20 percent increase in the annual budget of an approved CDP project;

(E) More than a 20 percent increase in actual expenditures over the approved annual budget for administrative operations; or

(F) A change in the contractual agreement(s) between the CDP applicant and its harvesting or processing partner, or a change in a CDP project, if such change is deemed by the Governor or the Secretary to be a material change.

(ii) Notification of an amendment to a CDP shall include the following information:

(A) The background and justification for the amendment that explains why the proposed amendment is necessary and appropriate;

(B) An explanation of why the proposed change to the CDP is an amendment according to paragraph (e)(3)(i) of this section;

(C) A description of the proposed amendment, explaining all changes to the CDP that result from the proposed amendment;

(D) A comparison of the original CDP text with the text of the proposed changes to the CDP, and the changed pages of the CDP for replacement in the CDP binder;

(E) Identification of any NMFS' findings that would need to be modified if the amendment is approved along with the proposed modified text; and

(F) A description of how the proposed amendment meets the requirements of this § 675.27. Only those CDQ regulations that are affected by the proposed amendment need to be discussed.

(4) *Technical amendments.* Any change to a CDP that is not a substantial amendment as defined at paragraph (e)(3)(i) of this section, is a technical amendment. It is the responsibility of the CDQ group to coordinate with the Governor to ensure that a proposed technical amendment does not meet the definition for a substantial amendment. Technical amendments require written notification to the Governor and NMFS before the change in a CDP occurs. A technical amendment will be approved when the CDQ group receives a written notice from NMFS announcing the receipt of the technical amendment. The Governor may recommend to NMFS in writing that a technical amendment be disapproved at any time. NMFS may disapprove a technical amendment in writing at any time with the reasons therefor. Notification should include:

(i) The pages of the CDP with the text highlighted to show deletions and additions; and

(ii) The changed pages of the CDP for replacement in the CDP binder.

(5) It is the responsibility of the CDQ-managing organization to cease fishing operations once its respective CDQ pollock allocation has been reached. Total pollock harvests for each CDP will be determined by observer estimates of total catch and catch composition as reported on the daily observer catch message. The CDQ-managing organization must arrange for processors to transmit a copy of the observer daily catch message to it in a manner that allows the CDQ-managing organization to inform processors to cease fishing operations before the CDQ allocation has been exceeded. CDQ-managing organization representatives must also inform NMFS within 24 hours after the CDQ has been reached and fishing has ceased. If NMFS determines that the observer, the processor, or the CDQ-managing organization failed to follow the procedures described in paragraph (h) of this section for estimating the total harvest of pollock, or violated any other regulation in this part, NMFS reserves the right to estimate the total pollock harvest based on the best available data.

(f) *Suspension or termination of a CDP.*

* * * * *

[FR Doc. 95–30139 Filed 12–11–95; 8:45 am]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 60, No. 238
Tuesday, December 12, 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.

FEDERAL RESERVE SYSTEM

12 CFR Part 221

[Regulation U; Docket No. R–0905]

RIN 7100–AB65

Securities Credit Transactions; Review of Regulation U, ''Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks''

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing amendments to Regulation U, the regulation that covers extensions of credit by banks that are secured in whole or in part by those publicly traded securities defined as ''margin stock''. These amendments are being proposed as part of the Board's program to periodically review its regulations as well as to fulfill the requirements of section 303 of the Riegle Community Redevelopment and Regulatory Improvement Act of 1994. Two of the most important effects of the proposed amendments would be to provide: Explicit guidance for banks financing margin stock purchased by their customers through a broker-dealer on a delivery-versus-payment (or C.O.D.) basis; and greater flexibility for withdrawals and substitutions of collateral when margin stock is pledged along with cash equivalents and other securities by treating the entire credit as a single loan. In addition, amendments would conform Regulation U to changes recently proposed for Regulation T regarding increased loan value for exchange-traded options and money market mutual funds. Technical amendments would update the regulation to reflect a 1991 Board interpretation allowing lead banks to apply Regulation U to syndicated loans independent of other credit extended by syndicate banks and restore language indicating that the exemption for temporary financing of customer securities transactions does not apply to securities purchased at a broker-dealer.

DATES: Comments should be received on or before February 15, 1996.

ADDRESSES: Comments should refer to Docket No. R–0905, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments also may be delivered to Room B–222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Scott Holz, Senior Attorney, or Angela Desmond, Senior Counsel, Division of Banking Supervision and Regulation, (202) 452–2781. For users of Telecommunications Device for the Deaf (TDD), please contact Dorothea Thompson, (202) 452–3544.

SUPPLEMENTARY INFORMATION: The Board is proposing amendments to Regulation U (12 CFR part 221), ''Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks,'' as part of its program to periodically review its regulations and to satisfy requirements under section 303 of the Riegel Community Redevelopment and Regulatory Improvement Act of 1994. The proposed amendments include coverage of bank financing of securities purchased by customers through a broker-dealer on a cash basis and treatment of mixed-collateral loans (loans secured in part by margin stock and in part by other collateral) as a single loan if all collateral consists of securities and cash equivalents. Conforming amendments are proposed in light of the recently published amendments to Regulation T (12 CFR part 220), ''Credit by Brokers and Dealers'' (see 60 FR 33763; June 29, 1995) that would increase the loan value of exchange-traded options and money market mutual funds. Two technical amendments are discussed below.

In addition to the amendments described in this proposal, comment is invited on all areas of Regulation U, including (but not limited to) whether the regulation can be eliminated, simplified, or the burdens imposed thereunder eased.

1. Financing of Securities Purchased on a DVP Basis

Banks often act as custodians for their customers' securities. These securities are generally purchased via a registered broker-dealer in a cash account and sent to the bank on a delivery-versus-payment (DVP) basis.[1] Banks traditionally have not accepted securities in a DVP transaction if the customer does not have the funds to make full payment on hand at the bank. Accepting securities without having the customer's full payment on hand involves a credit relationship similar to a customer using a margin account at a broker-dealer.

In the past few years, System examiners and staff of the Securities and Exchange Commission have alleged that certain banks were financing these DVP purchases without documentation and in excess of margin requirements contained in Regulation U. The banks were found in violation of Regulation U or settled charges without admitting or denying their culpability.[2]

Provided customers have sufficient collateral, Board staff believes financing of securities purchases can be accommodated within the existing provision for revolving-credit agreements found in § 221.3(c) of Regulation U, with the addition of some clarifying language.[3] However, it should be noted that this will not result in exactly equal regulation between banks and broker-dealers because the combination of Board, SEC, and SRO rules applicable to broker-dealers in this area cannot be recreated in Regulation

[1] Customers purchase securities at a broker-dealer on either a cash or margin basis, using either a cash or margin account. When a customer purchases a security on a cash basis, he either deposits the full purchase price in the cash account or asks to have the security sent to his agent (usually a custodial bank) against full payment of the purchase price. This latter method is described in section 220.2(e) of Regulation T as a *delivery against payment, payment against delivery,* or *C.O.D. transaction* and is generally referred to by the industry as a DVP transaction.

[2] See, e.g., *SEC* v. *Hansen,* 726 F. Supp. 74 (S.D.N.Y. 1989).

[3] Applying the section on revolving-credit agreements will ensure that banks financing such purchases establish credit limits for their customers, including limits on intraday trading.

U.[4] Board staff believes that the supervisory structure for banking institutions and the requirement that banks establish credit agreements before financing these transactions will lead banks to impose some additional limitations themselves, but because the additional requirements applicable to broker-dealers are not contained in Regulation T, they cannot be imposed by Regulation U.

2. Mixed-Collateral Loans

Regulation U does not apply to extensions of securities credit that are not secured at least in part by margin stock. Loans secured in part by margin stock and in part by other collateral are known as ''mixed-collateral'' loans and Regulation U has always required some kind of separation for these types of loans. Although a single credit agreement may be used,[5] § 221.3(e) of Regulation U states that a loan secured in part by margin stock and in part by other collateral ''shall be treated as two separate loans.'' This separation requirement has been the subject of numerous inquiries since the last revision of Regulation U and has led to this proposal for a relaxation of the regulation in this area.[6]

The section on mixed-collateral loans does not present a problem when first applied at the time the loan commitment is made, as it merely requires a bank to determine the loan value of margin stock collateral and then verify that the other collateral has a good faith loan value sufficient to make up the difference between the loan value of the margin stock and the amount of credit being extended and to allocate the credit secured by each tranche.

There have been, however, a number of inquiries concerning the interplay of § 221.3(e) (mixed-collateral loans) and § 221.3(f) (withdrawals and substitutions) of Regulation U. As an example, suppose the value of a customer's nonmargin stock collateral has increased over time but the value of the margin stock has not. In spite of the fact that the overall value of the collateral has increased, the customer cannot withdraw margin stock because this ''separate'' loan does not have sufficient loan value to permit the withdrawal. In other words, changes in collateral value in one tranche have no effect on the other tranche. This separation requirement makes collateral management extremely difficult.

Board staff has tried to respond to inquiries in this area through interpretation of the existing regulation.[7] However, in light of the growth of revolving credit agreements secured by more than just margin stock, it appears that the current rule is unnecessarily burdensome to effectuate the statutory scheme of regulation.[8]

The proposed amendment to the section on mixed collateral loans would still require the regulatory segregation of collateral, but would expand the types of collateral that could be securing loans that currently can only be secured by margin stock to include all financial instruments (stocks, bonds, and cash equivalents).[9] Acting in good faith, a bank would be able to value all financial instruments in accordance with the margin requirements in the Supplement to Regulation U (§ 221.8) and permit substitutions within this group in conformity with the section on withdrawals and substitutions, meaning the aggregate loan value of the substituted collateral must at least equal the aggregate loan value of the collateral withdrawn. Under the proposed amendment, credit secured by nonfinancial collateral, such as real estate, would continue to be treated as a separate loan. Comment is invited on the continuing need for separation of collateral between financial instruments and other collateral.

3. Conforming Amendments

Although the Board's margin regulations provide a level playing field for lenders extending purpose credit secured by margin stock, statutory and other considerations have always made the scope of Regulations G and U less broad than that of Regulation T.[10] Two of the proposed amendments to Regulation T would make it less restrictive than Regulation U, leading the Board to propose conforming amendments. The two amendments would allow 50 percent margin for exchange-traded options (currently given no loan value) and good faith loan value for money market mutual funds (currently given 50 percent loan value). In addition, the definitions of ''cash equivalent'' and ''examining authority'' would be added from the Regulation T proposal to the definitional section of Regulation U.

4. Technical Amendments

Two technical amendments are proposed. The first would add a sentence to the ''single-credit rule'' to reflect a 1991 Board interpretation allowing the lead bank to perform Regulation U compliance for syndicated loans. The other would reinsert language inadvertently deleted in 1983 from one of the Regulation U exemptions for credit extended to persons other than broker-dealers.[11]

5. Section-by-Section Explanation of Proposed Changes to Regulation U

Section 221.1 Authority, Purpose and Scope.

No substantive changes.

Section 221.2 Definitions.

(1) Eliminate letter designations for definitions in § 221.2 and references thereto in §§ 221.1(b), 221.3(a) and 221.7(c)(2).

(2) Add definitions (from Regulation T) for *cash equivalent* and *examining authority* (referred to in § 221.5(c)(9)(ii)).

[4] Although the Board does not have a maintenance margin in its regulations, broker-dealers are required to monitor extensions of securities credit under SRO rules, call for additional collateral when market values fall below a specified percentage, and sell some of the customer's securities if the additional collateral is not received. In addition, SRO rules require customers opening margin accounts to deposit a minimum amount of equity in cash or securities (generally $2000).

[5] The ability of a bank to use a single credit agreement was a reform instituted in 1983. Before that time, separate credit agreements were required for the stock collateral and the nonstock collateral.

[6] Before 1983, Regulation U covered loans secured by any stock. A ''mixed-collateral'' loan was one secured in part by stock and in part by other collateral. Now that the regulation's scope has been reduced to cover only loans secured by margin stock, a ''mixed-collateral'' loan is one secured in part by margin stock and in part by other collateral. ''Other collateral'' may include stock that would have been covered under the previous version of Regulation U and therefore not subject to the provisions covering mixed-collateral loans. This reduction in the scope of the regulation had the unintended effect of reducing the flexibility for withdrawals and substitutions of collateral for mixed-collateral loans.

[7] See, e.g., *Federal Reserve Regulatory Service* 5–923.2, 5–923.41, and 5–923.42.

[8] Many customers who have securities to pledge as collateral have more than just margin stock (they often have debt securities as well). The section on mixed-collateral loans presumes there will be no change in the collateral once it has been pledged. The number of inquiries in this area is an indication that this is often not the case.

[9] One of the goals of the section on mixed-collateral loans is to ensure that a lender does not inflate the loan value of nonmargin collateral to offset the fact that the margin regulations limit the value of margin stock to 50 percent of its current market value. Most financial instruments have readily available prices, lessening the possibility for evasion of the margin requirements. Other collateral, such as real estate, boats and automobiles, is more likely to have a less well agreed upon market value.

[10] For example, although the Securities Exchange Act of 1934 requires the Board to set margins for all purchases of securities, it specifically excludes bank loans on nonconvertible debt securities.

[11] The exemption for credit to a customer to temporarily finance the purchase or sale of securities for prompt delivery contained a restriction prohibiting its use for securities purchased at a broker-dealer. This restriction was inadvertently dropped in 1983 and it is being reinserted.

(3) Exclude money market funds from definition of *margin stock* so as to give allow them good faith loan value.

(4) Edit statement in definition of *maximum loan value* that ''[p]uts, calls and combinations thereof have no loan value'' to reflect loan value for exchange-traded options.

Section 221.3 General Requirements

221.3(a)—General Rule

(1) Edit statement in general rule that collateral other than margin stock has good faith loan value to reflect fact that puts and calls that do not qualify as margin stock have no loan value.

221.3(c)—Revolving-Credit or Multiple-Draw Agreements

(2) Expand subsection to cover financing of securities purchased on a payment-against-delivery (or DVP) basis.

(3) Clarify that FR U–1 is always taken when arrangement is established and must be amended for subsequent disbursements if (i) all collateral is not pledged up front, or (ii) collateral has been withdrawn or substituted between disbursements.

221.3(d)—Single Credit Rule

(4) Clarify that single credit rule does not cover syndicated loans (see Board Interpretation on loan participations in section 221.124 of Regulation U).

221.3(e)—Mixed Collateral Loans

(5) Alter application of rule so that instead of separating margin stock collateral from nonmargin stock collateral, securities and cash equivalents are separated from other types of collateral.

Section 221.4 Agreements of Nonmember Banks

Editorial change reflects combining of Forms FR T–1 and FR T–2.

Section 221.5 Special Purpose Loans to Brokers and Dealers

No substantive changes.

Section 221.6 Exempted Transactions

Restore language to 221.6(f) that credit is not to be used by a customer to purchase securities from a broker-dealer.

Section 221.7 OTC List

No substantive changes.

Section 221.8 Supplement

Allow options that qualify as margin stock the same loan value as other margin stock.

Regulatory Flexibility Act

As noted in the summary, the proposed amendments should improve the regulation by providing explicit guidance on certain lending practices and greater flexibility in verifying compliance for certain types of loans. The Board believes there will be a beneficial economic impact if this proposal is adopted. Comments are invited on this statement.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0115), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found in 12 CFR part 221. This information is required by Regulation U and authorized by the Securities Exchange Act of 1934 (15 U.S.C. 78g and 78w). The respondents are for-profit financial institutions. Records must be retained for three years after the credit is extinguished.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0115.

No additional reporting requirements or modifications to existing recordkeeping requirements are proposed. The current estimated burden is 4 minutes per response. There are 10,637 subject respondents making an estimated average of 212 of the subject loans annually, for a total of 157,853 hours of annual burden for recordkeeping. Based on an hourly cost of $20, the annual cost to the public is estimated to be $3,157,060.

Because the records would be maintained at banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 12 CFR Part 221

Banks, banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investment companies, Investments, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board proposes to amend 12 CFR Part 221 as follows:

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCK (REGULATION U)

1. The authority citation for Part 221 is revised to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78h, 78q, and 78w.

§ 221.1 [Amended]

2. Section 221.1(b) is amended by removing the word ''§ 221.2(b)'' and adding ''§ 221.2'' in its place.

3. Section 221.2 is amended as follows:

a. By removing the alphabetic paragraph designations from the definitions and placing the definitions in alphabetical order;

b. By removing the paragraph designation (1) in front of the definition of *Bank*, by designating the text following the work *Bank* as paragraph (1), by revising newly designated paragraph (1) introductory text and paragraph (2) introductory text;

c. By adding new definitions in alphabetical order for *Cash equivalent* and *Examining authority*;

d. By removing the period at the end of paragraph (6)(iii) and adding ''; or'' in its place, and by adding new paragraph (6)(iv) to the definition of *Margin stock*;

e. By revising the third sentence of the definition of *Maximum loan value*.

The additions and revisions read as follows:

§ 221.2 Definitions.

* * * * *

Bank (1) Has the meaning given to it in section 3(a)(6) of the Act (15 U.S.C. 78c(a)(6)) and includes:

* * * * *

(2) Bank does not include:

* * * * *

Cash equivalent means negotiable bank certificates of deposit, bankers acceptances issued by banking institutions in the United States and payable in the United States, and any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8) that is a money market fund in compliance with all applicable requirements of SEC Rule 2a–7 (17 CFR 270.2a–7).

* * * * *

Examining authority means:

(1) The national securities exchange or national securities association of which a broker or dealer is a member; or

(2) If a member of more than one self-regulatory organization, the organization designated by the Securities and Exchange Commission (SEC) as the examining authority for the creditor.

* * * * *

Margin stock * * *

(6) * * *

(iv) A company which is a money market fund in compliance with all applicable requirements of SEC Rule 2a–7 (17 CFR 270.2a–7).

Maximum loan value * * * Puts, calls and combinations thereof that do not qualify as margin stock have no loan value. * * *

* * * * *

4. Section 221.3 is amended as follows:

a. By revising the last sentence of paragraph (a)(1);

b. By revising paragraph (c);

c. By adding a sentence to the end of paragraph (d)(1);

d. By revising paragraph (e). The revisions and additions read as follows:

§ 221.3 General requirements.

(a) * * * (1) * * * All other collateral, except for puts and calls, has good faith loan value, as defined in § 221.2 of this part.

* * * * *

(c) *Purpose statement for agreements involving revolving or multiple-draw credit or financing of securities purchases on a payment-against-delivery basis.* (1) If a bank extends credit, secured directly or indirectly by any margin stock, in an amount exceeding $100,000, under an agreement involving revolving or other multiple-draw credit or financing of securities purchases on a payment-against-delivery basis, Form FR U–1 must be executed at the time the credit arrangement is originally established and must be amended as described in paragraph (c)(2) of this section for each disbursement if all of the collateral for the agreement is not pledged at the time the agreement is originally established.

(2) If a purpose statement executed at the time the credit arrangement is initially made indicates that the purpose is to purchase or carry margin stock, the credit will be deemed in compliance with this part if the maximum loan value of the collateral at least equals the aggregate amount of funds actually disbursed or at the end of any day on which credit is extended under the agreement, the bank calls for additional collateral sufficient bring the credit into compliance with § 221.8 (the Supplement). For any purpose credit disbursed under the agreement, the bank shall obtain and attach to the executed Form FR U–1 a current list of collateral which adequately supports all credit extended under the agreement.

(d) * * * (1) * * * Syndicated loans need not be aggregated with other unrelated purpose credit extended by the same bank.

* * * * *

(e) *Mixed collateral loans.* (1) A purpose credit secured in part by margin stock and in part by collateral other than securities and cash equivalents shall be treated as two separate loans, one secured by margin stock and any other securities and cash equivalents and one by all other collateral. A bank may use a single credit agreement, if it maintains records identifying each portion of the credit and its collateral.

(2) A purpose credit secured entirely by securities and cash equivalents may be treated as a single loan.

* * * * *

5. Section 221.4 is amended by revising the parenthetical phrase in the middle of paragraph (a) to read as follows:

§ 221.4 Agreements of nonmember banks.

(a) * * * (See Form FR T–1, T–2) * * *

* * * * *

6. Section 221.6 is amended by revising paragraph (f) to read as follows:

§ 221.6 Exempted transactions.

* * * * *

(f) To any customer, other than a broker or dealer, to temporarily finance the purchase or sale of securities for prompt delivery, if the credit is to be repaid in the ordinary course of business upon completion of the transaction and is not extended to enable the customer to pay for securities purchased in an account subject to part 220 of this chapter;

* * * * *

7. Section 221.7 is amended by revising paragraph (c)(2) to read as follows:

§ 221.7 Requirements for the list of OTC margin stocks.

* * * * *

(c) * * *

(2) No longer substantially meets the provisions of paragraph (b) of this section or the definition of *OTC margin stock* in § 221.2 of this part.

* * * * *

8. Section 221.8 is amended by revising paragraphs (a) and (c) to read as follows:

§ 221.8 Supplement, maximum loan value of margin stock and other collateral.

(a) *Maximum loan value of margin stock.* The maximum loan value of any margin stock is fifty percent of its current market value.

* * * * *

(c) *Maximum loan value of options.* Except for options that qualify as margin stock, puts, calls, and combinations thereof have no loan value.

By order of the Board of Governors of the Federal Reserve System, December 6, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–30131 Filed 12–11–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–98–AD]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes Powered by General Electric CF6–80C2 or Pratt & Whitney PW4000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes. This proposal would require modification of the engine fuel feed system. This proposal is prompted by reports indicating that the coupling nut on the fuel tube on the outboard strut (engine position 1) fractured. The actions specified by the proposed AD are intended to prevent such fracturing of the coupling nut, which could result in release of fuel onto the engine cowling and a subsequent fire.

DATES: Comments must be received by February 6, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–98–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamra J. Elkins, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2669; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–98–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–98–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056

Discussion

The FAA has received reports indicating that the coupling nut on the fuel tube on the outboard strut (engine position 1) on several Boeing Model 747–400 series airplanes fractured. Fracturing of the coupling nut caused fuel to leak onto the engine cowling. This fracturing has been attributed to relative movement between the outboard struts (engine positions 1 and 4) and the wing front spar. Fracturing of the coupling nut on the fuel tube can result in release of fuel onto the engine cowling. This condition, if not corrected, could result in a fire.

The FAA has reviewed and approved two service bulletins that describe procedures for modification of the engine fuel feed system:

1. Boeing Alert Service Bulletin 747–28A2185, Revision 1, dated September 21, 1995, which applies to certain Model 747–400 series airplanes powered by either General Electric CF6–80C2 or Pratt & Whitney PW4000 series engines. This service bulletin describes procedures for replacement of the strut fuel tubes and couplings at engine positions 1 and 4. The replacement involves installing new shrouded couplings that have been redesigned to be more flexible in response to the relative movement between the outboard struts and the wing front spar.

2. Boeing Service Bulletin 747–28–2146, dated August 13, 1992, which applies to certain Model 747–400 series airplanes powered by General Electric CF6–80C2 series engines. This service bulletin describes procedures for installation of new fuel lines, shrouded fuel line couplings redesigned to be more flexible (between the strut mid bulkhead and the wing front spar), and drain lines at each engine position to provide a drain path from the new couplings to the existing drain system.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the engine fuel feed system. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Operators should note that, although Boeing Service Bulletin 747–28–2146 recommends installation of fuel lines, couplings, and drain lines at each engine position, this proposed AD would require those installations only at engine positions 1 and 4. The FAA finds that the addressed unsafe condition does not exist with regard to engine positions 2 and 3, since relative movement between those engine positions and the wing front spar is insufficient to cause fracturing of the coupling nut. Further, the FAA has received no reports of fracturing of the coupling nut that have been attributed to relative movement between engine positions 2 and 3 and the wing front spar.

There are approximately 226 Model 747–400 series airplanes of the affected design in the worldwide fleet.

The FAA estimates that 34 airplanes of U.S. registry would be required by this proposed AD to replace the strut fuel tubes and couplings at engine positions 1 and 4 in accordance with Boeing Alert Service Bulletin 747–28A2185. That replacement would take approximately 74 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $9,582 per airplane. Based on these figures, the cost impact of this proposed replacement on U.S. operators is estimated to be $476,748, or $14,022 per airplane.

Currently, there are no Model 747–400 series airplanes on the U.S. Register that would be required by this AD to accomplish the installation specified in Boeing Service Bulletin 747–28–2146. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 162 work hours per airplane (81 work hours per engine; 2 engines per airplane) to accomplish the proposed installation, at an average labor rate of $60 per work hour. Required parts would cost approximately $9,582 per airplane. Based on these figures, the cost impact of this proposed installation would be $19,302 per airplane.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

Boeing: Docket 95–NM–98–AD.

Applicability: Model 747–400 series airplanes powered by General Electric CF6–80C2 or Pratt & Whitney PW4000 series engines; as identified in Boeing Alert Service Bulletin 747–28A2185, Revision 1, dated September 21, 1995, and Boeing Service Bulletin 747–28–2146, dated August 13, 1992; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fracturing of the coupling nut, which could result in release of fuel onto the engine cowling and a subsequent fire, accomplish the following:

(a) Within 18 months after the effective date of this AD, accomplish the requirements of paragraph (a)(1) or (a)(2), as applicable.

(1) For Model 747–400 series airplanes identified in Boeing Alert Service Bulletin 747–28A2185, Revision 1, dated September 21, 1995: Replace the strut fuel tubes and couplings at engine numbers 1 and 4 with new redesigned (shrouded) couplings, in accordance with that alert service bulletin.

(2) For Model 747–400 series airplanes having variable numbers RT641 through RT650 inclusive, identified in Boeing Service Bulletin 747–28–2146, dated August 13, 1992: On engine positions 1 and 4 only, install new fuel lines, shrouded fuel line couplings (between the strut mid bulkhead and the wing front spar), and drain lines in accordance with that service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30213 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–78–AD]

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 series airplanes. This proposal would require inspections to detect corrosion and cracking of the lower horizontal-stabilizer cutout longeron, the corner fitting, the skin strap, and the outer skin; and repair, if necessary. This proposal is prompted by cracking found at the lower corner of the horizontal-stabilizer cutout longeron during a full scale fatigue test. The actions specified by the proposed AD are intended to prevent such cracking, which could result in reduced structural integrity of the horizontal stabilizer cutout longeron.

DATES: Comments must be received by January 23, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 277–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–78–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A300–600 series airplanes. The DGAC advises that, during a full-scale fatigue test, cracking was found on the test airplane at the lower corner of the horizontal-stabilizer cutout longeron, between frame (FR) 87 and FR89 and between stringer (STGR) 24 and STGR27, left- and right-hand. The cracking was found after 87,675 simulated flights. Such fatigue cracking, if not corrected, could result in reduced structural integrity of the horizontal stablizer cutout longeron.

Airbus has issued Service Bulletin A300–53–6042, Revision 1, dated February 20, 1995, which describes procedures for repetitive visual and eddy current inspections to detect corrosion and cracking of the lower horizontal-stabilizer cutout longeron, the corner fitting, the skin strap, and the outer skin between FR87 and FR89 and between STGR24 and STGR27, left- and right-hand; and repair, if necessary. The service bulletin also describes procedures for repetitive rotating probe inspections to detect cracks in the fastener holes at the same locations, and repair, if necessary. The service bulletin also describes procedures for certain follow-on actions, which include installing a new corner fitting, installing a new longeron, and performing a cold working procedure repairing cracks of certain measurements. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive (CN) 94–269–171(B)R1, dated March 29, 1995, in order to assure the continued airworthiness of these airplanes in France.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive visual and eddy current inspections to detect corrosion and fatigue cracking of the lower horizontal-stabilizer cutout longeron, the corner fitting, the skin strap, and the skin between FR87 and FR89 and between STGR24 and STGR27, left-hand and right-hand. The proposed AD would also require repetitive rotating probe inspections to detect cracks in the fastener holes at the same locations; and repair or certain a follow-on actions, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously. Certain repairs would be required to be accomplished in accordance with a method approved by the FAA.

Operators should note that certain requirements of this proposed AD would differ from actions recommended in the referenced Airbus service bulletin. The service bulletin specifies that inspection thresholds and intervals may be adjusted based on certain average flight operations of the airplane. However, the FAA has determined that such adjustments would not address the unsafe condition in a timely manner. Therefore, this proposed AD does not permit such adjustments. In developing the appropriate compliance time for the proposed rule, the FAA considered not only the manufacturer's recommendation, but the safety implications involved with cracking of the horizontal-stabilizer cutout longeron and the number of landings that had been accumulated when cracking was detected. In light of these factors, the FAA finds the compliance times specified in the proposed AD for initiating the required actions to be warranted, in that they represent an appropriate interval of time allowable for the affected airplanes to continue to operate without compromising safety.

Additionally, the service bulletin specifies that operators need not count touch-and-go landings in determining the total number of landings between two consecutive inspections, even if those landings are less than five percent of the landings between inspection intervals. Since the fatigue cracking that was found in the lower horizontal stabilizer cutout longeron is aggravated by landing, the FAA finds that all touch-and-go landings must be counted in determining the total number of landings between two consecutive inspections.

The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 268 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $32,160 to $16,080 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industries: Docket 95–NM–78–AD.

Applicability: Model A300–600 series airplanes on which Airbus Modification No. 6146 has not been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alternation, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the horizontal stabilizer cutout longeron due to fatigue cracking, accomplish the following:

(a) Prior to the accumulation of 18,000 total landings, or within 2,000 landings after the effective date of this AD, whichever occurs later: Perform a visual and an eddy current inspection to detect cracks and/or corrosion of Areas 1 and 2 of the lower horizontal stabilizer cutout longeron, as defined in Airbus Service Bulletin A300–53–6042, Revision 1, and dated February 20, 1995. Perform the inspections in accordance with the service bulletin.

(b) Perform a visual and an eddy current inspection to detect cracks and/or corrosion of Area 3 of the lower horizontal-stabilizer cutout longeron, as defined in Airbus Service Bulletin A300–53–6042, Revision 1, dated February 20, 1995. Perform these inspections in accordance with the service bulletin, at the later of the times specified in paragraph (b)(1) and (b)(2) of this AD.

(1) Prior to the accumulation of 24,000 total landings, but not before the accumulation of 18,000 total landings; or

(2) Prior to the accumulation of 2,000 landings after the effective date of this AD.

(c) If no cracking is detected during any inspection required by this AD: Prior to further flight, cold work and ream the vacated fastener holes, in accordance with Airbus Service Bulletin A300–53–6042, Revision 1, dated February 20, 1995; and perform the requirements of paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For airplanes on which no cracking is found in Area 1 or 2: Repeat the inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 6,000 flight cycles.

(2) For airplanes on which no cracking is found in Area 3: Perform the various follow-on actions in accordance with the service bulletin. (The follow-on actions include installing a new corner fitting, installing a new longeron and performing a cold working procedure.) After accomplishment of these follow-on actions, no further action is required by this AD.

(d) If any cracking is detected during any inspection required by this AD, perform the requirements of paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) If any cracking is found in Area 1 or 3 that is within the limits specified in Airbus Service bulletin A300–53–6042, Revision 1, dated February 20, 1995: Prior to further flight, repair in accordance with the service bulletin.

(2) If any cracking is found in Area 2, or if any cracking is found in any area and that cracking is beyond the limits described in Airbus Service Bulletin A300–53–6042, Revision 1, dated February 20, 1995: Prior to further fight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(e) If any corrosion is detected during any inspection required by this AD, prior to further flight, repair the corrosion in accordance with Airbus Service Bulletin A300–53–6042, Revision 1, dated February 20, 1995.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 6, 1995.

Darrell M. Pederson,

Acting Manger, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30212 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64 and 68

[CC Docket No. 87–124; FCC 95–474]

Access to Telecommunications Equipment and Services by Persons With Disabilities (Hearing Aid Compatibility)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On November 28, 1995, the Commission adopted a Notice of Proposed Rulemaking (NPRM) regarding hearing aid compatibility of wireline telephones. Rules proposed in the NPRM would require that all wireline telephones in the workplace, confined settings (e.g., hospitals, nursing homes) and hotels and motels eventually would be hearing aid compatible and have volume control. This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

DATES: Written comments by the public on the NPRM and on the proposed and/or modified information collections are due on or before January 12, 1996, and reply comments are due on or before February 16, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before February 12, 1996.

ADDRESSES: Office of the Secretary, Room 222, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain—t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Greg Lipscomb, Attorney, 202/418–2340, Fax 202/418–2345, TTY 202/418–0484, glipscom@fcc.gov, Network Services

Division, Common Carrier Bureau. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Notice of Proposed Rulemaking in the matter of Access to Telecommunications Equipment and Services by Persons With Disabilities, (CC Docket 87–124, adopted November 28, 1995, and released November 28, 1995). The file is available for inspection and copying during the weekday hour of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, Room 239, 1919 M Street, N.W., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 2100 M Street, N.W., Suite 140, Washington D.C. 20037, phone 202/857–3800.

Paperwork Reduction Act of 1995

This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: NA.

Title: Access to Telecommunications Equipment and Services by Persons With Disabilities, CC Docket No. 87–124.

Form No.: NA.

Type of Review: New Collection.

Respondents: Businesses or other for profit.

Number of Respondents: 806,100.

Estimated Time per Response: 2 hours.

Total Annual Burden: 1,635,000 hours.

Needs and Uses: The manufacturing date stamp on telephone equipment is needed for, and will be used for, determining whether a particular telephone is hearing aid compatible. The designation of emergency use hearing aid compatible telephones is needed to provide access to workplace emergency telephones for persons with hearing disabilities until workplaces are required to provide that all workplace telephones are hearing aid compatible. The equipment packaging and instructions information is needed to alert consumers in cases where a packaged telephone is not hearing aid compatible.

Analysis of Proceeding: In 1992, the Commission adopted rules implementing the Hearing Aid Compatibility Act of 1988, 47 U.S.C. § 610 (HAC Act). In 1993, the Commission suspended portions of the 1992 rules because petitions filed by establishments affected by the regulations stated that the establishments were encountering serious difficulties in their attempts to comply. On March 27, 1995, the Commission announced that an advisory committee, the Hearing Aid Compatibility Negotiated Rulemaking Committee (Committee), would consider whether the rule suspension should be lifted and whether new rules should be proposed. (See 59 FR 60343 (Nov. 23, 1994); 58 FR 1539 (March 27, 1995); and 60 FR 27945 (May 26, 1995). The Committee represented the views and interests of all interested parties, including those of the Commission, telephone equipment manufacturers, employers, hospitals, nursing homes, hotels and motels, and persons with disabilities. The Committee's recommendations, adopted by unanimous consent, were filed with the Commission in the Committee's Final Report of August, 1995. The NPRM reflects the recommendations of the Committee.

The NPRM seeks comment first, on the Committee's proposal to require hearing aid-compatible telephones in: (1) The non-common areas of the workplace; (2) the patient and residential rooms of confined settings, such as hospitals and nursing homes; and (3) the guest rooms of hotels and motels. Second, the NPRM seeks comment on a proposal that all replacement telephones and all newly purchased telephones should be equipped with volume control, in addition to having electro-magnetic coil hearing aid-compatibility. The NPRM also seeks comment on a proposed rule that would require that all telephones manufactured or imported for use in the United States have a volume control feature, and includes a proposed technical specification for volume control. Third, the NPRM seeks comment on a proposal to modify our rules governing telephone equipment labelling requirements. Fourth, the NPRM seeks comment on proposals to implement additional recommendations of the Committee regarding consumer education. Finally, the NPRM seeks comment on proposed amendments to existing hearing aid compatibility rules for the purpose of clarification.

The proposed rules provide, in general, that all wireline telephones in the workplace, in confined settings, and in hotels and motels eventually would be hearing aid compatible, as defined at 47 C.F.R. Section 68.316 (electro-magnetic coil compatibility). The proposed rules would require no testing or retrofitting of existing workplace telephones. Instead, the proposed rules set deadlines that are beyond the normal life-cycle times for the telephones in these establishments to be replaced. The proposed rules also would require volume control for newly acquired and replacement telephones in these establishments, once the Commission's technical standards and implementation rules for volume control are in place. Replacement or retrofitting for volume control also would not be required, and existing inventories of telephones would not be affected by the volume control requirement. The NPRM states that the volume control feature could assist many telephone users, whether they have hearing disabilities, and whether they rely on telephones that are hearing aid compatible. The rules are necessary to implement the Hearing Aid Compatibility Act of 1988. If adopted, the proposed rules would increase access by persons with hearing disabilities to telephones provided for emergency use.

Under the proposed rules, most workplace telephones would be required to be hearing aid compatible by January 1, 2000. In harmony with the provisions of the Americans With Disabilities Act of 1990, establishments with fewer than fifteen employees would be exempt from these requirements. After the applicable date for having hearing aid compatible telephones, employers could presume that their telephones were hearing aid compatible. Any person legitimately on the premises could challenge this presumption with a good faith request for a hearing aid compatible telephone. Upon receipt of such a request, the employer would have fifteen working days to replace any particular telephone

that turns out not to be hearing aid compatible.

For confined settings, the proposed rules would require that establishments with fifty or more beds make their telephones hearing aid compatible within one year of the Commission's implementing Order, while those with fewer than fifty beds would have to comply within two years. Telephones in all confined setting establishments would be exempt if alternate signalling devices were available, monitored and working, or if a resident brought in and maintained his or her own telephone equipment.

The proposed rules would require that hotels and motels with eighty or more guest rooms be required to provide hearing aid compatible telephones within two years of the Commission's implementing Order, while those with fewer than eighty guest rooms would have three years to do so. Upon the effective date of these proposed rules, generally twenty percent of guest rooms must have telephones that are hearing aid compatible.

The proposed rules do not address wireless telephone hearing aid compatible issues, because those are being addressed by the Commission's Wireless Telecommunications Bureau.

Initial Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix C of the NPRM. Written public comments are requested in the IRFA. These comments must be filed in accordance with the same filing procedures as other comments in this proceeding, but they also must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis.

Reason for Action: The NPRM responds to the recommendations of the Hearing Aid Compatibility Negotiated Rulemaking Committee. Pursuant to the Negotiated Rulemaking Act, the Commission is obligated to initiate this rulemaking proceeding.

Objectives: The objective of this proposal is to provide greater access to the telephone network by persons with hearing disabilities, while at the same time balancing the needs of establishments that must provide hearing aid-compatible telephones.

Legal Basis: The proposed action is authorized under Sections 1, 201–205, and 218 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154, 201–205, and 218.

Reporting, Record Keeping and Other Compliance Requirements: The proposed rules would require manufacturers and importers of telephones for use in the United States to provide volume control with their equipment after a certain date. Such telephone equipment manufacturers and importers also would be required to display on their equipment the date of manufacture. In addition, workplaces with fifteen or more employees, confined setting establishments and hotels and motels would have to provide hearing aid-compatible telephones after certain dates.

Federal Rules Which Overlap, Duplicate, or Conflict with These Rules: None.

Description, Potential Impact and Number of Small Entities Involved: The proposals set forth in this Notice may have an economic impact on workplaces with fifteen or more employees, confined setting establishments and hotels and motels. These establishments eventually may be required to replace some or all of their existing telephones with telephones that are hearing aid-compatible, including telephones that have volume control. These proposals also may make it easier for these establishments to acquire employees and generate business.

Any Significant Alternatives Minimizing the Impact on Small Entities, Consistent with Stated Objectives: None.

List of Subjects

47 CFR Part 64

Communications common carriers, Handicapped, Telephone, Hearing aid compatibility.

47 CFR Part 68

Administrative practice and procedure, Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Telephone, Hearing aid compatibility, Volume control.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–30374 Filed 12–11–95; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 95–175; RM–8707]

Radio Broadcasting Services; Ada, Newcastle, Watonga, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Tyler Broadcasting Corporation requesting the reallotment of Channel 227C1 from Ada, OK, to Newcastle, OK, as the community's first local aural broadcast service, and the modification of Station KTLS' license to specify Newcastle as its community of license. To accommodate the allotment at Newcastle, the Commission also proposes the substitution of Channel 230A for Channel 228A at Watonga, OK, and the modification of Station KIMY's license to specify the alternate Class A channel. Channel 227C1 can be allotted to Newcastle in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.5 kilometers (4.7 miles) south, at coordinates 35–10–44 NL; 97–36–03 WL, to accommodate petitioner's desired transmitter site. Channel 230A can be allotted to Watonga at Station KIMY's licensed transmitter site, at coordinates 35–54–17 NL; 98–23–09 WL.

DATES: Comments must be filed on or before January 29, 1996, and reply comments on or before February 13, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gary S. Smith, Esq., Smithwick & Belendiuk, P.C., 1990 M Street, NW., Suite 510, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–175, adopted November 21, 1995, and released December 6, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–

3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A Karousos,

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

[FR Doc. 95–30220 Filed 12–11–95; 8:45 am]

BILLING CODE 6712–01–F

Notices

Federal Register
Vol. 60, No. 238
Tuesday, December 12, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Request for New Information Collection and Extension and Revision of Currently Approved Information Collection

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Forest Service's intention to collect information necessary to implement the Forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. 101–382). New information collection is necessary to administer timber export restrictions. Extension and revision of currently approved existing information collection, included with this notice, is also necessary to administer timber export restrictions.

DATES: Comments must be submitted on or before February 12, 1996.

ADDRESSES: All comments should be addressed to: Dave Hessel, Director, Timber Management Staff, U.S. Forest Service, P.O. Box 96090, Washington, D.C. 20090–6090.

FOR FURTHER INFORMATION CONTACT: Rex Baumback, Timber Sale Contract Administration Specialist, Timber Management Staff, U.S. Forest Service, at (202) 205–0855.

SUPPLEMENTARY INFORMATION: The Forest Service needs this collection to assist in the administration of the Forest Resources Conservation and Shortage Relief Act of 1990 (Act). All new and revised collections mentioned in this notice are proposed to be consolidated under OMB Number 0596–0114:

New Information Collection Requirements

Title: USDA, Forest Service Request for Timber Export and Substitution Information Collection.

OMB Number: New.

Expiration Date of Approval: New.

Type of Request: The following collection requirements are new and have not received approval by the Office of Management and Budget. These collections are proposed to be consolidated with other collections under OMB Number 0596–0114.

36 CFR 223.187(a)(1)(i)

Abstract: To validate that lumber and construction timbers (except western red cedar) have been manufactured to required grades (16 U.S.C. 620e(7)(B)(i)), the shipper must retain a legible, certified copy of the lumber inspection certificate. This information collection requirement was identified in the proposed comprehensive rule published January 29, 1991 (56 FR 3354).

Estimate of Burden: The public reporting burden to retain lumber inspection certificates to validate that products have been manufactured to required grades is estimated to average 0.05 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for maintaining lumber inspection certificates (except western red cedar) are estimated to be 40.

Estimated Number of Responses per Respondent: 40.

Extimated Total Annual Burden on Respondents: 80.

36 CFR 223.187(b)(2)

Abstract: To ensure that lumber products (except western red cedar) are processed for their intended use (16 U.S.C. 620e(7)(B)(i)), manufacturers are required to certify that the products are not intended for remanufacture. This information collection requirement was identified in the proposed comprehensive rule published January 29, 1991 (56 FR 3354).

Estimate of Burden: Public reporting burden for certification that lumber products (except western red cedar) are not intended for remanufacture is estimated to average 0.20 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for certification that lumber products (except western red cedar) are not intended for remanufacture are estimated to be 40.

Estimated Number of Responses per Respondent: 40.

Estimated total Annual Burden on Respondents: 320.

36 CFR 223.187(b)(3)

Abstract: To ensure that pulpwood bolts are not intended for remanufacture, manufacturers are required to certify that the bolts are intended to be manufactured into pulp (16 U.S.C. 620e(7)(B)(viii)). This information requirement was added in the final comprehensive rule, published September 8, 1995 (60 FR 46890), in response to comments received on the proposed comprehensive rule.

Estimate of Burden: Public reporting burden for certification that pulpwood bolts are not intended for remanufacture is estimated to average 0.25 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for certification that pulpwood bolts are not intended for remanufacture are estimated to be 3.

Estimated Number of Responses per Respondent: 33.

Estimated Total Annual Burden on Respondents: 25.

36 CFR 223.187(b)(5)

Abstract: To assist enforcement of the Act, the certifications in 36 CFR 223.187(b) (2) and (3) must be signed by someone with authority. Thus, a delegation of authority is required. This information requirement was added in the final comprehensive rule, published September 8, 1995 (60 FR 46890), in response to comments received on the proposed comprehensive rule.

Estimate of Burden: Public reporting burden for the delegation of authority is estimated to average 1.0 hour per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for the delegation of authority are estimated to be 43.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 43.

36 CFR 223.187(c)(1)

Abstract: To validate that western red cedar lumber has been manufactured to required grades (16 U.S.C. 620b and 620e), the shipper must retain a legible, certified copy of the lumber inspection certificate. This information collection requirement was identified in the proposed comprehensive rule published January 29, 1991 (56 FR 3354).

Estimate of Burden: The public reporting burden to retain lumber inspection certificates to validate that western red cedar products have been manufactured to required grades is estimated to average 0.05 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for lumber inspections certificates for western red cedar are estimated to be 7.

Estimated Number of Responses per Respondents: 43.

Estimated Total Annual Burden on Respondents: 15.

36 CFR 223.187(d)(1)

Abstract: To ensure that western red cedar lumber products are processed for their intended use (16 U.S.C. 620b and 620e), manufacturers are required to certify that the products are not intended for remanufacture. This information requirement was added in the final comprehensive rule, published September 8, 1995 (60 FR 46890), in response to comments received on the proposed comprehensive rule.

Estimate of Burden: Public reporting burden for certification that western red cedar lumber products are not intended for remanufacture is estimated to average 0.20 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for certification that western red cedar lumber products are not intended for remanufacture are estimated to be 7.

Estimated Number of Responses per Respondent: 43.

Estimated Total Annual Burden on Respondents: 60.

36 CFR 223.187(d)(3)

Abstract: To assist in enforcement of the Act, the certification in 36 CFR 223.187(d)(1) must be signed by someone with authority. Thus, a delegation of authority is required. This information requirement was added in the final comprehensive rule, published September 8, 1995 (60 FR 46890), in response to comments received on the proposed comprehensive rule.

Estimate of Burden: Public reporting burden for the delegation of authority is estimated to average 1.0 hour per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for delegation of authority are estimated to be 7.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 7.

36 CFR 223.190(a)

Abstract: An exporter of unprocessed timber that intends to affiliate with a purchaser of Federal timber may apply for a sourcing area if they certify their intent to affiliate (16 U.S.C. 620b(c)(3)). This certification is necessary to ensure that sourcing area applications are processed only when there is demonstrated intent to affiliate. This information requirement was added in the final comprehensive rule, published September 8, 1995 (60 FR 46890), in response to comments received on the proposed comprehensive rule.

Estimate of Burden: Public reporting burden for certification of intent to affiliate is estimated to average 1.0 hour per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for certification of intent to affiliate are estimated to be 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1.

36 CFR 223.190(j)

Abstract: Applicants for sourcing areas are required to certify that their applications are accurate and true. Respondents to the proposed regulations suggested that people who comment on sourcing area applications should submit accurate and true information, as well. This certification meets that need (16 U.S.C. 620b(c)(3)). This information requirement was added in the final comprehensive rule, published September 8, 1995 (60 FR 46890), in response to comments received on the proposed comprehensive rule.

Estimate of Burden: The public reporting burden to certify comments on sourcing area applications is estimated to average 0.10 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents to certify comments on sourcing area applications are estimated to be 100.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10.

36 CFR 223.190(l)

Abstract: A person with an approved sourcing area may choose to relinquish it (16 U.S.C. 620b(c)). It is important that this be a carefully considered decision; therefore, persons relinquishing a sourcing area are asked to sign a certification stating that they understand the consequences of relinquishing a sourcing area. This information requirement was added in the final comprehensive rule, published September 8, 1995 (60 FR 46890), in response to comments received on the proposed comprehensive rule.

Estimate of Burden: Public reporting burden for relinquishing a sourcing area is estimated to average 1.0 hour per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents; Respondents wishing to relinquish a sourcing area are estimated to be 2.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2.

36 CFR 223.193(b)

Abstract: The Act requires each person who transfers unprocessed timber originating from Federal lands to provide such other person with a notice, acknowledgement, and agreement that the Federal timber will receive domestic processing (16 U.S.C. 620d(a)). This certification is necessary in order to prevent substitution of Federal timber for private timber that is exported. This information collection requirement was identified in the proposed comprehensive rule published January 29, 1991 (56 FR 3354).

Estimate of Burden: Public reporting burden for the certification concerning transfers of unprocessed timber originating from Federal lands is estimated to average 1.0 hour per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for the certification concerning transfers of unprocessed timber originating from Federal lands are estimated to be 500.

Estimated Number of Responses per Respondent: 25.

Estimated Total Annual Burden on Respondents: 12,500.

36 CFR 223.194(b)

Abstract: Except for private timber that is exempt from the export restrictions, the rule requires a certification that domestic processing is required for each transaction involving unprocessed private timber, pursuant to the Act's prohibition against substitution (16 U.S.C. 620b). This certification is necessary in order to prevent substitution of private timber that requires domestic processing for private timber that is exported. This information collection requirement was identified in the proposed comprehensive rule published January 29, 1991 (56 FR 3354).

Estimate of Burden: Public reporting burden for the certification required for transfers of private timber requiring domestic processing is estimated to average 0.50 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for the certification required for transfers of private timber requiring domestic manufacturing are estimated to be 500.

Estimated Number of Responses per Respondent: 20.

Estimated Total Annual Burden on Respondents: 5,000.

36 CFR 223.195(b)

Abstract: The rule requires that all identifying marks placed on Federal logs and/or private logs that require domestic processing be retained or, if lost, replaced. This requirement is needed to maintain log identity until the log is processed, in order to enforce the Act's prohibition against substitution (16 U.S.C. 620b). This information collection requirement was identified in the proposed comprehensive rule published January 29, 1991 (56 FR 3354).

Estimate of Burden: Public reporting burden for the retention of identifying marks is estimated to average 1.0 hour per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for retention of identifying marks are estimated to be 100.

Estimated Number of Responses per Respondent: 10.

Estimated Total Annual Burden on Respondents: 1,000.

36 CFR 223.195(c)

Abstract: The rule requires that National Forest System logs be branded and, if they require domestic processing, painted with highway yellow paint. This is necessary to show National Forest System timber sale origin and the domestic processing requirement, in order to enforce the Act's prohibition against exporting unprocessed Federal timber (16 U.S.C. 620a). This information collection requirement was identified in the proposed comprehensive rule published January 29, 1991 (56 FR 3354).

Estimate of Burden: Public reporting burden for branding and painting National Forest System logs is estimated to average 3.33 hours per (sale) response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for branding and painting National Forest System logs are estimated to be 1,000.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 10,000.

36 CFR 223.195(d)

Abstract: The rule requires that private logs that require domestic processing be painted with highway yellow paint. This is necessary to show the domestic processing requirement. This information collection requirement was identified in the proposed comprehensive rule published January 29, 1991 (56 FR 3354).

Estimate of Burden: Public reporting burden for painting private timber with highway yellow paint is estimated to average 2.25 hours per (sale) response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for painting private timber with highway yellow paint are estimated to be 2,000.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 13,500.

36 CFR 223.195(f)

Abstract: The rule provides that branding requirements on National Forest System logs may be waived in certain situations in order to lessen the burden on timber purchasers without hindering the agency's ability to enforce the Act. Purchasers may request a waiver by completing a certification statement. This information requirement was added in the final comprehensive rule, published September 8, 1995 (60 FR 46890), in response to comments received on the proposed comprehensive rule.

Estimate of Burden: Public reporting burden for waiver of the branding requirement on National Forest System logs is estimated to average 0.50 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for waiver of the branding requirement on National Forest System logs are estimated to be 1,000.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 1,500.

Extension and Revision of Currently Approved Information Collection Under 0596–0021

Title: USDA, Forest Service Request for Disposal of National Forest Timber, Reports on Export or Substitution of Unprocessed Timber.

OMB Number: 0596–0021.

Expiration Date of Approval: March 31, 1997.

Type of Request: The following collection requirements are extensions and revisions of currently approved OMB Number 0596–0021 and are proposed to be consolidated under OMB Number 0596–0114.

36 CFR 223.48(a)

Abstract: The existing regulations require an annual report, for all sales purchased prior to August 20, 1990, on the disposition of any unprocessed timber from the sale and the disposition of private timber within the tributary area which is exported or sold for export. This collection needs to be maintained, since timber purchased prior to August 20, 1990, may still be in commerce.

Estimate of Burden: Public reporting burden for the annual report, for timber sales purchased prior to August 20, 1990, is estimated to average 2.0 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for the annual report, for timber sales purchased prior to August 20, 1990, are estimated to be 25.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 50.

36 CFR 223.87

Abstract: In order to be eligible to bid, bidders must certify that their timber purchase and export activities are in

compliance with the Act and existing regulations.

Estimate of Burden: Public reporting burden for certification that timber purchase and export activities are in compliance with the Act and existing regulations is estimated to average 30 seconds per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for certification that timber purchase and export activities are in compliance with the Act and existing regulations are estimated to be 500.

Estimated Number of Responses per Respondent: 20.

Estimated Total Annual Burden on Respondents: 83.

36 CFR 223.193(a)

Abstract: The Act requires an annual report on the acquisition and disposition of Federal timber. The Act contains this reporting requirement (16 U.S.C. 620d(a)(1)). This is a revision of currently approved form FS 2400–46 that was approved in OMB Number 0596–0021 as part of the 36 CFR 223.87 information collection requirements.

Estimate of Burden: Public Reporting burden for the annual report is estimated to average: 4.0 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for the annual report are estimated to be 500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,000.

Extension and Revision of Currently Approved Information Collection Under 0596–0114

Title: USDA, Forest Service Request for Disposal of National Forest Timber, Timber Export or Substitution Restrictions.

OMB Number: 0596–0114.

Expiration Date of Approval: May 31, 1997.

Type of Request: The following collection requirement is an extension and revision of currently approved OMB Number 0596–0114 and is proposed to be consolidated with other information collections in this notice under OMB Number 0596–0114.

36 CFR 223.190(c)

Abstract: Sourcing area applications require certain minimum information to be evaluated, pursuant to the Act's requirements (16 U.S.C. 620b(c)(3)). This information includes: a map; a list of manufacturing facilities within same vicinity as applicant's facilities; any other relevant information; and certification that the information is true, complete, and accurate.

Estimate of Burden: Public reporting burden is estimated to average 8.0 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for sourcing area applications are estimated to be 2.

Estimated Number of Responses per Respondent: 1.

Estiamted Total Annual Burden on Respondents: 16.

Extension and Revision of Currently Approved Information Collection Under 0596–0115

Title: USDA, Forest Service Request for Sale and Disposal of National Forest Timber, Log Export and Substitution Exemption Restrictions.

OMB Number: 0596–0115.

Expiration Date of Approval: August 31, 1995.

Type of Request: The following collection requirements are extensions and revisions of currently approved OMB Number 0596–0115 and are proposed to be consolidated under OMB Number 0596–0114.

36 CFR 223.191(e)

Abstract: Purchasers have the option of providing information for sourcing area reviews. This information may increase the likelihood that the results of the review will meet the purchaser's needs and will provide comprehensive information for the Department's review of the application (16 U.S.C. 620b(c)(3)).

Estimate of Burden: If purchasers elect to provide information for sourcing area reviews, the public reporting burden is estimated to average 2.0 hours per responses.

Respondents: Businesses or other for-profit entities, including small businesses.

Estiamted Number of Respondents: Respondents to the review of sourcing areas are estimated to be 10.

Estiamted Number of Responses per Respondent: 1.

Estiamted Total Annual Burden on Respondents: 20.

36 CFR 223.203(c)

Abstract: The Act provides an exception to indirect substitution restrictions for National Forest System timber from within Washington State (16 U.S.C. 620b(b)(2)). Purchasers with approved shares may sell or trade those shares if the purchaser advises the Regional Forester of the amounts being traded and the name of the person acquiring such rights, so the agency has accurate information by which to monitor the exemption.

Estimate of Burden: Public reporting burden is estimated to average 1.0 hour per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estmated Number of Respondents: Respondents to the trading of shares in Washington State are estimated to be 2.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2.

Comments Are Invited On

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of this agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 4, 1995.

Valdis E. Mezainis,

Acting Chief.

[FR Doc. 95–29949 Filed 12–11–95; 8:45 am]

BILLING CODE 3410–11–M

Rural Housing and Community Development Service

Notice of Availability of Housing Funds

AGENCIES: Rural Housing and Community Development Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing and Development Service (RHCDS) announces the availability of housing funds for fiscal year 1996 (FY 1996). This action is taken to comply with 42 U.S.C. 1490p which requires that RHCDS publish in the Federal Register

notice of the availability of any housing assistance.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese-Foxworth, Loan Specialist, Rural Rental Housing Branch, Multi-Family Housing Processing Division, Room 5337, or Gloria Denson, Senior Loan Specialist, Single Family Housing Processing Division, Room 5334, RHCDS, USDA, South Agriculture Building, Washington, DC 20250, telephones (202) 720–1608 and (202) 720–1474 respectively. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

Programs Affected

These programs or activities are listed in the Catalog of Federal Domestic Assistance under Nos:

10.405 Farm Labor Housing Loans and Grants
10.410 Very Low to Moderate Income Housing Loans
10.411 Rural Housing Site Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.420 Rural Self-Help Housing Technical Assistance
10.427 Rural Rental Assistance Payments
10.433 Housing Preservation Grants
10.442 Housing Application Packaging Grants

Discussion of Notice

7 CFR chapter XVIII, part 1940, subpart L contains the formulas and methodology applicable to loan and grant funds for FY 1996.

At the current time, there is no authority to obligate section 515 new construction loans. Rural Economic and Community Development (RECD) state offices will be advised when the program is re-authorized for new construction loans. The public may contact the individuals listed in this Notice or state office personnel for further information. The guidance provided to our state offices is separated between assistance available in our Multi- and Single-Family Housing Programs as follows:

Multi-Family Housing (MFH)

I. General

A. This notice provides MFH allocations to individual States for Fiscal Year (FY) 1996. Allocation computations have been performed in accordance with 7 CFR 1940.575 and 1940.578. The transition formula is not used.

B. MFH loan and grant levels for FY 1996 are as follows:

Section 514 Farm Labor Housing (LH) Loans	$15,000,000
Section 515 Rural Rental Housing (RRH) Loans	152,480,000
Section 516 LH Grants (Unobligated prior year balances and/or cancellations of prior years will be added to the amount shown)	10,0000,000
Section 521 Rental Assistance (RA)	
RRH New Construction	32,200,000
LH New Construction	4,600,000
Section 525/509 Housing Application Packaging Grants*	1,000,000
Section 533 Housing Preservation Grants (HPG)	11,000,000

* See Single Family Housing (SFH) section of this Notice for further information.

II. State Allocations

All state allocations, with the exception of new construction RA, have been developed with the methodology and formulas stated in 7 CFR part 1940, subpart L.

A. Section 515 RRH Loan Funds

1. *Amount Available for Allocation.*

Total available	$152,480,000
Less inventory property sales	8,500,000
Less general reserve	34,500,000
Less base administrative allocation	16,428,426
Less base allocation	0
Basic formula amount	93,051,574

2. *Base Allocation.* Not used.

3. *Administrative Allocation.* A distribution of funds to certain States to assure that all States receive at least $1,250,000 to ensure sufficient funding levels for new construction or repair and rehabilitation loans less base allocation.

4. *Reserves.*

a. *State Office Reserve.* In States which allocate funds to Districts, 7 CFR 1940.552(j) authorizes the State Director to hold a reserve. Such reserves, if established, will be available only for patchouts, leveraging state Section 515 funds with National Office reserve funds in a targeted area and to nonprofits, hardships or emergency situations.

b. *Inventory Property Sales.* $8,500,000 has been set aside to facilitate the sale of inventory properties. Funding for inventory property sales will be split between the National Office and State Office on a 50/50 basis.

c. *National Office Reserve.* The reserve is approximately 25 percent of the total funds available and is distributed as follows:

(i) *General Reserve.* $34,500,000 in general reserve funds have been set aside. Since access to general reserve funds cannot be assured or guaranteed, States should not consider potential access to these funds when authorizing Forms AD–622, ''Notice of Preapplication Review Action,'' up to the authorized percentage of their allocation. Until June 3, 1996, State Directors can request these funds for the following purposes:

(A) *Hardships and Emergencies.* The request must include sufficient documentation to support the hardship or emergency including reasons why it is in the Government's best interest to consider the request.

(B) *Patchouts.* A patchout, not to exceed 30 percent of the total loan obligation, when the State needs the additional funds to obligate 100 percent of its allocation.

Note: Repairs/Rehabilitations. Each State will use its Section 515 Allocation for repair and rehabilitation loans. Such loans will have first priority for funds in each State.

(C) *RH Cooperatives.*

(ii) *Designated Reserves.* The following set asides are derived from the general reserve.

(A) *State Rental Assistance (RA).* An amount of $2.5 million of the RRH funds has been set aside for States in which an active State sponsored RA program is available. Funds will be distributed to participating States based on a pro rata share of State RA units being provided. These funds are subject to year-end pooling requirements.

(B) *Equity Loans.* An amount of $2.5 million has been set aside for the equity loan prepayment incentive features described in FmHA Instruction 1965–E. Funds are fully available and are subject to year-end pooling requirements. The amount of equity funds available may be changed administratively by RHCDS based upon use and need for funds.

(C) *Nonprofit Reserve.* An amount of $7.5 million has been set-aside for certain nonprofit applicants. The applicant must be a nonprofit entity which meets the following conditions:

(1) Is a private nonprofit organization, consumer cooperative, or Indian Tribe; (2) whose principle purposes include the planning, development, and management of low-income housing; (3) is exempt from Federal income taxes under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code; (4) is not wholly or partially owned or controlled with or by a ''for profit'' entity; (5) is not a public body, housing authority, limited partnership, limited partnership with a nonprofit general partner; (6) is not coventuring with a ''for profit'' entity eligible for Section 515 assistance; and (7) is not requesting Low-Income Housing Tax Credits (LIHTC) pursuant to section 42 of the Internal Revenue Code. In order to maximize the number of loans from this reserve, each State may develop one proposal which may not exceed the State's average size (number of units) new construction loan. Funds will be made available on a first-come-first-served basis.

(D) *Targeting Reserve:* An amount of $12 million has been set aside for loan requests which are located in target areas selected by the State Director, in accordance with Strategic Plan Goals established by the Under Secretary. By December 15, 1995, each State Director will ensure that such target areas are selected. No state may request or receive more than $1 million from this reserve. A state or jurisdiction may utilize up to $500,000 of their own allocation in addition to the $1 million they can receive from the National Office provided they have addressed all repair and rehabilitation needs in their state. No requests received after January 3, 1996, will be considered.

5. *Pooling of Funds.*

a. *State Office Pooling.* The States which allocate funds by/to Districts are not authorized to pool unobligated funds prior to May 6, 1996.

b. *National Office Pooling.* Unused RRH funds will be placed in the National Office reserve and will be made available administratively. Year-end pooling of all Section 515 RRH loan funds is scheduled for close of business (COB), August 19, 1996.

B. Rental Assistance (RA)

1. *Valuation of New Construction RA.* A total of $32,200,000 will be available for RRH new construction RA and $4,600,000 is available for LH new construction RA. These equate to an estimated 3,200 units for the RRH and LH loan programs. All RA units held in the reserves are estimated based on the national weighted average.

2. *Estimated Units Available for Allocation.* The allocation formula contained in 7 CFR 1940.576 will not provide a proportionate amount of new construction RA in each State to match loan funds available for new unit development and is therefore not utilized in FY 1996. New construction RA allocations, based upon State's requests, are included in this Notice.

Estimated total units available	3,200
Less LH Reserve	400
Subtotal RRH	2,800
Less RRH reserve	1,550
Less RRH base allocation	0
Less RRH administrative allocation	0
Total State Requested RA Units	1,250

3. *Base Allocation.* No base allocation is provided.

4. *Administrative Allocation.* No administrative allocation is provided.

5. *Reserves:*

a. *State Office Reserve.* In States which allocate funds and RA, 7 CFR 1940.552(j) authorizes the State Director to hold a reserve. Such reserves, if established, will be limited only to patchouts and loans under the nonprofit or targeted area reserves, and hardships and emergency situations.

b. *National Office Reserve.* 925 units will be held in the National Office reserve. The National Office reserve is available to States for the nonprofit and targeting reserves.

c. *Participation loans and RA:* 625 units of new construction RA have been set aside to provide tenant subsidy on units that may be developed through participation loans, if such loans are authorized. This set aside will be redistributed if participation loans are not authorized.

d. *LH.* The 400 RA units for LH new construction are being retained in a separate LH reserve.

6. *Pooling of RA.*

a. *State Office Pooling.* The States which allocate RA by or to Districts are not authorized to pool unobligated RA prior to May 6, 1996.

b. *National Office Pooling.* Year-end National Office pooling of RA for RRH is scheduled for COB, August 19, 1996.

7. *Availability of the Allocation.* States are authorized to approve up to 100 percent of their RA allocation indicated in this Notice.

8. *Suballocation by the State Director.* RA units may be suballocated to Servicing Offices, at the discretion of the State Director, in accordance with 7 CFR 1940.552(j).

9. *Approval and Obligation of RA.* Loans will only be obligated when sufficient RA to ensure market feasibility can be obligated at the same time. RA for loans obligated in a prior FY is not authorized.

III. Farm Labor Housing Loan and Grant Funds (Not Allocated to States)

A. Section 514 Farm LH Loans

Loans are funded in accordance with 7 CFR 1940.579(a).

FY 1996 Appropriation	$15,000,000
Available for Off-Farm Loans	10,500,000
Available for On-Farm Loans	1,500,000
National Office Reserve	3,000,000

B. *Section 516 LH Grants.* These grants are funded in accordance with 7 CFR 1940.579(b).

FY 1996 Appropriation	$10,000,000
Available for LH Grants	7,000,000
Available for Technical Assistance Contracts	1,000,000
National Office Reserve	2,000,000

C. *National Office Loan and Grant Reserve.* $5 million National Office loan and grant reserve that will be available until June 30, 1996, or until expended. The reserve will be used for the following purposes on a first-come-first-served basis.

1. *Repair and rehabilitation of LH projects in the portfolio.* Loans and grants are available for the repair and rehabilitation of existing projects that have health and safety violations.

2. *Migrant and migrant/homeless projects.* Funds are available for obligation for proposals under existing regulations that include at least fifty percent of the units to serve migrant farmworkers or the dual populations of migrant farmworkers and the homeless.

3. *Leveraged LH projects.* While some leverage funds should be used in all LH projects to the degree possible and feasible, reserve funds are available for projects that have commitments of non-LH loan and grant funds in excess of 25 percent of total development cost.

D. *RA for LH—New Construction.* This RA is held in a National Office reserve for use with LH loan and grant applications in accordance with paragraph II B of this Notice.

E. *Processing Preapplications:*

1. In light of the current number of preapplications authorized to be developed into full applications, new Forms AD–622 will be authorized on a limited basis. Those preapplications that fall within the following categories will be accepted for National Office review:

a. Preapplications that are on-hand in the National Office and those that have been reviewed by the State Office and

are ready as of the date of this notice for National Office review.

b. Preapplications that are from sponsors assisted by the TA contractors.

c. Preapplications for repair and rehabilitation of existing projects to correct serious health and safety conditions.

d. Preapplications that include at least 50 percent of the units for migrant farmworkers and operate on a seasonal basis.

e. Preapplications that are highly leveraged and reflect at least 50 percent of the total development cost being funded by the LH loan and grant program.

2. Preapplications should not exceed $2.5 million in LH loan and grant funds and proposals should reflect economically feasible projects in terms of management and operation.

IV. Section 533 Housing Preservation Grants (HPG)

A. *Amount Available for Allocation.*

Total available	$11,000,000
Less reserve	550,000
Less base allocation	5,300,000
Less administrative allocation	541,436
Basic Formula Amount	4,608,564

B. *Base Allocation.* The base allocation is $100,000 times 53 states and territories which equals $5.3 million.

C. *Administrative Allocations.* A distribution of funds to certain States to assure that all States receive at least $150,000 of initial allocation.

D. *Reserve.* The National Office reserve is 5 percent of the total funds available. The reserve is for emergency and projects in targeted areas. The request must include sufficient documentation to support the emergency and projects in targeted areas including reasons why it is in the Government's best interest to consider the request.

E. *Pooling of Funds.* Funds in excess of the dollar amount of applications on hand will be pooled in the National Office at a date to be announced.

F. *Availability of the Allocation.* HPG is a competitive grant program. Opening and closing dates for submission of preapplications will be announced. Subsequent to review and ranking of preapplications and submission of final applications, States are authorized to obligate HPG requests in amounts not to exceed those reflected in this Notice. There will be no funds for patchouts or additional projects.

V. Exception Authority

The Administrator, or designee, may in individual cases, make an exception to any requirements of this Notice which are not inconsistent with the authorizing statute, if he or she finds that application of such requirement would adversely affect the interest of the Government. The Administrator, or his or her designee, also reserves the right to change pooling dates, establish or change minimum and maximum fund usage from set-asides or the reserve, or restrict participation in set-asides and reserves.

Single Family Housing (SFH)

I. General

A. This section provides SFH allocations available to individual States for fiscal year (FY) 1996. Allocation computations have been made in accordance with 7 CFR 1940.563 through 1940.568.

B. The SFH loan amounts and grant amounts shown below are based on the total loan levels deliverable with subsidy. The SFH levels authorized for FY 1996 are as follows:

Section 502 Guaranteed Rural Housing (RH) Loans	
Nonsubsidized Guarantees *	$1,700,000,000
Subsidized Guarantees	0
Section 502 Direct RH Loans	
Very Low-income Subsidized Loans *	406,498,000
Low-income Subsidized Loans *	609,747,000
Nonsubsidized Loans	0
Credit Sales	0
Section 504 Housing Repair Loans *	37,798,000
Section 504 Housing Repair Grants **	24,900,000
Section 509 Compensation for Construction Defects *	495,000
Section 523 Self-Help Site Loans *	595,010
Section 523 Self-Help Technical Assistance Grants **	12,650,000
Section 524 RH Site Loans *	600,000
Section 525/509 Housing Application Packaging Grants (HAPG) **	5,191,000

* SFH loan levels deliverable with subsidy.
** Unobligated or canceled funds from prior fiscal years have been added to the amount shown.

C. SFH loan and grant types not allocated to States are available on a first-come-first-served basis as follows:

1. *Section 502 Direct Nonsubsidized Funds (loan making and servicing).* There were no FY 1996 funds designated for loans for nonsubsidized loan making and servicing applicants. Assistance is available for qualified very low- and low-income applicants who are eligible for subsidy, but at the present time the subsidy is not needed. The subsidy will be obtain from the State's subsidized regular funding.

2. *Credit Sale Authority.* There is no funding provided for credit sales in FY 1996. State Directors are required to maintain an adequate reserve of section 502 loan funds to finance the sale of SFH inventory program property to program eligible buyers. FY 1996 funding for RHCDS nonprogram financing of credit sales is not authorized.

3. *Section 509 Compensation for Construction Defects, Section 523 Self-Help Site Loans, Section 523 Self-Help Technical Assistance Grants, and Section 524 RH Site Loans.* Funding will be approved by the National Office, SFHPD.

4. *Deferred Mortgage Payment Demonstration.* Funding will not be provided for deferred mortgage authority or loans for deferred mortgage assumptions.

II. State Allocations

All allocations have been developed with the methodology and formulas stated in 7 CFR part 1940. The funds distributed to each State for a particular quarter in total may exceed the funds available nationally for all States. *Therefore, if funds become exhausted at the National Office level, some States will not have access to the full distribution for the remainder of the quarter.* ALL ALLOCATED FUNDS TO STATE OFFICES ARE SUBJECT TO

THE AVAILABILITY OF FUNDS AT THE NATIONAL LEVEL.

A. *Section 502 Nonsubsidized Guaranteed RH Loans.*

1. *Amount Available for Allocation.*

Total Available	$1,700,000,000
Less National Office Reserve	255,000,000
Less Base Allocation	0
Basic Formula— Administrative Allocation	$1,445,000,000

2. *Basic Formula Criteria, Data Source, and Weight.* See 7 CFR 1940.563(b) Data derived from the 1990 U.S. Census was provided to each State by the National Office on August 12, 1993.

3. *Transition Formula.* Will not be used in FY 1996.

4. *Base Allocation.* The base allocation is an amount, if any, above the computed formula allocation necessary for each State to receive a total allocation sufficient to run a viable program (at least $1 million).

5. *Administrative Allocation.* Due to the absence of Census Data, the Western Pacific Areas will receive an administrative allocation.

6. *General Reserve.* Requests for National Office reserve funds will be considered on a first-come-first-served basis.

7. *Pooling of Funds.* There will be no mid-year pooling. Year-end pooling is tentatively scheduled for close of business on August 12, 1996. Pooled funds will be placed in the National Office reserve and will be made available administratively.

8. *Availability of the Allocation.* Funds will be distributed cumulatively by quarters as follows: 45 percent through the first quarter, 75 percent through the second quarter, 95 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

9. *Suballocation by the State Director.* The State Director will retain these funds at the State Office level. Funds will not be suballocated to District or County Offices.

B. *Section 502 Direct RH Loans*

1. *Amount Available for Allocation.*

Total Available	$1,016,244,245
Less General Reserve	30,000,000
Less Designated Reserves	120,000,000
Basic Formula—Administrative Allocation	$866,244,245

2. *Basic Formula Criteria, Data Source, and Weight.* See 7 CFR 1940.565(b). Data derived from the 1990 U.S. Census was provided to each State by the National Office on August 12, 1993.

3. *Transition Formula.* Will not be used in FY 1996.

4. *Base Allocation.* Will not be used in FY 1996.

5. *Administrative Allocation.* Due to the absence of Census Data, the Western Pacific Areas will receive an administrative allocation.

6. *Reserve.*

a. *State Office Reserve.* State Directors must maintain an adequate reserve to fund the following applications:

(i) Hardship applications. Hardship is determined by the State Director on a case-by-case basis and must include applications from persons living in deficient housing for more than 6 months.

(ii) The State's portion of funds for Mutual Self-Help loans.

(iii) Subsequent loans for essential improvements or repairs and in connection with transfers with assumptions of the RHCDS indebtedness.

(iv) Financing for the purchase of Government owned inventory properties.

(v) State Directors are required to set aside not more than 20 percent of their initial low-income allocation for participation in leveraging Section 502 Direct loan funds. A reserve for very low-income participation is not required, but may be established if significant activity is anticipated by the State Director.

b. *National Office Reserves.*

(i) *General Reserve.* The total allocated FY 1996 general reserve contains $30 million. The reserve funds will be limited to providing funds to States for extreme hardship cases. FUNDING WILL NOT BE AVAILABLE UNTIL THE BEGINNING OF THE THIRD QUARTER.

(A) For the Section 502 Direct Loan Program, an extreme hardship case exists when:

(1) An individual or family is currently without housing and is unable to find shelter on a temporary basis with other family members, relatives, or friends, or the applicant is occupying a structure that has been recently condemned by local authorities; or

(2) The family is unable to obtain an adequate rental unit because:

(a) Such units are not available in the local market; or

(b) The family cannot afford the interim move due to money, health reasons, adequacy of optioned housing, importance of location of optioned house, etc.; or

(c) The hardship has been caused by fire, flooding, hurricane, tornado, or other causes beyond the applicant's control.

(B) Certain subsequent loans may be made in conjunction with a transfer or assumption, if the loan amount is very small and the hardship is determined to be unique.

(C) Based upon need and projected availability of unobligated funds, the Administrator reserves the right to permit expanded access to funds from the National Office without notice in the Federal Register.

(ii) Designated Reserves.

(A) *Targeted Reserve.* Of the FY 1996 Section 502 funds, $46 million will be held in the National Office reserve for targeted counties. Designated funds will be allotted 60 percent for low-income and 40 percent for very low-income applicants. These funds will be subject to year-end pooling requirements.

(1) Funds will be distributed cumulatively by quarters as follows: 40 percent through the first quarter, 70 percent through the second quarter, 90 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

(2) The targeted reserve must be set aside and used for areas identified in the States' FY 1996 annual performance goals such as the underserved counties; nonmetro counties with persistent poverty; Indian reservations; colonias; Empowerment Zones/Enterprise Communities (EZ/ECs), Pacific Northwest areas; the Appalachia; Mississippi Delta Region; and communities with special needs that have not been adequately served during the last 5 years.

(B) Demonstration Housing Program: Section 502 RH funds in the amount of $4 million have been set aside for demonstration housing concepts which were identified by the National Office for approval in FY 1995. Designated funds will be allotted 60 percent for low-income and 40 percent for very low-income. All funds are subject to the pooling requirements of 7 CFR part 1940 subpart L.

(C) *Matching Funds for States with Approved Mutual Self-Help Housing Grants.* THE AMOUNT OF $70 MILLION OF FY 1996 SECTION 502 FUNDS HAS BEEN SET ASIDE FOR MATCHING FUNDS ON THE BASIS OF THE NATIONAL OFFICE CONTRIBUTING 75 PERCENT FROM THE NATIONAL OFFICE RESERVE TO AN INDIVIDUAL STATE CONTRIBUTING 25 PERCENT OF ALLOCATED SECTION 502 RH FUNDS USED OR THE GRANTEE

CONTRIBUTING 25 PERCENT TO ASSIST PARTICIPATING SELF-HELP FAMILIES. Funds are to be requested for the participating family at the time of loan approval and are subject to the pooling requirements of 7 CFR part 1940 subpart L. Reimbursement funds will be reimbursed at a rate of 60 percent for low-income and 40 percent for very low-income funds. States will be responsible for adjusting very low-/low-income funding activity within their state to compensate for the Mutual and Self-Help Program obligations differing significantly from the 40/60 percent allocation ratio.

7. *Pooling of Funds.*

a. *State Office Pooling.* If pooling is conducted within a State, it must not take place within the first 30 calendar days of the first, second, or third quarter. (There are no restrictions on pooling in the fourth quarter.) The pooled funds may be redistributed by the State Director provided the State Director has determined that the pooled funds could not be used in the field offices receiving the funds allocated in accordance with 7 CFR part 1940 subpart L.

b. *National Office Pooling.* There will be no mid-year pooling. Year-end pooling is tentatively scheduled for close of business August 12, 1996. Year-end pooled funds will be placed in the National Office reserve and will be made available administratively.

8. *Availability of the Allocation.* The Housing Act of 1949, as amended, provides that not less than 40 percent of the funds be made available for very low-income Section 502 loan applicants. Funds will be distributed by quarters, cumulatively, as follows: 40 percent through the first quarter, 70 percent through the second quarter, 90 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

9. *Suballocation by the State Director.* The State Director must suballocate to each District Office using the methodology and formulas required by 7 CFR part 1940, subpart L. The District Director will make funds available on a first-come-first-served basis to all field offices in the district. No County Office will have its access to funds restricted without the prior written approval of the Administrator.

C. *Section 504 Housing Repair Loans and Grants.*

1. *Amount Available for Allocations.*

Section 504 Loans	
Total Available	$37,798,000
Less General Reserve	3,800,000
Less Designated Targeted Reserve	1,900,000
Basic Formula—Administrative Allocation	32,098,000
Section 504 Grants	
Total Available	24,900,000
Less General Reserve	2,490.000
Less Designated Targeted Reserve	1,245,000
Basic Formula—Administrative Allocation	21,165,000

2. *Basic Formula Criteria, Data Source, and Weight.* See 7 CFR 940.566(b). Data derived from the 1990 U.S. Census was provided to each State by the National Office on August 12, 1993. This data must be used if funds are suballocated to District Offices.

3. *Transition Formula and Base Allocation.* Will not be used in FY 1996.

4. *Administrative Allocation.* Due to the absence of Census Data, the Western Pacific Areas received an administrative allocation.

5. *Reserve.*

a. *State Office Reserve.* State Directors must maintain an adequate reserve to fund hardship applications. Hardships will be determined by the State Director on a case-by-case basis.

b. *National Office Reserves.*

(i) *General Reserve.* The total allocated FY 1996 funds contain only 10 percent for the general reserve. Use of these reserve funds will be limited to providing funds to States for extreme hardship cases. An extreme hardship case is defined as an individual case with significant priority in funding, ahead of other requests, due to severe health or safety hazards, or physical needs of the applicant or community. The priority may be related to sanitation hazards, or impending climatic hazards which are above average and should receive priority for funds. Based upon need and projected availability of unobligated funds, the Administrator reserves the right to permit expanded access to funds from the National Office without notice in the Federal Register. All funds allocated to states are subject to the availability of funds at the National Level.

(ii) *Targeted Reserve.* Of the FY 1996 Section 504 loan and grant appropriations, $1.9 million and $1.245 million, respectively will be held in the National Office's reserve for the targeted counties. These funds will be subject to year-end pooling requirements.

7. *Pooling of Funds.* There will be no mid-year pooling. Year-end pooling is tentatively scheduled for close of business on August 12, 1996. Pooled funds will be placed in the National Office reserve and will be made available administratively.

8. *Availability of the Allocation.* Funds will be distributed by quarters cumulatively as follows: 40 percent through the first quarter, 70 percent through the second quarter, 90 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

D. *Sections 525/509 HAPG.*

1. *Amount Available for Allocations.*

Total Available (Carry-over Funds)	$5,191,000
Less General Reserve	391,000
Basic Formula Amount:	
Sections 502/504 Loans and Grants	3,000,000
Sections 514/516, 515, 524, and 533	1,000,000

2. *Basic Formula Criteria, Data Source, and Weight.* For Sections 502/504 loan and grant programs, each participating State's funds will be based on its number of eligible counties or colonias, with each State receiving a pro rata share of the total funds available. For Sections 514/516, 515, 524, and 533 programs, $1 million has been set aside in the National Office, on a first-come-first-served basis.

3. *Transition Formula, Base Allocation and Administrative Allocation. Will not be used in FY 1996.*

4. *General Reserve.* Requests for National Office reserve funds will be considered on a first-come-first-served basis.

5. *Pooling of Funds.* Year-end pooling is tentatively scheduled for close of business August 12, 1996. Pooled funds will be placed in the National Office reserve and will be made available administratively.

6. *Availability of the Allocation.* Funds will be distributed cumulatively by quarters as follows: 40 percent through the first quarter, 70 percent through the second quarter, 90 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

III. Exception Authority

The Administrator, or designee, may, in individual cases, make an exception to any requirements of this attachment which are not inconsistent with the authorizing statute, if the Administrator or designee finds that application of such requirement would adversely affect the interest of the Government. The Administrator, or designee, also reserves the right to change pooling dates, establish or change minimum and maximum fund usage from set asides and the reserve, or restrict participation in set asides and reserves.

The following spreadsheets contain the allocation of FY 1996 MFH and SFH

loan and grant funds to individual States:

Dated: December 4, 1995.

Jan E. Shadburn,

Acting Administrator, Rural Housing and Community Development Service.

SECTION 515 RURAL RENTAL HOUSING PROGRAM ALLOCATIONS

[Fiscal year 1996]

State	Formula factor	Loan allocation	Base/Admin allocation	Total allocation	State req.'d RA units	1995 weighted new constr. RA value	RA dollar value
AL	0.02957	$2,751,535	$0	$2,751,535	7	$11,706	$81,942
AK	0.00587	546,213	703,787	1,250,000	14	17,844	249,816
AZ	0.01780	1,656,318	0	1,656,318	39	14,862	579,618
AR	0.02310	2,149,491	0	2,149,491	35	10,766	376,810
CA	0.04653	4,329,690	0	4,329,690	65	11,429	742,885
CO	0.00840	781,633	468,367	1,250,000	20	11,280	225,600
DE	0.00190	176,798	1,073,202	1,250,000	25	15,143	378,575
MD	0.00880	818,854	431,146	1,250,000	14	15,074	211,036
FL	0.02890	2,689,190	0	2,689,190	0	10,450	0
GA	0.03867	3,598,304	0	3,598,304	81	8,556	693,036
HI	0.00790	735,107	514,893	1,250,000	12	13,344	160,128
WPA	0.00647	602,044	647,956	1,250,000	12	11,190	134,280
ID	0.00743	691,373	558,627	1,250,000	28	10,865	304,220
IL	0.02250	2,093,660	0	2,093,660	0	10,441	0
IN	0.02157	2,007,122	0	2,007,122	14	9,181	128,534
IA	0.01340	1,246,891	3,109	1,250,000	28	9,584	268,352
KS	0.01130	1,051,483	198,517	1,250,000	25	8,551	213,775
KY	0.03483	3,240,986	0	3,240,986	75	11,353	851,475
LA	0.03170	2,949,735	0	2,949,735	69	12,495	862,155
ME	0.00913	849,561	400,439	1,250,000	10	19,311	193,110
MA	0.00793	737,899	512,101	1,250,000	14	16,831	235,634
CT	0.00453	421,524	828,476	1,250,000	18	13,940	250,920
RI	0.00100	93,052	1,156,948	1,250,000	19	16,229	308,351
MI	0.02977	2,770,145	0	2,770,145	20	8,239	164,780
MN	0.01673	1,556,753	0	1,556,753	17	10,062	171,054
MS	0.03180	2,959,040	0	2,959,040	34	11,586	393,924
MO	0.02460	2,289,069	0	2,289,069	60	8,073	484,380
MT	0.00620	576,920	673,080	1,250,000	10	10,007	100,070
NE	0.00713	663,458	586,542	1,250,000	18	8,347	150,246
NV	0.00263	244,726	1,005,274	1,250,000	7	13,598	95,186
NJ	0.00657	611,349	638,651	1,250,000	23	20,565	472,995
NM	0.01437	1,337,151	0	1,337,151	34	13,643	463,862
NY	0.02753	2,561,710	0	2,561,710	42	13,255	556,710
NC	0.04497	4,184,529	0	4,184,529	18	13,224	238,032
ND	0.00413	384,303	865,697	1,250,000	24	9,159	219,816
OH	0.03450	3,210,279	0	3,210,279	0	10,001	0
OK	0.01917	1,783,799	0	1,783,799	0	10,128	0
OR	0.01423	1,324,124	0	1,324,124	5	10,959	54,795
PA	0.03687	3,430,812	0	3,430,812	45	11,538	519,210
PR	0.04923	4,580,929	0	4,580,929	91	15,902	1,447,082
SC	0.02690	2,503,087	0	2,503,087	0	12,315	0
SD	0.00597	555,518	694,482	1,250,000	24	12,365	296,760
TN	0.02973	2,766,423	0	2,766,423	0	10,044	0
TX	0.07645	7,113,793	0	7,113,793	0	10,503	0
UT	0.00430	400,122	849,878	1,250,000	20	13,163	263,260
VT	0.00403	374,998	875,002	1,250,000	20	16,304	326,080
NH	0.00503	468,049	781,951	1,250,000	22	15,581	342,782
VI	0.00273	254,031	995,969	1,250,000	20	22,792	455,840
VA	0.02660	2,475,172	0	2,475,172	0	10,867	0
WA	0.01743	1,621,889	0	1,621,889	36	9,925	357,300
WV	0.01937	1,802,409	0	1,802,409	0	9,875	0
WI	0.01873	1,742,856	0	1,742,856	36	9,245	332,820
WY	0.00307	285,668	964,332	1,250,000	0	10,883	0
DISTR	1.00000	93,051,574	16,428,426	109,480,000	1,250		15,357,236
N/O RES				43,000,000	1,550		
TTL AVAIL				152,480,000	2,800		

SECTION 533 HOUSING PRESERVATION GRANT PROGRAM

[Fiscal year 1996]

State	Base allocation	Basic formula factor	Basic formula amount	Admin. allocation	FY 96 allocation (rounded)
ALABAMA	100,000	0.02957	$136,277	.....	$236,280
ALASKA	100,000	0.00587	27,053	$22,947	150,000
ARIZONA	100,000	0.01780	82,033	.....	182,030
ARKANSAS	100,000	0.02310	106,459	.....	206,460
CALIFORNIA	100,000	0.04653	214,439	.....	314,440
COLORADO	100,000	0.00840	38,712	11,288	150,000
CONNECTICUT	100,000	0.00453	20,877	29,123	150,000
DELAWARE	100,000	0.00190	8,756	41,244	150,000
FLORIDA	100,000	0.02890	133,189	.....	233,190
GEORGIA	100,000	0.03867	178,215	.....	278,210
HAWAII	100,000	0.00617	28,435	21,565	150,000
IDAHO	100,000	0.00743	34,242	15,758	150,000
ILLINOIS	100,000	0.02250	103,694	.....	203,690
INDIANA	100,000	0.02157	99,408	.....	199,410
IOWA	100,000	0.01340	61,755	.....	161,750
KANSAS	100,000	0.01130	52,077	.....	152,080
KENTUCKY	100,000	0.03483	160,518	.....	260,520
LOUISIANA	100,000	0.03170	146,093	.....	246,090
MAINE	100,000	0.00913	42,077	7,923	150,000
MARYLAND	100,000	0.00880	40,556	9,444	150,000
MASSACHUSETTS	100,000	0.00793	36,546	13,454	150,000
MICHIGAN	100,000	0.02977	137,198	.....	237,200
MINNESOTA	100,000	0.01673	77,102	.....	177,100
MISSISSIPPI	100,000	0.03180	146,554	.....	246,550
MISSOURI	100,000	0.02460	113,372	.....	213,370
MONTANA	100,000	0.00620	28,573	21,427	150,000
NEBRASKA	100,000	0.00713	32,859	17,141	150,000
NEVADA	100,000	0.00263	12,121	37,879	150,000
NEW HAMPSHIRE	100,000	0.00503	23,181	26,819	150,000
NEW JERSEY	100,000	0.00657	30,279	19,721	150,000
NEW MEXICO	100,000	0.01437	66,226	.....	166,230
NEW YORK	100,000	0.02753	126,875	.....	226,880
NORTH CAROLINA	100,000	0.04497	207,249	.....	307,250
NORTH DAKOTA	100,000	0.00413	19,034	30,966	150,000
OHIO	100,000	0.03450	158,997	.....	259,000
OKLAHOMA	100,000	0.01917	88,347	.....	188,350
OREGON	100,000	0.01423	65,581	.....	165,580
PENNSYLVANIA	100,000	0.03687	169,919	.....	269,920
PUERTO RICO	100,000	0.04923	226,882	.....	326,880
RHODE ISLAND	100,000	0.00105	4,839	45,161	150,000
SOUTH CAROLINA	100,000	0.02690	123,972	.....	223,970
SOUTH DAKOTA	100,000	0.00597	27,513	22,487	150,000
TENNESSEE	100,000	0.02973	137,014	.....	237,010
TEXAS	100,000	0.07639	352,052	.....	452,050
UTAH	100,000	0.00430	19,817	30,183	150,000
VERMONT	100,000	0.00403	18,573	31,427	150,000
VIRGINIA	100,000	0.02660	122,589	.....	222,590
VIRGIN ISLAND	100,000	0.00273	12,582	37,418	150,000
WASHINGTON	100,000	0.01743	80,328	.....	180,330
W. PACIFIC TERR.	100,000	0.00820	37,791	12,209	150,000
WEST VIRGINIA	100,000	0.01937	89,269	.....	189,270
WISCONSIN	100,000	0.01873	86,319	.....	186,320
WYOMING	100,000	0.00307	14,148	35,852	150,000
STATE TOTALS	5,300,000	.....	4,608,564	541,436	10,450,000
N.O. RESERVES	550,000	.....	.....	.....	550,000
ADMIN. ALLOCATION	541,436	.....	.....	.....	.....
TOTAL ALLOCATION	.....	.....	.....	.....	11,000,000

SECTION 502 GUARANTEED LOANS (NONSUBSIDIZED)

States	State basic formula factor	State basic formula/administrative allocation	Total FY 1996 allocation
ALABAMA	0.0253847	36,656	36,656

SECTION 502 GUARANTEED LOANS (NONSUBSIDIZED)—Continued

States	State basic formula factor	State basic formula/administrative allocation	Total FY 1996 allocation
ALASKA	0.0061561	8,889	8,889
ARIZONA	0.0155290	22,424	22,424
ARKANSAS	0.0213661	30,853	30,853
CALIFORNIA	0.0524861	75,790	75,790
COLORADO	0.0100701	14,541	14,541
DELAWARE	0.0024043	3,472	3,472
MARYLAND	0.0104750	15,126	15,126
FLORIDA	0.0308357	44,527	44,527
GEORGIA	0.0385293	55,636	55,636
HAWAII	0.0083323	12,032	12,032
W. PACIFIC AREAS*	N/A	1,000	1,000
IDAHO	0.0077774	11,231	11,231
ILLINOIS	0.0256395	37,023	37,023
INDIANA	0.0236023	34,082	34,082
IOWA	0.0151422	21.865	21.865
KANSAS	0.0123032	17,766	17,766
KENTUCKY	0.0286790	41,412	41,412
LOUISIANA	0.0256223	36,999	36,999
MAINE	0.0113916	16,450	16,450
MASSACHUSETTS	0.0117468	16,962	16,962
CONNECTICUT	0.0065708	9,488	9,488
RHODE ISLAND	0.0017216	2,486	2,486
MICHIGAN	0.0337181	48,689	48,689
MINNESOTA	0.0184738	26,676	26,676
MISSISSIPPI	0.0259670	37,496	37,496
MISSOURI	0.0253687	36,632	36,632
MONTANA	0.0067138	9,695	9,695
NEBRASKA	0.0083216	12,016	12,016
NEVADA	0.0029735	4,294	4,294
NEW JERSEY	0.0091825	13,260	13,260
NEW MEXICO	0.0117200	16,924	16,924
NEW YORK	0.0369739	53,390	53,390
NORTH CAROLINA	0.0471742	68,119	68,119
NORTH DAKOTA	0.0040847	5,898	5,898
OHIO	0.0378081	54,595	54,595
OKLAHOMA	0.0175713	25,373	25,373
OREGON	0.0166212	24,001	24,001
PENNSYLVANIA	0.0438367	63,300	63,300
PUERTO RICO	0.0250931	36,234	36,234
SOUTH CAROLINA	0.0249510	36,029	36,029
SOUTH DAKOTA	0.0065435	9,449	9,449
TENNESSEE	0.0276859	39,978	39,978
TEXAS	0.0665018	96,029	96,029
UTAH	0.0039861	5,756	5,756
VERMONT	0.0057475	8,299	8,299
NEW HAMPSHIRE	0.0075234	10,864	10,864
VIRGIN ISLANDS	0.0027236	3,933	3,933
VIRGINIA	0.0278404	40,201	40,201
WASHINGTON	0.0200905	29,011	29,011
WEST VIRGINIA	0.0172518	24,912	24,912
WISCONSIN	0.0222867	32,182	32,182
WYOMING	0.0035006	5,055	5,055
STATE TOTALS	1,0000000	1,455,000	1,455,000
GENERAL RESERVE	.....	.....	255,000
DESIGNATED RESERVES	.....	.....	0
TOTAL	.....	.....	1,700,000

*Denotes Administrative Allocation.

SECTION 502 DIRECT RURAL HOUSING LOANS

States	State basic formula factor	State basic formula/administrative allocation	Total FY 1996 allocation
ALABAMA	0.0267275	23,056	23,056
ALASKA	0.0055160	4,758	4,758

SECTION 502 DIRECT RURAL HOUSING LOANS—Continued

States	State basic formula factor	State basic formula/administrative allocation	Total FY 1996 allocation
ARIZONA	0.0145422	12,545	12,545
ARKANSAS	0.0208104	17,952	17,952
CALIFORNIA	0.0454819	39,234	39,234
COLORADO	0.0091766	7,916	7,916
DELAWARE	0.0024571	2,120	2,120
MARYLAND	0.0115334	9,949	9,949
FLORIDA	0.0312406	26,949	26,949
GEORGIA	0.0374586	32,313	32,313
HAWAII	0.0067195	5,796	5,796
W. PACIFIC AREAS*	N/A	3,610	3,610
IDAHO	0.0076722	6,618	6,618
ILLINOIS	0.0266774	23,013	23,013
INDIANA	0.0270785	23,359	23,359
IOWA	0.0163474	14,102	14,102
KANSAS	0.0127369	10,987	10,987
KENTUCKY	0.0288838	24,916	24,916
LOUISIANA	0.0246715	21,283	21,283
MAINE	0.0108314	9,344	9,344
MASSACHUSETTS	0.0109818	9,473	9,473
CONNECTICUT	0.0066693	5,753	5,753
RHODE ISLAND	0.0015545	1,341	1,341
MICHIGAN	0.0353525	30,496	30,496
MINNESOTA	0.0199077	17,173	17,173
MISSISSIPPI	0.0250226	21,585	21,585
MISSOURI	0.0252733	21,802	21,802
MONTANA	0.0063685	5,494	5,494
NEBRASKA	0.0086752	7,483	7,483
NEVADA	0.0028583	2,466	2,466
NEW JERSEY	0.0097784	8,435	8,435
NEW MEXICO	0.0110320	9,517	9,517
NEW YORK	0.0359041	30,972	30,972
NORTH CAROLINA	0.0484405	41,786	41,786
NORTH DAKOTA	0.0045131	3,893	3,893
OHIO	0.0390131	33,654	33,654
OKLAHOMA	0.0174005	15,010	15,010
OREGON	0.0154949	13,366	13,366
PENNSYLVANIA	0.0467857	40,359	40,359
PUERTO RICO	0.0239695	20,677	20,677
SOUTH CAROLINA	0.0258249	22,277	22,277
SOUTH DAKOTA	0.0062682	5,407	5,407
TENNESSEE	0.0291846	25,176	25,176
TEXAS	0.0660415	56,971	56,971
UTAH	0.0040618	3,504	3,504
VERMONT	0.0052653	4,542	4,542
NEW HAMPSHIRE	0.0072711	6,272	6,272
VIRGIN ISLANDS	0.0020058	1,730	1,730
VIRGINIA	0.0289841	25,003	25,003
WASHINGTON	0.0187042	16,135	16,135
WEST VIRGINIA	0.0175008	15,097	15,097
WISCONSIN	0.0237188	20,461	20,461
WYOMING	0.0036105	3,115	3,115
STATE TOTALS	1.0000000	866,245	866,245
GENERAL RESERVE	.....	.....	30,000
DESIGNATED RESERVES	.....	.....	120,000
TOTAL	.....	.....	1,016,245

*Denotes Administrative Allocation.

SECTION 502 DIRECT RURAL HOUSING LOANS

States	Total FY 1995 allocation	Very low-income allocation 40 percent	Low-income allocation 60 percent
ALABAMA	23,056	9,223	13,833
ALASKA	4,758	1,904	2,854

SECTION 502 DIRECT RURAL HOUSING LOANS—Continued

States	Total FY 1995 allocation	Very low-income allocation 40 percent	Low-income allocation 60 percent
ARIZONA	12,545	5,018	7,527
ARKANSAS	17,952	7,181	10,771
CALIFORNIA	39,234	15,694	23,540
COLORADO	7,916	3,167	4,749
DELAWARE	2,120	848	1,272
MARYLAND	9,949	3,980	5,969
FLORIDA	26,949	10,780	16,169
GEORGIA	32,313	12,926	19,387
HAWAII	5,796	2,319	3,477
W. PACIFIC AREAS	3,610	1,444	2,166
IDAHO	6,618	2,648	3,970
ILLINOIS	23,013	9,206	13,807
INDIANA	23,359	9,344	14,015
IOWA	14,102	5,641	8,461
KANSAS	10,987	4,395	6,592
KENTUCKY	24,916	9,967	14,949
LOUISIANA	21,283	8,514	12,769
MAINE	9,344	3,738	5,606
MASSACHUSETTS	9,473	3,790	5,683
CONNECTICUT	5,753	2,302	3,451
RHODE ISLAND	1,341	537	804
MICHIGAN	30,496	12,199	18,297
MINNESOTA	17,173	6,870	10,303
MISSISSIPPI	21,585	8,634	12,951
MISSOURI	21,802	8,721	13,081
MONTANA	5,494	2,198	3,296
NEBRASKA	7,483	2,994	4,489
NEVADA	2,466	987	1,479
NEW JERSEY	8,435	3,374	5,061
NEW MEXICO	9,517	3,807	5,710
NEW YORK	30,972	12,389	18,583
NORTH CAROLINA	41,786	16,715	25,071
NORTH DAKOTA	3,893	1,558	2,335
OHIO	33,654	13,462	20,192
OKLAHOMA	15,010	6,004	9,006
OREGON	13,366	5,347	8,019
PENNSYLVANIA	40,359	16,144	24,215
PUERTO RICO	20,677	8,271	12,406
SOUTH CAROLINA	22,277	8,911	13,366
SOUTH DAKOTA	5,407	2,163	3,244
TENNESEE	25,176	10,071	15,105
TEXAS	56,971	22,767	34,204
UTAH	3,504	1,402	2,102
VERMONT	4,542	1,817	2,725
NEW HAMPSHIRE	6,272	2,509	3,763
VIRGIN ISLANDS	1,730	692	1,038
VIRGINIA	25,003	10,002	15,001
WASHINGTON	16,135	6,454	9,681
WEST VIRGINIA	15,097	6,039	9,058
WISCONSIN	20,461	8,185	12,276
WYOMING	3,115	1,246	1,869
STATE TOTALS	866,245	346,498	519,747
GENERAL RESERVE	30,000	12,000	18,000
DESIGNATED RESERVES	120,000	48,000	72,000
TOTAL	1,016,245	406,498	609,747

SINGLE FAMILY HOUSING TARGETED FUNDS

States	Section 502 direct loans base allocation	Section 502 direct loans formula alloc	Section 502 direct loans total allocation	Section 504 repair loans total allocation	Section 504 repair grants total allocation
ALABAMA	300	695	995	25	20
ALASKA	300	143	443	25	20
ARIZONA	300	378	678	25	20

SINGLE FAMILY HOUSING TARGETED FUNDS—Continued

States	Section 502 direct loans base allocation	Section 502 direct loans formula alloc	Section 502 direct loans total allocation	Section 504 repair loans total allocation	Section 504 repair grants total allocation
ARKANSAS	300	541	841	25	20
CALIFORNIA	300	1,183	1,483	25	20
COLORADO	300	239	539	25	20
DELAWARE	300	64	364	25	20
MARYLAND	300	300	600	25	20
FLORIDA	300	812	1,112	25	20
GEORGIA	300	974	1,274	25	20
HAWAII	300	175	475	25	20
W. PACIFIC AREAS*	300	93	393	25	20
IDAHO	300	200	500	25	20
ILLINOIS	300	694	994	25	20
INDIANA	300	704	1,004	25	20
IOWA	300	425	725	25	20
KANSAS	300	331	631	25	20
KENTUCKY	300	751	1,051	25	20
LOUISIANA	300	642	942	25	20
MAINE	300	282	582	25	20
MASSACHUSETTS	300	286	586	25	20
CONNECTICUT	300	173	473	25	20
RHODE ISLAND	300	40	340	25	20
MICHIGAN	300	919	1,219	25	20
MINNESOTA	300	518	818	25	20
MISSISSIPPI	300	651	951	25	20
MISSOURI	300	657	957	25	20
MONTANA	300	166	466	25	20
NEBRASKA	300	226	526	25	20
NEVADA	300	74	374	25	20
NEW JERSEY	300	254	554	25	20
NEW MEXICO	300	287	587	25	20
NEW YORK	300	934	1,234	25	20
NORTH CAROLINA	300	1,260	1,560	25	20
NORTH DAKOTA	300	117	417	25	20
OHIO	300	1,015	1,315	25	20
OKLAHOMA	300	453	753	25	20
OREGON	300	403	703	25	20
PENNSYLVANIA	300	1,217	1,517	25	20
PUERTO RICO	300	623	923	25	20
SOUTH CAROLINA	300	672	972	25	20
SOUTH DAKOTA	300	163	463	25	20
TENNESSEE	300	759	1,059	25	20
TEXAS	300	1,717	2,017	25	20
UTAH	300	106	406	25	20
VERMONT	300	137	437	25	20
NEW HAMPSHIRE	300	189	489	25	20
VIRGIN ISLANDS	300	52	352	25	20
VIRGINIA	300	754	1,054	25	20
WASHINGTON	300	486	786	25	20
WEST VIRGINIA	300	455	755	25	20
WISCONSIN	300	617	917	25	20
WYOMING	300	94	394	25	20
TOTAL ALLOCATED	15,900	26,100	42,000	1,325	1,060
N.O. RESERVES	.....	.....	4,000	575	185
TOTALS	.....	.....	46,000	1,900	1,245

*Denotes Administrative Allocation.

SECTION 504 RURAL HOUSING LOANS

States	State basic formula factor	State Basic formula/administrative allocation	Total FY 1996 allocation
ALABAMA	0.0291457	866	866
ALASKA	0.0080402	239	239
ARIZONA	0.0201005	597	597
ARKANSAS	0.0226131	672	672
CALIFORNIA	0.0532663	1,582	1,582

SECTION 504 RURAL HOUSING LOANS—Continued

States	State basic formula factor	State Basic formula/administrative allocation	Total FY 1996 allocation
COLORADO	0.0085427	254	254
DELAWARE	0.0020101	60	60
MARYLAND	0.0095477	284	284
FLORIDA	0.0296482	880	880
GEORGIA	0.0396985	1,179	1,179
HAWAII	0.0100503	298	298
W. PACIFIC AREAS*	N/A	2,400	2,400
IDAHO	0.0075377	224	224
ILLINOIS	0.0226131	672	672
INDIANA	0.0221106	657	657
IOWA	0.0130653	388	388
KANSAS	0.0115578	343	343
KENTUCKY	0.0321608	955	955
LOUISIANA	0.0296482	880	880
MAINE	0.0100503	298	298
MASSACHUSETTS	0.0080402	239	239
CONNECTICUT	0.0040201	119	119
RHODE ISLAND	0.0010050	30	30
MICHIGAN	0.0291457	866	866
MINNESOTA	0.0175879	522	522
MISSISSIPPI	0.0301508	895	895
MISSOURI	0.0241206	716	716
MONTANA	0.0060302	179	179
NEBRASKA	0.0070352	209	209
NEVADA	0.0030151	90	90
NEW JERSEY	0.0070352	209	209
NEW MEXICO	0.0150754	448	448
NEW YORK	0.0286432	851	851
NORTH CAROLINA	0.0477387	1,418	1,418
NORTH DAKOTA	0.0040201	119	119
OHIO	0.0331658	985	985
OKLAHOMA	0.0175879	522	522
OREGON	0.0150754	448	448
PENNSYLVANIA	0.0371859	1,104	1,104
PUERTO RICO	0.0341709	1,015	1,015
SOUTH CAROLINA	0.0281407	836	836
SOUTH DAKOTA	0.0060302	179	179
TENNESSEE	0.0296482	880	880
TEXAS	0.0783920	2,329	2,329
UTAH	0.0040201	119	119
VERMONT	0.0045226	134	134
NEW HAMPSHIRE	0.0055276	164	164
VIRGIN ISLANDS	0.0030151	90	90
VIRGINIA	0.0296482	880	880
WASHINGTON	0.0185930	552	552
WEST VIRGINIA	0.0180905	537	537
WISCONSIN	0.0195980	582	582
WYOMING	0.0035176	104	104
STATE TOTALS	1.0000000	32,098	32,098
GENERAL RESERVE	.....	.....	3,800
DESIGNATED RESERVES	.....	.....	1,900
TOTAL	.....	.....	37,798

*Denotes Administrative Allocation.

SECTION 504 RURAL HOUSING GRANTS

States	State basic formula factor	State basic formula/administrative allocation	Total FY 1996 allocation
ALABAMA	0.0281124	579	579
ALASKA	0.0056894	117	117
ARIZONA	0.0170683	352	352
ARKANSAS	0.0224230	462	462
CALIFORNIA	0.0481928	993	993

SECTION 504 RURAL HOUSING GRANTS—Continued

States	State basic formula factor	State basic formula/administrative allocation	Total FY 1996 allocation
COLORADO	0.0083668	172	172
DELAWARE	0.0023427	48	48
MARYLAND	0.0100402	207	207
FLORIDA	0.0341365	703	703
GEORGIA	0.0368139	759	759
HAWAII	0.0076975	159	159
W. PACIFIC AREAS*	N/A	560	560
IDAHO	0.0073628	152	152
ILLINOIS	0.0264391	545	545
INDIANA	0.0244311	503	503
IOWA	0.0163989	338	338
KANSAS	0.0133869	276	276
KENTUCKY	0.0297858	614	614
LOUISIANA	0.0261044	538	538
MAINE	0.0103748	214	214
MASSACHUSETTS	0.0097055	200	200
CONNECTICUT	0.0053548	110	110
RHODE ISLAND	0.0013387	28	28
MICHIGAN	0.0317938	655	655
MINNESOTA	0.0197456	407	407
MISSISSIPPI	0.0271084	559	559
MISSOURI	0.0257697	531	531
MONTANA	0.0060241	124	124
NEBRASKA	0.0087015	179	179
NEVADA	0.0026774	55	55
NEW JERSEY	0.0083668	172	172
NEW MEXICO	0.0123829	255	255
NEW YORK	0.0324632	669	669
NORTH CAROLINA	0.0471888	972	972
NORTH DAKOTA	0.0046854	97	97
OHIO	0.0361446	745	745
OKLAHOMA	0.0184070	379	379
OREGON	0.0157296	324	324
PENNSYLVANIA	0.0438420	903	903
PUERTO RICO	0.0264391	545	545
SOUTH CAROLINA	0.0261044	538	538
SOUTH DAKOTA	0.0063588	131	131
TENNESSEE	0.0294511	607	607
TEXAS	0.0716198	1,476	1,476
UTAH	0.0036814	76	76
VERMONT	0.0046854	97	97
NEW HAMPSHIRE	0.0060241	124	124
VIRGIN ISLANDS	0.0023427	48	48
VIRGINIA	0.0284471	586	586
WASHINGTON	0.0184070	379	379
WEST VIRGINIA	0.0180723	372	372
WISCONSIN	0.0224230	462	462
WYOMING	0.0033467	69	69
STATE TOTALS	1.000000	21,165	21,165
GENERAL RESERVE	.....	.....	2,490
DESIGNATED RESERVES	.....	.....	1,245
TOTAL	.....	.....	24,900

*Denotes Administrative Allocation.

SECTION 525/509 HOUSING APPLICATION PACKAGING GRANT FUNDS

States	Number of counties eligible	State basic formula factor	State allocation	Number of packaging grants per allocation
ALABAMA	13	0.0431894	164	328
ALASKA	5	0.0166113	63	126
ARIZONA	8	0.0265781	101	202
ARKANSAS	5	0.0166113	63	126
CALIFORNIA	3	0.0099668	38	76

SECTION 525/509 HOUSING APPLICATION PACKAGING GRANT FUNDS—Continued

States	Number of counties eligible	State basic formula factor	State allocation	Number of packaging grants per allocation
COLORADO	1	0.0033223	13	25
FLORIDA	2	0.0066445	25	50
GEORGIA	22	0.0730897	278	555
IDAHO	1	0.0033223	13	25
KENTUCKY	25	0.0830565	316	631
LOUISIANA	10	0.0332226	126	252
MISSISSIPPI	27	0.0897010	341	682
MONTANA	2	0.0066445	25	50
NEW MEXICO	11	0.0365449	139	278
NORTH CAROLINA	4	0.0132890	50	101
NORTH DAKOTA	3	0.0099668	38	76
OHIO	1	0.0033223	13	25
SOUTH CAROLINA	6	0.0199336	76	151
SOUTH DAKOTA	9	0.0299003	114	227
TENNESSEE	2	0.0066445	25	50
TEXAS	45	0.1495017	568	1,136
UTAH	1	0.0033223	13	25
VIRGINIA	4	0.0132890	50	101
WASHINGTON	2	0.0066445	25	50
WEST VIRGINIA	4	0.0132890	50	101
WISCONSIN	1	0.0033223	13	25
PUERTO RICO	77	0.2558140	972	1,944
VIRGIN ISLANDS	2	0.0066445	25	50
WEST PAC TERR	5	0.0166113	63	126
TOTAL COUNTIES	301	1.0000000	3,800	7,600
TOTAL RESERVE	.....	.....	1,391	.....
NATIONAL TOTAL	.....	.....	5,191	.....

AA reserve of $1,000,000 for section 514/516, 515, 524 and 533 will be held in the national office, available on a first-come-first-served basis. Additional reserve of $391,000 is available for all programs.

[FR Doc. 95–30135 Filed 12–11–95; 8:45 am]
BILLING CODE 3410–07–U

Rural Utilities Service

Municipal Interest Rates for the First Quarter of 1996

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the first quarter of 1996.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the first calendar quarter of 1996.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning January 1, 1996, and ending March 31, 1996.

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Financial Analyst, U.S. Department of Agriculture, Rural Utilities Service, room 2230–s, 14th Street & Independence Avenue, SW. AgBox 1522, Washington, DC 20250–1500. Telephone: 202–720–0736. FAX: 202–720–4120.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the first calendar quarter of 1996 for municipal rate electric loans. Pursuant to regulations originally published by the Rural Electrification Administration (REA) at 7 CFR 1714.5, the interest rates on advances from municipal rate loans are based on indexes published in the ''Bond Buyer'' for the four weeks prior to the first Friday of the last month before the beginning of the quarter.

The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub.L. 103–354, 101 Stat. 3178), signed by President Clinton on October 13, 1994, provides for the establishment of RUS as successor to REA with respect to various programs, including the electric loan program established by the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*). On October 20, 1994, the Secretary of Agriculture issued Secretary's Memorandum 1010–1, establishing RUS and abolishing REA. Therefore, RUS is publishing this notice implementing a rule originally published by REA.

In accordance with 7 CFR 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the first calendar quarter of 1996.

Interest rate term ends in (year)	RUS rate (0.000 percent)
2016 or later	5.500
2015	5.500
2014	5.500
2013	5.375
2012	5.375
2011	5.375
2010	5.375
2009	5.250
2008	5.125
2007	5.000
2006	5.000
2005	4.875
2004	4.750
2003	4.625
2002	4.500
2001	4.375
2000	4.375
1999	4.250
1998	4.125
1997	4.000

Dated: December 6, 1995.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 95–30136 Filed 12–11–95; 8:45 am]

BILLING CODE 3410–15–P

Interest Rate for FY 1996 RUS Telecommunications Cost-of-Money Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Utilities Service (RUS) is announcing that interest rates on telecommunications Cost-of-Money loans approved during fiscal year 1996 may exceed the 7 percent per year statutory limit.

FOR FURTHER INFORMATION CONTACT: Robert Peters, Assistant Administrator-Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture, room 4056–S, Ag Box 1590, 14th Street and Independence Avenue, SW., Washington, DC 20250–1500. Telephone (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION: Notice is given that under Title III of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1996 (Appropriations Act of 1996) (Pub. L. 104–37, approved October 21, 1995), the interest rate for telecommunications loans approved during fiscal year 1996 may exceed the 7 percent per year ceiling established by Pub. L. 103–129 (see 7 CFR 1735.31(c)(1)). The Appropriations Act of 1996 removes the 7 percent interest rate ceiling for telecommunications Cost-of-Money loans made during fiscal year 1996 only (October 1, 1995 to September 30, 1996).

Dated: December 6, 1995.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 95–30235 Filed 12–11–95; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

Federal Highway Administration, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–084. *Applicant:* Federal Highway Administration, McLean, VA 22101. *Instrument:* Automatic Non-Contact Aggregate Graduation Device, Model VDG 40. *Manufacturer:* Yernaux Pesage, France. *Intended Use:* See notice at 60 FR 50555, September 29, 1995.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides characterization of the size and shape of particles in aggregate paving mixtures using a special light and videocamera, a hopper, vibrating feeder and rotating drum. The Army Corps of Engineers and a university research department advise that (1) these capabilities are pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–30092 Filed 12–11–95; 8:45 am]

BILLING CODE 3510–DS–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Deduction of Import Charges for Certain Wool Textile Products Produced or Manufactured in Poland

December 8, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Effective on December 8, 1995, U.S. Customs Service adjusted charges in the following amounts made to textile products in Categories 433 and 443 for the period beginning on January 1, 1995 and extending through December 31, 1995. As a result, the limits, which were closed, will be reopened on December 12, 1995.

Category	Amount deducted
433	1,522 dozen.
443	3,000 numbers.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 62718, published on December 6, 1994.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30362 Filed 12–8–95; 1:48 pm]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 12, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the Internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a

telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, the proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 7, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: Title I State Plan for State Vocational Rehabilitation Service Program and the Title VI.
Frequency: Annually.
Affected Public: Individuals or households; Not-for-profit institutions; State, Local or Tribal Government.
Reporting Burden and Recordkeeping: Responses: 82.
Burden Hours: 1,658,139.
Abstract: The Rehabilitation Act of 1973, as amended, and its proposed implementing regulations, require each of the 82 State vocational rehabilitation agencies to submit a State plan for vocational rehabilitation services and a supplement for supported employment services. Program funding is contingent upon the department's approval of these state plans.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: 1996 National Postsecondary Student Aid Study.
Frequency: On Occasion.
Affected Public: Individuals or households; Business or other for-profit; Not for Profit institutions.
Reporting Burden and Recordkeeping: Responses: 1
Burden Hours: 36,191.
Abstract: This study collects data from a sample of students in postsecondary institutions, including institutional financial aid data on sample students, and a sample of students' parents. It collects data to determine how students and their families finance postsecondary education, and to describe characteristics of enrolled postsecondary students, addressing important issues in this area. This collection is for institutional student, and parent data.

[FR Doc. 95–30164 Filed 12–11–95; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 11, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Request for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: December 6, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Reporting and Recordkeeping Requirement for Douglas School & Stafford/Plus Loans.
Frequency: Annually.
Affected Public: Individual or households; State, Local or Tribal Government.
Reporting and Recordkeeping Burden: Responses: 4308
Burden Hours: 1077.

Abstract: Collection of state proposals for Targeted Teacher Deferment/ Teacher Shortage Areas, of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986.

Office of Educational Research and Improvement

Type of Review: New.
Title: Development of Measures of Elementary School Organization and Educational Processes: School Survey.
Frequency: One Time.
Affected Public: Not for Profit institutions.
Reporting Burden:
Responses: 300
Burden Hours: 75.
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This Study is the full-scale pilot test of the proposed data collection procedures and instrument for an effort to develop better measures of elementary school characteristics and processes that will be comparable with those of other countries. The survey was developed by the Indicators of Educational Systems Project in cooperation with the Organization for Economic Cooperation and Development (OECD) with support of the National Center for Education Statistics. Data will be collected on such topics as the stability of the school's staff, aspects of school leadership, cooperation among teachers, student evaluation practices, achievement orientation, and parent involvement.

[FR Doc. 95–30165 Filed 12–11–95; 8:45 am]
BILLING CODE 4000–01–M

Fund for the Improvement of Education Program

AGENCY: Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Secretary proposes to establish absolute priorities to fund projects that develop, evaluate and field-test State assessments aligned with challenging State content standards. The Secretary may use these priorities in FY 1996 and subsequent years. The Secretary proposes to provide Federal financial assistance to assist States in the development of assessments that can be used to improve classroom instruction, motivate all students to improve educational performance, and provide examples for students, teachers and parents of the learning outcomes that can be expected for all students.

DATES: Comments must be received on or before January 11, 1996.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Dr. David Sweet, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, N.W., Room 508H, Washington, D.C. 20208–5573. Comments can be faxed to David Sweet at (202) 219–2135. Comments may also be sent through the Internet to David—Sweet@ed.gov.

FOR FURTHER INFORMATION CONTACT: David Sweet, telephone: (202) 219–2079. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement of Education (FIE) supports nationally significant projects to improve the quality of education, assist all students to meet challenging State content and student performance standards and contribute to the achievement of the National Education Goals. The FIE program is authorized under Part A of Title X of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (20 U.S.C. 8001).

The Secretary is expressly authorized to use FIE program funds to support systemic education reform at the State and local levels through activities such as the development and evaluation of model strategies for assessment of student learning. The Secretary believes that the alignment of State content standards and State assessments is an important part of systemic educational reform. Exemplifying the forms and levels of educational performance that students in a State should be able to achieve is a critical step in the process of ensuring that students are reaching the State's challenging content standards. While many States are developing new content standards for the core academic subjects, some States are using assessments that are not aligned to their new content standards. The Secretary believes that helping to defray the cost of developing assessments aligned with challenging State content standards will advance State reform efforts.

State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education, and other public and private agencies, organizations, and institutions are eligible to receive funds under these priorities. However, the Secretary believes that SEAs and LEAs have the resources, knowledge, and authority necessary to lead systemic reform efforts. Therefore, SEAs and LEAs must participate as lead agents in the development of State assessments to ensure that the assessment systems are aligned with State content standards and the content of the curriculum. If reform is to be systemic, State agencies that are working on content and curriculum must either direct the development of assessments themselves or provide direction to LEAs to do so.

It is imperative that State assessments take into account the needs of all students. Therefore, funds awarded under the proposed priority may be used to develop, modify, field-test and evaluate assessments that take into account the needs of students with disabilities or students who have limited English proficiency.

Awards under these proposed priorities may be jointly funded under three statutory authorities:

(1) The Fund for the Improvement of Education (20 U.S.C. 8001);

(2) Section 618(c) of the Individuals with Disabilities Education Act (IDEA) regarding Evaluation and Program Information (20 U.S.C. 1418(c));

(3) Bilingual Education Research, Evaluation, and Dissemination Program, authorized by Title VII, Part A, Subpart 2 of the Improving America's Schools Act of 1994 (20 U.S.C. 7451–7452).

The Secretary has determined that the availability of this joint funding option would enhance the Department's ability to support projects that integrate into a single effort the development of assessments for all students and the modification of those assessments to take into account the needs of disabled and limited English proficient students.

Funds provided under Section 618 of IDEA can only be used for projects that modify, field-test, and evaluate assessments that take into account the needs of children and youth with disabilities. A project funded under Section 618 of IDEA should address how the assessments will improve the ability of SEAs and LEAs to provide full educational opportunities to children and youth with disabilities and to better assess the progress of children and youth with disabilities while in special education. As part of the post-award requirements for a project funded under Section 618 of IDEA, a grantee must prepare its procedures, findings, and other relevant information in a form that will maximize their dissemination and use, especially through dissemination networks and mechanisms authorized by Section 618, and in a form for inclusion in the annual report to

Congress submitted pursuant to Section 618(g). Funds provided under Section 618 may be used to fund projects proposed by applicants that are private for-profit agencies only when necessary because of the unique nature of the study.

In accordance with 20 U.S.C. 7452(b)(4), funds provided under the Bilingual Education Research, Evaluation, and Dissemination Program must be administered by individuals with expertise in bilingual education and the needs of limited English proficient students and their families. Funds provided under this program must be used to improve bilingual education and special alternative instruction programs for children and youth of limited English proficiency.

As part of the efforts to improve student assessment, the Department made awards in FY 1995 under the Assessment Development and Evaluation Grants Program, authorized by section 220 of the Goals 2000: Educate America Act. Under this program, the Secretary provides grants to SEAs, LEAs or partnerships of such agencies to help defray the costs of developing, field-testing and evaluating State assessments aligned to State content standards. Applications involving 43 States were received in 1995 and grants were made to support 9 projects. The Secretary expects these projects to develop model strategies for the assessment of student learning that will have a significant impact on State and local level systemic reform efforts.

Depending on the availability of funds in FY 1996 and subsequent years, the Secretary may decide to use funds under the proposed priorities to continue projects initially funded under the Assessment Development and Evaluation Grants program or to fund additional applications considered in the 1995 competition. Alternatively, the Secretary may decide to hold a competition for new awards under the proposed priorities.

The Secretary will announce the final priorities in a notice in the Federal Register. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under this competition will be published in the Federal Register concurrent with or following publication of the notice of final priorities.

Proposed Absolute Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to projects that meet one or more of the following priorities. The Secretary proposes to fund only projects that meet one or more of these absolute priorities:

Proposed Absolute Priority 1—Projects that develop, field-test, and evaluate assessments that are aligned to State content standards.

Proposed Absolute Priority 2—Projects that modify, field-test, and evaluate assessments to address the needs of children and youth with disabilities or limited English proficiency. Assessments to be modified must be those developed under priority (1) or similar assessments developed for all students and aligned to State content standards.

All projects must—

(a) Examine the validity and reliability of the assessment for the particular purposes for which the assessment was developed;

(b) Ensure that the assessment is consistent with relevant, nationally recognized professional and technical standards for assessments;

(c) Devote special attention to how the assessment treats all students, especially with regard to race, gender, ethnicity, disability, and language proficiency of those students; and

(d) Be developed by, or under the direction of, an SEA, LEA, or consortia of those agencies.

Selection Criteria

With respect to new awards made with funds from Section 618 of IDEA, the Secretary does not intend to use the selection criteria in 34 CFR 327.31. With respect to any new awards made with funds from the Bilingual Education Research, Evaluation, and Dissemination Program, the Secretary does not intend to use the selection criteria in 34 CFR 75.210. The Secretary intends to use the evaluation criteria in 34 CFR Part 700 to select all new awards under these priorities.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period in OERI, Room 510, 555 New Jersey Avenue, Washington, D.C., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

(a) 34 CFR part 327, with the exception of 34 CFR 327.31; and (b) the final regulations for the Standards for the Conduct and Evaluation of Activities Carried Out by the Office of Educational Research and Improvement (OERI)—Evaluation of applications for Grants and Cooperative Agreements and Proposals for Contracts, published on September 14, 1995 in the Federal Register (60 FR 47808), to be codified as 34 CFR Part 700.

Authority: 20 U.S.C. 8001.

(Catalog of Federal Domestic Assistance Number 84.215L—Fund for the Improvement of Education Program)

Dated: December 5, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–30167 Filed 12–11–95; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No. 84.305F, 84.306F, 84.307F, 84.308F and 84.309F]

Office of Educational Research and Improvement: National Institutes' Field-Initiated Studies Grant Program

AGENCY: Department of Education.

ACTION: Notice Inviting Applications for New Awards for fiscal year (FY) 1996—Amendment.

On September 14, 1995, the Assistant Secretary for Educational Research and Improvement published in the Federal Register (60 FR 47830) a notice inviting applications for new awards for the National Institutes' Field-Initiated Studies Grant Program. This notice amends the original information by adding a paragraph that indicates that the Secretary may fund two cycles of awards from this competition.

In the notice inviting applications for new awards, add the following paragraph to the **SUPPLEMENTARY INFORMATION** section.

The Department may fund two cycles of awards from these competitions. Applications funded in the first cycle will be awarded in June 1996 from FY 1996 funds. A second cycle of additional applications from this competition may be funded early in FY 1997, pending availability of FY 1997 funds, if the Secretary decides that there are applications of sufficiently high quality to merit funding.

Note: The Department is not bound by any estimates in this notice.

FOR FURTHER INFORMATION CONTACT: National Institute on Student Achievement, Curriculum, and Assessment: Clara Lawson-Holmes, U.S. Department of Education, 555 New Jersey Avenue, N.W., Room 510, Washington, DC 20208–5573. Telephone: (202) 219–2079 or clawson@inet.ed.gov. National Institute on the Education of At-Risk Students: Beth Fine, U.S. Department of Education, 555 New Jersey Avenue, N.W., Room 610, Washington, DC 20208–5521. Telephone: (202) 219–1323, or bfine@inet.ed.gov. National Institute on Early Childhood Development and Education: Joe Caliguro, U.S. Department of Education, 555 New Jersey Avenue, N.W., Washington, DC 20208–5520. Telephone: (202) 219–1935. National Institute on Educational Governance, Finance, Policy-Making, and Management: Elizabeth DeBra or Edward Fuentes, 555 New Jersey Avenue, N.W., Washington, DC 20208–5510. Telephone (202) 219–2021 or -2032. National Institute on Postsecondary Education, Libraries, and Lifelong Learning: Delores Monroe, 555 New Jersey Avenue, N.W., Room 620, Washington, DC 20208–5531. Telephone (202) 219–2229, or fis@inet.ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of the application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Servers at gopher.ed.gov (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 6031(c)(2)(B).

Dated: December 5, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–30166 Filed 12–11–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL96–15–000, et al.]

Jersey Central Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

December 4, 1995.

Take notice that the following filings have been made with the Commission:

1. Jersey Central Power & Light Company

[Docket No. EL96–15–000]

Take notice that on November 13, 1995, Jersey Central Power & Light Company tendered for filing a request for waiver of the Commission's Regulations to allow JCP&L to pass back to its wholesale customers certain refunds, including interest.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. MidAmerican Energy Company

[Docket No. EL96–18–000]

Take notice that on November 21, 1995, MidAmerican Energy Company (MidAmerican), filed an Application for Approval of Depreciation Rates pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure.

MidAmerican is the surviving corporation and utility of the July 1, 1995 merger of Iowa-Illinois Gas and Electric Company with Midwest Power Systems, Inc. and its exempt holding company parent, Midwest Resources, Inc. MidAmerican states that since July 1, 1995, the effective date of the merger, MidAmerican has used the depreciation rates used by its predecessors immediately prior to the merger. This practice has resulted in the application of two different depreciation rates to depreciable property held in the same account. MidAmerican requests authorization to use a single set of electric depreciation rates for accounting and final reporting purposes effective of January 1, 1996.

Copies of the filing were served on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Louisiana Public Service Commission, Mississippi Public Service Commission, State of Mississippi, Arkansas Public Service Commission and the City of New Orleans v. Systems Energy Resources, Inc. and Entergy Services, Inc.

[Docket No. EL96–19–000]

Take notice that on November 22, 1995, the Louisiana Public Service Commission, the Arkansas Public Service Commission, the Mississippi Public Service Commission, the City of New Orleans and the State of Mississippi filed a Complaint under Sections 205 and 206 of the Federal Power Act, 16 U.S.C. §§ 824d and 824e against System Energy Resources, Inc. and Entergy Services, Inc. The Complaint seeks to lower the allowed return on equity under the Entergy Unit Power Sales Agreement upon allegations under current circumstances, it is unjust and unreasonable. The Complaint contains a motion to consolidate this proceeding with an ongoing FERC proceeding entitled, System Energy Resources, Inc., Docket No. ER95–1042–000.

Comment date: January 3, 1996, in accordance with Standard Paragraph E at the end of this notice. Answers to the complain shall be due on or before January 3, 1996.

4. PacifiCorp

[Docket No. ER95–1838–000]

Take notice that on November 8, 1995 and November 14, 1995 Black Hills Power & Light Company tendered for filing amendments in the above-referenced docket.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Appalachian Power Company

[Docket No. ER95–1797–000]

Take notice that on November 14, 1995, the American Electric Power Service Corporation (AEPSC), on behalf of Appalachian Power Company (APCO), tendered for filing an amendment to its filing in the above-referenced docket.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company (Wisconsin)

[Docket No. ER96–372–000]

Take notice that on November 16, 1995, Northern States Power Company (Wisconsin) (NSPW) tendered for filing its Amended and Restated Power and Energy Supply Agreement with the Village of Trempealeau, Wisconsin, dated November 6, 1995. NSPW states that the Agreement supersedes the Power and Energy Supply Agreement between the parties dated March 5, 1992, as amended on July 5, 1994.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. MP Energy, Inc.

[Docket No. ER96–373–000]

Take notice that on November 16, 1995, MP Energy, Inc. (MP Energy) tendered for filing a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

MP Energy intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where MP Energy sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. MP Energy is not in the business of generating, transmitting, or distributing electric power.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER96–374–000]

Take notice that on November 16, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and Heartland Energy Services, Inc. FPL requests an effective date of November 20, 1995.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER96–375–000]

Take notice that on November 16, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and Electric Clearinghouse, Inc. FPL requests an effective date of November 20, 1995.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER96–376–000]

Take notice that on November 16, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and Catex-Vitol Electric, L.L.C. FPL requests an effective date of November 20, 1995.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power & Light Company

[Docket No. ER96–377–000]

Take notice that on November 16, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and Louis Dreyfus Electric Power, Inc. FPL requests an effective date of November 20, 1995.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power & Light Company

[Docket No. ER96–378–000]

Take notice that on November 16, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and Citizens Lehman Power Sales. FPL requests an effective date of November 20, 1995.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Power, Inc.

[Docket No. ER96–379–000]

Take notice that Entergy Power, Inc. (EPI) on November 16, 1995, tendered for filing a Purchase and Sale Agreement with Citizens Lehman Power Sales.

EPI requests an effective date for the Agreement that is one (1) day after the date of filing and respectfully requests waiver of the Commission's notice requirements.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Paragon Gas Marketing

[Docket No. ER96–380–000]

Take notice that on November 16, 1995, Paragon Gas Marketing (Paragon), a division of Eastex Energy, Inc. tendered for filing a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective no later than sixty (60) days from the date of its filing.

Paragon intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Paragon sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Paragon nor any of its affiliates are in the business of generating, transmitting, or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that sales may be made to any affiliate having a FERC rate schedule permitting sales for resale by such affiliate at rates established by agreement between the purchaser and the affiliate.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Southern Company Services, Inc.

[Docket No. ER96–382–000]

Take notice that on November 17, 1995, Southern Company Services, Inc. (''SCS''), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as ''Southern Companies'') filed two (2) service agreements between SCS, as agent of the Southern Companies, and (i) Gulf Stream Entergy and (ii) Louis Dreyfus Electric Power Inc. for non-firm transmission service under the Point-to-Point Transmission Service Tariff of Southern Companies.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Kentucky Utilities Company

[Docket No. ER96–383–000]

Take notice that on November 14, 1995, Kentucky Utilities Company (KU) filed to withdraw the Letter Agreement (FERC Rate Schedule 215) providing for coordination sales between itself and Electric Clearinghouse, Inc. (ECI).

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER96–387–000]

Take notice that on November 17, 1995, PECO Energy Company (PECO) filed a Service Agreement dated October 26, 1995, with Commonwealth Electric Company (CECO) under PECO's Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds CECO as a customer under the Tariff.

PECO requests an effective date of October 26, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to CECO and the Pennsylvania Public Service Commission.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. PECO Energy Company

[Docket No. ER96–388–000]

Take notice that on November 17, 1995, PECO Energy Company (PECO) filed a Service Agreement dated October 26, 1995, with Cambridge Electric Light Company (CELCO) under PECO's Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds CELCO as a customer under the Tariff.

PECO requests an effective date of October 26, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to CELCO and the Pennsylvania Public Service Commission.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Washington Water Power Company

[Docket No. ER96–389–000]

Take notice that on November 17, 1995, the Washington Water Power Company (WWP) tendered for filing two signed service agreements under FERC Electric Tariff Volume No. 4 with Heartland Energy Services, Inc. and Public Utility District No. 1 of Grays Harbor County previously approved as unsigned service agreements. A Certificate of Concurrence with respect to exchanges is included for Heartland Energy Services, Inc.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Washington Water Power Company

[Docket No. ER96–390–000]

Take notice that on November 17, 1995, the Washington Water Power Company (WWP) tendered for filing an Interconnection and Transmission Service Agreement between WWP and Public Utility District No. 1 of Chelan County, Washington. WWP requests waiver of the prior notice requirement and requests an effective time and date of 0001 hours, June 22, 1995.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Kansas City Power & Light Company

[Docket No. ER96–391–000]

Take notice that on November 17, 1995, Kansas City Power & Light Company filed an amendment to its Flexibile Point-to-Point Transmission Service Tariff and Network Integration Transmission Service Tariff in this docket.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Energy West Power Company, LLC

[Docket No. ER96–392–000]

Take notice that on November 17, 1995, Energy West Power Company, LLC (Energy West) tendered for filing a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

Energy West intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Energy West sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Energy West is not in the business of generating, transmitting, or distributing electric power.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER96–393–000]

Take notice that on November 17, 1995, GPU Service Corporation, on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred as to the GPU Operating Companies), filed an amendment to the GPU Power Pooling Agreement. The purpose of this amendment is to provide for the allocation of revenues received by the GPU Operating Companies under their Firm Transmission Service and Energy Transmission Service Tariffs between and among the Companies. GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. New England Power Company

[Docket No. ER96–394–000]

Take notice that on November 20, 1995, New England Power Company submitted for filing a letter agreement for transmission service to Rainbow Energy Marketing Corporation.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Green Mountain Power Corporation

[Docket No. ER96–395–000]

Take notice that on November 20, 1995, Green Mountain Power Corporation (GMP) tendered for filing Service Agreements for sales of capacity and energy under its FERC Electric Tariff, Original Volume No. 2 (Opportunity Transactions Tariff) to North American Energy Conservation, Inc, KCS Power Marketing, Virginia Power, and Pennsylvania Power & Light Company. GMP has requested waiver of the notice requirements of the Commission's Regulations in order to permit each of the Service Agreements to be made effective as of the date on which such Service Agreement was made.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. New England Power Company

[Docket No. ER96–396–000]

Take notice that on November 20, 1995, New England Power Company (NEP) submitted for filing a service agreement and certificate of service with Connecticut Municipal Electric Energy Cooperative under NEP's FERC Electric Tariff, Original Volume No. 6.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

27. New England Power Service Company

[Docket No. ER96–397–000]

Take notice that on November 20, 1995, New England Power Service Company (NEPSCO) submitted for filing a supplement, dated December 5, 1995, to the Amended REMVEC Agreement.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

28. Northern Indiana Public Service Company

[Docket No. ER96–399–000]

Take notice that on November 20, 1995, Northern Indiana Public Service Company (Northern Indiana), tendered for filing with the Commission its Point-to-Point Transmission Service Tariff and Network Integration Service Tariff.

Northern Indiana states that the Point-to-Point Transmission Service Tariff and Network Integration Service Tariff are initial rate schedules to implement open access electric transmission service on Northern Indiana's system.

Copies of the filing have been served on the Indiana Utility Regulatory Commission.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

29. Commonwealth Electric Company, Cambridge Electric Light Company

[Docket No. ER96–400–000]

Take notice that on November 20, 1995, Commonwealth Electric Company (Commonwealth) on behalf of itself and Cambridge Electric Light Company (Cambridge), collectively referred to as the ''Companies'', tendered for filing executed Service Agreements between the Companies and Bangor Hydro-Electric Company.

These Service Agreements specify that Bangor Hydro-Electric Company has signed on to and has agreed to the terms and conditions of the Companies' Power Sales and Exchanges Tariffs designated as Commonwealth's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 3) and Cambridge's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 5). These Tariffs, approved by FERC on April 1, 1995, and which have an effective date of March 20, 1995, will allow the Companies and Bangor Hydro-Electric Company to enter into separately scheduled transactions under which the Companies will sell to Bangor Hydro-Electric Company capacity and/or energy as the parties may mutually agree.

The Companies request an effective date of October 20, 1995, as specified on each Service Agreement.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

30. New England Power Company

[Docket No. ER96–401–000]

Take notice that on November 20, 1995, New England Power Company filed Service Agreements and Certificates of Concurrence with two power marketers under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

31. Illinois Power Company

[Docket No. ER96–402–000]

Take notice that on November 20, 1995, Illinois Power Company (IPC) tendered for filing an Interchange Agreement between IPC and Industrial Energy Applications (IEA). IPC states that the purpose of this agreement is to provide for the selling of capacity and energy by IPC to IEA.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

32. Idaho Power Company

[Docket No. ER96–403–000]

Take notice that on November 20, 1995, Idaho Power Company (IPC) tendered for filing a Service Agreement under Idaho Power Company FERC Electric Tariff, Second Revised, Volume No. 1 between Rainbow Energy Marketing Corporation and Idaho Power Company and a Certificate of Concurrence.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

33. Questar Energy Trading Company

[Docket No. ER96–404–000]

Take notice that Questar Energy Trading Company (Questar Energy) on November 20, 1995, tendered for filing its Rate Schedule No. 1, to be effective 60 days from November 20, 1995, and a petition for waivers of and blanket approvals under various regulations of the Commission.

Questar Energy intends to engage in electric power and energy transactions as a power marketer. Questar Energy proposes to charge rates mutually agreed upon by the parties. All sales will be at arms-length.

Questar Energy is not in the business of producing or transmitting electric power. Neither Questar Energy nor its affiliate(s) currently has or contemplates acquiring title to any electric power transmission or generation facilities. Questar Energy's Rate Schedule No. 1 provides for the sale of energy and capacity at prices mutually agreed upon by the purchaser and Questar Energy.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

34. Cinergy Services, Inc.

[Docket No. ER96–405–000]

Take notice that on November 21, 1995, Cinergy Services, Inc. (Cinergy) tendered for filing a service agreement under Cinergy's Non-Firm Point-to-Point Transmission Service Tariff (the Tariff) entered into between Cinergy and Tennessee Power Company.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

35. Heath Petra Resources, Inc.

[Docket No. ER96–381–000]

Take notice that on November 16, 1995, Heath Petra Resources, Inc. (Heath Petra), tendered for filing a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective no later than sixty (60) days from the date of its filing.

Heath Petra intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Heath Petra sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Heath Petra nor any of its affiliates are in the business of generating, transmitting, or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that sales may be made to any affiliate having a FERC rate schedule permitting sales for resale by such affiliate at rates established by agreement between the purchaser and the affiliate.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

36. National Gas & Electric L.P.; Western System Power Pool; Rainbow Energy Marketing Corporation; Imprimis Corporation Power; Clearinghouse Inc.

[Docket No. ER90–168–025, ER91–195–022, ER94–1061–006, ER94–1672–004, ER95–914–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On November 22, 1995, National Gas & Electric L.P. filed certain information as required by the Commission's March 20, 1990, order in Docket No. ER90–168–000.

On October 30, 1995, Western System Power Pool filed certain information as required by the Commission's May 13, 1993, order in Docket No. ER91–195–000.

On October 30, 1995, November 2, 1995, and November 22, 1995 Rainbow Energy Marketing Corporation filed certain information as required by the Commission's June 10, 1994 order in Docket No. ER94–1061–000.

On November 27, 1995, Imprimis Corporation filed certain information as required by the Commission's December

14, 1994, order in Docket No. ER94–1672–000.

On November 13, 1995, Power Clearinghouse Inc. filed certain information as required by the Commission's May 11, 1995, order in Docket No. ER95–914–000.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30200 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–375–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Intent To Prepare an Environmental Assessment for the Proposed Security Loop I Project and Request for Comments on Environmental Issues

December 6, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Security Loop I Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Great Lakes Gas Transmission Limited Partnership (Great Lakes) requests Commission authorization, in Docket No. CP95–375–000, to construct and operate one segment of approximately 13.8 miles of 36-inch-diameter mainline loop in Charlevoix and Otsego Counties, Michigan. Great lakes wants to complete the looping of a portion of its 973-mile-long mainline. In addition, Great Lakes proposes to modify the existing piping at the Boyne Falls Compressor Station to accommodate the new loop. No additional compression is proposed. The proposed project would provide increased system reliability and flexibility for Great Lakes' customers, and would facilitate maintenance on the Great lakes system.

The general location of the proposed facilities is shown in appendix 1. Detailed project maps are shown in appendix 2[2].

Land Requirements for Construction

The proposed loop would be built adjacent and parallel to the existing right-of-way. Great Lakes intends to use a 100-foot-wide construction right-of-way for most of the project. About 50 feet of the planned 100-foot width would be on existing right-of-way. Consequently, about 50 feet of new clearing would be required. Following construction, about 25 feet of the construction right-of-way would be allowed to revert to its former land use.

A 55-foot-wide construction right-of-way would be used for the 2.65 miles of state forest land. About 15 feet of the 55-foot width would be on existing right-of-way. Of the 40 feet of new clearing that would be required, about 20 feet would be allowed to revert to forest use.

Additional working space would be required adjacent to the planned construction right-of-way at road and other utility line crossings, wetland crossings, in areas of steep side slopes, and at the beginning and end of the proposed loop.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Soils.
- Wetlands.
- Land use.
- Vegetation and wildlife.

We do not believe that the proposed project will have any impacts on geology, water resources, endangered and threatened species, cultural resources, air quality and noise, and hazardous waste.

We will evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Great Lakes. Keep in mind that this is a preliminary list. The list of issues may be added to, subtract from, or changed based on your comments and our analysis. Issues are:

- One wetland would be crossed.
- A 100-foot-wide construction right-of-way is proposed.
- About 9.6 miles of the proposed pipeline right-of-way would cross forestland, resulting in the clearing of about 54.6 acres of forest.
- Approximately 11 percent of the proposed right-of-way would cross sandy soils within are considered highly

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[1] Great Lakes Gas Transmission Limited Partnership's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the *Federal Register.* Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

erodible soils by the Natural Resources Conservation Service.

• A total of 18.3 acres of public lands, including the Mackinaw State Forest, would be disturbed by the proposed construction right-of-way.

• Two residences are within 50 feet of the proposed construction right-of-way. In addition, a garage and a storage building are within 50 feet of the proposed construction right-of-way.

• The proposed construction right-of-way would cross 1.8 miles of Woodland Heights Estates, a proposed residential development.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

• Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426;

• Reference Docket No. CP95–375–000;

• Send a *copy* of your letter to: Mr. Jeff Gerber, EA Project Manager, Federal Energy Regulatory Commission—PR 11.2, 888 First Street, N.E., Washington, D.C. 20426; and

• Mail your comments so that they will be received in Washington, D.C. on or before January 5, 1996.

If you wish to receive a copy of the EA, you should request one from Mr. Gerber at the above address.

Becoming an Intervenor

In additional to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Jeff Gerber, EA Project Manager, at (202) 208–1121.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30207 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[TM96–3–20–000]

Algonquin Gas Transmission Company, et al.; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on November 30, 1995 and December 1, 1995, the thirty-five natural gas pipeline companies captioned above have each filed tariff sheets to establish the revised Gas Research Institute (GRI) surcharges effective January 1, 1996, for their respective transportation rates.[1] The proposed effective date of the tariff sheets is January 1, 1996.

The natural gas companies state that the tariff sheets listed in the Appendix A of this notice are being filed pursuant to the ''Opinion and Order Approving Gas Research Institute's Second Year of its 1995–1996 Research, Development and Demonstration Program, Related Five-Year Research and Development Plan for 1996–2000, and Funding for 1996 RD&D Activities'' issued by the Commission in Docket No. RP95–374–000 on October 13, 1995.

Any person desiring to be heard or to protest any of these filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filings noted above. 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 the filings are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[1] See Appendix A for a listing of the tariff sheets filed by each pipeline.

APPENDIX A

Pipeline/Docket No./Filing date	Tariff sheets	FERC gas tariff
Algonquin Gas Transmission Company, TM96–3–20–000, 12/1/95.	Eleventh Revised Sheet No. 21, Original Sheet No. 21A, Eleventh Revised Sheet No. 22, Second Revised Sheet No. 22A, Eighth Revised Sheet No. 23, Eighth Revised Sheet No. 24, Eighth Revised Sheet No. 25, Eighth Revised Sheet No. 27, Seventh Revised Sheet No. 29, Seventh Revised Sheet No. 31, Seventh Revised Sheet No. 35, First Revised Sheet No. 41.	Fourth Revised Volume No. 1.
	Eighth Revised Sheet No. 259, Seventh Revised Sheet No. 343, Fifth Revised Sheet No. 431.	Original Volume No. 1.
ANR Pipeline Company, TM96–2–48–000, 12/1/95.	Tenth Revised Sheet No. 17	Second Revised Volume No. 1.
CNG Transmission Corporation, TM96–3–22–000, 12/1/95.	Eighth Revised Sheet No. 31, Fourteenth Revised Sheet No. 32, Fourteenth Revised Sheet No. 33.	Second Revised Volume No. 1.
Columbia Gas Transmission Corporation, TM96–1–21–000, 12/1/95.	Second Rev Tenth Revised Sheet No. 25, Second Rev Tenth Revised Sheet No. 26, Second Rev Tenth Revised Sheet No. 27, Second Rev Eleventh Revised Sheet No. 28.	Second Revised Volume No. 1.
Columbia Gulf Transmission Company, TM96–3–70–000, 12/1/95.	Tenth Revised Sheet No. 018, Tenth Revised Sheet No. 019	Second Revised Volume No. 1.
East Tennesse Natural Gas Company, TM96–2–2–000, 12/1/95.	Sixth Revised Sheet No. 4	Second Revised Volume No. 1.
El Paso Natural Gas Company, TM96–1–33–000, 12/1/95.	4th Revised Fourth Revised Sheet No. 20, 3rd Revised First Revised Sheet No. 22, 5th Revised Fourth Revised Sheet No. 23, Fifth Revised Sheet No. 24, Second Revised Sheet No. 256, Second Revised Sheet No. 257.	Second Revised Volume No. 1–A.
	4th Rev Thirty-Fifth Rev Sheet No. 1-D.2, Twenty-Eighth Revised Sheet No. 1-D.3.	Third Revised Volume No. 2.
Equitrans, Inc., TM96–1–24–000, 11/29/95.	Sixth Revised Sheet No. 5, Fifth Revised Sheet No. 6, Fifth Revised Sheet No. 8.	First Revised Volume No. 1.
Florida Gas Transmission Company, TM96–2–34–000, 11/30/95.	Tenth Revised Sheet No. 8A, Fifth Revised Sheet No. 8A.01, Second Revised Sheet No. 8A.02, Ninth Revised Sheet No. 8B, Second Revised Sheet No. 8B.01.	Third Revised Volume No. 1.
Great Lakes Gas Transmission Company, TM96–2–51–000, 11/30/95.	Fifth Revised Sheet No. 7, Third Revised Sheet No. 4B	Second Revised Volume No. 1.
Iroquois Gas Transmission System, L.P., TM96–3–110–000, 11/30/95.	Eleventh Revised Sheet No. 4	First Revised Volume No. 1.
K N Interstate Gas Transmission Co. TM96–2–53–000, 11/29/95.	Twelfth Revised Sheet No. 4–D	Second Revised Volume No. 1–A.
	second Revised Sheet No. 36, Second Revised Sheet No. 37	Second Revised Volume No. 1–B.
	Fourth Revised Sheet No. 4	First Revised Volume No. 1–C.
	First Revised Sheet No. 31, First Revised Sheet No. 32	First Revised Volume No. 1–D.
K N Wattenberg Transmission, TM96–2–117–000, 11/29/95.	Fourth Revised Sheet No. 6, Second Revised Sheet No. 65, Third Revised Sheet No. 66.	Original Volume No. 1.
Koch Gateway Pipeline Company TM96–2–11–000, 11/30/95.	Ninth Revised Sheet No. 20, Ninth Revised Sheet No. 22, Sixth Revised Sheet No. 23, Ninth Revised Sheet No. 24.	Fifth Revised Volume No. 1.
Midwestern Gas Transmission Company, TM96–1–5–000, 12/1/95.	Fifth Revised Sheet No. 5	Second Revised Volume No. 1.
Mississippi River Transmission Company, TM96–3–25–000, 11/30/95.	Eighth Revised Sheet No. 10, Second Revised Sheet No. 227	Third Revised Volume No. 1.
Mojave Pipeline Company, TM96–2–92–000, 12/1/95.	Fifth Revised Sheet No. 11	Third Revised Volume No. 1.
National Fuel Gas Supply Corporation, TM96–2–16–000, 11/30/95.	Twelfth Revised Sheet No. 5, Eleventh Revised Sheet No. 6, Sixth Revised Sheet No. 6A.	Third Revised Volume No. 1.
Natural Gas Pipeline Company of America, TM96–2–26–000, 12/1/95.	Twelfth Revised Sheet No. 25	Sixth Revised Volume No. 1.
NorAm Gas Transmission Company, TM96–2–31–000, 12/1/95.	Fifth Revised Sheet No. 13	Fouth Revised Volume No. 1.
Northern Natural Gas Company, TM96–2–59–000, 12/1/95.	7 Rev Seventeenth Revised Sheet No. 50, 7 Rev Seventeenth Revised Sheet No. 51, 2 Rev Sixth Revised Sheet No. 52, 2 Revised Sixth Revised Sheet No. 59, 2 Revised Sixth Revised Sheet No. 60.	Fifth Revised Volume No. 1.
	3 Revised 145 Revised Sheet No. 1C, 3 Rev Twentieth Revised Sheet No. 1C.a.	Original Volume No. 1.
Northwest Pipeline Corporation, TM96–2–37–000, 11/30/95.	Third Revised Sixth Revised Sheet No. 5 Twentieth Revised Sheet No. 2.2.	Third Revised Volume No. 1.
Panhandle Eastern Pipe Line Company, TM96–3–28–000, 12/1/95.	Twenty-First Revised Sheet No. 4, Twenty-First Revised Sheet No. 5, Twenty-First Revised Sheet No. 6, Twenty-First Revised Sheet No. 7.	First Revised Volume No. 1.
Questar Pipeline TM96–2–55–000, 12/1/95.	Second Revised Substitute Fourth Revised Sheet No. 5, Second Revised Fourth Revised Sheet No. 5A.	First Revised Volume No. 1.

APPENDIX A—Continued

Pipeline/Docket No./Filing date	Tariff sheets	FERC gas tariff
	Second Revised Fourteenth Revised Sheet No. 8	Original Volume No. 1.
Southern Natural Gas Company, TM96–1–7–000, 11/30/95.	3rd Revised Sheet No. 194	Seventh Revised Volume No. 1.
T C P Gathering Co., TM96–1–122–000, 11/29/95.	First Revised Sheet No. 6, First Revised Sheet No. 84	Original Volume No. 1.
Texas Eastern Transmission Corporation, TM96–2–17–000, 12/1/95.	Seventeenth Revised Sheet No. 25, Sixteenth Revised Sheet No. 26, Seventeenth Revised Sheet No. 30, Sixteenth Revised Sheet No. 31, Eleventh Revised Sheet No. 34A, Tenth Revised Sheet No. 34B, Twenty-first Revised Sheet No. 41, Sixth Revised Sheet No. 41A, Twenty-first Revised Sheet No. 42, Eleventh Revised Sheet No. 42A, Eighth Revised Sheet No. 42B, Sixteenth Revised Sheet No. 43, Sixteenth Revised Sheet No. 50, Sixteenth Revised Sheet No. 51, Thirteenth Revised Sheet No. 52, Sixth Revised Sheet No. 631.	Sixth Revised Volume No. 1.
	Thirty-second Revised Sheet No. 1J, Thirty-first Revised Sheet No. 1K, Seventeenth Revised Sheet No. 1L.	Original Volume No. 2.
Texas Gas Transmission Corporation, TM96–3–18–000, 12/1/95.	Thirteenth Revised Sheet No. 10, Tenth Revised Sheet No. 11,, Fifth Revised Sheet No. 11A, Fifteenth Revised Sheet No. 12, Fifth Revised Sheet No. 13.	First Revised Volume No. 1.
Transcontinental Gas Pipe Line Corporation, TM96–5–29–000, 12/1/95.	Thirteenth Revised Sheet No. 60, Third Revised Sheet No. 60B, Second Revised Sheet No. 60C.	Third Revised Volume No. 1.
Transwestern Pipeline Company, TM96–2–42–000, 11/30/95.	116th Revised Sheet No. 5, 21st Revised Sheet No. 5A, 13th Revised Sheet No. 5A.02, 13th Revised Sheet No. 5A.03, 18th Revised Sheet No. 5B.	Second Revised Volume No. 1.
Trunkline Gas Company, TM96–4–30–000, 12/1/95.	Fifth Revised Sheet No. 13, Second Revised Sheet No. 216	First Revised Volume No. 1.
Williams Natural Gas Co., TM96–2–43–000, 11/29/95.	Eigth Revised Sheet No. 13, First Revised Sheet No. 268	Second Revised Volume No. 1.
Williston Basin Interstate Pipeline Company, TM96–2–49–000, 12/1/95.	4th Rev 58th Revised Sheet No. 11B, 4th Rev Thirteenth Revised Sheet No. 15, 4th Rev Sixteenth Revised Sheet No. 16, 4th Rev Thirteenth Revised Sheet No. 18, 4th Rev Eleventh Revised Sheet No. 21.	Second Volume No. 1.
	4th Rev 58th Revised Sheet No. 11B	Original Revised Volume No. 1.

[FR Doc. 95–30179 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–62–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on November 30, 1995 ANR Pipeline Company (''ANR'') tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (''Tariff''), the following tariff sheets, to become effective December 1, 1995:

Title Page to Tariff
Tenth Revised Sheet No. 8
Twelfth Revised Sheet No. 9
Twelfth Revised Sheet No. 13
Twelfth Revised Sheet No. 16
Fourteenth Revised Sheet No. 18
Third Revised Sheet No. 185

The proposed changes would increase proposed Quarterly Dakota Above-Market cost recoveries from $9.3 million to $9.7 million based upon costs incurred from August, 1995 to October, 1995.

ANR states that the above-referenced tariff sheets are being filed pursuant to the approved recovery mechanism of its Tariff to implement recovery of $9.7 million of costs that are associated with its obligations to Dakota Gasification Company (''Dakota'').

ANR proposes a reservation fee surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2 so as to recover the remaining ten percent (10%).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filings noted above. 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. 95–30195 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–70–000]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on December 1, 1995, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, revised tariff sheets to be effective January 1, 1996.

Canyon states that the purpose of the filing is to convert Canyon's tariff and rates from a volumetric (Mcf) to a thermal basis (MMBtu). The Commission's Order No. 582 issued September 28, 1995 at Docket No. RM95–3–000 requires pipelines that are on a volumetric basis to convert to a thermal basis within one year of implementation. Canyon states that it is therefore converting its existing

volumetric rates to a thermal basis. Canyon states that it has used the system average Btu for the twelve months ended September 30, 1995 as the basis for converting to a thermal basis. Canyon states that there will be no increase in revenues under the proposed revisions since both volumes and rates are being converted.

Canyon requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective January 1, 1996.

Canyon states that copies of the filing are being mailed to Canyon's jurisdictional customers and interested state regulatory agencies.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of filing noted above. 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. 95–30187 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–74–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on December 1, 1995, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Second Substitute Fourteenth Revised Sheet No. 11. CIG requests that the proposed tariff sheet be made effective on January 1, 1996.

CIG states that this filing is being made pursuant to CIG's FERC Gas Tariff, First Revised Volume No. 1, General Terms and Conditions, Article 21.7 (Account No. 858 Stranded Costs).

CIG states that copies of the filing were served upon the company's jurisdictional 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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. Pursuant to § 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filings noted above. 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 the filings 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. 95–30183 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ96–1–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on December 1, 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 in the above captioned proceeding, with a proposed effective date of December 1, 1995.

ESNG states that the revised tariff sheets are being filed pursuant to Section 21 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The revised sales rates reflect an increase of $0.4234 per dt in the Commodity Charge, as measured against ESNG's regularly scheduled Annual PGA filing, Docket No. TA96–1–23–000, *et seq.*, filed on September 1, 1995 and approved by the Commission on September 26, 1995.

The commodity current purchased gas cost adjustment reflects ESNG's projected cost of gas for the period December 1, 1995 through January 31, 1996, and has been calculated using its best estimate of available gas supplies to meet ESNG's anticipated purchase requirements. The increased gas costs in this filing are a result of higher prices being paid to producers/suppliers under ESNG's market-responsive gas supply contracts.

ESNG respectfully requests waiver of the Commission's thirty (30) day notice requirement so as to permit it to place the subject rates into effect on December 1, 1995, as proposed. ESNG states that it is unable to meet the thirty (30) day notice requirements due to the fact that the normal purchasing of gas supplies from producers/marketers is negotiated five working days before the end of the month (for the next month's supply). The normal time frame to order gas supply for the next month does not give ESNG any flexibility in order to make a filing in time for the ''notice requirement'' when gas prices spike upward (from projected) as they have for the month of December, 1995 (projected to remain at the same level for January, 1996). The Commission's waiver of the thirty day notice requirement in the case of this instant filing would allow for a more accurate recovery of ESNG's costs and mitigate the deferred commodity costs which would occur in the absence of such waiver.

ESNG states that copies of the filing have been served upon it 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, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Pursuant to Section 154.1210 of the Commission's Regulations, all such motions or protests should be filed not later than 12 days after the date of the filing noted above. 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. 95–30181 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–56–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on November 30, 1995, El Paso Natural Gas Company (El Paso), tendered for filing as part of its FERC Gas Tariff, Volume No. 1–A, the

following tariff sheets, to become effective January 1, 1996:

4th Revised Fourth Revised Sheet No. 23
Fourth Revised Sheet No. 24
Fourth Revised Sheet No. 26
3rd Revised Third Revised Sheet No. 27
3rd Revised Third Revised Sheet No. 28
First Revised Sheet Nos. 30–32

El Paso states that Section 31.4(b) of its tariff provides the mechanism by which El Paso adjusts the interest calculated on the unrecovered balance of its stranded investment cost in Washington Ranch Storage Facility and then adjusts the Monthly Amortized Amount allocated to each Shipper. El Paso states that the Tariff further provides that El Paso will adjust its rates for any differences resulting from the use of the estimated interest versus the actual interest and such difference shall be added to or deducted from the estimated interest for the upcoming six month period.

El Paso states that the Monthly Amortized Amount has been adjusted to reflect the projected interest and the difference in the previously estimated interest and actual interest utilizing the appropriate interest rate calculated pursuant to § 154.501(d)(1) of the Federal Energy Regulatory Commission's Regulations under the Natural Gas Act. El Paso states that the projected interest was calculated on the remaining unrecovered balance of the stranded investment costs. El Paso states that the revised Washington Ranch Reservation Surcharges and resulting Monthly Billed Amounts are shown on the tendered tariff sheets.

Any person desiring to be heard or to protest any of these filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to § 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filings noted above. 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 the filings 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. 95–30203 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–75–000]

High Island Offshore System; Notice of Tariff Revision

December 6, 1995.

Take notice that on December 4, 1995, High Island Offshore System (HIOS) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 2, the following revised sheets

Rate schedule(s)	Sheet No.
T–3	Fifteenth Revised Sheet No. 73.
	Ninth Revised Sheet No. 73A.
	Seventh Revised Sheet No. 73B.
T–17	Second Revised Sheet No. 419.

HIOS states Rate Schedules T–3 and T–17 are gas transportation agreements between HIOS and Texas Gas Transmission Corporation (Texas Gas), for service authorized by the Commission at Docket No. CP75–104, et al.

HIOS further states that the revisions reflect HIOS' tariff conversion from a volumetric to a thermal based tariff effective December 1, 1995. The said conversion is in compliance with the Commission's Stipulation and Agreement under FERC Docket No. RP94–162.

HIOS has requested that the subject Tariff revision be accepted for filing and made effective on December 1, 1995.

Any person desiring to be heard or to protest said filing should file a petition to intervene or to protest with the Federal Energy Regulatory Commission, 888 First 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, 385.214). Pursuant to § 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. 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 petition 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. 95–30182 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–63–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on November 30, 1995, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 1, 1996:

Second Revised Sheet No. 1
Sixth Revised Sheet No. 5
First Revised Sheet No. 31
First Revised Sheet No. 32
First Revised Sheet No. 33
First Revised Sheet No. 34
First Revised Sheet No. 35
First Revised Sheet No. 36
First Revised Sheet No. 37
First Revised Sheet No. 38
First Revised Sheet Nos. 39–40
First Revised Sheet No. 42
First Revised Sheet No. 43
First Revised Sheet No. 44
Fourth Revised Sheet No. 45
Third Revised Sheet No. 46
Second Revised Sheet No. 47
Fourth Revised Sheet No. 48
Second Revised Sheet No. 49
Third Revised Sheet No. 50
Third Revised Sheet No. 51
First Revised Sheet No. 52
First Revised Sheet No. 53
First Revised Sheet No. 54
Third Revised Sheet No. 55
Third Revised Sheet No. 56
Fourth Revised Sheet No. 57
Original Sheet No. 57A
Original Sheet No. 57B
Third Revised Sheet No. 59
Original Sheet No. 59A
Second Revised Sheet No. 60
First Revised Sheet No. 61
First Revised Sheet No. 68
First Revised Sheet No. 70
First Revised Sheet No. 73
Second Revised Sheet No. 75
Second Revised Sheet No. 76
First Revised Sheet No. 77
First Revised Sheet No. 78
First Revised Sheet No. 79
Original Sheet No. 79A
First Revised Sheet No. 80
First Revised Sheet No. 81
First Revised Sheet No. 82
First Revised Sheet No. 86A
First Revised Sheet No. 87
Second Revised Sheet No. 90
First Revised Sheet No. 91
First Revised Sheet No. 116
Second Revised Sheet No. 117
Fourth Revised Sheet No. 118
Second Revised Sheet No. 119
First Revised Sheet No. 171
First Revised Sheet No. 172
First Revised Sheet No. 173
First Revised Sheet No. 174
First Revised Sheet No. 175
First Revised Sheet No. 176
First Revised Sheet No. 177
First Revised Sheet No. 178

First Revised Sheet Nos. 179–180
Third Revised Sheet No. 181
Second Revised Sheet No. 184
Second Revised Sheet No. 185
Second Revised Sheet No. 186
Second Revised Sheet No. 188
Original Sheet No. 188A
Second Revised Sheet No. 189

Iroquois states that the purpose of the proposed changes is to establish a new park and loan service that would be performed by Iroquois under the proposed Rate Schedule PAL. PAL service will permit Iroquois customers to utilize Iroquois' linepack on an interruptible basis as a form of short-term storage. Iroquois states that this service is similar to other services which have been approved by the Commission in recent cases. See, e.g., Pacific Gas Transmission Company, 66 FERC ¶ 61,356 (1994); 68 FERC ¶ 61,197 (1994). In addition to the new rate schedule, the filing includes (i) numerous changes to the General Terms and Conditions of Iroquois' tariff to conform it to the new park and loan service, and (ii) a pro forma park and loan service contract. Iroquois states that copies of this filing were served upon all customers and interested state regulatory agencies. Any person desiring to be heard or to protest this filing should file a motion to intervene or protect with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. 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. 95–30194 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–58–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on November 30, 1995, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective January 1, 1996:

First Revised Sheet No. 103
First Revised Sheet No. 104
First Revised Sheet No. 202
First Revised Sheet No. 203
First Revised Sheet No. 204
First Revised Sheet No. 305
First Revised Sheet No. 4101
First Revised Sheet No. 4201

Koch Gateway states that this filing is submitted as a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission (''Commission'').

Koch Gateway also states that copies of its filing are being served upon Koch Gateway customers, states commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30201 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–66–000]

Mississippi River Transmission Corporation; Notice of Filing

December 6, 1995.

Take notice that on November 30, 1995, Mississippi River Transmission Corporation (MRT) submitted for filing worksheets reflecting the calculation of Miscellaneous Revenues in accordance with Section 18 of its FERC Gas Tariff, Third Revised Volume No. 1. MRT states that during the Miscellaneous Revenue Accumulation Periods contained in the filing its cashout costs exceeded cashout revenues and that no penalty charges were collected from affiliates, resulting in no Miscellaneous Revenue Flowthrough Adjustment at this time.

MRT states that copies of its filing have been mailed to all of its affected customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. 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 available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30191 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–67–000]

Mojave Pipeline Company; Notice of Tariff Filing

December 6, 1995.

Take notice that on December 1, 1995, Mojave Pipeline Company (Mojave) tendered for filing a notice of tariff filing concerning natural gas services proposed to be rendered pursuant to Mojave's FERC Gas Tariff, First Revised Volume No. 1. Mojave is tendering revised tariff sheets for filing and acceptance to become effective January 1, 1996.

Mojave states that its proposed Tariff Sheets implement two, new ''Hub Series,'' including Authorized Loan Service under Rate Schedule ALS–1 and Authorized Parking Service under Rate Schedule APS–1, to be provided by Mojave pursuant to its blanket transportation certificate under Part 284 of the Commission's Regulations. In addition, Mojave states that its filing includes modifications to the Operating Tolerances provisions set forth in Section 20 of the General Terms and Conditions of its tariff which provide for Imbalance Trading as a further operational accommodation available to firm and interruptible shippers on Mojave's system. Mojave proposes to

change two-tiered rates for Authorized Loan Service and Authorized Parking Service consisting of a minimum $0.001/MMBtu and maximum $0.329/MMBtu ''First Day'' rate; and a minimum $0.001/MMBtu and maximum $0.1645/MMBtu ''Subsequent Day'' rate. Mojave further proposes to treat revenues derived from such services as interruptible transportation revenues for purposes of revenue allocations and crediting under Rate Schedule FT–1. Mojave purposes no separate rate for Imbalance Trading, except for a $0.02/MMBtu ''marketing fee'' which trading at the request of an affected shipper.

Mojave states that copies of the notice were served upon all of Mojave's firm and interruptible transportation customers and all interested state regulatory 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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. 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. 95–30190 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–60–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on November 30, 1995, National Fuel Gas Supply Corporation (''National'') tendered for filing as part of its FERC Gas Tariff, Thirteenth Revised Sheet No. 5, to be effective January 1, 1996.

National states that the proposed tariff sheet reflects an adjustment to recover $59,000 through National's EFT rate based on the Transportation and Storage Cost Adjustment provision set forth in Section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

National further states that copies of this compliance filing were served upon the company's jurisdictional customers and the regulatory commission's of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. 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. 95–30197 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–59–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on November 30, 1995, National Fuel Gas Supply Corporation (National), pursuant to Section 12.5 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1, tendered for filing as a limited application, pursuant to Section 4 of the Natural Gas Act, a proposed direct bill to recover unassigned gas costs effective on January 1, 1996.

National states that the proposed limited Section 4 application provides for the recovery of unassigned gas costs incurred by National from the time it restructured its services on August 1, 1993, until the time CNG Transmission Corporation, Columbia Gas Transmission Corporation, and Tennessee Gas Pipeline Company implemented their restructured services.

National further states that $184,647.89 of unassigned gas costs billed by those pipelines during that period, including interest, are to be recovered from National's customers pursuant to the allocation method set forth on Sheet Nos. 167 through 179 of National's tariff.

National further states that copies of this compliance filing were served upon the company's jurisdictional customers and the regulatory commission's of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

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, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriated 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. 95–30198 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–69–000]

Northern Natural Gas Company; Notice of Compliance Filing

December 6, 1995.

Take notice that Northern Natural Gas Company (Northern), on December 1, 1995, tendered for filing, under Section 4 of the Natural Gas Act (NGA), notice in compliance of the November 29, 1995, Order Authorizing Abandonment and Determining Jurisdictional Status of Facilities (Order), issued by the Commission in Docket No. CP95–270–000 et al. authorizing Northern Natural Gas Company (Northern) to abandon certain transmission facilities, located in Reeves, Pecos and Ward Counties in Texas, (Reeves and Ward County Facilities) by sale to Mobil Producing Texas & New Mexico Inc. (Mobil Producing).

Northern states the reason for the termination is the abandonment of the Reeves and Ward County Facilities by sale to Mobil Producing. As a result of restructuring under Order No. 636, Northern's merchant services

obligations have been terminated and Northern no longer requires any gas supplies from the production areas accessed by the Reeves and Ward County Facilities to fulfill its customer obligations.

A notice of the deletion of receipt and delivery points of the Reeves and Ward County Facilities will be posted on Northern's EBB, consistent with Northern's practice.

Copies of the filing were served upon the company's 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, 888 First Street, N.E., Washington, D.C., 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. All protest will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party 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 inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30188 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–68–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on December 1, 1995, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current Stranded Account No. 858 and Stranded Account No. 858-Reverse Auction surcharges, which are designed to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed 6th Rev Seventeenth Revised Sheet Nos. 50 and 51 and Twenty-Fifth Rev Sheet No. 53 to revise these surcharges effective January 1, 1996.

Northern states that copies of this filing were served upon the Company's 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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30189 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–54–000]

Northern Natural Gas Company; Notice of Compliance Filing

December 6, 1995.

Take notice that on November 30, 1995, Northern Natural Gas Company (Northern), tendered for filing, under Section 4 of the Natural Gas Act (NGA), notice of termination of gathering services. Northern states that on November 29, 1995, an Order Authorizing Abandonment and Determining Jurisdictional Status of Facilities (Order) was issued by the Commission in the above-referenced Docket Numbers authorizing Northern Natural Gas Company (Northern) to abandon certain pipeline, compression, dehydrating and delivery point gathering facilities, with appurtenances, located in various counties in Texas, Oklahoma, Kansas, Wyoming and Colorado (Facilities), by sale to its affiliates Enron Anadarko Gathering Corp., Enron Gathering Limited Partnership, Enron Permian Gathering Inc. and Enron Mountain Gathering Inc. (collectively referred to as ''Enron Gathering Companies'').

Northern states that this filing is being made in compliance with the Order.

Northern states the reason for the termination is the abandonment of the Facilities by sale to the Enron Gathering Companies. As a result of restructuring under Order No. 636, Northern's merchant services obligations have been terminated and Northern no longer requires any gas supplies from the Anadarko, Hugoton, Permian or Rocky Mountain production areas accessed by the Facilities to fulfill its customer obligations.

Northern states that a notice of this termination has been posted on Northern's EBB, consistent with Northern's practice. In addition, contemporaneous with this filing, written notice of the termination is being provided to each applicable individual gathering shipper.

Northern also states that copies of the filing were served upon the company's 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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to § 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party 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 inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30204 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG96–2–000]

Sea Robin Pipeline Company; Notice of Filing

December 6, 1995.

Take notice that on November 28, 1995, Sea Robin Pipeline Company (Sea Robin) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1]

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 19286–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994),

Continued

and Order Nos. 566 *et seq.*[2] Sea Robin states that it is revising its standards of conduct to incorporate the changes required by Order Nos. 566 and 566–A.

Sea Robin states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

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, 888 First Street, N.W., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before December 21, 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. 95–30208 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–64–000]

South Georgia Natural Gas Company; Notice of Revised Tariff Sheets

December 6, 1995.

Take notice that on November 30, 1995, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, to become effective January 1, 1996:

Second Revised Sheet No. 5
Second Revised Sheet No. 6

South Georgia sets forth in the filing the deferred costs of its post employment benefits (other than pensions) (''PBOPs'') incurred since January 1, 1993. These costs have arisen as a result of South Georgia's adoption of the Statement of Financial Accounting Standards No. 106, Employers Accounting for Post-Retirement Benefits Other Than Pensions (SFAS 106).

Copies of the filing were served upon South Georgia's 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, 888 First Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. 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 South Georgia's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30193 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–72–000]

Southern Natural Gas Company; Notice of Settlement Compliance Filing

December 6, 1995.

Take notice that on December 1, 1995, Southern Natural Gas Company (Southern) submitted for filing to become part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following substitute tariff sheets, to become effective January 1, 1996:

Sixth Revised Sheet No. 15A
Sixth Revised Sheet No. 17A
Second Revised Sheet No. 18A

Southern asserts that the purpose of this filing is to comply with the Commission's Order Accepting Settlement, Severing Contesting Parties, Issuing Certificates and Approving Abandonment issued on September 29, 1995, 72 FERC ¶ 61,322 (1995) (Order), which approved the Stipulation and Agreement (Settlement) filed by Southern on March 15, 1995 in Docket Nos. RP89–224–012, et al. In accordance with Paragraph 15 of Article VII of the Settlement, Southern has made this filing to recover a GSR volumetric surcharge based on an estimate of its unrecovered 1995 and 1996 GSR costs.

Under the terms of the Settlement, Southern had filed tariff sheets providing for recovery of Southern's gas supply realignment (GSR) costs from the parties supporting the Settlement through a reservation surcharge of $1.40/Mcf of Transportation Demand and a volumetric surcharge of $0.08/MMBtu, which sheets were accepted subject to conditions effective March 1, 1995, by Letter Order of the Commission dated April 4, 1995, in Docket No. RP95–209, 71 FERC ¶ 61,022 (1995). Paragraph 15 of Article VII of the Settlement provides for Southern to file on or before December 1, 1995 a GSR volumetric surcharge to be effective for the parties supporting the Settlement beginning January 1, 1996, which surcharge replaces the $1.40/Mcf and $0.08/MMBtu surcharges previously in effect. Such volumetric surcharge is to be calculated based on the sum of Southern's estimate of its unrecovered GSR costs as of December 31, 1995, plus Southern's estimate of its 1996 GSR costs (after deducting (i) Southern's share of GSR costs and (ii) any transportation revenue credits to be applied against the GSR volumetric surcharges as provided in paragraph 3 of Article VIII of the Settlement and excluding costs allocated to contesting parties not bound by the Settlement), divided by the latest 12-month actual throughput on Southern's system. The Settlement provides that the GSR volumetric surcharge calculated as described hereinabove shall be effective as of January 1, 1996, subject to an adjustment effective April 1, 1996, as provided in Paragraph 16 of Article VII of the Settlement.

Southern states that copies of the filing were served upon Southern's customers, intervening parties and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to § 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. 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 Southern's filing are on file with the Commission and are available for public

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65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed sub nom. Conoco, Inc.* v. FERC, D.C. Cir. No. 94–1745 (December 14, 1994).

inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30185 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–65–000]

Southern Natural Gas Company; Notice of Revised Tariff Sheets

December 6, 1995.

Take notice that on November 30, 1995, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to become effective January 1, 1996:

Twenty-sixth Revised Sheet No. 15
Fifth Revised Sheet No. 15a
Twenty-sixth Revised Sheet No. 17
Fifth Revised Sheet No. 17a
Fourteenth Revised Sheet No. 18
First Revised Sheet No. 18a

Section 14.2 of Southern's Tariff provides for an annual reconciliation of Southern's storage costs to reflect differences between the cost to Southern of its storage gas inventory and the amount Southern receives for such gas arising out of (i) the purchase and sale of such gas in order to resolve shipper imbalances; and (ii) the purchase and sale of gas as necessary to maintain an appropriate level of storage gas inventory for system management purposes. In the instant filing, Southern submits the rate surcharge to the transportation component of its rates under Rate Schedules FT, FT–NN, and IT resulting from the fixed and realized losses it has incurred from the purchase and sale of its storage gas inventory.

Southern states that copies of the filing were served upon Southern's 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, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. 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 Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30192 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–57–000]

Southern National Gas Company; Notice of GSR Revised Tariff Sheets

December 6, 1995.

Take notice that on November 30, 1995, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to become effective December 1, 1995.

Twenty-fourth Revised Sheet No. 15
Twenty-fourth Revised Sheet No. 17

The proposed tariff sheets reflects a slight decrease in Southern's December 1, 1995, FT and FT-NN GSR surcharge.

Southern states that the above referenced sheets will be applicable to parties who are not in support of Southern's Stipulation and Agreement filed on March 15, 1995 in Docket Nos. RP89-224, et al.

Southern states that copies of the filing were served upon Southern's intervening customers and interested state commissions.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. 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 Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc- 95-30202 Filed 12-11-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96–53–000]

Southern Natural Gas Company; Notice of GSR Cost Recovery Filing

December 6, 1995.

Take notice that on November 30, 1995, Southern Natural Gas Company (Southern) set forth its revised demand tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of January 1, 1996.

Tariff Sheets Applicable to Contesting Parties:

Twenty-Fifth Revised Sheet No. 15
Twenty-Fifth Revised Sheet No. 17
Thirteenth Revised Sheet No. 18
Seventeenth Revised Sheet No. 29
Seventeenth Revised Sheet No. 30
Seventeenth Revised Sheet No. 31

Tariff Sheets Applicable to Supporting Parties:

Fourth Revised Sheet No. 15A
Fourth Revised Sheet No. 17A

Southern sets forth in the filing its revised demand surcharges and revised interruptible rates that will be charged in connection with its recovery of GSR costs associated with the payment of price differential costs under realigned gas supply contracts or contract buyout costs associated with continuing realignment efforts as well as sales function costs during the period August 1, 1995 through October 31, 1995. These GSR costs have arisen as a direct result of customers' elections during restructuring to terminate their sales entitlements under Order No. 636. Southern submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, with the proposed effective date of October 1, 1996.

Southern states that copies of the filing were served upon Southern's 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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of filing noted above. 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 Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30205 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket Nos. RP96–73–000 and TM96–2–9–000]

Tennessee Gas Pipeline Company; Notice of Filing

December 6, 1995.

Take notice that on December 1, 1995, Tennessee Gas Pipeline Company (Tennessee) filed a transportation cost rate adjustment (TCRA) to recover costs paid for transportation on other pipelines, as reflected in Account 858, pursuant to Article XXIV of Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1 and to reflect the Gas Research Institute (GRI) Adjustment for 1996. Tennessee requests that the following tariff sheets implementing the TCRA, be accepted and allowed to go into effect on January 1, 1996:

Fourth Revised Sheet No. 20
Fifth Revised Sheet No. 21
Eighth Revised Sheet No. 21A
Thirteenth Revised Sheet No. 22
Eighth Revised Sheet No. 22A
Fourth Revised Sheet No. 23
First Revised Sheet No. 23A
Fourth Revised Sheet No. 26
Fifth Revised Sheet No. 26A
Fourth Revised Sheet No. 26B

Tennessee states that the filing will reduce its TRCA surcharge by $.14 per dth, resulting in a TCRA surcharge of $.30 per dth.

Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. Pursuant to § 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30184 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP–96–61–000]

Tennessee Gas Pipeline Company; Notice of Change Pursuant to Tariff Adjustment Provisions

December 6, 1995.

Take notice that on November 30, 1995, Tennessee Gas Pipeline Company (Tennessee) filed to revise its recovery of take-or-pay transition costs pursuant to Article XXV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee states that the purpose of the filing is to reflect the recovery of an additional $5,141,642 of new take-or-pay transition costs, including interest, incurred by Tennessee pursuant to settlements predating July 1, 1992. Tennessee states that the new costs of $5,141,642 have been allocated under an equitable sharing formula of 50% absorption and 50% recovery (41.78% demand, 8.22% volumetric) in conformance with the Stipulation and Agreement filed on June 25, 1991, as amended, in Docket No. RP86–119, *et al.*

Tennessee also submitted the following revised tariff sheet to be effective October 1, 1995:

Fifth Revised Volume No. 1
Third Revised Sheet No. 38

Tennessee states that the purpose of this tariff sheet is to terminate the previously effective demand surcharge to Alabama-Tennessee Natural Gas Company.

Tennessee states that copies of the filing have been mailed to affected customers and state regulatory commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. 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. 95–30196 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–71–000]

Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on December 1, 1995, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, revised tariff sheets to be effective January 1, 1996.

Trailblazer states that the purpose of the filing is to convert Trailblazer's tariff and rates from a volumetric (Mcf) to a thermal basis (MMBtu). The Commission's Order No. 582 issued September 28, 1995 at Docket No. RM95–3–000 requires pipelines that are on a volumetric basis to convert to a thermal basis within one year of implementation. Trailblazer states that it is therefore converting its existing volumetric rates to a thermal basis. Trailblazer states that it has used the system average Btu for the twelve months ended September 30, 1995 as the basis for converting to a thermal basis. Trailblazer states that there will be no increase in revenues under the proposed revisions since both volumes and rates are being converted.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective January 1, 1996.

Trailblazer states that copies of the filing are being mailed to Trailblazer's jurisdictional customers and interested state regulatory agencies.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to § 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. 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. 95–30186 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

Upper Peninsula Power Company; Notice of Public Scoping Meeting

[Project No. 1864–005]

December 6, 1995.

The Federal Energy Regulatory Commission (Commission) has received an application for a new license (relicense) for the existing project operated by the Upper Peninsula Power Company (UPPCo) on the Ontonagon River system in the western part of Michigan's Upper Peninsula and a small portion of neighboring Wisconsin. The project includes four developments: Bond Falls, Bergland, Cisco, and Victoria.

Upon review of the application, supplemental filings and intervenor submittals, the Commission staff concludes that, given the location and interaction of the project with other projects nearby, staff will prepare an Environmental Impact Statement (EIS) that describes and evaluates the probable impacts of the applicant's proposals and alternatives for the project.

One element of the EIS process is scoping. Scoping activities are initiated early to:

- Identify reasonable alternative operational procedures and environmental enhancement measures that should be evaluated in the EIS;
- Identify significant environmental issues related to the operation of the existing project;
- Determine the depth of analysis for issues that will be discussed in the EIS; and
- Identify resource issues that are of lesser importance and, consequently, do not require detailed analysis in the EIS.

Scoping Meetings

Commission staff will conduct three public meetings for the Bond Falls Project. All interested individuals, organizations, and agencies are invited to attend any of the planned meetings and help staff identify the scope of environmental issues that should and should not be analyzed in the Bond Falls EIS.

Two scoping meetings will be held on Wednesday, January 10, 1996, at the Best Western Porcupine Mountain Lodge in Silver, City, MI. The first meeting will be held from 1:00 PM to 4:00 PM, EST, and will be oriented toward resource agency concerns. The second meeting will be held in the evening from 7:30 PM to 10:00 PM, EST, and will be oriented toward public participation.

A third scoping meeting will be held on Thursday, January 11, 1996, at the Sylvania Visitor Center in Watersmeet, MI. The meeting will be held in the evening from 7:00 PM to 10:00 PM, EST, and will be oriented toward public participation.

Procedures

The meetings, which will be recorded by a stenographer, will become part of the formal record of the Commission's proceeding on the Bond Falls Project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to identify themselves for the record.

Concerned parties are encouraged to speak during the public meeting. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session. All speakers will be provided at least 5 minutes to present their views.

Objectives of the Scoping Meetings

At the scoping meetings, the staff will:

- Summarize the environmental issues tentatively identified for analysis in the EIS;
- Identify resource issues that 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 relicensing the project. 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 January 31, 1996. Written comments should be provided at the scoping meeting or mailed to the Commission, as follows: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., 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 benefits 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 Project No. 1864: Bond Falls

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. See 18 CFR 4.34(b).

For further information, please contact Frankie Green at (202) 501–7704.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30206 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ96–1–35–000]

West Texas Gas, Inc.; Notice of Filing

December 6, 1995.

Take notice that on December 1, 1995, West Texas Gas, Inc. (WTG) filed Seventeenth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective January 1, 1996. WNG states that this tariff sheet and the accompanying explanatory schedules constitute WTG's quarterly 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, 888 First 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. Pursuant to Section 154.210 of the Commission's regulations, all such motion or protests must be filed not later than 12 days after the date of filing noted above. 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. 95–30180 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5341–5]

Request for Comments: Information Collection Request for the 1996 Metal Products and Machinery—Phase II Survey; Agency Information Collection Activities

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the United States Environmental Protection Agency (EPA) is planning to request approval from the Office of Management and Budget (OMB) to conduct a survey of industries included in the Metal Products and Machinery (MP&M) Phase II industrial categories. These categories are motor vehicles (i.e., automotive industry activities—excluding automotive filling stations), bus & truck, railroad, office machines, household equipment, instruments (i.e., measurement and control instruments), precious metals, and ships & boats. Before submitting the proposed Information Collection Request (ICR) to OMB for review and approval, EPA is soliciting comments from the public on specific aspects of the proposed information collection as described below.

DATES: Comments and requests for information must be received by EPA no later than February 12, 1996.

ADDRESSES: The public may contact Mr. Mark Ingle at the EPA for a copy of the proposed survey instruments. Mr. Ingle may be reached by mail at U.S. EPA, Engineering and Analysis Division, Mail Code 4303, Office of Science and Technology, 401 M Street SW., Washington, DC 20460; or by telephone at (202) 260–7191. The survey instruments will be available as draft documents that include all pertinent instructions, information request questions, and definitions.

SUPPLEMENTARY INFORMATION: *Affected Entities:* Entities affected by the proposed survey include industrial activities that manufacture, maintain, or repair metal products and machinery included in the following industry categories: motor vehicles (i.e., automotive industry activities—excluding automotive filling stations), bus & truck, railroad, office machines, household equipment, instruments (i.e., measurement and control instruments), precious metals, and ships & boats. Such entities may be privately owned, or may be owned by the federal government and/or state/local governments. The survey instruments will be sent to entities in these categories, regardless of the ownership status of the parts they are manufacturing, maintaining, or repairing. The survey is intended to identify and collect data from MP&M Phase II industrial sites that generate and discharge process wastewater from unit operations associated with potential water-using industrial activities (selected examples of water-using industrial activities are electroplating, painting, machining, grinding, conversion coating).

In addition to the directly affected entities listed above, the EPA also plans to collect information related to regulatory burden that would be created by implementation of a final MP&M Phase II rule on other federal agencies (e.g., Department of Defense, Department of Energy, etc.), and the state/local governmental authorities responsible for operating the affected publicly owned treatment works. Impacts on these other government entities could include either increased costs to issue additional permits or cost savings realized from using the proposed national standards instead of local pollutant limits.

Title: 1996 Metal Products and Machinery Industry—Phase II Survey.

Abstract: The survey is intended to collect, from industry and other affected parties, the type of technical and economic information required by EPA to develop effluent limitations guidelines for the Metal Products and Machinery, Phase II industry categories described above. EPA is required under Section 304(m) of the Clean Water Act of 1987 (Federal Water Pollution Control Act, 33 U.S.C. 1314[m]) to promulgate new effluent limitations guidelines. As the result of a lawsuit by the Natural Resources Defense Council, Inc. (NRDC) and Public Citizen, Inc. (*NRDC et al.* v. *Reilly*, Civ. No. 89–2980), a Consent Decree was entered by the Court on January 31, 1992 that established the schedule for promulgating numerous effluent limitations guidelines including the MP&M Phase II rule. Thus, EPA is required under a court order stemming from the CWA to promulgate the MP&M Phase II rule. Because this survey will be issued under authority of Section 308 of the Clean Water Act of 1987 (Federal Water Pollution Control Act, U.S.C. Section 1318), responses from data collection survey instrument recipients are mandatory. The survey instruments will be mailed after OMB approves the ICR. The ICR that will be submitted by EPA to OMB will include discussion of the comments EPA has already received to date and the comments received as the result of today's announcement. The proposed survey instruments are a necessary part of the data collection portion of the effluent limitations guidelines development process. The proposed survey instruments will provide EPA with the technical and economic data required to effectively evaluate pollution control technologies and the economic achievability of the final rule. EPA will consider both technical performance and economic achievability (including cost effectiveness analyses of alternative pollution control technologies) when developing the final regulations.

Burden Statement: The proposed survey instruments were developed by improving upon the MP&M Phase I survey in such a manner as to reduce burden and improve clarity. EPA has already conducted an outreach program to industry and other government entities with the objective of minimizing reporting burden. The outreach program included distribution of draft survey instruments to industry and governmental associations, outreach to community groups, and direct presentations at meetings. The following are the industry/government associations already contacted as part of the EPA outreach program: Air Conditioning and Refrigeration Institute, American Ambulance Association, American Automotive Manufacturers Association, American Bus Association, American Electronics Association, American Electroplaters and Surface Finishers Society, American Furniture Manufacturing Association, American Public Transit Association, American Short Line Railroad Association, American Trucking Association,

American Watch Association, Association Council of the National Association of Manufacturers, Association for the Advancement of Medical Instruments, Association of American Railroads, Association of International Automotive Manufacturers, Association of Home Appliance Manufacturers, Association of Metropolitan Sewerage Agencies, Automotive Service Association, Citizens for a Better Environment, Clock Manufacturers and Marketing Association, Community Transportation Association of America, Computer and Communication Industry Association, Dental Manufacturers of America, Electronic Industries Association, Environmental Defense Fund, Friends of the Earth, Gold & Silver Institute, Health Industry Manufacturers Association, Information Technology Industry Council, International Precious Metals Institute, Manufacturing Jewelers & Silversmiths of America, Motor & Equipment Manufacturers Association, National Coalition of Advanced Manufacturing, National Association of Metal Finishers, National Shipbuilding Research Program, Natural Resources Defense Council, Railway Progress Institute, Scientific Apparatus Manufacturers Association, Silver Coalition, Silver Users Association, Sierra Club, Sporting Goods Manufacturers Association, The Jewelry Manufacturers Guild, Truck Renting and Leasing Association, United Bus Owners of America, United Auto Workers Union—Health and Safety Department. Based on comments already received as the result of these outreach activities, the proposed MP&M Phase II industry survey instruments will be made up of a brief screener and a more detailed questionnaire. This two-phase survey will allow burden on industrial facilities to be related to process wastewater flow and pollutant discharges such that facilities discharging less than 1,000,000 gallons per year of process wastewater will have less reporting burden than facilities discharging larger volumes of process wastewater. Finally, EPA will maintain a temporary, no-charge telephone number that survey recipients may call to obtain assistance in completing the data collection surveys. EPA believes that the no-charge telephone number will greatly reduce burden by helping recipients to answer specific questions within the context of their individual operations. To minimize burden on federal, state, and local governments that may operate MP&M-Phase-II-type facilities, survey instruments for these specific government entities that reflect the unique nature of government economic accounting have been developed. Similar survey instruments that discuss potential burden issues on other government entities such as wastewater treatment plant operators have also been developed. Current burden estimates, based on an analysis of the MP&M Phase I survey responses and comments provided by trade associations on the proposed MP&M Phase II survey instruments are based on the type and number of surveys that will be distributed. The following summarizes these burden estimates:

1. The total estimated burden on industry to respond to the data collection surveys is estimated to be 59,540 hours. This burden is based on industry completing approximately 5,000 surveys. Of these 5,000 surveys, 4,620 will be the simple, one-page screeners that are estimated to require only one hour to complete (i.e., the average time required by all recipients to complete the survey will be one hour; with many recipients requiring only a few minutes to complete the screener, while large firms may require a few hours to collect the required data). The remaining 380 recipients (i.e., the larger industrial wastewater dischargers) will receive larger, more comprehensive surveys that will take up to approximately 154 hours to complete. The burden estimates for these larger facilities are based on approximately 100 sites requiring approximately 118 hours to complete the survey and 280 of the largest discharging facilities requiring 154 hours to complete the survey.

2. The total burden estimate on municipalities, DoD, DoE, and other government entities is expected to be 3,400 hours with approximately 50 government entities having to complete surveys. EPA estimates that these other government entities will require an average of 68 hours to complete the surveys (i.e., the amount of time municipalities will require to complete the surveys will range from 1 hour to 136 hours with 68 hours being an average estimated amount of time).

3. The total burden estimate on POTWs and other entities that will implement the MP&M Phase II rules is estimated to be 5,500 hours with approximately 250 POTWs completing the data collection surveys and each respondent requiring an average of 22 hours to complete the survey. Estimates for the time required to complete these surveys ranges from 4 to 40 hours for each survey respondent.

Thus, the total national burden estimate for all parts of this data collection is 68,440 hours.

Given that EPA needs to collect data regarding both costs and benefits associated with environmental rules, EPA is interested in any suggestions industry or the public may have regarding means of reducing the data collection burden. Any burden reduction suggestions must consider the need to collect information on the pollutants being discharged by the industries, the processes that generate the pollutants, the economic achievability of the proposed regulations, and the economic benefits derived from reducing pollution in our oceans, lakes, rivers, and streams. Please send any suggestions for reducing burden to Mr. Mark Ingle, U.S. EPA, Engineering and Analysis Division, Mail Code 4303, Office of Science and Technology, 401 M Street, S.W., Washington, DC 20460.

Dated: November 14, 1995.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 95–30258 Filed 12–11–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5344–5]

XL Community Pilot Program

SUMMARY: This document responds to President Clinton's March 16, 1995 initiatives listed in the report, *Reinventing Environmental Regulation*. In the report, EPA committed to implementing pilot programs to develop innovative alternatives to the current environmental management system. These programs will give a limited number of regulated entities and communities an opportunity to demonstrate excellence and leadership in environmental protection. These reinvention pilot programs, entitled Project XL, will focus on four areas: facilities, industry sectors, federal government agencies, and communities. This Federal Register Notice addresses the XL Community Pilot Program and is a solicitation for pilot project proposals and comments on all aspects of the XL Community Pilot Program. An earlier Federal Register Notice published on May 23, 1995 (60 FR 27282 discusses the XL pilot programs for facilities, industry sectors, and Federal government agencies.

Today, EPA is announcing the XL Community Pilot Program to join with local governments, communities, states, federal recognized tribes, and others to conduct a limited number of pilot projects that demonstrate and assess the merits of community-designed and directed strategies for achieving greater environmental quality and sustainable

economic goals. These pilots will build on the experience gained in the Administration's Empowerment Zone and Ecosystem Management Initiatives. Both of these efforts encourage participants to achieve their community's economic development and environmental quality goals by using community-based planning to mobilize the resources necessary to sustain economic and environmental health. XL Community pilots will integrate the mutually supportive goals of economic development and environmental protection at the community level utilizing full public participation.

In the XL Communities Pilot Program EPA will assist local communities to achieve superior environmental performance. Through the XL Communities Pilot Program, EPA will offer assistance in one or more areas, depending on the nature of the proposed project—flexiblility in the implementation of environmental regulations, technical support, coordination of federal programs, the identification of government resources, and other type of support identified on a case by case basis—in exchange for a commitment on the part of the community entity to go beyond the environmental results of compliance and achieve greater environmental quality that would have been realized under traditional approaches.

In a separate reinvention effort, also included in the initiatives announced by the President on March 16, 1995, the Agency's Office of Enforcement and Compliance Assurance (OECA) is developing an enforcement policy for communities whose facilities are not in compliance with environmental regulations and are willing to enter into compliance agreements to make progress towards meeting environmental standards. These agreements may extend across more than one environmental program and would recognize the need for flexibility in approach or timing. (For information on this policy contact Kenneth Harmon; Office of Enforcement and Compliance Assurance; (202) 564–7049.)

This document includes: background information on the XL Communities Pilot Program; a description of the Program; its relationship to other regulatory reinvention activities; the criteria, process, and timing for the selection of projects; and an invitation for public comment.

This Notice invites proposals from local governments, community groups, and other public and private entities interested in initiating pilot programs.

Dated: December 6, 1995.

Leonard Fleckenstein,

Office of Sustainable Ecosystems and Communities.

[FR Doc. 95–30259 Filed 12–11–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5343–6]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act; In Re Chicago Industrial Waste Haulers, Alsip, IL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (''CERCLA''), as amended, notice is hereby given of a proposed administrative settlement concerning the recovery of past response cost at the Chicago Industrial Waste Haulers Site (''CIWH'') in Alsip, Illinois (the ''Site''). This settlement requires respondent to pay specified amounts of money to reimburse the U.S. Environmental Protection Agency for past response costs incurred at the Site.

DATES: Comments must be submitted on or before January 11, 1996.

ADDRESSES: Comments should be addressed to the Docket Clerk, Mail Code MFA–10J, U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, and should refer to: In Re Chicago Industrial Waste Haulers, Alsip, Illinois, U.S. EPA Docket No. V–W–96–C–324.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, U.S. Environmental Protection Agency, Assistant Regional Counsel (C–29A), 77 W. Jackson Blvd., Chicago, Illinois 60604, (312) 886–5825.

SUPPLEMENTARY INFORMATION: The party listed below has executed binding certification of its consent to participate in the settlement.

The Respondent will pay approximately $75,000.000 in settlement payments for response costs related to the CIWH Site. Should CIWH miss a payment, the entire balance would become immediately due and owing.

Respondent: Chicago Industrial Waste Haulers.

The Environmental Protection Agency will receive written comments relating to this settlement for thirty days from the date of publication of this Notice.

A copy of the settlement agreement and additional background information relating to the settlement are available for review and may be obtained in person or by mail from Nancy-Ellen Zusman, Assistant Regional Counsel (C–29A), 77 W. Jackson Blvd., Chicago, Illinois 60604.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*

William E. Muno,

Director, Superfund Division.

[FR Doc. 95–30105 Filed 12–11–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1074–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1074–DR), dated October 27, 1995, and related determinations.

EFFECTIVE DATE: November 29, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael J. Polny of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Glenn C. Woodard as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 95–30226 Filed 12–11–95; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1074–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1074–DR), dated October 27, 1995, and related determinations.

EFFECTIVE DATE: December 1, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 20, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–30227 Filed 12–11–95; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1069–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1069–DR), dated October 4, 1995, and related determinations.

EFFECTIVE DATE: November 29, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael J. Polny of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Glenn C. Woodard as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 95–30228 Filed 12–11–95; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Seiwa America, Inc., 5500 Frantz Road, Suite 117, Dublin OH 43017, Officers: Kazunari Tada, President, Seigo Iwafune, Executive Vice President

Honesty Trade and Business Around The World, 7400 Harwin Drive, Suite 112, Houston, TX 77036, Tarek A. Morsi, Sole Proprietor

Overseas Trading & Shipping Co., Inc., 2719 Pittman Drive, Silver Spring, MD 20910, Officers: Mohamed Ali Taha, President, Richard Paul Stevens, Treasurer/Secretary

Independent Brokerage, L.L.C., 510 Plaza Drive #2755, Atlanta, GA 30349, Officers: Leslie M. Dodgen, President, Robin T. Craig, Vice President

King Senderax, Incorporated dba, King Senderax Cargo, 1520 North Gower Street, #100, Los Angeles, CA 90028, Officers: Anupam Biswas, C.E.O., Norbert Giessmann, Vice President

Robinson Expediters, Inc., 9675 NW 13th Street, Miami, FL 33172, Officers: Jorge Robinson, President, Ebba Robinson, Vice President

Cibao Cargo/Cibao Furniture, Inc., 14 East 167 Street, Bronx, NY 10452, Officer: Jose Perdomo, President

Marimar Forwarding, Inc., 9604 N.W. 13th Street, Miami, FL 33172, Officer: Maria A. Morales, President

Lynx International, Inc., 1942 Shawnee Road, Eagan, MN 55122, Officers: Joel N. Meyer, President, Mark D. Spurbeck, Vice President

Wesley S. Koerber, 4242 Harford Creamery Road, White Hall, MD 21161, Sole Proprietor

Glory Express, Inc., 460 Carson Plaza Drive, #119, Carson, CA 90746, Officers: Kuk Yul Cho, President

VIP Transport, Inc., 2703 Wardlow Road, Corona, CA 91720, Officers: Danny C. Griffins, President

Dated: December 6, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–30126 Filed 12–11–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/20/95 AND 12/01/95

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Catholic Healthcare West, Memorial Health Systems, Inc., Bakersfield Memorial Hospital and Memorial Center, Inc	95–1553	11/20/95
Bayer AG, Hoechst AG, Hoechst Celanese Corporation	96–0288	11/20/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/20/95 AND 12/01/95—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
McKesson Corporation, Ogden Corporation, Ogden BioServices Corporation	96–0315	11/20/95
John W. Kluge, Padang Securities Limited, Cal-Almond, Inc	96–0319	11/20/95
Ronald O. Perelman, Lomas Financial Corporation (Debtor-in-Possession), Lomas Mortgage USA, Inc	96–0322	11/20/95
Republic Waste Industries, Inc., Lee G. Brown, Garbage Disposal Service, Inc	96–0271	11/22/95
Michael J. Cudahy, E for M Corporation, E for M Corporation	96–0294	11/22/95
Quantum Realty Trust, Quantum Realty Trust, BHL Limited Partnership	96–0299	11/22/95
National Grange Mutual Insurance Company, The Mutual Assurance Company, The Mutual Assurance Company	96–0304	11/22/95
Browning-Ferris Industries, Inc., MacMillan Bloedel Limited (a British Columbia Corp), Fibres International, Inc	96–0316	11/22/95
NRE Holdings, Inc., Joseph J. Naparlo, C&N Dining, Inc	96–0347	11/22/95
SoftKey International Inc., Minnesota Educational Computing Corporation, Minnesota Educational Computing Corporation	96–0249	11/24/95
Finaxa, The Restaurant Company, The Restaurant Company	95–0146	11/25/95
Mellon Bank Corporation, KeyCorp, KeyCorp	96–0245	11/27/95
El Paso Natural Gas Company, Charles Schusterman, Premier Gas Company	96–0255	11/27/95
Mr. Joe Lewis Allbritton, Price Communications Corporation, WHTM–TV, Inc	96–0318	11/27/95
Peter Munk, Occidental Petroleum Corporation, Occidental C.O.B. Co., Inc	96–0320	11/27/95
Occidental Petroleum Corporation, Peter Munk (a Canadian resident), Clark USA, Inc	96–0321	11/27/95
Consolidated Electrical Distributors, Inc., Price Brothers Company, Utility Systems Division of Price Brothers Company	96–0330	11/27/95
Interim Services Inc., Computer Power Group, Ltd., CP Systems, Inc. and Computer Power (UK) Limited	96–0335	11/27/95
Mrs. Mugdha N. Gadgil, Castle Energy Corporation, Indian Refining Company, Indian Refining I Limited Part	96–0341	11/27/95
AT&T Corp., Mobil Corporation, Mobil Mining and Minerals Company	96–0343	11/27/95
Republic Waste Industries, Inc., George W. Fennell, Fennell Container Co., Inc., Fennell Waste Systems, Inc	96–0350	11/27/95
George W. Fennell, Republic Waste Industries, Inc., Republic Waste Industries, Inc	96–0351	11/27/95
Republic Waste Industries, Inc., Robert C. and Jannette T. Duncan, J.C. Duncan Company, Inc., Grand Prairie Disposal Company	96–0352	11/27/95
Robert C. & Jannette T. Duncan, Republic Waste Industries, Inc., Republic Waste Industries, Inc	96–0353	11/27/95
United TransNet, Inc., CDG Holding Corp., CDG Holding Corp	96–0355	11/27/95
United TransNet, Inc., Chee B. Louie, Tricor America, Inc	96–0356	11/27/95
Quality Dining, Inc., Brinker International, Inc., Brinker International, Inc	96–0359	11/27/95
H Group Holding, Inc., Presidio Capital Corp., Northpark Associates Limited Partnership	96–0362	11/27/95
Sprint Corporation, Sprint Corporation, Centel Cellular Company of Fort Walton Beach Limited Partners	96–0364	11/27/95
Gordon + Morris Investment Partnership, L.P., Thomas H. Lee Equity Partners, L.P., Lee-CST Holding Corp	96–0366	11/27/95
Medaphis Corporation, MedQuist, Inc., MedQuist Receivables Management Company	96–0367	11/27/95
CGW Southeast Partners I, L.P., Asahi Glass Co., Ltd. (a Japanese Company), Cataphote Inc	96–0376	11/27/95
Employers Self Insurers Fund, Summit Holding Corporation, Summit Holding Corporation	96–0389	11/27/95
Carlos M. and Rosa R. de la Cruz, Bacardi Limited (a Bermuda Company), Coca-Cola Puerto Rico Bottlers & B&C Bever. Distrb. N.V	96–0390	11/27/95
Capital Area Health Foundation, Polyclinic Health System, Inc., Polyclinic Health System, Inc	95–2357	11/28/95
The Multicare Companies, Inc., Glenmark Holding Company Limited Partnership, Glenmark Associates, Inc	96–0281	11/28/95
CSX Corporation, Continental Grain Company, ContiCarriers and Terminals, Inc	96–0282	11/28/95
All American Semiconductor, Inc., Added Value Electronics Distribution, Inc., Added Value Electronics Distribution, Inc	96–0331	11/28/95
First Union Corporation, NOVA Holdings, Inc., NOVA Holdings, Inc	96–0368	11/28/95
First Fidelity Bancorporation, NOVA Holdings, Inc., NOVA Holdings, Inc	96–0369	11/28/95
WorldCom, Inc., NOVA Holdings, Inc., NOVA Holdings, Inc	96–0370	11/28/95
Warburg, Pincus Investors, L.P., NOVA Holdings, Inc., NOVA Holdings, Inc	96–0375	11/28/95
Rexam plc (a British Corporation), Emson Research, Inc., The Mark Industries, Incorporated	96–0379	11/28/95
Advanced Micro Devices, Inc., NexGen, Inc., NexGen, Inc	96–0264	11/29/95
Thomas & Betts Corporation, Equity Holdings Limited, Amerace Corporation	96–0329	11/29/95
Blue Cross and Blue Shield of Tennessee, Memphis Hospital Service & Surgical Association, Inc., Memphis Hospital Service & Surgical Association, Inc	96–0387	11/29/95
Anadarko Petroleum Corporation, Royal Dutch Petroleum Company, Shell Western E&P Inc	96–0393	11/29/95
Illinois Tool Works Inc., John Legat, Waltraud Legat, Trans Tech America Inc	96–0247	11/30/95
Real Estate Operations, Inc., The Prudential Insurance Company of America, The Prudential Insurance Company of America	96–0385	11/30/95
Richey Electronics, Inc., Electrical Distribution Acquisition Company, Electrical Distribution Acquisition Company	96–0388	11/30/95
Winton M. Blount, Noel Group, Inc., Simmons Outdoor Corporation	96–0395	11/30/95
United/Harvey Holdings, L.P., United/Harvey Holdings, L.P., Harvey Hotel Company, L.P	96–0397	11/30/95
Time Warner Inc., Meredith Corporation, Meredith Corporation	96–0444	11/30/95
CORE Industries Inc., CMB Industries, CMB Industries	96–0292	12/01/95
Western Wireless Corporation, Bachtel Cellular Liquidity, L.P., Great Plains Cellular, L.P	96–0307	12/01/95
Gordon S. Lang, Avery Dennison Corporation, Avery Dennison Corporation	96–0314	12/01/95
John J. and Janet L. Melk, Republic Waste Industries, Inc., Republic Waste Industries, Inc	96–0358	12/01/95
Amcor, Ltd. (an Australian Corporation), The ANLE Paper Company, The ANLE Paper Company	96–0360	12/01/95
Dennis Mehiel, Chesapeake Corporation, Chesapeake Consumer Products Company	96–0363	12/01/95
Matsushita Electrical Industrial Co., Ltd., General Motors Corporation, Hughes-JVC Technology Corporation	96–0403	12/01/95
MIDCOM Communications Inc., Cherry Communications Incorporated, Cherry Communications Incorporated	96–0407	12/01/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/20/95 AND 12/01/95—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
FrontierVision Partners, L.P., Lee A. Bertman, C4 Media Cable Southeast, L.P. and County Cable Co., L.P	96–0408	12/01/95
ITT Corporation, John Hancock Mutual Life Insurance Company, Russell Hotel Joint Venture Partnership	96–0427	12/01/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commssion.

Donald S. Clark,

Secretary.

[FR Doc. 95–30214 Filed 12–11–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 952–3391]

The Dannon Company, Inc.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the Tarrytown, NY-based frozen yogurt manufacturer from misrepresenting the fat, calories, saturated fat, or cholesterol in any of its frozen yogurt products. The consent agreement settles allegations stemming from nutritional claims made in advertisements for Dannon's line of Pure Indulgence frozen yogurt.

DATES: Comments must be received on or before February 12, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St., and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Justin Dingfelder, Bureau of Consumer Protection, Federal Trade Commission, S–4631, 6th Street & Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3017.

Peter Metrinko, Bureau of Consumer Protection, Federal Trade Commission, S–4624, 6th Street & Pennsylvania Ave., N.W., Washington, DC 20580, (202) 326–2104.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

United States of America Before Federal Trade Commission

In the Matter of The Dannon Company, Inc., a corporation .

[File No. 952–3391.]

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of The Dannon Company, Inc., hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an Order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between The Dannon Company, Inc., by this duly authorized officer and attorneys, and counsel for the Federal Trade Commission, that:

1. Proposed respondent The Dannon Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 120 White Plains Road, Tarrytown, NY 10591.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 234 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (1) Issue its complaint corresponding in form and substance with the draft complaint attached hereto and its decision containing the following Order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. Delivery by the Postal Service of the complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement

may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed complaint and Order contemplated hereby. It understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that respondent The Dannon Company, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacture, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any frozen food product, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of fat, saturated fat, cholesterol or calories in any such product. If any representation covered by this Part either directly or by implication conveys any nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration, compliance with this Part shall be governed by the qualifying amount for such defined claim as set forth in that regulation.

II

Nothing in this Order shall prohibit respondent from making any representation that is specifically permitted in labeling for any such product in regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

III

It is further ordered that respondent, its successors and assigns, shall pay to the Federal Trade Commission, by cashier's check or certified check made payable to the U.S. Treasury and delivered to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Ave., NW, Washington, DC 20580, the sum of $150,000. Respondent shall make this payment on or before the tenth day following the date of entry of this Order. In the event of any default on any obligation to make payment under this section, interest, computed pursuant to 28 U.S.C. 1961(a), shall accrue from the date of default to the date of payment.

IV

It is further ordered that, for three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All labeling, packaging, advertisements and promotional materials setting forth any representation covered by this Order;

2. All materials that were relied upon to substantiate any representation covered by this Order; and

3. All test reports, studies, surveys, demonstrations or other evidence in its possession or control, that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation, including complaints from consumers.

V

It is further ordered that respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

VI

It is further ordered that respondent shall, within thirty days after service of this Order, distribute a copy of this Order to each of its operating divisions, and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertisements, promotional materials, product labels or other materials covered by this Order.

VII

It is further ordered that respondent shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied or intends to comply with this Order.

VIII

It is further ordered that this order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Benjamin I. Berman,

Acting Secretary.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from The Dannon Co., Inc., (''respondent'' or ''Dannon'').

The proposed consent order has been placed on the public record for sixty (60) days for receipt of public comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns claims made by Dannon in its advertising for Pure Indulgence frozen yogurt.

The Commission's complaint in this matter charges Dannon with engaging in deceptive and unfair acts or practices in connection with the advertising of Pure Indulgence. The complaint alleges that respondents manufactured, advertised, offered for sale, sold or distributed a frozen yogurt sold under the name ''Pure Indulgence,'' which it represented

was low in fat, low in calories, and lower in fat than ice cream. At the serving size for frozen yogurt commonly consumed, Pure Indulgence was not low in fat or low in calories. Further, Pure Indulgence was not lower in fat than many ice creams.

The Commission's complaint alleges that the above representations for certain flavors of Pure Indulgence, at the time the advertising was disseminated, were false and misleading.

The consent order contains provisions designed to remedy the violations charged and to prevent Dannon from engaging in similar deceptive and unfair acts in the future.

Part I of the Commission's order prohibits respondent, in connection with the manufacture, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any frozen food product, from misrepresenting, in any manner, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of fat, saturated fat, cholesterol or calories in any such product. However, if any representation covered by this Part either directly or by implication conveys any nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration, compliance with this Part shall be governed by the qualifying amount for such defined claim as set forth in that regulation.

Part II of the order provides that nothing in the order shall prohibit respondent from making any representation that is specifically permitted in labeling for any such product in regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

Under the terms of Part III of the order, respondents shall pay $150,000.00 to the U.S. Treasury.

Part IV of the order requires Dannon to maintain copies of all materials relating to advertisements covered by the order and all documents relating to substantiation of advertising claims covered by the order.

Part V requires Dannon to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VI requires Dannon to distribute copies of the order to certain company officials and employees and certain other representatives and agents of Dannon.

Part VII requires Dannon to file with the Commission a report detailing compliance with the order.

Part VIII provides for termination of the order twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify any of their terms.

[FR Doc. 95–30215 Filed 12–11–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 942–3012]

Safe Brands Corporation, Warren Distribution, Inc. and ARCO Chemical Company; Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit Safe Brands, the manufacturer of Sierra antifreeze, Warren Distribution, its parent company, and ARCO, the supplier of the principal ingredient in Sierra antifreeze, from making unsubstantiated claims about the safety and environmental benefits of Sierra. They would also be required to put a statement on Sierra containers cautioning consumers that it may be harmful if swallowed. The Commission alleged that the companies had claimed, without adequate substantiation, that Sierra is absolutely safe for people and pets, that Sierra is generally safer for the environment than conventional antifreezes because it is biodegradable, and that Sierra and its container are recycled.

DATES: Comments must be received on or before February 12, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston, Bureau of Consumer Protection, Federal Trade Commission, S–4002, 6th Street & Pennsylvania Ave., NW., Washington, DC 20580 (202) 326–3153; Michael Dershowitz, Bureau of Consumer Protection, Federal Trade Commission, S–4002, 6th Street & Pennsylvania Ave., NW., Washington, DC 20580 (202) 326–3158.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

United States of America Before Federal Trade Commission

In the Matter of Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO Chemical Company, a corporation.

[File No. 942 3012]

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of proposed respondents Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO Chemical Company, a corporation, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Safe Brands Corporation, Warren Distribution, Inc., and ARCO Chemical Company, by their duly authorized officers, and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Safe Brands Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska. It is a wholly-owned subsidiary of proposed respondent Warren Distribution, Inc. Proposed respondent Warren Distribution, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska. Proposed respondents Safe Brands Corporation and Warren Distribution, Inc. have their principal offices or places of business at 727 South 13th Street, Omaha, Nebraska 68102.

Proposed respondent ARCO Cemical Company is a corporation organized, existing and doing business under and by virtue of the law of the State of Delaware with its principal office or place of business at 3801 West Chester Pike, Newtown Square, Pennsylvania 19073.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and education, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist in deposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For purposes of this Order, the following definition shall apply:

''Competent and reliable scientific evidence'' means tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I

It is ordered that respondents, Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO Chemical Company, a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any antifreeze, coolant, or deicer product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any such product will not harm the environment, is less harmful to the environment than other products, or offers any environmental benefit, unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

II

It is further ordered that respondents, Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO Chemical Company, a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any antifreeze, coolant, or deicer product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the safety or relative safety of such product for humans or animals unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation.

III

It is further ordered that respondents, Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO Chemical Company, a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, offering for sale, sale, or distribution of any propylene glycol-based antifreeze or coolant product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, shall disclose on the front of the container of all such products the following:

''See Back Panel for CAUTIONARY INFORMATION''

and shall disclose on the back of the container of all such products the following:

''CAUTIONARY INFORMATION: This Product MAY BE HARMFUL IF SWALLOWED. STORE SAFELY AWAY FROM CHILDREN AND PETS. Do not store in open or unlabeled containers.''

Each disclosure shall be in a conspicuous and prominent place on the container, in conspicuous and legible type in contrast by typography, layout, or color with all other printed material on the container. The disclosure on the back of the container shall be surrounded by a one (1) point rule. The disclosure on the front of the container and the first two sentences of the disclosure on the back of the container shall be in type at least as large as the largest print type on the back of the container, but, in any case,

no smaller than ten (10) point type. The words ''CAUTIONARY INFORMATION'' on the front and back of the container shall be in bold type. The last sentence of the disclosure on the back of the container shall be in type at least as large as the type in which the majority of the printed material on the back of the container is printed.

The back of the container shall also contain the following statement, printed in type at least as large as the type in which the majority of the printed material on the back of the container is printed:

''Clean up any leaks or spills.''

IV

It is further ordered that respondents, Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO Chemical Company, a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any antifreeze, coolant, or deicer product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or my implication, the level of vehicular engine protection provided by any such product, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation.

V

It is further ordered that respondents, Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO Chemical Company, a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any antifreeze, coolant, or deicer product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the extent to which:

A. Any such product or its package is capable of being recycled; or,

B. Recycling collection programs for such product or its package are available.

VI

It is further ordered that the provisions of this Order shall not apply to any label or labeling printed prior to the date of service of this Order and shipped by respondents to distributors or retailers prior to one hundred (100) days after the date of service of this Order.

VII

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VIII

It is further ordered that respondents shall distribute a copy of this Order to each of their operating divisions and to each of their officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

IX

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporations such as a dissolution, assigned, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporations which may affect compliance obligations under this Order.

This Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

It is further ordered that respondents shall, within sixty (60) days later service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Benjamin I. Berman,

Acting Secretary.

Analysis of Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Safe Brands Corporation, Warren Distribution, Inc., and ARCO Chemical Company.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the agreement's proposed order.

This matter concerns the labeling and advertising of Sierra Antifreeze-Coolant (''Sierra''), a propylene glycol-based automobile antifreeze marketed by Safe Brands Corporation and its parent company, Warren Distribution, Inc. The Commission's complaint in this matter alleges that ARCO Chemical Company sold the propylene glycol (''PG'') used in the manufacture of Sierra and provided information for, participated in the preparation of, paid for, and reviewed and/or approved Sierra advertising and promotional materials. The complaint also alleges that ARCO Chemical itself disseminated advertisements under its own name for PG antifreeze generally.

The Commission's complaint charges that the respondents claimed in advertising and promotional materials

that compared to conventional, ethylene glycol-based antifreeze (''EG antifreeze''), Sierra and other PG antifreezes are safer for the environment generally. According to the complaint, although respondents had a reasonable basis that Sierra and other PG antifreezes, compared to EG antifreeze, are less toxic, and therefore safer for that part of the environment that is composed of humans, pets, and wildlife that may accidentally ingest it, respondents did not substantiate their claim that Sierra and other PG antifreezes are safer for the environment generally (*e.g.*, the air, water, soil, plants, or aquatic life). The complaint also alleges that respondents represented without adequate substantiation that Sierra and other PG antifreezes are absolutely safe for the environment after ordinary use and that because Sierra and other PG antifreezes are biodegradable, they are absolutely safe for the environment after ordinary use. The complaint states that one reason these claims are unsubstantiated is that used antifreeze, whether EG or PG-based, may contain lead and/or other substances that are hazardous to the environment.

Furthermore, the complaint charges that the respondents represented without adequate substantiation that Sierra and other PG antifreezes are absolutely safe for people and pets. The complaint also charges that respondents claimed without adequate substantiation that because Sierra and other PG antifreezes contain PG—an ingredient designated by the Food and Drug Administration as ''generally recognized as safe'' and which is found in foods, drugs, cosmetics, and pet foods—they are absolutely safe for people and pets. According to the complaint, although respondents had a reasonable basis that Sierra and other PG antifreezes are safer than EG antifreeze, respondents lacked substantiation for the claim that they are absolutely safe.

In addition, the complaint alleges that the respondents made the unsubstantiated representation that compared to conventional, EG antifreeze, Sierra provides superior automotive protection from freezing temperatures, boil-overs, and corrosion.

Finally, the complaint charges that the respondents falsely and without adequate substantiation represented that Sierra antifreeze and its plastic container are recyclable. In fact, the complaint alleges, while both Sierra and its container are capable of being recycled, the vast majority of consumers cannot recycle either of them because there are few collection facilities nationwide that accept PG antifreeze or high-density polyethylene plastic antifreeze containers for recycling.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires the respondents to cease and desist from representing that any antifreeze, coolant, or deicer product will not harm the environment, is less harmful to the environment than other products, or offers any environmental benefit, unless the respondents possess competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

Part II of the proposed order requires the respondents to cease and desist from making any representation about the safety or relative safety for humans or animals of any antifreeze, coolant, or deicer product, unless they possess competent and reliable scientific evidence that substantiates the representation.

Part III of the proposed order requires that the respondents print the following two statements on the back of containers of all PG antifreeze or coolant products: ''CAUTIONARY INFORMATION: This Product MAY BE HARMFUL IF SWALLOWED. STORE SAFELY AWAY FROM CHILDREN AND PETS. Do not store in open or unlabeled containers'' and ''Clean up any leaks or spills.'' On the front of all such containers the following must be disclosed: ''See Back Panel for CAUTIONARY INFORMATION.'' Part III also specifies the manner in which these disclosures must be made.

Part IV of the proposed order requires the respondents to cease and desist from making any representation about the level of vehicular engine protection provided by any antifreeze, coolant, or deicer product, unless the respondents possess competent and reliable scientific evidence that substantiates the representation.

Part V of the proposed order requires that the respondents cease and desist from misrepresenting the extent to which any antifreeze, coolant, or deicer product or its package is capable of being recycled or the extent to which recycling collection programs are available.

Part VI of the proposed order provides that, for up to 100 days after the service of the order, respondents may continue to ship products from existing stock in containers with nonconforming labeling.

The proposed order also requires the respondents to maintain materials relied upon to substantiate the claims covered by the order, to distribute copies of the order to certain company officials, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order. The order also contains a provision stating that it will terminate after twenty (20) years absent the filing of a complaint against respondents alleging a violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

[FR Doc. 95–30216 Filed 12–11–95 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Cancellation of December 14 meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the previously announced December 14 meeting of the Federal Accounting Standards Advisory Board has been canceled. Agenda issues planned for the December meeting will be discussed at the January 25 meeting, which will be duly announced in a later edition of the Federal Register.

FOR FURTHER INFORMATION CONTACT:

Ronald S. Young, Executive Staff Director, 750 First St., N.E., Room 1001, Washington, D.C. 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: December 7, 1995.

Ronald S. Young,

Executive Director.

[FR Doc. 95–30245 Filed 12–11–95; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0346]

Akorn, Inc., et al.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of five new animal drug applications (NADA's). Three NADA's are held by Akorn, Inc., and one each is held by Parke-Davis, Division of Warner-Lambert Co., and Veterinary Research and Development, Inc. The firms notified the agency in writing that the animal drug products were no longer marketed and requested that approval of the applications be withdrawn. In a final rule published elsewhere in this issue of the Federal Register, FDA is amending the regulations by removing the entries which reflect approval of the NADA's.

EFFECTIVE DATE: December 22, 1995.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0159.

SUPPLEMENTARY INFORMATION: The sponsors of the applications listed in the table in this document have informed FDA that these animal drug products are no longer marketed and have requested that FDA withdraw approval of the applications.

NADA No.	Drug name	Sponsor name and address
6–032	Diphenylhydantoin sodium capsules	Parke-Davis, Division of Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950
12–444	Sterile prednisolone suspension	Akorn, Inc., 100 Akorn Dr., Abita Springs, LA 70420
94–978	Phenylbutazone injection	Do.
110–046	Dexamethasone injection	Do.
140–904	Copper disodium edetate injection	Veterinary Research and Development, Inc., P.O. Box 1299, Truckee, CA 95734

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 6–032, 12–444, 94–978, 110–046, and 140–904 and all supplements and amendments thereto is hereby withdrawn, effective December 22, 1995.

In a final rule published elsewhere in this issue of the Federal Register, FDA is removing 21 CFR 520.704, 522.514, and 522.1880, and amending 21 CFR 510.600(c), 522.540, and 522.1720 to reflect the withdrawal of approval of the above mentioned NADA's.

Dated: December 4, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–30122 Filed 12–11–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95D–0370]

Revised Compliance Policy Guides (CPG's); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revision of two CPG's. The CPG's are being revised because they contain outdated information and misprinted regulatory guidance. This action is being taken to ensure that FDA's CPG's accurately reflect FDA policy and to limit confusion.

DATES: Effective December 12, 1995. Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of CPG Sec. 545.400 ''Pottery (Ceramics); Imported and Domestic—Cadmium Contamination'' (CPG 7117.06), and CPG Sec. 545.450 ''Pottery (Ceramics); Imported and Domestic—Lead Contamination'' (CPG 7117.07) to the Director, Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on CPG Sec. 545.400 ''Pottery (Ceramics); Imported and Domestic—Cadmium Contamination'' (CPG 7117.06) and CPG Sec. 545.450 ''Pottery (Ceramics); Imported and Domestic—Lead Contamination'' (CPG 7117.07) to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville MD, 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of CPG Sec. 545.400 ''Pottery (Ceramics); Imported and Domestic—Cadmium Contamination'' (CPG 7117.06) and CPG Sec. 545.450 ''Pottery (Ceramics); Imported and Domestic—Lead Contamination'' (CPG 7117.07) and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ronald C. Varsaci, Center for Food Safety and Applied Nutrition (HFS–022), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4251.

SUPPLEMENTARY INFORMATION: FDA is revising the following two CPG's because they contain outdated information or misprinted regulatory guidance: (1) CPG Sec. 545.400 ''Pottery (Ceramics); Imported and Domestic—Cadmium Contamination'' (CPG 7117.06), and (2) CPG Sec. 545.450 ''Pottery (Ceramics); Imported and Domestic—Lead Contamination'' (CPG 7117.07).

The guidance for flatware and small hollowware in CPG Sec. 545.400 and for pitchers in CPG Sec. 545.450 was mistakenly printed as 0.05 instead of 0.5 microgram/milliliter. The CPG's are also being revised to specify current methodologies in the Official Methods of Analysis of the Association of Official Analytical Chemists International (AOAC) and to include the American Society for Testing Materials (ASTM) and Laboratory Information Bulletin (LIB) methodologies. The CPG provides guidance on recommending legal actions and on when entries of potteries should be detained based on cadmium or lead contamination. To minimize any confusion that may exist, FDA has decided to issue revisions.

Dated: December 5, 1995.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 95–30171 Filed 12–11–95; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Dental Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of R03 Small Grants—96–05 (Teleconference).

Dates: December 13, 1995.

Time: 1 pm.

Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892.

Contact Person: Dr. William Gartland, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesta, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of Research Projects, Small Business Grants, and Conference Grants—96–06.

Dates: December 14, 1995.

Time: 8 am.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Buidling, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

This notice is being published less than fifteen days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: National Institute of Dental Research Special, Emphasis Panel–Review of Oral Cancer Centers—96–07.

Dates: January 7–11, 1996.

Time: 8 am.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Dr. Yong Shin, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of the Conference Grants—97–10 (Teleconference).

Dates: January 18, 1996.

Time: 11 am.

Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20802.

Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of Coop Agreement Applications—96–08.

Dates: January 23–24, 1996.

Time: 8 am.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Dr. Philip Washko, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

The meetings will be closed in accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: December 7, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30303 Filed 12–11–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings.

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: December 12, 1995.

Time: 5:15 p.m.

Place: NIH, Rockledge 2, Room 4104, Telephone Conference.

Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.

Name of SEP: Biological and Physiological Sciences.

Date: December 13, 1995.

Time: 4 p.m.

Place: NIH, Rockledge 2, Room 4148, Telephone Conference.

Contact Person: Dr. Philip L. Perkins, Scientific Review Administrator, 6701 Rockledge Drive, Room 4148, Bethesda, Maryland 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes, of Health, HHS).

Dated: December 6, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30304 Filed 12–11–95; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Office for Women's Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration (SAMHSA) in January 1996.

The meeting of the Advisory Committee for Women's Services will include a discussion of and update on policy and program issues relating to women's substance abuse and mental health service needs at SAMHSA, including the SAMHSA fiscal year 1996 budget and reauthorization; regional meetings on SAMHSA's proposed Performance Partnership Grants; SAMHSA policy on inclusion and attention to the needs of women and racial/ethnic minority populations; activities of the National Women's Resource Center for the Prevention and Treatment of Alcohol, Tobacco and Other Drug Abuse and Mental Illness; monitoring the impact of change at HHS; and a discussion of data collection pertaining to women.

A summary of the meeting and/or a roster of committee members may be obtained from: Pamela J. McDonnell,

Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, SAMHSA, Parklawn Building, Room 13–99, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5184.

Substantive information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Date(s): January 8–9, 1996.

Place: Conference Room H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open: January 8: 8:30 a.m. to 5:00 p.m.; January 9: 8:30 a.m. to adjournment

Contact: Pamela J. McDonnell, Room 13–99, Parklawn Building, Telephone (301) 443–5184.

Dated: December 6, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–30170 Filed 12–11–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Upper Skagit Indian Tribe Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that by Resolution No. 95–18, the Upper Skagit Indian Tribe Liquor Control Ordinance was duly adopted by the Upper Skagit Indian Tribe on May 4, 1995. This Ordinance provides for the possession, sale, introduction for sale, purchase, or other dealing in alcoholic beverages within Upper Skagit Indian Tribe country, as defined by 18 U.S.C. 1151.

DATES: This Ordinance is effective as of December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, N.W., MS–2611–MIB, Washington, D.C. 20240; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Upper Skagit Indian Tribe Liquor Control Ordinance is to read as follows:

Upper Skagit Indian Tribe Liquor Control Ordinance

Part I. Policy and Definitions

Section 1.1. Public Policy Declared

This Tribal Liquor Control Ordinance shall be cited as the ''Upper Skagit Tribal Liquor Control Ordinance'' (the ''Ordinance''). Under the inherent sovereignty of the Upper Skagit Indian Tribe (the ''Tribe''), this Ordinance shall be deemed an exercise of the Tribe's power for the protection of the welfare, health, peace, morals and safety of the members of the Tribe. It is further the Tribe's policy to assure that any transaction, importation, sale or consumption involving an alcoholic beverage, while within the Tribe's jurisdiction, shall occur in strict compliance with this Ordinance, the laws of the United States and where applicable, the State of Washington.

Section 1.2. Definitions

The stated terms are defined as follows:

a. ''Alcoholic Beverage'' shall mean any intoxicating liquor, beer or any wine, as defined under the provisions of this Ordinance or other applicable law;

b. ''Tribal Council'' shall mean the Tribal Council of the Upper Skagit Indian Tribe, which is its governing body.

c. ''Legal Age'' shall mean the age requirements, as defined in Part II, Section 2.2.

d. ''Sale'' shall mean the serving of any contents of any bagged, bottled, boxed, canned or kegged alcoholic beverage by any means whatsoever for a consideration of currency exchange.

Section 1.3. General Prohibition

It shall be a violation of Tribal law to manufacture for sale, to sell, offer or keep for sale, possess, transport or conduct any transaction involving any alcoholic beverage except in compliance with the terms, conditions, limitations, and restrictions specified in this Ordinance.

Section 1.4. Tribal Control of Alcoholic Beverages

The Tribal Council shall have the sole and exclusive right to authorize the importation of alcoholic beverages into the Upper Skagit Reservation and Indian Country over which the Upper Skagit Tribe has jurisdiction for sale or for the purpose of conducting transactions therewith, and no person or organization shall so import any such alcoholic beverages into the Upper Skagit Reservation or Indian Country over which the Upper Skagit Tribe has jurisdiction unless authorized by the Tribal Council to do so.

Section 1.5. Community On-Site Sales

The Tribal Council shall establish and maintain within the Upper Skagit Reservation a Casino, including full-service restaurants and bar, all of which are located within the Casino Facility, which shall be authorized to store and sell alcoholic beverages in conjunction with the operation of the restaurants and bar and in accordance with the provisions of this Ordinance. The Tribal Council shall set the prices of alcoholic beverages sold.

Section 1.6. State of Washington Licenses and Agreements

The Tribe/casino/licensee/operator may negotiate an agreement or obtain a State of Washington liquor license for any Tribally-operated establishment that sells alcoholic beverages or conducts transactions involving alcoholic beverages to the extent required by applicable law in order to allow the Tribe to sell liquor on the Upper Skagit Reservation or in Indian Country under the Tribe's control.

Part II. Compliance With the Laws of the State of Washington

Section 2.1. Applicability of State Law

The Tribe and its agents shall act in conformity with State laws regarding the sale of liquor to the extent required by applicable federal law, including 18 U.S.C. § 1161.

Section 2.2. Persons Under 21 Years of Age: Restrictions

The Tribe shall comply with the State of Washington laws regarding restrictions on the sale of alcoholic beverages to persons under the age of 21 years in any Tribal establishment operating pursuant to the provisions of this Ordinance.

Section 2.3. Restrictions on Intoxicated Persons

No Tribally-operated or licensed establishment shall sell, give, or furnish any alcoholic beverage or in any way allow any alcoholic beverage to be sold, given or furnished to a person who is obviously intoxicated.

Section 2.4. Hours and Days of Sale

Any Tribally-operated or licensed establishment shall sell or furnish alcoholic beverages for on-site consumption only during hours or on days which are in compliance with applicable Washington law.

Part III. Tribal Licensing and Regulation

Section 3.1. Power to License and Tax

The power to establish tribal licenses and levy taxes under the provision of this Ordinance is vested exclusively with the Tribal Council. If the Tribal Council enters into any agreements with the State regarding the sale of liquor, the agreement shall be deemed to constitute Tribal Law.

Section 3.2. Tribally-Owned Establishments

The Tribal Council can issue, by resolution, an appropriate license to a Tribally-owned establishment upon determining the site for the establishment and obtaining the necessary licensing or agreement from the State of Washington.

Section 3.3. License of Retail Sales

3.3.1 The Tribal Council shall have the power to issue licenses to any tribal or state chartered corporation, individual or partnership or other entity to undertake any sales or transactions which the Tribe itself has the power to undertake under this ordinance for the sale of alcoholic beverages at a retail store.

3.3.2 Applications for a License shall be submitted in the form prescribed by the Tribal Council or its authorized employees. The Tribal Council may, within its sole discretion and subject to the conditions in this Ordinance, issue or refuse to issue the License applied for upon payment of such fee as the Tribal Council may prescribe.

3.3.3 Every license shall be issued in the name of the applicant and no license shall be transferable or assignable without the written approval of the Tribal Council, nor shall the licensee allow any other person or entity to use the license.

3.3.4 The Tribal Council may, for violations of this Ordinance, suspend or cancel any license. Prior to cancellation or suspension of a license, the Tribal Council shall send notice of its intent to cancel or suspend the license to the licensee. A licensee whose Liquor License is cancelled or suspended by the Tribal Council shall be entitled to appeal the cancellation or suspension within 10 days of the receipt from the Tribal Council of such notice by filing a Notice of Appeal with the Clerk of the Tribal Court. The appeal of any such Notice shall be determined by the Tribal Court in accordance with the Ordinances of the Tribe governing Tribal Court actions and the decision of the Tribal Court, including any appeal within the Tribal Court system, shall be final and binding on the parties.

3.3.5 No license issued under this Ordinance shall be valid for a period longer than one year.

Section 3.3.4. Regulations

The Tribal Council may, consistent with this Ordinance, adopt regulations it deems necessary to implement this Ordinance.

Part IV. Construction

Section 4.1. Severability

If any part of this Ordinance, or the application thereof to any party, person, or entity or to any circumstances, shall be held invalid for any reason whatsoever, the remainder of the section or Ordinance shall not be affected thereby, and shall remain in full force and effect as though no part thereof had been declared to be invalid.

Section 4.2. Amendment or Repeal of Ordinance

This Ordinance may be amended or repealed by a majority vote of the Tribal Council. Any amendment to this Liquor Ordinance shall be published as required pursuant to Federal Law.

Section 4.3. Sovereign Immunity

Nothing in this Ordinance is intended, nor shall anything contained in it be construed, as a waiver of the sovereign immunity of the Upper Skagit Indian Tribe.

Section 4.4. Effective Date

This Ordinance shall be effective upon the date that the Secretary of the Interior certifies this Ordinance and publishes it in the Federal Register.

Section 4.5. Jurisdiction

Notwithstanding anything in this Ordinance to the contrary, nothing herein is intended, nor shall it be construed, as a grant of jurisdiction from the Upper Skagit Indian Tribe to the State of Washington beyond that provided by applicable law. The Tribe shall operate in conformity with State law and Tribal Law to the extent provided pursuant to 18 U.S.C. § 1161.

Dated: December 5, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–30244 Filed 12–11–95; 8:45 am]

BILLING CODE 4310–02–P

National Park Service

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 December 2, 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, DC 20013–7127. Written comments should be submitted by December 27, 1995.

Paul R. Lusignan,

Acting Keeper of the National Register.

COLORADO

Denver County

Austin Building, 2400–2418 E. Colfax and 1742 Josephine St., Denver, 95001512

Jefferson County

Thiede Ranch, 22258 Shingle Creek Rd., Golden, 95001509

Larimer County

Baldpate Inn, 4900 S. CO 7, Estes Park vicinity, 95001510

Moffat County

Vanatta Apartments, 660 Yampa Ave., Craig, 95001511

Ouray County

Jackson, George, House, 129 Citadel Dr., Ridgway vicinity, 95001508

HAWAII

Honolulu County

Aiea Sugar Mill, 99—197 Aiea Heights Dr., Aiea, 95001501

INDIANA

Carroll County

Adams Mill Covered Bridge, Co. Rd. 50 E over Wildcat Cr., Cutler vicinity, 95001537

Cass County

Pleasant Hill Church, Jct. of Co. Rd. 400 S and Co. Rd. 675 W, Logansport vicinity, 95001539

Dubois County

Dubois County Courthouse, One Courthouse Sq., Jasper, 95001538

Marion County

Homecroft Historic District, Roughly bounded by Madison Ave., Southview Dr., Orinoco Ave., and Banta Rd., Homecroft, 95001536

Marshall County

Culver Commercial Historic District, Roughly bounded by Washington St., the N-S alley E of Main St., Madison St. and Ohio St., Culver, 95001530

Montgomery County

Normal Hall, Jct. of W. Main and Harrison Sts., NW corner, Ladoga, 95001533

Morgan County

Hite—Finney House, 183 N. Jefferson St., Martinsville, 95001532

Morgan County Courthouse, Courthouse Sq., Martinsville, 95001531

Orange County

Newberry Friends Meeting House, US 150/IN 56 W of Paoli, Paoli vicinity, 95001534

Posey County

Mount Vernon Site, Address Restricted, Mount Vernon vicinity, 95001542

St. Joseph County

Battell Park Historic District, Mishawaka Ave., Mishawaka, 95001541

Shelby County

Shelbyville High School, Jct. of Second and Tompkins Sts., Shelbyville, 95001535

Steuben County

Pokagon State Park (New Deal Resources in Indiana State Parks MPS) 5 mi. N of Angola, W of US 27, Angola vicinity, 95001540

KENTUCKY

Bourbon County

Glen Oak, 1004 Thatchers Mill Rd., Paris vicinity, 95001513

Edmonson County

Mitchell—Estes Farmstead, 1706 Upper Smiths Grove Rd., Smiths Grove vicinity, 95001528

Kenton County

Covington Downtown Commercial Historic District (Boundary Increase), 701, 702, 709, 711, 713, 715, 722 and 723–725 Scott Blvd., Covington, 95001525

Madison County

Boone Tavern, 100 Main St., Berea, 95001527

Simpson County

Cedars, The, 812 E. Cedar St., Franklin, 95001516
Hampton Hall, 6240 Bowling Green Rd., Franklin, 95001519
Hargis House, 300 E. Cedar St., Franklin, 95001518
Harristown Historic District, Roughly bounded by Walker Ave., Bell St., W. Washington St. and West St., Franklin, 95001515
Moore, Randolph Gilbert, House, 321 S. College St., Franklin, 95001517
Triple Pine Farm, 5945 Bowling Green Rd., Franklin, 95001520
West Cedar Street Historic District, W. Cedar St., N and S sides, between N. High and West Sts., Franklin, 95001514

Warren County

College Hill Historic District (Boundary Increase), 416 E. 12th Ave., Bowling Green, 95001526

MARYLAND

Howard County

Brick House on the Pike, 9465 Baltimore National Pike, Ellicott City, 95001522

NEBRASKA

Dodge County

Turner, George and Nancy, House, 78 S. C St., Fremont, 95001502

NORTH CAROLINA

Watauga County

US Post Office—Boone, 679 W. King St., Boone, 95001521

OKLAHOMA

Oklahoma County

Elks Victory Lodge—Ruby's Grill Building, 322 NE 2nd, Oklahoma City, 95001498
Haywood Building, 307 NE 2nd, Oklahoma City, 95001499
Littlepage Building, 219 N. Central Ave., Oklahoma City, 95001500

OREGON

Douglas County

Umpqua—Eden Site, Address Restricted, Reedsport vicinity, 95001524

TENNESSEE

Wilson County

Castle Heights Academy Historic District, Jct. of Castle Heights Ave. N. and Cadet Ct., Lebanon, 95001507

VERMONT

Grand Isle County

Grand Isle County Courthouse, US 2, North Hero, 95001523

Lamoille County

Lamoille County Courthouse, Main St., Hyde Park, 95001497

WASHINGTON

Spokane County

Fuller, W.P., and Company Warehouse, E. 111 and E. 115 Desmet, Spokane, 95001529

WISCONSIN

Dodge County

Schulze, Ferdinand, House, N. 4262 Daley Rd., Hustisford, 95001503

Forest County

Camp Five Farmstead, 5466 Connor Farm Rd., Laona, 95001506

Waukesha County

Block C Historic District, Roughly bounded by W. Main St., Gaspar St. and Broadway, Waukesha, 95001504

Winnebago County

Brooklyn No. 4 Fire House, 17 W. Sixth Ave., Oshkosh, 95001505

[FR Doc. 95–30225 Filed 12–11–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data

The Commission has received a request from Escalation Consultants, Inc., for permission to use certain data from the Commission's 1988 through 1994 I.C.C. Waybill Samples. A copy of the request (WB489 — 11/11/95) may be obtained from the I.C.C. Office of Economic and Environmental Analysis.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Commission's Office of Economic and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30242 Filed 12–11–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32819]

Toledo, Peoria and Western Railway Corporation; Trackage Rights Exemption; Burlington Northern Railroad Company

Burlington Northern Railroad Company (BN) has agreed to grant overhead trackage rights to Toledo, Peoria and Western Railway Corporation (TP&W) over the trackage of BN located between BN milepost 00.0 at Galesburg, IL, and BN milepost 52.3 at Peoria, IL. The purpose of this transaction is to enable TP&W to connect with BN and The Atchison, Topeka, and Santa Fe Railway Company (Santa Fe) at Galesburg. The trackage rights were to become effective on or after November 29, 1995.

These trackage rights have been granted pursuant to a settlement agreement, dated May 5, 1995, which was entered into by TP&W, on the one hand, and, on the other, BN and Santa Fe in connection with the BN/Santa Fe control proceeding in Finance Docket No. 32549, Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company. Under the agreement, TP&W also is to provide haulage services for BN and Santa Fe between Galesburg and Peoria, IL.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Karl Morell, Suite 1035, 1101

Pennsylvania Avenue, N.W., Washington, D.C. 20004.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: December 4, 1995.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30241 Filed 12–11–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket Nos. AB–364 (Sub-No. 2X) and AB–3 (Sub-No. 125X)]

Texas Northeastern Division, Mid-Michigan Railroad, Inc.; Discontinuance of Service Exemption; in Lamar and Red River Counties, TX; Missouri Pacific Railroad Company; Abandonment Exemption; in Lamar and Red River Counties, TX

Texas Northeastern Division, Mid-Michigan Railroad, Inc. (TNER), and Missouri Pacific Railroad Company (MP) have filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances* for TNER to discontinue service over and MP to abandon 29.1 miles of rail line extending from Clarksville (milepost 61.5) to Paris (milepost 90.6), in Lamar and Red River Counties, TX.[1]

TNER and MP certify that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 11, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by December 22, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 2, 1996, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.[5]

A copy of any pleading filed with the Commission should be sent to applicant's representatives: Michael W. Blaszak, Texas Northeastern Division, Mid-Michigan Railroad, Inc., 211 South Leitch Avenue, LaGrange, IL 60525–2162; and Joseph D. Anthofer, Union Pacific Railroad Co., 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

TNER and MP have filed an environmental report which addresses the effects of the abandonment and discontinuance, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 15, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 6, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30243 Filed 12–11–95; 8:45 am]

BILLING CODE 7035–01–P

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicants, in their verified notice, indicated a proposed consummation date of January 3, 1996. Because the verified notice was not filed until November 22, 1995, consummation should not have been proposed to take place before January 11, 1996. Applicants' representatives have subsequently agreed that the proposed consummation date is January 11, 1996.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of this notice of exemption. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[3] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[5] Legislation to terminate the Commission on December 31, 1995, is now pending enactment. Until further notice, parties submitting pleadings should continue to use the current name and address.

JUDICIAL CONFERNECE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will meet on January 10, at 7 p.m., and on January 11 and 12, at 8:30 a.m. The meeting will be open to public observation but not participation.

DATES: January 10–12, 1996.

ADDRESSES: The Ritz-Carlton, Marina del Rey, 4375 Admiralty Way, Marina del Rey, California.

FOR FURTHER INFORMATION CONTACT:

John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: December 6, 1995.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 95–30217 Filed 12–11–95; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OJP No. 1069]

RIN 1121–ZA26

National Criminal History Improvement Program (''NCHIP'') Advanced State Award Program (''ASAP'')

November 7, 1995.

AGENCY: Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

ACTION: Notice of program plan.

SUMMARY: The Bureau of Justice Statistics (BJS) is publishing this notice to announce the initiation of the National Criminal History Improvement Program (NCHIP) Advanced State Award Program (ASAP). The grant program implements the grant provisions of the Brady Handgun Violence Prevention Act and the National Child Protection Act of 1993, and those provisions of the Violent Crime Control and Law Enforcement Act of 1994, which pertain to the establishment, maintenance, or use of criminal history records and criminal record systems.

DATES: Eligible states must submit applications on or before December 31, 1995.

ADDRESSES: Applications should be sent to Application Coordinator, the Bureau of Justice Statistics, 633 Indiana Avenue, N.W., 11th Floor, Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Carol G. Kaplan, Chief, Criminal History Improvement Programs, (202) 307–0759. The BJS fax number is (202) 307–5846.

SUPPLEMENTARY INFORMATION:

The National Criminal History Improvement Program

The National Criminal History Improvement Program (NCHIP) implements the grant provisions of the Brady Handgun Violence Prevention Act (Brady Act), 103 Pub.L. 159, 107 Stat. 1563, the National Child Protection Act of 1993, 103 Pub.L. 209, 107 Stat. 2490, and those provisions of the Violent Crime Control Act of 1994, 103 Pub.L. 322, 108 Stat. 1796, which pertain to the improvement of criminal history record systems.

The appropriation for the NCHIP program in Fiscal Year 1995 was $100 Million. Of this amount, $6 Million was transferred to the FBI to support implementation of the National Instant Criminal Background Check System (NICS), $5 Million was awarded for program evaluation, firearm related research, and state technical assistance, and $88 Million is for direct awards to the states.

The NCHIP ''core'' program, as described in the Program Announcement issued by the Bureau of Justice Statistics (BJS) in November 1994, assists states in improving the quality and accessibility of criminal history records in support of the national record system, NICS. $83 Million was designated for this component of the NCHIP program. Consistent with legislative preference for states with the least advanced computerized criminal history files, $5 Million of this $83 Million represents supplemental awards to 5 states designated as least-advanced priority states.

The Advanced State Award Program (ASAP), formerly referred to as the ''extended core'' program, is supported with $5 Million from the Fiscal Year 1995 appropriation.

The NCHIP program builds on earlier efforts supported by the Bureau of Justice Statistics and the Bureau of Justice Assistance (BJA). These include the BJS-administered Criminal History Record Improvement Program (CHRI) and the BJA-administered Byrne Formula 5% set-aside program. As described in the November 1994 program announcement, NCHIP is closely coordinated with the Byrne Formula program and with related activities being undertaken by the FBI and the Bureau of Alcohol, Tobacco, and Firearms.

The Advanced State Award Program

The goal of the NCHIP Advanced State Award Program (ASAP) is to assist states in the identification of persons other than felons who are prohibited from purchasing firearms under 18 U.S.C. Sec. 922(g) and (n), as amended. This effort supports the goal of the permanent system established under Section 102(b) of the Brady Act by enhancing the effectiveness of the National Instant Criminal Background Check System (NICS).

The focus of the Advanced State Award Program is on the specific provisions (other than those pertaining to disqualified convicted felons) of 18 U.S.C. Sec. 922 (g) and (n), as amended by the Violent Crime Control Act of 1994, for which relevant data are available in state and local databases. The Federal Bureau of Investigation is implementing the Federal segment of the NICS and will make available to states, through the NICS, data which are available from or through the Federal systems.

Applications for funding under the Advanced State Award Program should focus on one or more of the following categories of persons prohibited from purchase of firearms:

Anyone who—

—is an unlawful user of, or addicted to, any controlled substance;
—has been adjudicated as a mental defective or been committed to a mental institution;
—is an alien who is illegally or unlawfully in the United States;
—is subject to any court order restraining them from threatening or committing acts of domestic violence or abuse;
—is under indictment for an offense punishable by imprisonment for more than 1 year.

The objective of the Advanced State Award Program is to build a body of knowledge on the access and retrieval of data on these categories of prohibited persons for use by all the states; applicants should not focus exclusively on benefits to their own state.

Definitions: Final Regulations defining the categories stated above have not yet been issued. Pending release of such final definitions, applicants may refer to Appendix B for the current working definitions of prohibited classes other than felons. States will be advised of any changes in such definitions where applicable.

States should recognize that the definitions in Appendix B may be narrower than applicable definitions for prohibited firearm purchasers under state legislation. For purposes of the ASAP program, applicable state definitions which place broader restrictions on purchase of firearms may be used in defining eligible projects in those states. In those states, applicants should cite relevant state legislation, where pertinent.

Eligibility Criteria

To be eligible to apply for additional NCHIP funding under the Advanced State Award Program, a state must be a participant in the FBI's Interstate Identification Index (III) at the date of application. The same agency that submitted the state's original NCHIP application should submit the state's application for ASAP funding. If an exception is necessary (for example, in the case of a successor agency), contact your BJS grant monitor.

Allowable Costs

Costs associated with developing access to databases on persons other than felons, who are ineligible to purchase a firearm, are allowed.

ASAP funds can be used to:

—investigate the existence and completeness of noncriminal history data bases;
—evaluate the feasibility of accessing relevant noncriminal justice data systems for purposes of background checks;
—create or upgrade noncriminal justice data bases;
—develop and/or implement protocols for accessing such systems and, where appropriate, incorporate such data into criminal history systems;
—develop and implement procedures for making data on prohibited persons other than felons available to the national NICS;
—develop and implement necessary protocols to ensure privacy and confidentiality of identifiable data;
—document activities, protocols, and systems to assist other jurisdictions in developing similar capabilities.

Where the system or procedures to be established or upgraded are not maintained by a criminal justice agency or the agency charged with implementation of the Brady Act, a justification for such proposed expenditures must be included with the application.

Consistent with NCHIP program policy applicable to systems which serve purposes other than the identification of prohibited persons, ASAP funds are allowable to cover only that portion of system development and implementation costs which support the NCHIP and ASAP goals and objectives as defined in the NCHIP Program Announcement and discussed above. Therefore, the applicant must determine (and the application must include) a reasonable cost estimate for that portion of a proposed effort which meets these objectives.

The Application

The application must contain a clear and concise description of the project proposed for funding and a statement of the benefits to be derived from the project both within the state and for other jurisdictions. A complete budget (including applicable proration information, where appropriate) and budget narrative must also be included. The budget should indicate costs associated with each task proposed for funding.

As in the original NCHIP application, the application should indicate any linkages between what is being proposed and activities of a similar nature that have been funded with state funds, or with funds made available under the Byrne Formula program. The application should also describe the relationship, if any, between the proposed efforts and the activities being funded under the state's NCHIP award.

See Appendix A, ''Application and Administrative Requirements,'' for other information which should be included in the application.

BJS recognizes that, in some cases, an extended core activity was proposed in the state's original NCHIP application. In order to minimize state effort, the same, or a revised version, of the previously submitted project description may be resubmitted for the state's ASAP application.

Selection Criteria

Applications will be judged on a competitive basis. This means that some applications may not be selected for funding. Applications from different states which address the same kind of prohibited database will be judged against each other, although more than one may be funded.

Applications will be evaluated on the basis of the following factors:

- Evidence of the state's commitment to participate in and support the NICS, consistent with the Attorney General's Notice in the Federal Register on June 1, 1994;
- The extent to which the state has implemented an advanced criminal history record system (in terms of automation, arrest and disposition reporting, fingerprint supported records, and other relevant factors) or has provided evidence that plans are currently being implemented to achieve such a high level of operation;
- The extent to which the proposed development, use, or enhancement of innovative procedures, or the development and implementation of databases and/or operating policies, will be of value to other jurisdictions;
- The technical feasibility of the proposal and the extent to which the proposal appears reasonable in light of the state's current level of system development and statutory framework;
- The extent to which the state has demonstrated commitment to the improvement of criminal record systems through efforts supported with state funds or awards under the BJS administered CHRI program, the NCHIP program or the Byrne Formula program;
- Reasonableness of the budget and the nature of the proposed expenditures.

When May A State Apply?

Applications for funding under the Advanced State Award Program will be accepted until December 31, 1995.

What is the Maximum Dollar Amount for Which A State May Apply?

In general, the maximum award will not exceed $250,000 per state. If states wish to submit combined applications, larger award amounts will be considered.

When Will Awards Be Made?

The selection of applications to be funded with funds appropriated in Fiscal Year 1995 will be made after the December 31 deadline. Awards will be announced no later than March 15, 1996. Projects can be scheduled for up to 24 months.

Appendix A

Application and Administrative Requirements

Application Content

All applicants must submit:

- Standard Form 424, Application for Federal Assistance.
- Standard Form 424A, Budget Information.
- OJP Form 4000/3 (Rev. 1–93), Program Narrative and Assurances.
- OJP Form 4061/6 Certifications.
- OJP Form 7120/1 (Rev. 1–93), Accounting System and Financial Capability Questionnaire (to be submitted by applicants who have not previously received Federal funds).

Applicants are requested to submit an original and two copies of the application and certifications to the following address: Application Coordinator, Bureau of Justice Statistics, 633 Indiana Avenue, NW, Washington, DC 20531, Phone: (202) 616–3500.

Standard Form 424 (SF–424). The SF–424, a one page sheet with 18 items, serves as a cover sheet for the entire application. This form is required for every application for Federal assistance. No application can be accepted without a completed, signed original SF–424. Directions to complete each item are included on the back of the form.

Standard Form 424A (SF–424A). All applications must include SF–424A, Budget Information for all years of project activity. Applicants should ensure that all appropriate columns and rows balance. Directions to complete this form are found on page 3 of SF–424A.

Detailed Budget. Applicants must provide a detailed justification for all costs including the basis for computation of these costs. For example, the detailed budget would include the salaries of staff involved in the project and the portion of those salaries to be paid from the award; fringe benefits paid to each staff person; travel costs related to the project; equipment to be purchased with the award funds; and supplies required to complete the project.

Budget Narrative. The budget narrative closely follows the content of the detailed budget. The narrative should relate the items budgeted to specific tasks and allowable cost categories and should provide a justification and explanation for the budgeted items

including the criteria and data used to arrive at the estimates for each budget category. Please note applications that include noncompetitive contracts for the provision of specific services must contain a sole source justification for any procurement in excess of $25,000.

The budget narrative should indicate amounts to be made available to agencies other than the grant recipient (for example, the agency with responsibility for CCH, the courts, local agencies.)

Program Narrative. All applications must include a program narrative which fully describes the expected design and implementation of the proposed program. OJP Form 4000/3 (Rev. 1–93) provides additional detailed instructions for preparing the program narrative.

The narrative should include a time line of activities indicating, for each proposed activity, the projected duration of the activity, expected completion date, and any products expected.

The application should include a description of the roles and responsibilities of key organizational and/or functional components involved in project activities; and a list of key personnel responsible for managing and implementing the major elements of the program.

Assurances. OJP Form 4000/3 (Rev. 1–93) must be included in the application submission. If submitting this form separate from the SF–424, the applicant must sign and date the form to certify compliance with the Federal statutes, regulations, and requirements as cited.

Certification Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace. Applicants should refer to the regulations cited in OJP Form, 4061/6 to determine the certification to which they are required to attest. A copy of OJP Form 4061/6 can be obtained from the BJS Application Coordinator. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR Part 69, ''New Restrictions on Lobbying,'' and 28 CFR Part 67, ''Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).'' The certifications shall be treated as a material representation of fact upon which reliance will be placed when the U.S. Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

Financial and Administrative Requirements

Discretionary grants are governed by the provisions of OMB Circulars applicable to financial assistance. The circulars, with additional information and guidance, are contained in the ''Financial and Administrative Guide for Grants,'' Office of Justice Programs, Guideline Manual, M7100, available from the Office of Justice Programs. This guideline manual, provided upon request, is intended to assist grantees in the administration of funds and includes information on allowable costs, methods of payment, Federal rights of access to records, audit requirements, accounting systems, and financial records.

Complete and accurate information is required relative to the application, expenditure of funds, and program performance. The consequences of failure to comply with program guidelines and requirements will be determined at the discretion of the Department.

Civil Rights Obligations

All applicants for Federal financial assistance must sign Certified Assurances that they are in compliance with the Federal laws and regulations which prohibit discrimination in any program or activity that receives such Federal funds. Section 809(c), Omnibus Crime Control & Safe Streets Act of 1968, 42 U.S.C. Sec. 3789d, provides that:

No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, or denied employment in connection with any program or activity funded in whole or in part with funds made available under this title.

Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans With Disabilities Act prohibit discrimination on the basis of disability.

The applicant agency must discuss how it will ensure nondiscriminatory practices as they relate to:

(1) Delivery of services or benefits—to ensure that individuals will not be denied access to services or benefits under the program or activity on the basis of race, color, religion, national origin, gender, age, or disability;

(2) Employment practices—to ensure that its personnel in the program or activity are selected for employment without regard to race, color, religion, national origin, gender, age, or disability; and

(3) Program participation—to ensure members of any planning, steering or advisory board, which is an integral part of the program or activity, are not excluded from participation on the basis of race, color, religion, national origin, gender, age or disability; and to encourage the selection of such members who are reflective of the diversity in the community to be served.

Audit Requirement

In October 1984, Congress passed the Single Audit Act of 1984. On April 12, 1985, the Office of Management and Budget issued Circular A–128, ''Audits of State and Local Governments'' which establishes regulations to implement the Act. OMB Circular A–128, ''Audits of State and Local Governments,'' outlines the requirements for organizational audits which apply to BJS grantees.

Disclosure of Federal Participation

Section 8136 of the Department of Defense Appropriations Act (Stevens Amendment), enacted in October 1988, requires that, ''when issuing statements, press releases for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments, shall clearly state (1) the percentage of the total cost of the program or project which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program.''

Intergovernmental Review of Federal Programs

Federal Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' allows States to establish a process for reviewing Federal programs in the State, to choose which programs they wish to review, to conduct such reviews, and to make their views known to the funding Federal agency through a State ''single point of contact.''

If the State has established a ''single point of contact,'' and if the State has selected this program to be included in its review process, the applicant must send a copy of its letter or application to the State ''single point of contact'' at the same time that it is submitted to BJS. The letter or application submitted to BJS must indicate that this has been done. The State must complete its review within 60 days. The review period will begin on the date that the letter or application is officially received by BJS. If BJS does not receive comments from the State's ''single point of contact'' by the end of the review period, this will be interpreted as a ''no comment'' response.

If the State has not established a ''single point of contact,'' or if it has not selected the BJS statistics development or criminal history improvement programs in its review process, this must be stated in the letter or application.

Appendix B

Categories of Persons Prohibited From Receiving Firearms [1]

Persons Who Are Under Indictment for, or Have Been Convicted in Any Court of, a Crime Punishable by Imprisonment for a Term Exceeding One Year

This category includes any person (1) who currently is under indictment (or ''information'') for a crime *punishable* by imprisonment for a term exceeding one year, or whose case has been referred to court-martial if he/she is in the military; or (2) who has been convicted in any court (including, for example, a military court) of a crime *punishable* by imprisonment for a term exceeding one year. (''Information'' refers to a formal accusation of a crime made by a prosecuting attorney, as distinguished from an ''indictment'' presented by a grand jury.) The maximum sentence that may be imposed determines whether a person is under indictment or information for a disabling crime. Similarly, the maximum sentence that may be imposed, rather than the actual sentence, determines whether a person has been convicted of a disabling crime. Such a crime includes any Federal, State, or foreign offense for which the maximum penalty is

[1] These definitions of categories of persons prohibited from receiving firearms are pending final action by the Bureau of Alcohol, Tobacco and Firearms, U.S. Treasury Department.

capital punishment or imprisonment in excess of one year. Indictments, information, and convictions for the following crimes are exceptions and are *not* disabling: (1) Federal or State offenses pertaining to antitrust offenses, unfair trade practices, and other similar business-related offenses; and (2) State offenses classified by State law as misdemeanors punishable by imprisonment for a term of 2 years or less.

Any conviction which has been expunged, set aside, or for which a person has been pardoned or has had civil rights restored *remains disabling if* (1) the pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, *or* (2) the person is prohibited by the law where the conviction occurred, from receiving or possessing any firearm. Also, a State's restoration of a convicted felon's civil rights does not remove any firearms disability caused by a Federal conviction. The burden of proof is on the applicant to prove that his/her firearms disabilities have been removed.

Persons Who Are Fugitives From Justice

This category includes persons (1) who know they have charges pending against them, even if only for a misdemeanor, and who leave the State of prosecution, or (2) who leave the State in order to avoid giving testimony in any criminal proceeding.

Persons Who Are Unlawful Users of or Addicted to Any Controlled Substance

This category includes persons who are unlawful users of or addicted to any controlled substance, as defined in section 102 of the Controlled Substances Act. Controlled substances include, but are not limited to, marijuana, depressants, stimulants, and narcotic drugs. They do not include distilled spirits, wine, malt beverages, or tobacco.

It is unlawful to use any illegal controlled substance (such as PCP), or to use any other controlled substance (such as morphine) in a manner other than as prescribed by a licensed physician. A person who is ''addicted'' to a controlled substance is any individual who is found to (1) habitually use a controlled substance so as to endanger the health, safety, welfare, or morals of the public, or (2) to have lost the power of self-control with reference to the addiction.

To incur firearms disabilities, there must be evidence that a person is a current unlawful user of, or addict to, a controlled substance. Such unlawful use or addiction may be demonstrated by evidence of: (1) The recent use of a controlled substance, which is part of a pattern of unlawful use or addiction; or (2) the current unlawful use of, or addiction to, a controlled substance.

Evidence of unlawful use or addiction includes, but is not limited to, any of the following: a criminal record, self-admission of use, diagnoses or other records at a drug treatment or rehabilitation center or other medical facility, testimony or a statement by a psychiatrist or other licensed physician who diagnosed the symptoms or treated the person, needle marks on the person, a failed (that is, ''positive'') drug test, or testimony of a social acquaintance who observed the unlawful use of a controlled substance by the person.

Concerning drug tests, failing a single drug test would give reasonable cause for disqualifying a person from purchasing a firearm. Federal agencies may exercise discretion in determining when to report the ''positive'' result of a drug test for controlled substances. For example, agencies are not required to report such results prior to giving the person an opportunity to contest the results of the ''test'' through a proceeding that provides due process.

Persons Who Have Been Adjudicated as Mental Defectives or Been Committed to a Mental Institution

The category includes persons who have been adjudicated as mental defectives or been committed to a mental institution by a court, board, commission, or other lawful authority. An adjudication as a mental defective occurs when a court, board, commission, or other lawful authority determines that an individual is mentally retarded or of marked subnormal intelligence, mentally ill, or mentally incompetent. Examples of persons adjudicated as mental defectives include defendants in criminal cases who are found not guilty by reason of insanity, and persons found to be a danger to others as a result of a mental disorder or illness.

For there to be a disabling ''commitment'' to a mental institution, a formal commitment by a court, board, commission, or other legal authority is necessary. Any person who has been committed in such a way to a mental institution *involuntarily*—even for reasons other than mental defectiveness or mental illness (such as for drug use)—is prohibited from receiving firearms. However, the mere presence of a person in a mental institution for observation is not a disabling commitment. Also, a voluntary commitment to a mental institution is not disabling. ''Mental institutions'' include mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness.

Persons Who are Aliens and are Illegally or Unlawfully in the United States

This category includes all aliens who are unlawfully in the United States or are not in a valid nonimmigrant or immigrant status—except for individuals in ''immigration parole'' status (see the note below).

Examples of persons in this category include any alien:

(1) Who has entered the country illegally;

(2) Nonimmigrant whose authorized period of admission has expired;

(3) Student who has failed to maintain status as a student; or

(4) Under an order of deportation, whether or not he/she has left the United States.

(Note: Aliens are not disqualified from purchasing firearms for being in ''immigration parole'' status in the United States pursuant to the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*, (INA). In accordance with the INA, immigration parole may be granted temporarily to an alien at the discretion of the U.S. Attorney General ''for emergent reasons or for reasons deemed strictly in the public interest.'' An example would be a person who is ineligible to enter the United States legally, but who has been granted parole into the United States to assist the government in an investigation.)

Persons Who Have Been Discharged from the Armed Forces Under Dishonorable Conditions

This category only includes persons whose separation from the Armed Forces resulted from a dishonorable discharge. It does not include, for example, persons whose separation from the Armed Forces resulted from a dismissal, bad conduct discharge, or other than honorable discharge.

Persons Who Have Renounced their United States Citizenship

This category includes persons who have formally renounced their United States citizenship either (1) before a diplomatic or consular officer of the United States in a foreign state, or (2) before an officer designated by the Attorney General when the United States is in a state of war.

Persons Who are Subject to a Court Order Restraining Them from Committing Domestic Violence

This category includes any person who, at the time he/she applies to receive a firearm, is under a court order that meets the following criteria:

- The order must have been issued after a hearing of which the person subject to the order received actual notice, and at which the person had an opportunity to participate; *and*
- The order must restrain the person subject to the order from harassing, stalking, or threatening an intimate partner of the person, or a child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; *and*
- The order must include a finding that the person subject to the order represents a credible threat to the physical safety of the intimate partner or child, *or* the order must explicitly prohibit the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

The term ''intimate partner'' is defined as a spouse, former spouse, an individual who is a parent of a child of the person, or an individual who cohabitates or has cohabited with the person.

Persons Who Are Juveniles

This category covers the prohibition against the transfer of firearms by Federal Firearms Licensees to certain underage persons. Federal Firearms Licensees are prohibited from transferring a *shotgun or rifle* to any person less than 18 years of age, and are prohibited from transferring *any other*

firearm, including a handgun, to any person less than 21 years of age.

Jan M. Chaiken,

Director, Bureau of Justice Statistics.

[FR Doc. 95–30221 Filed 12–11–95; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

December 7, 1995.

The Department of Labor has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). Copies of this individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095). Comments and questions about the ICR listed below should be directed to Ms. O'Malley, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210 within 30 days from the date of this publication in the Federal Register. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10325, Washington, DC 20503 ((202) 395–7316). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Agency: Employment and Training Administration.

Title: An Evaluation of the Emergency Unemployment Compensation Act.

OMB Number: 1205–0 new.

Frequency: One-time.

Affected Public: Federal Government.

Number of Respondents: 4,000.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 4,520.

Description: This project is designed to conduct a comprehensive analysis of the Emergency Unemployment Compensation Act. The results of this evaluation will provide policy relevant information required by the Administration and Congress to determine how to structure future extended benefits programs.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 95–30162 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

[TA–W–31,365]

Conagra Flour Milling Company, Superior, Wisconsin; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at ConAgra Flour Milling Company, Superior Wisconsin. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–31,365; ConAgra Flour Milling Company, Superior, Wisconsin (November 22, 1995)

Signed at Washington, D.C. this 30th day of November, 1995.

Russell T. Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30157 Filed 12–11–95; 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 Program Manager 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 Program Manager, Office of Trade Adjustment Assistance, at the address show below, not later than December 22, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than December 22, 1995.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 27th day of November, 1995.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 11/27/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,645	Details by Patricia Green (Wkrs)	Portland, OR	10/30/95	Ladies' Belts.
31,646	DMI Furniture, Inc (Co.)	Gettysburg, PA	11/15/95	Wood Household Furniture.
31,647	Country Maid Sportswear (Wkrs)	Danville, PA	11/13/95	Girl's Sportswear.
31,648	Country Maid Sportswear (Co.) (	Shamokin Dam, PA	11/13/95	Girl's Sportswear.
31,649	Columbia Sportswear (Wkrs)	Portland, OR	11/08/95	Sportswear Apparel.
31,650	Carpenter Manufacturing (UAW)	Mitchell, IN	10/29/95	Automotive Parts.
31,651	Brookside Group, Inc. (USWA)	McCordsville, IN	11/11/95	Air Moving Devices.
31,652	Bob-Kat Tanning Co. (Co.)	Peabody, MA	11/17/95	Cowhide Split Suede Leather.

APPENDIX—Continued

[Petitions Instituted On 11/27/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,653	Akzo Nobel Salt, Inc. (USWA)	Mainstee, MI	11/07/95	Evaporated Salt.
31,654	Abu Garcia, Inc. (Wkrs)	Fairfield, NJ	11/15/95	Warehouse/Sales etc. Fishing Rods, Reels.
31,655	Albermarle Spinning Mills (Wkrs)	Albemarle, NC	11/09/95	Yarn & Greige Cloth.
31,656	American Trouser, Inc. (Co.)	Columbus, MS	11/15/95	Men's Dress & Casual Slacks.
31,657	Joseph A. Bank, Mfg. (UNITE)	Hampstead, MD	11/13/95	Men's Suits, Sportcoats, Vest.
31,658	Wilkes Mill & Feed Co. (Co.)	Washington, GA	11/10/95	Beef Cattle Feed.
31,659	Custom Packaging Systems (Wkrs)	Manistee, MI	11/13/95	Flexible Intermediate Bulk Containers.
31,660	The Elkins Company (Wkrs)	Elkins, WV	11/14/95	Household Furniture.
31,661	Westchester Lace, Inc. (UNITE)	West New York, NJ	11/14/95	Lace.
31,662	Grossman and Sons, Inc. (UNITE)	Passaic, NJ	11/14/95	Ladies' Hats.
31,663	J. Lamb, Inc. (UNITE)	Englewood, NJ	11/14/95	Vinyl Mattress Covers.

[FR Doc. 95–30152 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

Notice of 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 November, 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–31,547; Columbian Cutlery Co., Inc., Reading, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–31,536; General Electric Co., GE Transportation Systems—Erie, Erie, PA

TA–W–31,434; CVI, Inc., Hilliard, OH

TA–W–31,440; BP Chemicals (Hitco), Inc., Fibers & Materials Div., Santa Ana, CA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,510; Movil Corp., Marketing, Refining & Chemical Technical Center (MRCTEC), Paulsboro, NJ

TA–W–31,472; Sara International, Inc., Opa Locka, FL

TA–W–31,478; J.H. Enterprise, Shreveport, LA

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

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–31,525; Matsushita Electric Corp of America, Matsushita Television Co., Franklin Park, IL: September 29, 1994.

TA–W–31,459; Treasure Craft, Compton, CA: September 7, 1994.

TA–W–31,584; R & R Sportswear, Exeter, PA: October 17, 1994.

TA–W–31,628; Cal-Style Furniture Mfg Co., Compton, CA: November 20, 1994.

TA–W–31,417; Parker Drilling Co., Del City, OK: September 1, 1994.

TA–W–31,446; Fruit of The Loom, Rockingham, NC; August 29, 1994.

TA–W–31,421; Continental Systems, Jonesboro, AR: September 7, 1994.

TA–W–31,518; Samson International Ltd, Tulsa, OK: September 28, 1994.

TA–W–31,553; Stratus Computer, Inc., Marlboro, MA: October 4, 1994.

TA–W–31,419; Fifth Street Slacks, Louisville, GA: September 7, 1994.

TA–W–31,580; The MFC Group, Telford, PA: October 11, 1994.

TA–W–31,485; Quantum Corp., High Capacity Storage Group, Colorado Springs, CO Including ''Temporary'' workers employed through Kelly Services, Inc., Colorado Springs, CO & workers subcontracted through the following firms, all located in Colorado Springs, CO: Tech/Aid, Olsten Staffing Services, Manpower Temporary Services, Tad Staffing Service, Power Temps and Aerotek: September 19, 1994.

TA–W–31,610; Toll Gate Garmet Co., Inc., Hamilton, AL: October 26, 1994.

TA–W–31,602; Crown Textile Co., Plants #01, #02, #03 & Converting Plant, South Talladega, AL: October 23, 1994.

TA–W–31,465; Cranston Print Works Co., Cranston, RI: September 13, 1994.

TA–W–31,555; Fruit of The Loom, Woodville Apparel Corp., Woodville, MS: October 10, 1994.

TA–W–31,557; Fruit of The Loom, Rienzi Manufacturing, Inc., Rienzi, MS: October 9, 1994.

TA–W–31,568; Fruit of The Loom, Greensburg, KY: October 4, 1994.

TA–W–31,599; Fruit of The Loom, Bowling Green, KY: October 18, 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 November, 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

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00648; The MFC Group, Telford, PA

NAFTA–TAA–00636; Colombian Cutlery Co., Inc., Reading, PA

NAFTA–TAA–00653; Weksler Instruments Corp., Freeport, NY

NAFTA–TAA–00652; Master Package Corp., Owen, WI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

None

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–00669; Kellogg USA, In., San Leandro Plant, San Leandro CA: October 30, 1994.

NAFTA–TAA–00679; Cal-Style Furniture Manufacturing Co., Compton, CA: November 9, 1994.

NAFTA–TAA–00664; Koring Brothers, Inc., Long Beach, CA: October 24, 1994.

NAFTA–TAA–00662; Equitable Resources Energy Co., Buckhannon, WV: October 19, 1994.

I hereby certify that the aforementioned determinations were issued during the month of November, 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 December 1, 1995.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30153 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,385]

Johnson Controls Battery Group, Inc. Louisville, Kentucky; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of November 13, 1995, the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers of the subject firm. The denial notice was signed on October 13, 1995 and published in the Federal Register on October 27, 1995 (60 FR 55063).

The petitioner presents evidence that the subject firm shifted production to a foreign owned facility.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 30th day of November 1995.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30150 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00634]

Lockheed Martin, Ocean, Radar & Sensor Systems, Utica, New York; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Notice of Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on October 26, 1995, applicable to workers of Lockheed Martin, Ocean, Radar & Sensor Systems Division located in Utica, New York. The notice will soon be published in the Federal Register.

At the request of the State designee, the Department has reviewed the subject certification for workers at the subject firm. Based on new findings, the Department is amending the certification to include all workers engaged in the production of printed circuit boards.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports from Canada or Mexico. Therefore, the Department is amending the certification to expand coverage to all workers engaged in the production of printed circuit boards and all workers engaged in the inspection operation of the printed circuit board assemblies at Lockheed Martin, Ocean, Radar & Sensor Systems Division located in Utica, New York that were adversely affected by increased imports from Canada or Mexico and a shift in production of the inspection operation to Mexico, respectively.

The amended notice applicable to NAFTA–00634 is hereby issued as follows:

''All workers engaged in the production of printed circuit boards and all workers engaged in the inspection operation of the printed circuit board assemblies at Lockheed Martin, Ocean, Radar & Sensor Systems Division located in Utica, New York who become totally or partially separated from employment on or after October 5, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 30th day of November 1995.

Russell T. Kile.

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30145 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,569; TA–W–31,570]

Mapa Pioneer, et al., 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) as amended by the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated in response to a petition received on October 23, 1995 and filed on behalf of workers at Mapa Pioneer in Willard and Attica Ohio. The workers produce nitrile and neoprene gloves.

The investigation revealed that Mapa Pioneer made a decision in 1995 to transfer its neoprene glove production from its domestic plants to an affiliate in France. In addition, the transfer will result in the closing of the Attica, Ohio facility at the end of 1995.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with nitrile and neoprene gloves produced at Mapa Pioneer in Willard and Attica, Ohio contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

''All workers of Mapa Pioneer in Willard and Attica, Ohio who became totally or partially separated from employment on or after October 10, 1994 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, D.C. this 14th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30151 Filed 12–12–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,761]

Motor Coach Industries International, Roswell, New Mexico; Notice of Revocation of Certification of Eligibility To Apply for Worker Adjustment Assistance

This notice revokes the Notice of Certification of Eligibility To Apply for Worker Adjustment Assistance issued April 11, 1995 for petition TA–W–30,761. The notice was published in the Federal Register on April 24, 1995 (60 FR 20764). The notice is revoked since new information supplied by the company shows that the determination issued was based on erroneous information.

Signed in Washington, D.C., this 29th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30146 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,457]

Reckitt & Colman, Alliance and Toledo, Ohio, and Lincoln, Illinois; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 25, 1995, in response to a worker petition which was filed on September 25, 1995, on behalf of workers at Reckitt & Coleman, Alliance and Toledo, Ohio, and Lincoln, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 28th day of November, 1995.

Russell Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30159 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,479]

Reidbord Brothers Company, Pittsburgh and Apollo, Pennsylvania; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 2, 1995, in response to a worker petition which was filed by a company official on behalf of workers at Reidbord Brothers Company, Pittsburgh and Apollo, Pennsylvania.

An existing certification for this company is currently in effect (TA–W–31,574A and TA–W–31,574B). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 1st day of December, 1995.

Russell Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30154 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,930]

Sun Apparel, Incorporated El Paso, TX; 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 Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 18, 1995, applicable to all workers of Sun Apparel, Concepcion Plant, El Paso, Texas. The notice was published in the Federal Register on April 27, 1995 (60, FR 20764).

The State Agency requested that the Department review the subject certification. New findings show that worker separations have occurred at the Sun Apparel's Armour Plant in El Paso. The workers at the Armour Plant, like the Concepcion Plant, are engaged in employment related to the production of jeans. The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Therefore, the Department is amending the certification to expand coverage to all workers of Sun Apparel in El Paso, not just workers at the Concepcion Plant.

The amended notice applicable to TA–W–30,930 is hereby issued as follows:

All workers of Sun Apparel, Incorporated, El Paso, Texas who became totally or partially separated from employment on or after April 3, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

FR Doc. 95–30147 Filed 12–11–95; 8:45am]

BILLING CODE 4510–30–M

[TA–W–30,932; TA–W–30, 932A]

Thomas & Betts Company, Elizabeth, New Jersey, et al.; 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 Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 3, 1995, applicable to all workers of Thomas & Betts Company, located in Elizabeth, New Jersey. The notice was published in the Federal Register on May 17, 1995 (60 FR 26459).

Based on new information received from petitioners, the Department reviewed the subject certification. Findings show that worker separations have occurred at the distribution center of Thomas & Betts located in Cranbury, New Jersey. The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,932 is hereby issued as follows:

All workers of Thomas & Betts Company, Elizabeth, New Jersey (TA–W–30,932) and Cranbury, New Jersey (TA–W–30,932A) who became totally or partially separated from employment on or after April 12, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30149 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,329A; TA–W–30, 329D; TA–W–30, 329E]

United Technologies Corporation, Pratt & Whitney East Hartford, Connecticut, et al.; 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 an Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on February 22, 1995, applicable to all workers of Pratt & Whitney, East Hartford, Connecticut engaged in employment related to the production of jet engine parts. The notice was published in the Federal Register on March 1, 1995 (60 FR 11119).

At the request of two State Agencies, the Department reviewed the certification for workers of the subject firm. New findings show that state field representatives for the subject firm located in Florida and Michigan, were paid by the subject firm and should have been included in the certification. The intent of the Department's certification is to include all workers of Pratt & Whitney who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,329 is hereby issued as follows:

All workers of United Technologies Corporation, Pratt & Whitney, East Hartford, Connecticut (TA–W–30,329A); and field representatives located in Florida (TA–W–30,329D) and Michigan (TA–W–30,329E) whose wages were paid by Pratt & Whitney, East Hartford Connecticut, engaged in employment related to the production of jet engine parts who became totally or partially separated from employment on or after September 7, 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 November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30158 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,927, NAFTA—00120]

Walker Manufacturing Company, Hebron, OH; Notice of Negative Determination on Reconsideration

On December 14, 1994 the United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *UAW Local 1927 and Employees and Former Employees of Walker Manufacturing* v. *Secretary of Labor* (94–10–00584).

The Department's initial denial for the Hebron workers, issued on August 15, 1994 and published in the Federal Register on September 2, 1994 (59 FR 45711), was based on the fact that the increased import criterion and the ''contributed importantly'' test of the Worker Group Eligibility Requirements of the Trade Act were not met. U.S. aggregate imports of mufflers and exhaust pipes declined absolutely in 1993 compared to 1992 and in the latest twelve month period from June 1993 through May 1994 compared with the same period one year earlier.

The Hebron plant had only one customer and that customer's import purchases were not important relative to Hebron's sales during the relevant period.

The workers were also denied eligibility to apply for TAA on reconsideration. The reconsideration notice was issued on October 5, 1994 and published in the Federal Register on October 14, 1994 (59 FR 52194).

The reconsideration findings show that as a result of the Hebron closure, the company is making Hebron's machinery available to other corporate North American plants including some machinery to Mexico. However, the capital equipment used to make exhaust systems is not like or directly competitive with exhaust systems themselves and as such would not form a basis of a worker group certification. Other findings on reconsideration show that no production was shifted to Mexico and only a very small portion of Hebron's total production, the production of resonator bodies, was shifted to Canada; however, the workers who produced resonator bodies were not separately identifiable. (AR p. 23 and p. 28).

The workers were also denied under a NAFTA petition (NAFTA–00120) on June 30, 1994 (59 FR 37997) and on reconsideration on October 7, 1994 (59 FR 53213). The Department's denial was based on the fact that neither the increased import criterion nor the shift in production to Mexico or Canada criterion of the Worker Group Eligibility Requirements of the NAFTA provisions of the Trade Act was met.

The record states that the Ohio Bureau of Employment Security (OBES) made a preliminary finding that the firm met the increased import criterion. (See AR p. 30). This state finding is only a preliminary finding to get the investigatory process started. The state's investigation was not as extensive as the Department's investigation. Further, under the NAFTA–TAA provisions, the state, unlike the Department, does not make a finding on the ''contributed importantly'' test, which the workers failed to pass.

On further reconsideration, the Department has difficulty obtaining additional information from Walker Manufacturing especially as to a further breakout of Hebron's production and sales. On December 20, 1994, the Department, however, did contact the plaintiffs' counsel, and other union witnesses to request any information or documentation that would contradict the Department's negative determinations. Counsel for the plaintiffs alleged that about 50 resonator workers were laid off in February 1994 and that 40 percent of the plant's production was shipped to Mexico prior

to the phasedown. (See AR pp. 69–70). These allegations were not backed up by any supporting documentation, and none of the other union witnesses supplied any evidence or documentation.

The remand findings show that the Walker plant in Queretaro, Mexico does not produce any goods or products like or directly competitive with the articles formerly produced at Hebron. The Mexican plant is a supplier of exhaust systems for General Motors, Chrysler and Volkswagen and to the replacement parts market (aftermarket) in Mexico. The Herbron plant, on the other hand, produced exhaust systems only for Ford. These customized exhaust systems are not interchangeable. (See AR p. 74).

The findings also show that no production was transferred to Mexico as a result of the closure of the Hebron plant. (See AR p.49, p.64). Neither the Hebron plant nor Walker's Mexico plant supply the same customers. (See AR p. 49). Only the production of resonator bodies was transferred to Canada; however, this transfer accounted for only a very small portion of Hebron's total production and the workers were not separately identifiable by product. All other production was transferred to company owned domestic plants, primarily Marshall, Michigan and Ligonier, Indiana. (See AR p. 62).

Other findings on reconsideration show that the Hebron plant closure was due to capacity concerns within Walker Manufacturing and Walker's desire to provide better service for Hebron's sole customer, Ford Motor Company. (See AR p. 62).

On remand, the Department received a further breakout by month of Hebron's production and a listing of all Hebron's capital assets shipped to other corporate locations. (See AR pp. 118–46). These new findings show that Canadian corporate exports (from Cambridge) to the U.S. from May 1, 1992 to April 30, 1994, were less than one-tenth of one percent of Hebron's sales during the same period. (See AR pp. 147, 149). Such a small proportion is too insignificant to form a basis for a worker group certification, especially since the Hebron workers are not separately identifiable by product, and thus it cannot be determined how many workers produced the components that are now being imported. (See AR p. 23, pp. 28–29).

Other findings on reconsideration show only very small amounts of Hebron's assets were shipped to Mexico. (See AR pp. 118–152). Contrary to the contention of the plaintiffs' counsel, (See AR p. 163), the mere transfer of machinery from a domestic plant to a Mexican or Canadian plant would not, by itself, form a basis for a worker group certification under the NAFTA provisions of the Trade Act. Rather the NAFTA provisions specifically state that there must be a shift in production of *articles* from a domestic firm to a Mexican or Canadian plant for the workers to be eligible to apply for transitional adjustment assistance, not the shifts of *machinery* associated with those, or any other type of articles. (Trade Act, Sec 250(a)(1)(B), 19 U.S.C. § 2331(a)(1(B)). Since no articles formerly produced at the Hebron plant are now being produced in Mexico, the transfer of production criterion has not been met here.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of the Walker Manufacturing Company in Hebron, Ohio.

Signed at Washington, D.C., this 5th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30156 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00602]

Conagra Flour Milling Company Superior, Wisconsin; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at ConAgra Flour Milling Company, Superior, Wisconsin. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

NAFTA–00602; ConAgra Flour Milling Company, Superior, Wisconsin (November 22, 1995)

Signed at Washington, D.C. this 29th day of November, 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30161 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00609]

Dow Chemical Company Corporate Aviation Division, Freeland, Michigan; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Dow Chemical Co., Corporate Aviation Division, Freeland, Michigan. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

NAFTA–00609; Dow Chemical Co., Corporate Aviation Division, Freeland, Michigan (November 22, 1995)

Signed at Washington, D.C. this 29th day of November, 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30160 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00634]

Lockheed Martin, Ocean, Radar & Sensor Systems, Utica, 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 Certification of Eligibility to Apply for Worker Adjustment Assistance on October 26, 1995, applicable to all workers of Lockheed Martin, Ocean, Radar & Sensor Systems Division located in Utica, New York. The notice will soon be published in the Federal Register.

At the request of the State designee, the Department has reviewed the subject certification to specify that only the inspection operation of the printed circuit board assemblies are being shifted to Mexico.

The intent of the Department's certification is to include workers engaged in the inspection operation of the printed circuit board assemblies at Lockheed Martin, Ocean, Radar & Sensor Systems Division located in Utica, New York that were adversely affected by the shift in production of the inspection operation to Mexico.

The amended notice applicable to NAFTA—00634 is hereby issued as follows:

All workers engaged in the inspection operation of the printed circuit board assemblies at Lockheed Martin, Ocean, Radar & Sensor Systems Division located in Utica, New York who become totally or partially separated from employment on or after October 5, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1994.

Signed at Washington, D.C. this 1st day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30155 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00358]

Sun Apparel, Inc., El Paso, Texas; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on March 10, 1955, applicable to all workers of Sun Apparel, Inc., Concepcion Plant located in El Paso, Texas. The notice was published in the Federal Register on March 22, 1995 (60 FR 15164).

At the request of the State Agency, the Department reviewed the subject certification. New findings show that worker separations have occurred at the Sun Apparel's Armour Plant in El Paso. The workers at the Armour Plant, like the Concepcion Plant, are engaged in employment related to the production of jeans. The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports from Mexico or Canada. Therefore, the Department is amending the certification to expand coverage to all workers of Sun Apparel in El Paso, not just those workers at the Concepcion Plant.

The amended notice applicable to NAFTA–00358 is hereby issued as follows:

All workers of Sun Apparel, El Paso, Texas who became totally or partially separated from employment on or after February 2, 1994 are eligible to apply for NAFTA–TAA Section 250 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30148 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, on October 4, 19985, Federal Register No. 192, page 52024, the National Science Foundation (NSF) published, for public comment, a proposed collection of information, ''Survey of Industrial Research and Development, 1995–97.'' No public comments were received. The collection of information is now being forwarded to the Office of Management and Budget for consideration. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call Herman Fleming, NSF Clearance Officer at (703) 306–1243, or send comments to: National Science Foundation, 4201 Wilson Boulevard, Suite 485, Arlington, VA 22230.

Written comments should be received by January 5, 1995.

Abstract: This survey measures the amount and indicates the direction of R&D expenditures by U.S. industry, Government agencies, corporations, academic researchers, trade associations, research organizations, and others use the survey statistics to analyze and forecast technological growth, investigate productivity determinants, formulate tax policies, and compare individual company performance with industry averages.

Companies with known R&D activity and samples of companies in selected industries that may conduct R&D are included.

Dated: December 7, 1995.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 95–30229 Filed 12–11–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–309, 50–285, 50–317, 50–318, 50–336, and 50–335]

Maine Yankee Atomic Power Co., Omaha Public Power District, Baltimore Gas and Electric Co., Northeast Nuclear Energy Co., and Florida Power & Light Co.; Maine Yankee, Fort Calhoun Unit 1, Calvert Cliffs Units 1 and 2, Millstone Unit 2, and St. Lucie Unit 1; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition dated May 2, 1995, by Mr. John F. Doherty, J.D. (Petition for action under 10 CFR 2.206). The Petition pertains to the following plants: Maine Yankee, Fort Calhoun Unit 1, Calvert Cliffs Units 1 and 2, Millstone Unit 2, and St. Lucie Unit 1.

In the Petition, Petitioner requested that the following six pressurized-water reactors be immediately shut down: Maine Yankee, Fort Calhoun Unit 1, Calvert Cliffs Units 1 and 2, Millstone Unit 2, and St. Lucie Unit 1. In addition, the Petitioner requested that steam generator tubes be inspected immediately at those plants.

The Director of the Office of Nuclear Reactor Regulation has determined to deny the Petition. The reasons for this denial are explained in the ''Director's Decision Pursuant to 10 CFR 2.206'' (DD–95–22), the complete text of which follows this notice, and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 6th day of December, 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

Office of Nuclear Reactor Regulation, William T. Russell, Director

In the Matter of: Maine Yankee Atomic Power Co., Omaha Public Power District, Baltimore Gas and Electric Co., Northeast

Nuclear Energy Co., Florida Power & Light Co. (Maine Yankee, Fort Calhoun Unit 1, Calvert Cliffs Units 1 and 2, Millstone Unit 2, and St. Lucie Unit 1). Docket Nos. 50–309, 50–285, 50–317, 50–318, 50–336, and 50–335. License Nos. DPR–36, DPR–40, DPR–53, DPR–69, DPR–65, DPR–67.

I. Introduction

On May 2, 1995, Mr. John F. Doherty, J.D. (Petitioner), filed a Petition with the U.S. Nuclear Regulatory Commission (NRC) pursuant to 10 CFR 2.206. The Petitioner requested that the following six pressurized-water reactors be immediately shut down: Maine Yankee, Fort Calhoun Unit 1, Calvert Cliffs Units 1 and 2, Millstone Unit 2, and St. Lucie Unit 1. In addition, the Petitioner requested that steam generator tubes be inspected immediately at those plants. The Petitioner stated that an inspection by the license in April 1995 of the Maine Yankee plant using the newly developed Point Plus system revealed that the steam generator tubes are on the verge of rupture, threatening the release of radioactive liquid and gaseous material into the environment and consequent harm to human health and safety. Because the other plants the Petitioner identified were built by the same manufacturer (Combustion Engineering) and are of similar operating age, the Petitioner asked that they, along with the Maine Yankee, be immediately shut down and that all steam generator tubes be immediately inspected using the Point Plus Probe system.

On June 28, 1995, I informed the Petitioner that the Petition had been referred to my office for preparation of a Director's Decision. I further informed the Petitioner that his request for immediate shutdown and inspection was denied because continued operation of these units until their next scheduled outage posed no undue risk to public health and safety. I also informed the Petitioner that the NRC would take appropriate action within a reasonable time.

II. Discussion

The Petitioner requested that six CE-designed plants be shut down and their steam generator tubes inspected with the Plus Point inspection probe. The request appears to be based on concerns that without inspections using the Plus Point probe, the steam generators in these plants may be susceptible to one or more steam generator tube ruptures (SGTRs). However, the results of examinations of tubes removed from the Maine Yankee steam generators and in situ pressure tests of the most severely degraded tubes in the Maine Yankee steam generators have demonstrated that the tubes, although severely degraded, still had a significant margin before failure even under postulated accident conditions. Furthermore, the NRC has taken actions to ensure that other plants have performed appropriate steam generator tube inspections to assure tube integrity. These important actions are discussed below in greater detail.

The NRC applies a defense-in-depth approach toward protecting public health and safety from the potential consequences of events involving the rupture of steam generator tubes. Steam generator tube degradation is managed through a combination of several different elements, including inservice inspection, tube repair criteria, primary-to-secondary leak rate monitoring, water chemistry, and analyses to ensure safety objectives are met.

The primary means for assessing steam generator tube degradation is through inservice inspections. Plant technical specifications require a periodic inspection of the steam generator tubes. Any tubes with identified degradation in excess of the repair criteria are repaired or removed from service. In order to assess the condition of steam generator tubing, the industry primarily relies on eddy current inspection techniques, which includes the motorized rotating pancake coil (MRPC) test. Circumferential cracking in steam generator tubing has been identified at expansion transitions, small radius U-bends, dented tube support plate intersections, and sleeved joints. Based on the utilities' responses to GL 95–03, the inservice CE steam generators (i.e., not including retired CE steam generators) have been inspected in these areas with techniques capable of detecting circumferential cracking and, to date, such cracking was found only at the expansion transitions.

Experience to date, including experience at the Maine Yankee plant, shows that the standard MRPC probe is a reliable means for detecting structurally significant cracking in steam generator tubes. The use of an MRPC probe in conjunction with adequate inspection procedures is a reliable means for detecting circumferential cracking in steam generator tubes. As discussed above, metallographic examinations of removed tubing and in situ pressure testing of degraded tubes continue to support the staff's conclusion that properly conducted MRPC inspections can identify circumferential cracking before the cracking exceeds the structural limits.

In addition to requiring periodic steam generator tube inspections, the NRC requires an operational leak rate limit to provide reasonable assurance that should a primary-to-secondary leak be experienced during service, it will be detected and the plant will be shut down in a timely manner before rupture occurs and with no undue risk to public health or safety. Requiring operation within these limits decreases the possibility that steam generators may be vulnerable to tube ruptures during postulated accidents such as a main steamline break or a loss-of-coolant accident.

Inspection findings at Maine Yankee in 1994 revealed indications of large circumferential cracks that had been missed in previous inspections because of inadequacies in MRPC test and analysis procedures. The test and analysis procedures were upgraded accordingly. However, subsequent inspections at Maine Yankee performed with the MRPC in early 1995 revealed circumferential indications that were more numerous and larger than expected based on the short operating interval since the previous inspection. The 100-percent MRPC inspection of the expansion transitions were supplemented by inspections with the recently developed Plus Point probe and a specially wound high-frequency MRPC coil. These latter probes offer improved sensitivity to inner-diameter-initiated circumferential cracks of the type present at the Maine Yankee expansion transitions and identified substantial numbers of relatively small circumferential cracks not detected with the conventional MRPC.

Three tubes were removed from these steam generators in early 1995. Before the tubes were removed, they were tested by ultrasonic, visual (fluorescent penetrant dye), and eddy current techniques to confirm the nature of the indications. Eddy current methods included examination with a standard rotating pancake coil, a Plus Point coil, and a high-frequency pancake coil. The indications were sized with various techniques and the tubes were then destructively examined so that the actual size of the indications could be determined. The results of the destructive examinations are provided in NRC Information Notice 95–40, ''Supplemental Information Pertaining to Generic Letter 95–03, 'Circumferential Cracking of Steam Generator Tubes.' '' The destructive examination results and data obtained with a high-frequency pancake coil suggest that many of the indications may not have been as structurally significant as the standard pancake coil appeared to indicate.

In situ pressure tests were conducted on the tubes with the largest MRPC indications and the results indicate acceptable margins against burst under normal operating and postulated accident conditions. The NRC had a review conducted by an independent contractor of the in situ test method used at Maine Yankee and determined that it provides a reasonable simulation of the hydraulic pressure loads induced during a postulated main steamline break.

Thus, it has been demonstrated that the tubes with the largest indications at Maine Yankee continued to exhibit adequate structural integrity at the time they were found. This finding is attributable to the morphology of the cracks as determined from metallographic examinations of pulled tube specimens from Maine Yankee. This morphology consists of cracks that were not coplanar but rather of short circumferential length and staggered around the circumference over a short axial region with ligaments of material between the cracks. These ligaments add considerably to the strength of the tube, but these ligaments are generally not detectable by the MRPC.

The findings at Maine Yankee nevertheless raised concern that large undetected circumferential cracks could possibly exist at other plants. Therefore, the NRC issued Generic Letter (GL) 95–03, ''Circumferential Cracking of Steam Generator Tubes,'' on April 28, 1995, notifying licensees of the Maine Yankee experience and requesting that they evaluate recent operating experience concerning the detection and sizing of circumferential cracks and the potential applicability of this experience to their plants. On the basis of the results of this evaluation, past inspections and the results thereof, and other relevant factors, licensees were requested to develop a safety assessment justifying continued operation until the next scheduled steam generator tube inspections were to be performed. The generic letter also requested that licensees develop and submit their plans for the next steam generator tube inspection as they pertain to the detection of circumferential cracks. The utilities were required to respond to GL 95–03 within 60 days. By now, the utilities that own the six plants listed in the Petition have responded to GL 95–03 and the responses have been evaluated by the staff.

Based on the utilities' responses to GL 95–03, with the exception of Millstone Unit 2, the CE plants listed in the Petition have been inspected in those areas susceptible to circumferential cracking with improved eddy current inspection probes equally capable as the Point Plus system of detecting circumferential cracking. All tubes with detected cracks have been removed from service. The licensee for Millstone Unit 2 replaced the original CE steam generators during an outage that ended in January 1993. The new steam generators incorporated many new design features that are expected to eliminate or greatly reduce the potential for circumferential tube cracking. These include the use of Inconel 690, a material that has significantly greater resistance to cracking and hydraulic expansion of tubes, which reduces the potential for cracking in the expansion transitions. The limited operational time, improvements in design, and favorable plant operating conditions minimize the potential for the development of circumferential cracking in the Millstone Unit 2 steam generators. Millstone Unit 2 steam generators will continue to be inspected during refueling outages.

The NRC has studied the risk and potential consequences of a range of SGTR events in NUREG–0844, ''NRC Integrated Program for the Resolution of Unresolved Safety Issues A–3, A–4, and A–5 Regarding Steam Generator Tube Integrity.'' The staff estimated the risk contribution due to the potential for single and multiple SGTRs. The study also examined the expected consequences of SGTR scenarios, including beyond-design-basis situations, such as the potential for release as a result of containment bypass because of failed tubes concurrent with a breach of secondary system integrity. A combination of circumstances and conditions is required to produce such simultaneous failures: (1) Main steamline break or other less severe loss of secondary system integrity, (2) the potential that a population of tubes susceptible to rupture exists in a particular steam generator, (3) the potential that operators would not take actions to avoid high differential pressures, and (4) the probability that a large number of tubes would actually fail simultaneously. In the NUREG –0844 assessment, the staff concluded that the probability of simultaneous multiple tube failure was small (approximately 10^{-5}), and that the risk resulting from releases during SGTRs with loss of secondary system integrity was small (about 10^{-7} latent fatalities per reactor year).

III. Conclusion

Based on the fact that (1) adequate steam generator tube inspections have been performed, (2) primary-to-secondary leakage is being monitored on a continuing basis, and (3) the risk of multiple SGTR events is low, I have concluded that an immediate shutdown and Plus Point probe inspection of Maine Yankee, Fort Calhoun Unit 1, Calvert Cliffs Units 1 and 2, St. Lucie Unit 1, and Millstone Unit 2 is not warranted.

The Petitioner's request for action pursuant to 10 CFR 2.206 is denied. As provided in 10 CFR 2.206(c), a copy of the Decision will be filed with the Secretary of the Commission for the Commission's review. This Decision will constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 6th day of December , 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95–30176 Filed 12–11–95; 8:45 am]

BILLING CODE 7590–01–P–M

[Docket Nos. 50–325 AND 50–324]

Carolina Power & Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an amendment to Facility Operating License Nos. DPR–71 and DPR–62 issued to the Carolina Power & Light Company (the licensee) for operation of the Brunswick Steam Electric Plant, Units 1 and 2 (BSEP) located in Southport, North Carolina.

Effective October 26, 1995, the Commission amended its regulations (10 CFR Part 50, Appendix J) to provide a performance-based option for leakage-rate testing of containments of light-water-cooled nuclear plants. The proposed amendment would permit the licensee to implement this performance-based option, which allows leakage testing intervals to be based on system and component testing performance.

The proposed amendment requires the establishment of a ''Primary Containment Leakage Rate Testing Program'' (program) and makes general reference to the NRC guidance utilized by the licensee for development of this program, i.e. Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program''. Regulatory Guide 1.163 addresses the acceptability of industry-

developed guidance described in Nuclear Energy Institute document NEI 94–01, entitled ''Industry Guideline for Implementing Performance-Based Option of 10 CFR Part 50, Appendix J.'' The proposed amendment takes one exception to the guidance in NEI 94–01. Based upon the use of compensatory measures, the exception would allow the use of less accurate flow measuring equipment.

Certain containment leakage testing schedules and details regarding the scope of containment valves and penetrations to be leak-tested will be included in the licensee's program but would be removed by this proposed amendment from the BSEP Technical Specifications. Consistent with NEI 94–01 the proposed amendment relaxes the schedules for performing primary containment air lock leakage surveillance testing and, if the interval for testing of overall containment leakage (Type A testing) has been extended under the program to 10 years, requires inspections for containment integrity during two other refueling outages before the next Type A test as well as immediately prior to that test.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed license amendments revise the Technical Specifications to reflect the adoption of a performance-based containment leakage-testing program. The Nuclear Regulatory Commission has approved the use of a performance-based option for containment leakage testing programs when it amended 10 CFR Part 50, Appendix J (60 FR 49495).

For adoption of the revised regulations, licensees are required to incorporate into their Technical Specifications, by general reference, the NRC regulatory guide or other plant-specific implementing document [used to develop the performance-based leakage-testing program]. A new Administrative Control subsection is being added to the Brunswick Plant Technical Specifications that requires the establishment and maintenance of a Primary Containment Leakage Rate Testing Program. As stated in the Technical Specification, this Primary Containment Leakage Rate Testing Program will conform with NRC Regulatory Guide 1.163, Revision 0, dated September 1995, ''Performance-Based Containment Leak-Rate Testing Program'' by establishing leakage testing intervals based on the criteria in Section 11.0 of NEI 94–01. The Technical Specifications will continue to require performance of a periodic general visual inspection of the containment to ensure early detection of any structural deterioration of the containment system that might occur.

The effect of increasing containment leakage rate testing intervals has been evaluated by the Nuclear Energy Institute using the methodology described in NUREG–1493 [''Performance-Based Containment Leak-Test Program'', September 1995] and historical representative industry leakage rate testing data. The results of this evaluation, as published in NEI 94–01, Revision 0, are that the increased risk corresponding to the extended test interval is small (less than 0.1 percent of total risk) and compares well to the guidance of the NRC's safety goal. Therefore, adoption of performance-based verification of leakage rates for isolation valves, containment penetrations, and the overall containment boundary will provide an equivalent level of safety and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. No safety-related equipment, safety function, or plant operations will be altered as a result of the proposed license amendment. The safety objective for the primary containment is stated in 10 CFR 50, Appendix A, ''General Design Criteria for Nuclear Power Plants.'' The safety function of the primary containment will be met since the containment will continue to provide ''an essentially leak-tight barrier against the uncontrolled release of radioactivity to the environment * * *'' for postulated accidents. Therefore, the proposed license amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendments do not involve a significant reduction in a margin of safety. As stated above, the Nuclear Regulatory Commission has approved the use of a performance-based option for containment leakage testing programs when it amended 10 CFR Part 50, Appendix J (60 FR 49495). The new Primary Containment Leakage Rate Testing Program will conform with NRC Regulatory Guide 1.163, Revision 0, dated September 1995, ''Performance-Based Containment Leak-Rate Testing Program'' by requiring that leakage testing intervals be established based on the criteria in Section 11.0 of NEI 94–01, Revision 0.

As discussed in Part 1 above, the effect of increasing containment leakage rate testing intervals has been evaluated by the Nuclear Energy Institute using the methodology described in NUREG–1493 and historical representative industry leakage rate testing data. The results of this evaluation, as published in NEI 94–01, Revision 0, are that the increased safety risk corresponding to the extended test intervals is small (less than 0.1 percent of total risk) and compares well to the guidance of the NRC's safety goal. In addition, as demonstrated by risk analyses contained in NUREG–1482 (sic) [NUREG–1493], relaxation of the integrated leak rate test frequency does not significantly increase the probability or consequences of a previously evaluated accident. Integrated leakage rate tests have been demonstrated to be of limited value in detecting significant leakages from penetrations and isolation valves. Therefore, the proposed license amendments adopting a performance-based approach for verification of leakage rates for isolation valves, containment penetrations, and the containment overall will continue to meet the regulatory goal of providing an essentially leak-tight containment boundary, will provide an equivalent level of safety, and do not involve a significant reduction in a margin of safety.

The revised Technical Specifications will continue to maintain the allowable leak rate (L_a) as the Type A test [containment overall leak-rate test] performance criterion. In addition, a requirement to perform a periodic general visual inspection of the containment has been maintained as part of the performance-based leakage testing program.

The revised Technical Specifications will continue to maintain the allowable leak rate (L_a) (sic) [0.6 L_a] as the Type B [containment penetration leak-rate test] and C [containment isolation valve leak-rate test] tests' performance criterion. As supported by the findings of NUREG–1493, the percentage of leakages detected only by integrated leak rate tests is small (only a few percent) and Type B and C leakage tests are capable of detecting more than 97 percent of containment leakages and virtually all such leakages are identified by local leak rate tests (LLRTs) of containment isolation valves.

Thus, the proposed license amendments do not involve a significant reduction in a margin of safety and will continue to ensure the revised Appendix J regulatory goal of ensuring an essentially leak-tight containment boundary.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be

considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 11, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to David B. Matthews, petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 13, 1995, as amended on November 27, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland, this 5th day of December 1995.

For the Nuclear Regulatory Commission.

David C. Trimble,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–30175 Filed 12–11–95; 8:45 am]

BILLING CODE 7590–01–P

[IA 95–058]

Five Star Products, Inc. and Construction Products Research, Fairfield, CT and H. Nash Babcock, Order

I

Five Star Products, Inc. (FSP), is a company located in Fairfield, Connecticut, and was formerly known as U.S. Grout Corporation. FSP manufactures and sells grout and concrete products to the nuclear industry and has done so for about 20 years. Through a holding company, Mr. Babcock owns FSP and several related businesses, including Construction Products Research, Inc. (CPR), which performs laboratory tests of FSP products. Mr. Babcock is Vice-President of FSP and President of CPR.

II

FSP submitted its grout and concrete products to CPR for testing. Following the tests, CPR issued certifications that it tested FSP products in conformance with certain specifications of the American Society for Testing and Materials. FSP subsequently utilized those certifications as the basis for certifying that its products satisfied Appendix B and customer Purchase Order (PO) requirements. At various times since 1980, FSP has advertised and represented to NRC licensees that its products are manufactured in accordance with the requirements of Appendix B. It has supplied products pursuant to purchase orders requiring FSP to meet the requirements of Appendix B, and 10 CFR Part 21. Licensees who have purchased material from FSP under FSP's certification of quality have used the grout and concrete in safety-related applications and as basic components.

The Nuclear Regulatory Commission (NRC or Commission) issued 10 CFR Part 21 (Part 21) to implement Section 206 of the Energy Reorganization Act of 1974. Part 21 imposes, *inter alia*, evaluation and reporting requirements on directors and responsible officers of firms which supply basic components of any facility or activity which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974. Basic components are structures, systems, or parts in which a defect or failure to comply with applicable requirements could create a substantial safety hazard. 10 CFR 21.3(a). Part 21 is implemented in conjunction with Appendix B, which contains the quality assurance (QA) criteria applicable to design, fabrication, construction, and testing of safety-related structures, systems, and components in commercial nuclear power plants. Together, these requirements are intended to assure the safety of safety-related components, materials, and services for nuclear power plants.

Section 206 of the Energy Reorganization Act of 1974 requires directors and responsible officers of firms constructing, owning, operating or supplying the basic components of a facility or activity licensed or regulated by the Atomic Energy Act of 1954, as amended, who obtain information regarding defects in those basic components, or failures of basic components, or of the facility to comply with NRC requirements, to notify the NRC of those defects and failures to comply. Section 206(d) authorizes the Commission to conduct inspections and other enforcement activities necessary to insure compliance with that section. 10 CFR 21.41 and 21.51 implement Section 206(d).

III

The NRC conducts inspections of vendors who supply safety-related components pursuant to Appendix B and who supply basic components pursuant to Part 21. On August 18, 1992, the NRC began an unannounced inspection of FSP, and of its laboratory contractor, CPR, to determine the extent to which FSP supplied basic components to NRC licensees, the adequacy of FSP's QA Program, the adequacy of CPR's testing of FSP products, and the adequacy of FSP products.

Shortly after the inspection began, Mr. Babcock met with the inspection team and questioned the NRC's authority to conduct the inspection. Mr. Babcock was presented with two identical letters from the NRC staff, dated August 13, 1992, each addressed separately to FSP and CPR. The letters outlined the NRC's inspection authority under 10 CFR Part 21, Section 161o of the Atomic Energy Act of 1954, as amended (AEA), and Section 206(d) of the Energy Reorganization Act of 1974, as amended (ERA). Despite this, Mr. Babcock continued to question the NRC's authority and, throughout the inspection, denied the inspectors access to inspect CPR's testing laboratory, which was located in the basement of FSP's Fairfield, Connecticut, headquarters, and access to inspect CPR's laboratory records.

During the inspection of August 18 and 19, 1992, the inspection team reviewed NRC power reactor licensee POs submitted to Five Star in order to determine the scope of FSP's nuclear involvement. The team was provided with POs for the period 1988 to 1992. Those POs demonstrate that at least seven NRC reactor licensees and one licensee contractor had issued POs to FSP for safety-related grout and concrete mix products, and had specified compliance with Appendix B and Part 21.

The inspection team reviewed copies of several NRC licensee audit reports of FSP and CPR. These reports documented that NRC licensee requests to audit CPR's test laboratory and records were consistently denied by FSP. Further, several NRC licensee audit reports found that FSP's QA program was not acceptable and did not meet certain requirements of Appendix B.

The NRC inspection team requested copies of all audits performed by FSP of CPR to determine CPR's compliance with the quality assurance criteria of Appendix B and Part 21. Only one FSP audit of CPR was performed, by the FSP QA Manager, and it was provided to the NRC inspection team by the FSP QA Manager. The July 31, 1992 audit report concluded that CPR's June 10, 1992 QA program was satisfactory. The format and most of the language of this report were identical to a report of an audit conducted by Toledo Edison, an NRC

Part 50 reactor licensee, of FSP's QA program in February 1991. The FSP QA Manager later admitted that he had not in fact conducted an audit of CPR, and that he had used the Toledo Edison audit report to fabricate the July 31, 1992 audit report of CPR.

On August 19, 1992, the second day of the inspection, Mr. Babcock told the inspectors to leave at the end of that day and not return until after Labor Day. At 4:45 p.m. that day, Mr. Babcock was presented with another letter from the NRC staff which was witnessed by members of the inspection team and Mr. Henry Allen of FSP. This letter reiterated the legal authority of the NRC to conduct the inspection, and notified Mr. Babcock that continued refusals to permit inspection of FSP or CPR would be treated as a violation of 10 CFR 21.41, could result in enforcement action, and could be subject to treatment as a criminal violation in accordance with Sections 161o and 223 of the AEA. Notwithstanding this second letter, Mr. Babcock continued to deny the NRC inspectors access to the CPR laboratory and to records of the CPR laboratory. The inspectors left the site at 5:00 pm as Mr. Babcock had requested.

The inspection team also requested copies of QA manuals for both FSP and CPR which would provide the basis to support FSP's certifications to licensees that its products were manufactured under an appendix B Quality Assurance (QA) program. Copies of these documents were not furnished by FSP due to Mr. Babcock's suspension of further inspection activities.

As a result of FSP's and Mr. Babcock's curtailing the inspection, the inspection team was unable to review the implementation of FSP's QA Program against licensee PO's or to inspect CPR's testing of FSP's grout and concrete mix products, and thus was unable to determine whether those products were produced, tested and provided in compliance with appendix B and part 21. Therefore, the NRC staff could not determine whether there was reasonable assurance that those FSP grout and concrete mix products were acceptable for use in safety-related applications in nuclear power plants.

Shortly thereafter, the NRC obtained a federal criminal search warrant, which was executed on September 1, 1992. Certain documents and testimonial evidence were taken.

Additionally, the NRC Office of Investigations conducted an investigation of the allegations leading to and the events surrounding the inspection. (OI Case No. 1–92–037). During the course of the OI investigation, Mr. Babcock instructed his attorney to forward to the NRC a letter dated February 18, 1994, which Mr. Babcock had composed and signed. The attorney forwarded the letter, in which Mr. Babcock stated: ''We did not deny the NRC inspectors access to the laboratory in August 1992. Mr. John S. Ma, a civil engineer on the NRC inspection team, was escorted to the lab where he conducted an inspection of the test laboratory.'' As indicated above, and as known to Mr. Babcock, no NRC inspectors were allowed in the laboratory at any time during the August 1992 inspection and, therefore, the statement concerning Mr. Ma's access to and inspection of the CPR laboratory is deliberately false. The letter was material because it provided incorrect information to the NRC on a matter that was under investigation.

IV

Based on the facts discussed above, the NRC concludes that the following violations of NRC requirements occurred:

A. 10 CFR 50.5, ''Deliberate misconduct'' prohibits any contractor (including a supplier or consultant), subcontractor, or any employee of a contractor or subcontractor who knowingly provides to any licensee, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's activities subject to this part, from deliberately submitting to the NRC, a licensee, or a licensee's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

Contrary to the above, the Quality Assurance Manager of Five Star Products, and Five Star Products through its Quality Assurance Manager, prepared an audit report for Five Star Products of the Construction Products Research QA Program, dated July 31, 1992, without conducting an audit of Construction Products Research, and provided that audit report to NRC inspectors during an inspection of Five Star Products on August 18–19, 1992, knowing that no such audit had been conducted. This audit report was material to the NRC because it was capable of influencing its determination of whether the Construction Products Research QA Program complied with appendix B, and 10 CFR part 21 requirements.

B. Contrary to 10 CFR 50.5, Mr. H. Nash Babcock, the Vice President of Five Star Products, Inc. and the President of Construction Products Research, prepared and caused to be sent to the NRC a letter, in which Mr. Babcock stated that one NRC inspector had been allowed to and did in fact inspect the laboratory test facility of Construction Products Research on August 19, 1992. In fact, as Mr. Babcock knew, no NRC inspector was permitted to inspect the laboratory facilities of Construction Products Research during the August 18–19, 1992 inspection. The letter was material to the NRC because it provided information directly related to a matter under investigation by the NRC, specifically, whether Mr. Babcock had deliberately denied NRC inspectors access to the Construction Products Research test facility in violation of NRC requirements.

C. 10 CFR 21.41 requires that each individual, corporation, partnership or other entity subject to the regulations in part 21 shall permit duly authorized representatives of the Commission to inspect its records, premises, activities, and basic components as necessary to effectuate the purposes of part 21.

10 CFR 21.51(b) requires, in part, that each individual, corporation, partnership or other entity subject to the regulations in part 21 must afford the Commission, at all reasonable times, the opportunity to inspect records pertaining to basic components.

Contrary to the above, on August 18 and 19, 1992, Five Star Products, Inc., through H. Nash Babcock, Vice President of Five Star Products, and Construction Products Research, Inc., through H. Nash Babcock, President of Construction Products Research, denied NRC inspectors access necessary to conduct an inspection of Five Star Products' contracted laboratory test facility, Construction Products Research, for, and of Construction Products Research records of test data associated with, safety-related grout and concrete mix products sold by Five Star Products to nuclear power plants licensed under 10 CFR part 50, pursuant to purchase orders specifying compliance with appendix B and 10 CFR part 21. Mr. Babcock also refused to allow NRC inspectors reasonable access to CPR laboratory personnel. By terminating the inspection, Mr. Babcock also prevented NRC inspectors from completing their examination of Five Star records.

V

The NRC and its licensees must be able to rely on licensee contractors and officers of licensee contractors, including providers of safety-related basic components such as Five Star Products, Inc., and suppliers of services associated with basic components, such as Construction Products Research, Inc., to comply with NRC requirements,

including the requirements to provide accurate and complete information in all material respects and the requirements to permit inspection of their records, premises, activities and components. Five Star Products' and Mr. H. Nash Babcock's violations of 10 CFR 21.41, 21.51(b), and 50.5 demonstrate that Five Star Products and its Vice President, Mr. Babcock, are unable or unwilling to comply with NRC requirements to permit inspections and to provide complete and accurate information to the NRC in all material respects. In addition, they did not permit NRC licensees access to CPR's facilities in order to conduct necessary audits. Construction Products Research's and Mr. Babcock's violation of 10 CFR 21.41, 21.51(b), and 50.5 demonstrate that Construction Products Research and its President, Mr. Babcock, are unable or unwilling to comply with NRC requirements to permit inspections by the NRC or its licensees and to provide complete and accurate information to the NRC in all material respects. Consequently, I lack the requisite reasonable assurance that the NRC and NRC licensees can rely on the statements or certifications of Five Star Products, Inc., Construction Products Research, Inc., or Mr. H. Nash Babcock, that basic components of Five Star Products, Inc. or associated services of Construction Products Research, Inc. meet NRC requirements necessary to protect public health and safety. Therefore, I find that the public health, safety, and interest require that Five Star Products, Inc., Construction Products Research, Inc. and Mr. Babcock (1) be prohibited from providing structures, systems, and components subject to a procurement contract specifying compliance with Appendix B, or basic components subject to a procurement contract specifying compliance with 10 CFR Part 21, and (2) must respond to this Order and take certain other actions if they desire to provide such products to NRC licensees who specify that they must meet the requirements of Appendix B, or 10 CFR Part 21 [1].

VI

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, Section 206 of the Energy Reorganization Act, as amended, and the Commission's regulations at 10 CFR 2.202, 10 CFR Parts 21 and 50, and 10 CFR 50.5, IT IS HEREBY ORDERED, THAT:

1. Until Five Star Products, Inc., Construction Products Research, Inc., H. Nash Babcock, and any concern which is owned, controlled, operated or managed by H. Nash Babcock, satisfy the provisions of paragraph 2., below, they are prohibited from:

A. providing or supplying structures, systems, or components, including grout and concrete, subject to a procurement contract specifying compliance with Appendix B; and

B. providing or supplying basic components, including grout and concrete, subject to a procurement contract specifying that the contract is subject to the requirements of 10 CFR Part 21;

2.A. If Five Star Products, Inc., Construction Products Research Inc., or any concern owned, controlled, operated or managed by H. Nash Babcock, desires to lift the prohibition specified in paragraph 1, above, then Five Star Products, Inc., Construction Products Research, Inc., H. Nash Babcock or the concern owned, controlled, operated, or managed by H. Nash Babcock, shall, at least 90 days prior to the date it desires to have the prohibition lifted:

(1) Advise the NRC of that intent in writing;

(2) Respond in writing under oath or affirmation specifically as to each of the violations listed in Section IV, including: (a) An admission or denial of the alleged violation, (b) the reasons for the violation if admitted, and if denied, the reasons why, (c) the corrective steps that have been taken and the results achieved, (d) the corrective steps that will be taken to avoid further violations, and (e) the date when full compliance will be achieved;

(3) Agree in writing, under oath or affirmation, and in fact, to permit the NRC, NRC licensees, and contractors performing QA functions for such licensees, to inspect the records, premises, basic components and activities of Five Star Products, Inc., of Construction Products Research, Inc., or of any concern owned, controlled, operated or managed by H. Nash Babcock that desires to provide safety related products or basic components, or to perform tests to support claims that those products or components and those testing services meet the standards of Appendix B and 10 CFR Part 21, and to signify in writing a willingness to do so in the future;

(4) Agree in writing under oath or affirmation to demonstrate and in fact to demonstrate that those basic components and services associated with basic components meet the standards of Appendix B by having tests performed by an independent third party and having that third party provide copies of the results of those tests directly to the NRC; and

(5) The officers, managers, and supervisors of Five Star Products, Inc. and Construction Products Research, Inc. provide statements that they understand that the activities and records of the organization are subject to NRC inspection, that communications with the NRC must be complete and accurate, and that any employee may provide information to the NRC at any time without fear of retribution; and

B. When all conditions of paragraph 2.A. above have been satisfied, and the NRC has conducted inspections of the QA program and Part 21 program of Five Star Products, Inc., Constructions Products Research, Inc., and any concern owned, controlled, operated, or managed by H. Nash Babcock, and any necessary corrective action has been completed, the prohibition of paragraph 1, above, will be lifted in writing.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Five Star Products, Inc., Construction Products Research, Inc., and Mr. H. Nash Babcock of good cause.

VII

In accordance with 10 CFR 2.202, Five Star Products, Inc., Construction Products Research, Inc., and H. Nash Babcock, or any other person adversely affected by the Order, may submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Five Star Products, Inc., Construction Products Research, Inc., and H. Nash Babcock, and any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555, to

[1] This does not prohibit FSP from supplying commercial grade materials to NRC licensees, or CPR from testing and certifying commercial grade materials to NRC licensees, provided that no representations are made with regard to FSP products being qualified for safety-related applications in nuclear power plants based on compliance with 10 CFR Part 50, Appendix B, or that 10 CFR Part 21 requirements have been met.

the Assistant General Counsel for Hearings and Enforcement and the Director, Office of Nuclear Reactor Regulation, both at the same address. If a person other than Five Star Products, Inc., Construction Products Research, Inc., or H. Nash Babcock requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Five Star Products, Inc., Construction Products Research, Inc., H. Nash Babcock, or any other person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, the provisions specified in Section VI above shall be effective and final 20 days from the date of this Order without further order or proceedings.

Dated at Rockville, Maryland this 1st day of December 1995.

For the Nuclear Regulatory Commission.

James L. Milhoan,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

[FR Doc. 95–30174 Filed 12–11–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

High Intensity Drug Trafficking Areas; Availability of Funds

AGENCY: Office of National Drug Control Policy.

ACTION: Notice of funds availability.

SUMMARY: Public Law 102–393 directs the Office of National Drug Control Policy (ONDCP) to transfer certain funds to Federal, State and local drug control entities in connection with the High Intensity Drug Trafficking Area (HIDTA) program. The purpose of this announcement is to communicate to potential applicants the policies and procedures that are used in administering the program. This announcement parallels requirements of the HIDTA Program Guidance which is issued annually to the HIDTA Directors.

FOR FURTHER INFORMATION CONTACT: The HIDTA Director in your area as follows:

Houston (and a surrounding area that includes Harris County, Galveston County, and all municipalities therein). Stan Furce (713) 567–9331.

Miami (and a surrounding area that includes Broward County, Dade County, Monroe County, and all municipalities therein). Doug Hughes (305) 597–2091.

New York City (and a surrounding area that includes Nassau County, Suffolk County, and Westchester County, New York and all municipalities therein; and Union County, Hudson County, Essex County, Bergen County, and Passaic County, New Jersey, and all the municipalities therein). Harry Brady (212) 385–6980.

Los Angeles (and a surrounding area that includes Los Angeles County, Orange County, Riverside County, and San Bernardino County, and all municipalities therein). Roger Bass (213) 894–1868.

Washington D.C./Baltimore (and a surrounding area that includes Baltimore County, Howard County, Anne Arundel County, Prince Georges County, Montgomery County, and Charles County, Maryland and all the municipalities therein; and Washington, D.C.; and Arlington County, Alexandria County, Fairfax County, Prince William County, and Loudoun County, Virginia, and all the municipalities therein). Tom Carr (301) 489–1777.

Puerto Rico/Virgin Islands, Bill Lindley (809) 766–5656.

The Southwest Border (and adjacent areas that include:

San Diego County and Imperial County, California, and all the municipalities therein;

Yuma County, Marcopia County, Pinal County, Pima County, Santa Cruz County, and Cochise County, Arizona, and all the municipalities therein;

Bernalillo County, Hidalgo County, Grant County, Luna County, Dona Ana County, Eddy County, Lea County, and Otero County, New Mexico, and all the municipalities therein;

El Paso County, Hudspeth County, Culberson County, Jeff Davis County, Presidio County, Brewster County, Pecos County, Terrell County, and Crockett County, Texas, and all the municipalities therein;

Bexar County, Val Verde County, Kinney County, Maverick County, Zavala County, Dimmit County, La Salle County, Webb County, Zapata County, Jim Hogg County, Starr County, Hildago County, Willacy County, and Cameron County, Texas, and all the municipalities therein).

Dennis Usrey (619) 557–6850.

Chicago, Illinois—Mark Prosperi (312) 886–7855.

Atlanta, Georgia—Zenford Mitchell (404) 730–9359.

Philadelphia, Pennsylvania and Camden, New Jersey—Dave Webb (215) 451–5450.

SUPPLEMENTARY INFORMATION: ONDCP hereby announces its policies and application procedures for funds available under Public Law 102–393 to state and local drug control entities for drug control activities consistent with the approved strategy for each HIDTA.

Eligible Applicants

Public Law 100–690, Nov. 18, 1988, authorized the Director of ONDCP to designate areas meeting certain criteria as HIDTAs. Houston, Los Angeles, Miami, New York and the Southwest Border were so designated as part of the 1990 National Drug Control Strategy. In 1994 Washington/Baltimore and Puerto Rico/Virgin Islands were also designated. Chicago, Atlanta and Philadelphia/Camden were designated Empowerment HIDTAs in 1995. Federal, State and local law enforcement agencies located within the specific geographical areas outlined in the National Drug Control Strategy are eligible to apply for funds under this notice.

Program Objective

The goal of the HIDTA program is to reduce drug trafficking. The primary objective is to severely disrupt and dismantle drug and money laundering organizations operating in and through the HIDTAs. In concert with Federally led HIDTA initiatives, State and local proposals focus on joint local, State and Federal law enforcement efforts that target major drug organizations that support the international organizations and cartels. Funds must be used strictly for implementing an approved joint HIDTA strategy. The funds cannot be used to supplant existing support for ongoing State or local drug control operations, which should be funded out of the agencies' normal operating budgets.

Available Funds

At least $55.0 million is available for State and local participation in the HIDTAs.

Application Procedures

Each applicant must submit a written joint proposal and cooperative agreement application to the HIDTA Director in the respective HIDTA. A majority, if not all, of the transfers may be in the form of cooperative agreements. The proposals must include a written statement of the purpose, scope and measurable objective of the initiative; a narrative of the implementation plan; administrative

data including the name and address of the official authorized to enter into the cooperative agreement between the agency and the U.S. Government; a proposed detailed budget outlining how the funds will be spent; and internal controls which will ensure the funds are spent for stated purposes. The proposals and applications are first submitted to and reviewed by the area Executive Committee in the HIDTA and, upon approval, forwarded for review by National HIDTA Committee which includes representatives of ONDCP, the Departments of Justice, Treasury, and Health and Human Services. Next, they are submitted to the Director of ONDCP for review, final approval, and transfer of funds. The applicant may be required to submit additional information deemed necessary prior to approval of the cooperative agreement.

Funding Mechanism and Restrictions

Upon receipt and approval of the application, the applicant and the government will execute cooperative agreements specifying the mechanism for receipt of funds and the conditions attendant to initial and continued receipt of the funds. The applicant will be expected to comply with the following conditions prior to the expenditure of any of the funds: all travel funded must be in accordance with the published U.S. Government travel regulations; all pertinent information regarding the cooperative agreement must be made available to the public; applicable civil rights and anti-discrimination statutes must be adhered to; accounting systems and records shall be such that the Comptroller General of the United States shall be able to audit the uses of the funds. Other conditions regarding expenditures of the funds and applicant performance shall be specified in the terms and conditions of the cooperative agreement that must be executed before any funds may be received.

For any expenditure incurred prior to execution of the cooperative agreement, detailed transaction records must be submitted along with evidence supporting that the expenditures were for the purposes stated in the legislation. The ONDCP/HIDTA Director will have to approve reimbursement for these expenditures before they can be considered eligible grant costs.

Lee P. Brown,

Director.

[FR Doc. 95–30163 Filed 12–11–95; 8:45 am]

BILLING CODE 3180–02–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee, 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 meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, January 4, 1996
Thursday, January 18, 1996
Thursday, February 8, 1996
Thursday, February 22, 1996

The meetings will start at 10:45 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may 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: December 5, 1995.

Anthony F. Ingrassia,

Chairman Federal Prevailing Rate Advisory Committee.

[FR Doc. 95–30054 Filed 12–11–95; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36552; International Series Release No. 898; File No. SR–NASD–95–49]

Self-Regulatory Organizations; National Association of Securities Dealers; Notice of Filing of Proposed Rule Change Granting the Canadian Depository for Securities Access to the Automated Confirmation Transaction Service

December 5, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 12, 1995, the National Association of Securities Dealers, Inc., (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend its ''Rules of Practice and Procedure for the Automated Confirmation Transaction Service'' (''ACT Rules'') to permit The Canadian Depository for Securities (''CDS'') to enter trades in NASD's Automated Confirmation Transaction Service (''ACT'').

[1] 15 U.S.C. 78s(b)(1) (1988).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1992, the NASD approved an amendment to the ACT Rules to permit certain non member clearing organizations and their member broker/dealers to have access to and participate in ACT.[3] The rule change was adopted with the West Canada Clearing Corporation (''WCCC'') in mind, and WCCC was the first non member clearing organization to be granted access to and participation in ACT.[4]

In granting access and participation to non member clearing organizations, however, the NASD was concerned about its ability to regulate individual non member broker/dealers that enter into transactions with NASD member. Accordingly, the NASD determined to permit non member participation only for those organizations that would guarantee the trades submitted by their members. The amendments to the ACT Rules allowing non member clearing organizations access to and participation in ACT and specifically approving WCCC participation were approved by the Commission on April 19, 1995.[5]

The NASD has received another request through the International Securities Clearing Corporation to allow member broker/dealers of CDS to participate in ACT. After reviewing the financial status of CDS, the NASD believes CDS is in a financial position to guarantee the performance of its members. In addition, CDS is a member of the National Securities Clearing Corporation (''NSCC'') and a Special Representative under NSCC's rules.[6] Furthermore, CDS members submit trade data through NSCC's Correspondent Clearing Service[7] as required by ACT Rules.[8]

The NASD believes that permitting CDS broker/dealer members to participate in ACT will expand the universe of Canadian brokers executing trades with NASD members in the U.S. and will facilitate comparison of trades executed by members of CDS in the T+3 settlement cycle.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[9] which require that the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The NASD believes the rule change is consistent with the Act because the rule change will permit CDS broker/dealer members to participate in ACT under an agreement by CDS to guarantee its member transactions. It will expand the universe of Canadian brokers executing trades with NASD members in the U.S., and it will facilitate the comparison of trades executed by members of CDS in the T+3 settlement cycle.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designated up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–95–49 and should be submitted by January 2, 1996.

[2] The Commission has modified the text of the summaries prepared by the NASD.

[3] Generally, ACT facilitates comparison and clearing of interdealer over-the-counter equity trades by requiring input of trade details within specific time frames, comparing the trade details, and submitting matched, locked-in trades for clearing. For a complete description of ACT, refer to Securities Exchange Act Release Nos. 27229 (September 8, 1989), 54 FR 38484 [File No. SR–NASD–89–25] (order partially approving proposed rule change to permit ACT to be used by self-clearing firms) and 28583 (October 26, 1990), 55 FR 46120 [File No. SR–NASD–89–25] (order approving remainder of File SR–NASD–89–25 to permit ACT to be used by introducing and correspondent broker-dealers).

[4] The NASD granted access and participation to WCCC in part because it submits its transaction data to the Midwest Clearing Corporation (''MCC'') through an end-of-day processing transmittal that is part of the regional interface between the clearing corporations. WCCC also demonstrated sufficient financial strength to support the trade guarantee made on behalf of its members.

[5] Securities Exchange Act Release No. 35625 (April 19, 1995), 60 FR 20785 [File No. SR–NASD–94–55] (order approving proposed rule change relating to the access of WCCC and its members to ACT).

[6] Generally, a Special Representative is a member or a registered clearing agency that has been authorized by one or more other persons to act on their behalf at NSCC. For a complete description of Special Representative, refer to NSCC Rule 39, ''Special Representative/Index Receipt Agent.''

[7] Under the correspondent clearing service, NSCC members functioning as Special Representatives (*e.g.*, CDS) submit transaction data on behalf of correspondents, which are NSCC members or non members of NSCC that are members of an interfaced clearing organization (*e.g.*, CDS member). For a complete description of NSCC's Correspondent Clearing Service, refer to NSCC Procedure IV., C.

[8] ACT Rules require that a nonmember clearing organization not be given access to ACT unless it (1) is a clearing agency registered under the Act, (2) maintains membership in a registered clearing agency, or (3) maintains an effective clearing arrangement with a registered clearing agency.

[9] 15 U.S.C. 78o-3(b)(6) (1994).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30222 Filed 12–11–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21570; 812–9820]

EAI Select Managers Equity Fund, et al.; Notice of Application

December 6, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an Order under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: EAI Select Managers Equity Fund (''Fund''), Evaluation Associates Capital Markets, Incorporated (''Manager''), EAI Partners, L.P. (''EAI''), Evaluation Associates, Incorporated 401(K) Plan and Trust (''EAI Plan''), Harding Service Corporation, *et al.* Profit Sharing Plan and Trust (''Harding Plan''), and Stockwood VII, Inc. 401K Plan (''Stockwood Plan'', and, together with the EAI Plan and the Harding Plan, the ''Affiliated Plans'').

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act exempting applicants from section 17(a) of the Act and pursuant to section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: The requested order would permit a collective investment account sponsored by EAI to transfer its securities to the Fund.

FILING DATES: The application was filed on October 16, 1995 and amended on December 1, 1995. Applicants agree to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 28, 1995 and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: EAI, 200 Connecticut Avenue, Suite 700, Norwalk, Connecticut 06854–1958; Harding Plan and Stockwood Plan, 300 South Street, P.O. Box 1975, Morriston, New Jersey 07962–1975.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is an open-end management investment company organized as a Massachusetts business trust. The Fund has filed a registration statement under the Securities Act of 1933 which will become effective prior to the consummation of the transactions described in this application. The Manager is the investment adviser of the Fund and presently owns all of the Fund's outstanding shares. EAI is the parent of the Manager and is the sponsor of the EAI Plan, an in-house employee benefit plan for employees of EAI, the Manager, and their affiliates.

2. The Harding Plan is an employee benefit plan for employees of Harding Service Corporation (''Harding''). The Stockwood Plan is an employee benefit plan for employees of Stockwood VII, Inc. (''Stockwood''). Certain trustees of the Harding Plan and the Stockwood Plan have a greater than five percent direct or indirect equity interest in EAI. In addition, certain officers, employees and/or affiliates of Harding and Stockwood have a greater than five percent direct or indirect equity interest in EAI.

3. The Affiliated Plans and certain other participant-directed employee benefit plans (collectively, the ''Plans'') currently invest in The EAI Small Managers Equity Fund Trust, a collective investment account (''Account''). EAI is the investment adviser of the Account. The Account has not registered under the Act in reliance on the exception from the definition of ''investment company'' under section 3(c)(1) of the Act. Section 3(c)(1) provides that an issuer whose outstanding securities are beneficially owned by not more than one hundred persons and which is not making and does not propose to make a public offering of its securities is not an investment company. In The PanAgora Group Trust (pub. avail. April 29, 1994), the staff stated that, for purposes of section 3(c)(1), the staff would consider a defined contribution plan participant who decides whether or how much to invest in a private investment company to be a beneficial owner of the company's securities. Participants in the Plans have discretion to direct investment of their assets, and there are more than 100 such participants. Therefore, the Account may no longer rely on the exception in section 3(c)(1) unless the Plans' investment in the Account is terminated by December 31, 1995.[1]

4. EAI believes that the Fund is a suitable alternative investment vehicle for the Plans. Applicants contemplate that the Account would make an in-kind distribution of securities held in the Account's portfolio to the Plans and that those Plans choosing to invest in the Fund would purchase shares of the Fund by contributing the distributed securities to the Fund in exchange for Fund shares. The Account would remain available to employee benefit plans whose participants cannot direct asset investment.

5. Upon its withdrawal from the Account, each Plan would receive securities equal in value to its *pro rata* beneficial interest in the Account. Each Plan purchasing shares of the Fund by contribution of the securities distributed to it would receive shares of the Fund having a net asset value equal to the value of the securities contributed. Assets of the Plans used to purchase Fund shares would be valued at ''current market value'' as defined in rule 17a–7(b). The assets of the Fund would be invested with the same objectives and in the same manner as the assets of the Account are presently invested.

6. Each Plan choosing to purchase Fund shares by an in-kind contribution of securities would do so only upon written direction of the Plan fiduciaries. A party independent of EAI would provide such direction for the Affiliated Plans. EAI and/or the Manager would provide each Plan fiduciary with the Fund's current prospectus and a written statement disclosing the fee structure under which the Manager would be paid. Because the total expenses to be paid by the Fund will be higher than those paid by the Account, a Plan purchasing shares of the Fund would

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[10] 17 CFR 200.30-3(a)(12) (1994).

[1] *See* Latham & Watkins (pub. avail. Dec. 28, 1994).

incur greater total expenses, and this would be disclosed in a written statement to the Funds.

7. Applicants represent that investments in the Fund by the Plans would provide the plans with several benefits that are not presently available with the Account. The Plan participants would enjoy the protections of the Securities Act and the Act. In addition, investment of Plan assets in the Fund allows the Plan's participants and sponsors to monitor more easily the performance of their investments, as information concerning the investment performance of the Fund generally would be available in daily newspapers.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from selling to or purchasing from such investment company any security or other property. Section 2(a)(3) of the Act, in relevant part, defines ''affiliated person'' to include: (a) Any person directly or indirectly owning, controlling, or holding with the power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person directly or indirectly controlling, controlled by, or under common control with, such other person; and (c) if such other person is an investment company, any investment adviser thereof.

2. Although the SEC has taken a no-action position with respect to certain collective investment fund conversions, that position is conditioned on affiliated persons, or second-tier affiliates, of the Fund having no beneficial interest in the proposed transactions. Federated Investors (pub. avail. April 21, 1994). In the case of the EAI Plan, the transaction involves assets belonging to an employee benefit plan established for employees of EAI or other affiliated persons that could be considered second-tier affiliates of the Fund. In the case of the Harding Plan and Stockwood Plan, the transactions involve assets belonging to employee benefit plans with trustees, officers, employees, and/or affiliates of the sponsoring entities having a greater than five percent ownership interest in EAI. Applicants request an exemptive order to permit the Fund to accept in-kind transfers of the assets of the Affiliated Plans.

3. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act.

4. Applicants represent that the proposed transactions meet the requirements of section 17(b). Because the value of the shares each Plan receives in the Fund would be equal to fair market value of that Plan's *pro rata* share of assets in the Account, applicants represent that the transactions are fair to all involved and do not involve overreaching on the part of any person. In addition, applicants represent that because the investment policies and objectives of the Fund are identical to those of the Account, the transactions would be consistent with the portfolio objectives and policy of the Fund. Because the transactions would bring the Plans' investments under the supervision of the SEC, applicants represent that the transactions would be consistent with the provisions of the Act.

5. Applicants represent that the proposed transactions would comply with rule 17a–7 under the Act in most respects. Rule 17a–7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if, among other requirements, the transactions are affected at an ''independent market price'' and the investment company's board of directors reviews the transactions for fairness. Applicants would comply with rule 17a–7 to the extent possible, as stated in the conditions to the requested order.

6. Section 17(d) prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from effecting any transaction in which such investment company is a joint, or joint and several, participant with such person in contravention of SEC rules and regulations. Rule 17d–1 under the Act provides that no joint transaction covered by the rule may be consummated unless the SEC issues an order upon application. In passing upon such applications, the SEC considers whether participation by a registered investment company is consistent with the provisions, policies, and purposes of the Act, and is not on a basis less advantageous than that of other participants.

7. Because EAI, as sponsor of the EAI Plan, may have legal title to the EAI Plan's assets invested in the Account, EAI may be viewed as acting as a principal in the proposed transactions. Applicants represent that, since the fiduciaries of each Plan would make an independent determination as to whether to invest in the Fund and assets used to purchase shares of the Fund would be valued at current market prices, the terms received by the Affiliated Plans would not be more or less advantageous than those available to other investors. In addition, as discussed previously, applicants represent that the transactions would be consistent with the Act and the rules thereunder.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The purchase transactions will comply with the provisions of rule 17a–7(b)–(f).

2. The purchase transactions will not occur unless and until the Board of Trustees of the Fund (including a majority of Trustees that are not interested persons of the Fund) and the Plans' fiduciaries (or, in the case of the Affiliated Plans, parties independent of EAI) find that the transactions are in the best interest of the Fund and the Plans, respectively. In the case of the Fund, this determination and the basis on which it is made will be recorded fully in the records of the Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30223 Filed 12–11–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21569; 812–9842]

PCS Cash Fund, Inc., et al.; Notice of Application December 5, 1995

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: PCS Cash Fund, Inc., Morgan Stanley Fund, Inc., and Morgan Stanley Institutional Fund, Inc. (with their successors in interest,[1] the ''Funds'').

RELEVANT ACT SECTIONS: Order request under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) and rule 2a–7 thereunder, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1), and under section 17(d) of the Act and rule

[1] ''Successors in interest'' is herein limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

17d–1 thereunder to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applications request an order that would permit each applicant investment company to enter into deferred compensation arrangements with its directors who are not interested persons of the company.

FILING DATES: The application was filed on November 13, 1995, and amended on December 5, 1995

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 2, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 1221 Avenue of the Americas, New York, New York, 10020.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, 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.

Applicants' Representations

1. Each of the Funds is a Maryland corporation registered under the Act as an open-end management investment company. The PCS Cash Fund, Inc. consist of three series, the PCS Money Market Portfolio, PCS Tax-Free Money Market Portfolio, and PCS Government Obligations Money Market Portfolio. The Morgan Stanley Money Market Fund is a series of the Morgan Stanley Fund, Inc. The Money Market Portfolio and Municipal Money Market Portfolios are series of the Morgan Stanley Institutional Fund, Inc. (Shares of the PCS Tax-Free Money Market Portfolio and the Morgan Stanley Money Market Fund are not currently being offered.) Morgan Stanley Asset Management Inc. (''Morgan Stanley'') is the investment adviser to each Fund and is registered under the Investment Advisers Act of 1940.

2. Each Fund has a board of directors, a majority of the members of which are not ''interested persons'' of such Fund within the meaning of section 2(a)(19) of the Act. Each of the directors who is not an ''interested person'' of one or more of the Funds receives annual fees which collectively are, and are expected to continue to be, insignificant in comparison to the total net assets of the Funds. Applicants request an order to permit the directors who are not interested persons of any of the Funds and who receives director's fees from one or more of the Funds (the ''Eligible Directors'') to elect to defer receipt of all or a portion of their fees pursuant to a deferred compensation plan (the ''Plan'') and related election agreement entered into between each Eligible Director and the appropriate Fund. Under the Plan, the Eligible Directors could defer payment of directors' fees (the ''Deferred Compensation'') in order to defer payment of income taxes or for other reasons.

3. Applicants request that relief be extended to any other registered open-end investment company established or acquired in the future, or series thereof, for which Morgan Stanley or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with Morgan Stanley, acts in the future as investment adviser or principal underwriter (the ''Future Funds'').

4. Under the Plan, the deferred fees payable by a Fund to a participating Eligible Director will be credited to a book reserve account established by the Fund (an ''Deferred Fee Account''), as of the first business day following the date such fees would have been paid to the Eligible Director. Each Eligible Director may elect to have the return on his or her deferred fees measured as if the fees had been invested and reinvested in 90-day U.S. Treasury Bills or shares of one or more of the portfolios of the Fund of which he or she is a director (the ''Underlying Securities'').

5. The initial value of Deferred Compensation credited to a Deferred Fee Account will be effected at the respective current net asset value of each such open-end Fund. In the future, the Plan may be modified so that an Eligible Director may select as Underlying Securities shares of any other Fund besides the one of which he or she is a director.

6. The Funds' respective obligations to make payments of amounts accrued under the Plan will be general unsecured obligations, payable solely from their respective general assets and property. The Plan provides that the Funds will be under no obligation to purchase, hold or dispose of any investments under the Plan, but, if one or more of the Funds choose to purchase investments to cover their obligations under the Plan, then any and all such investments will continue to be a part of the respective general assets and property of such Funds.

7. Any participating money market series of a Fund that values its assets in accordance with a method prescribed by rule 2a–7 will buy and hold the Underlying Securities that determine the performance of the Deferred Fee Accounts in order to achieve an exact match between such series' liability to pay deferred fees and the assets that offset such liability. In addition, as a matter of prudent risk management, each Fund that is not a money market fund may purchase and hold shares of the Underlying Securities in amounts equal in value to the deemed investments of the Deferred Fee Accounts of its Eligible Directors. Thus, in cases where the Funds purchase shares of the Underlying Securities, liabilities created by the credits to the Deferred Fee Accounts under the Plan are expected to be matched by an equal amount of assets (i.e., a direct investment in Underlying Securities), which assets would not be held by the Fund if directors' fees were paid on a current basis.

8. Payments under the Plan will be made in generally equal annual installments over a five year period beginning on the first day of the year following the year in which the Eligible Director's termination of service occurred. In the event of death prior to the commencement of the distribution of amounts credited to a Deferred Fee Account, the balance of such account will be distributed to the Eligible Director's designated beneficiary in a lump sum as soon as practicable after such director's death. In the event of death after the commencement of the distribution of the Deferred Fee Account, the balance of such account will be distributed to the designated beneficiary over the remaining portion of the five-year period. In all other events, a Eligible Director's right to receive payments will be nontransferable. The Plan provides that the board of directors of the Fund has the right to accelerate or extend payment of amounts in the Deferred Fee Account at any time after the termination of the Eligible Director as a director. In the event of the liquidation, dissolution, or winding up of a Fund or the distribution of all or substantially all of a Fund's assets and property to its

shareholders (unless the Fund's obligations under the Plan have been assumed by a financially responsible party purchasing such assets) or in the event of a merger or reorganization of a Fund (unless prior to such merger or reorganization, the Fund's board of directors determines that the Plan shall survive the merger or reorganization), all unpaid amounts in the Deferred Fee Accounts maintained by such Fund shall be paid in a lump sum to the Eligible Directors on the effective date thereof.[2] The Plan will not obligate any participating Fund to retain a director in such a capacity, nor will it obligate any Fund to pay any (or any particular level of) directors' fees to any director.

Applicants' Legal Analysis

1. Applicants request an order which would exempt the Funds: (a) under section 6(c) of the Act from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) and rule 2a–7 thereunder, to the extent necessary to permit the Funds to adopt and implement the Plan; (b) under sections 6(c) and 17(b) of the Act from section 17(a)(1) to permit the Funds to sell securities for which they are the issuer to participating Funds in connection with the Plan; and (c) under section 17(d) of the Act and rule 17d–1 thereunder to permit the Funds to effect certain joint transactions incident to the Plan.

2. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Plan possesses none of the characteristics of senior securities that led Congress to enact section 18(f)(1). The Plan would not: (a) induce speculative investments or provide opportunities for manipulative allocation of any Fund's expenses or profits; (b) affect control of any Fund; or (c) confuse investors or convey a false impression as to the safety of their investments. All liabilities created under the Plan would be offset by equal amounts of assets that would not otherwise exist if the fees were paid on a current basis.

3. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. The Plan would set forth all such restrictions, which would be included primarily to benefit the Eligible Directors and would not adversely affect the interests of the directors or of any shareholder.

4. Section 22(g) prohibits registered open-end investment companies from issuing any of their securities for services or for property other than cash or securities. This provision prevents the dilution of equity and voting power that may result when securities are issued for consideration that is not readily valued. Applicants believe that the Plan would merely provide for deferral of payment of such fees and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

5. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. The relief requested from section 13(a)(3) would extend to Future Funds for which Morgan Stanley becomes investment adviser subsequent to such Future Fund's initial public offering and that have investment policies prohibiting the purchase of investment company shares without shareholder approval. Applicants believe that relief from section 13(a)(3) is appropriate to enable the affected Funds to invest in Underlying Securities without a shareholder vote. Applicants will provide notice to shareholders in the prospectus of each affected Fund of the Deferred Compensation under the Plan. The value of the Underlying Securities will be *de minimis* in relation to the total net assets of the respective Fund, and will at all times equal the value of the Fund's obligations to pay deferred fees (plus any increase in value thereof.)

6. Rule 2a–7 imposes certain restrictions on the investments of ''money market funds,'' as defined under the rule, that would prohibit a Fund that is a money market Fund from investing in the shares of any other Fund. Applicants believe that the requested exemption would permit the Funds to achieve an exact matching of Underlying Securities with the deemed investments of the Deferred Fee Accounts, thereby ensuring that the deferred fees would not affect net asset value.

7. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the relief requested from the above provisions satisfies this standard.

8. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company from selling any security to such registered investment company. Funds that are advised by the same entity may be ''affiliated persons'' under section 2(a)(3)(C) of the Act.[3] Applicants assert that section 17(a)(1) was designed to prevent, among other things, sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interest in such enterprises. Applicants submit that the sale of securities issued by the Funds pursuant to the Plan does not implicate the concerns of Congress in enacting this section, but merely would facilitate the matching of each Fund's liability for deferred directors' fees with the Underlying Securities that would determine the amount of such Fund's liability.

9. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policies of the registered investment company, and the general purposes of the Act. Applicants assert that the proposed transaction satisfies the criteria of section 17(b). The finding that the terms of the transaction are consistent with the policies of the registered investment company is predicated on the assumption that relief is granted from section 13(a)(3). Applicants also request relief from section 17(a)(1) under section 6(c) to the extent necessary to implement the Deferred Compensation under the Plan on an ongoing basis.

10. Section 17(d) and rule 17d–1 generally prohibit a registered

[2] Applicants acknowledge that the requested order would not permit a party acquiring a Fund's assets to assume a Fund's obligations under the Plan if such obligations would constitute a violation of the Act by the assuming party. Accordingly, such assumption would be permitted only if the assuming party is (a) another Fund, (b) another registered investment company that has received exemptive relief similar to that requested by applicants, or (c) not a registered investment company or is otherwise exempt from the provisions of the Act.

[3] Section 2(a)(3)(C) of the Act defines the term ''affiliated person'' of another person to include any person directly or indirectly controlling, controlled by, or under common control with such other person.

investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan ''on a basis different from or less advantageous than that of'' the affiliated person. Eligible Directors will not receive a benefit, directly or indirectly, that would otherwise inure to a Fund or its shareholders. Eligible Directors will receive tax deferral but the Plan otherwise will maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the deferred fees were paid on a current basis. When all payments have been made to a Eligible Director, the Eligible Director will be no better off, relative to the Funds, than if he or she had received directors fees on a current basis and invested them in Underlying Securities.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. With respect to the relief requested from rule 2a–7, any money market Fund, or series thereof, that values its assets in accordance with a method prescribed by rule 2a–7 will buy and hold the Underlying Securities that determine the value of the Deferred Fee Accounts to achieve an exact match between such Funds' or series' liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchases Underlying Securities issued by an affiliated Fund, the Fund will vote such shares in proportion to the votes of all other shareholders of such affiliated Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30224 Filed 12–11–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2302]

Bureau of Oceans and International Environmental and Scientific Affairs; Conservation Measures for Antarctic Fishing Under the Auspices of the Commission for the Conservation of Antarctic Marine Living Resources

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs, State.

ACTION: Notice.

SUMMARY: At its Fourteenth Meeting in Hobart, Tasmania, October 24 to November 3, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted the conservation measures listed below, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area in Antarctic waters. These were agreed upon in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources. The measures restrict overall catches of certain species of fish, prohibit the taking of certain species of fish, list the fishing seasons, define the reporting requirements, and specify measures that must be taken to minimize the incidental taking of non-target species.

DATES: Persons wishing to comment on the measures or desiring more information should submit written comments by January 11, 1996.

FOR FURTHER INFORMATION CONTACT: Erica Keen, Division of Polar Affairs, Office of Oceans Affairs (OES/OA/PA), Room 5805, Department of State, Washington, D.C. 20520, (202) 647–3262.

SUPPLEMENTARY INFORMATION

Conservation Measures Adopted at the Fourteenth Annual Meeting of CCAMLR

At its Fourteenth Annual Meeting in Hobart, Tasmania, October 24 to November 3, 1995, the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR) adopted the following conservation measures. The conservation measures addressing catch limitations were adopted in accordance with Conservation Measure 7/V and therefore enter into force immediately.

Conservation Measures Adopted in 1995

Conservation Measure 29/XIV [1,2]

Minimization of the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research in the Convention Area

The Commission,

Noting the need to reduce the incidental mortality of seabirds during longline fishing by minimizing their attraction to fishing vessels and by preventing them from attempting to seize baited hooks, particularly during the period when the lines are set,

Adopts the following measures to reduce the possibility of incidental mortality of seabirds during longline fishing.

1. Fishing operations shall be conducted in such a way that the baited hooks sink as soon as possible after they are put in the water.[3] Only thawed bait shall be used.

2. Longlines shall be set at night only (i.e., between the times of nautical twilight).[4] During longline fishing at night, only the minimum ship's lights necessary for safety shall be used.

3. The dumping of offal shall be avoided as far as possible while longlines are being set or hauled; if discharge of offal is unavoidable, this discharge shall take place on the opposite side of the vessel to that where longlines are set or hauled.

4. Every effort should be made to ensure that birds captured alive during longlining are released alive and that wherever possible hooks are removed without jeopardizing the life of the bird concerned.

5. A streamer line designed to discourage birds from settling on baits during deployment of longlines shall be towed. Specification of the streamer line and its method of deployment is given in the Appendix to this Measure. Details of the construction relating to the number and placement of swivels may be varied so long as the effective sea surface covered by the streamers is no less than that covered by the currently specified design. Details of the device dragged in the water in order to create tension in the line may also be varied.

6. Other variations in the design of streamer lines may be tested on vessels carrying two observers, at least one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, providing that all other elements of this Conservation Measure are complied with.[5]

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[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

[3] For vessels using the Spanish method of longline fishing, weights should be released before line tension occurs; wherever possible weights of at least 6 kg mass should be used, spaced at 20 m intervals.

[4] Wherever possible, setting of lines should be completed at least three hours before dawn (to reduce loss of bait to/catches of white-chinned petrels).

[5] The streamer lines under test should be constructed and operated taking full account of the principles set out in WG–IMALF–94/19 (available from the CCAMLR Secretariat); testing should be carried out independently of actual commercial fishing and in a manner consistent with the spirit of Conservation Measure 65/XII.

Conservation Measure 45/XIV

Precautionary Catch Limitation on *Euphausia superba* in Statistical Division 58.4.2

The total catch of *Euphausia superba* in Statistical Division 58.4.2 shall be limited to 450 000 tonnes in any fishing season. A fishing season begins on 1 July and finishes on 30 June of the following year.

This limit shall be kept under review by the Commission, taking into account the advice of the Scientific Committee.

For the purposes of implementing this Conservation Measure, the catches shall be reported to the Commission on a monthly basis.

Conservation Measure 78/XIV

Precautionary Catch Limits on *Champsocephalus gunnari* and *Dissostichus eleginoides* in Statistical Division 58.5.2

1. In accordance with the management advice of the 1994 meeting of the Scientific Committee:

(ii) a precautionary TAC of 311 tonnes in any one season shall be set for *Champsocephalus gunnari* in Division 58.5.2; and

(ii) a precautionary TAC of 297 tonnes in any one season shall be set for *Dissostichus eleginoides* in Division 58.5.2.

These TACs may only be taken by trawling.

2. If, in the course of a directed fishery for *Dissostichus eleginoides* or *Champsocephalus gunnari,* the by-catch in any haul of any of the species *Lepidonotothen squanifrons, Notothenia rossii, Channichthys rhinoceratus* or *Bathyraja* spp. exceeds 5%, the fishing vessel shall move to another fishing location not closer than 5 n miles distant.[1] The fishing vessel shall not fish within 5 n miles of the location in which the by-catch exceeded 5%, for a period of at least five days.[2]

3. The Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII and the Monthly Effort and Biological Data Reporting System set out in Conservation Measure 52/XI shall apply.

4. The fishing season shall commence in each year at the close of the annual meeting of the Commission and shall continue until the respective precautionary catch limits are reached or until 30 June, whichever comes first.

5. The catch limits shall be kept under review by the Commission, taking into account the advice of the Scientific Committee.

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[1] This provision is adopted pending the adoption of a more appropriate definition of a fishing ground by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XXI, pending the adoption of a more appropriate period by the Commission.

Conservation Measure 88/XIV

New Fishery in Statistical Division 58.4.3 in the 1995/96 Season

The Commission,

Welcoming the notification of Australia of its intention to conduct a new fishery in Statistical Division 58.4.3 for *Dissostichus* species.

Noting that no other Member has notified the Commission of the intent to establish a new fishery for these species in this Statistical Division.

Agreeing that no other fishing shall occur for the *Dissostichus* species in Statistical Division 58.4.3 in the 1995/96 season.

adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. The new fishery by Australia for *Dissostichus eleginoides* and *D. mawsoni* in Statistical Division 58.4.3 shall be limited to 200 tonnes for both species combined. This fishery shall be conducted by bottom trawling only.

2. For the purposes of this new fishery, the fishing season is defined as the period from 4 November 1995 until 30 June 1996.

3. The by-catch of any other species in this Statistical Division shall not exceed 50 tonnes for each species.

4. Fishing should take place over as large a geographical and bathymetric range as possible within the Statistical Division. In particular, areas where concentrations of fish are found should not be the only areas that are fished.

5. The Ten-day Catch and Effort Reporting System, as set out in Conservation Measure 61/XII shall apply.

6. Monthly effort and biological data shall be reported in accordance with Conservation Measure 52/XI. By-catch species are defined as any cephalopod, crustacean or fish species other than *Dissostichus* species.

Conservation Measure 89/XIV

New Fishery in Statistical Division 58.5.2 in the 1995/96 Season for Deep-water Species

The Commission,

Welcoming the notification of Australia of its intention to conduct a new fishery in the 1995/96 season in Statistical Division 58.5.2 for deep-water species, not covered by Conservation Measure 78/XIV,

Noting that no other Member has notified the Commission of the intent to establish a new fishery for these species in this Statistical Division,

adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. The new fishery by Australia for deep-water species, not covered by Conservation Measure 78/XIV, shall be limited to 50 tonnes for each species. This fishery shall be conducted by bottom trawling only.

2. For the purposes of this new fishery, the fishing season is defined as the period from 4 November 1995 to 30 June 1996.

3. If, in any haul, the by-catch of any of the species *Lepidonotothen squamifrons, Notothenia rossi, Channichthys rhinoceratus* or *Bathyraja* spp. exceeds 5%, the fishing vessel shall move to another location not closer than 5 n miles distant.[1] The fishing vessel shall not fish within 5 n miles of the location in which the by-catch exceeded 5%, for a period of at least five days[2].

4. The Ten-day Catch and Effort Reporting System, as set out in Conservation Measure 61/XII shall apply.

5. Monthly effort and biological data shall be reported in accordance with Conservation Measure 52/XI.

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[1] This provision is adopted pending the adoption of a more appropriate definition of a fishing ground by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.

Conservation Measure 90/XIV

Experimental Harvest Regime for the Crab Fishery in Statistical Subarea 48.3 for the Seasons 1995/96 to 1997/98

The following measures apply to all crab fishing within Statistical Subarea 48.3 for the 1995/96, 1996/97 and 1997/98 fishing seasons. Every vessel participating in the crab fishery in Subarea 48.3 shall conduct fishing operations in accordance with an experimental fishing regime as outlined below:

1. The experimental regime shall consist of three phases. Each vessel participating in the fishery shall complete all three phases. Phase 1 shall be conducted during the first season that a vessel participates in the experimental regime. Phases 2 and 3 shall be completed in the next season of fishing.

2. Vessels shall conduct Phase 1 of the experimental regime at the start of their first season of participation in the

experimental regime. For the purposes of Phase 1, the following conditions shall apply:

(i) Phase 1 shall be defined as a vessel's first 200,000 pot hours of effort at the start of its first fishing season;

(ii) every vessel conducting Phase 1 shall expend its first 200,000 pot hours of effort within a total area delineated by twelve 0.5° latitude by 1.0° longitude blocks. For the purposes of this Conservation Measure, these blocks shall be numbered A through L. The blocks are illustrated in Figure 1, and the northeast corner of each block is listed in Table 1 of Annex 90/A. For each string, pot hours shall be calculated by taking the total number of pots on the string and multiplying by the soak time (in hours) for that string. Soak time shall be defined for each string as the time between start of setting and start of hauling;

(iii) vessels shall not fish outside the area delineated by the twelve 0.5° latitude by 1.0° longitude blocks prior to completing Phase 1;

(iv) during Phase 1, vessels shall not expend more than 30,000 pot hours in any single 0.5° latitude by 1.0° longitude block;

(v) if a vessel returns to port before it has expended 200,000 pot hours in Phase 1, the balance of remaining pot hours shall be expended before the vessel can consider Phase 1 to be completed; and

(vi) after completing 200,000 pot hours of experimental fishing, vessels shall consider Phase 1 to be completed and commence fishing in a normal fashion.

3. Normal fishing operations shall be conducted in accordance with the regulations set out in Conservation Measure 91/XIV.

4. For the purposes of implementing normal fishing operations after Phase 1 of the experimental regime, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII shall apply.

5. Vessels shall conduct Phase 2 of the experimental regime at the start of their second season of participation in the experimental regime. For the purposes of Phase 2, the following conditions shall apply:

(i) every vessel conducting Phase 2 shall fish in three small squares measuring approximately 26 n miles^2 in area (the dimensions of these squares shall be 6.0′ latitude by 7.5′ longitude). These squares shall be subdivisions of the blocks delineated in Phase 1 of the experimental regime;

(ii) vessel captains shall determine the location of the three squares that will be fished, but selected squares may not be contiguous and the distance between the boundaries of any two squares must be at least 4 n miles;

(iii) vessels shall fish continuously (except in emergencies or foul weather conditions) within a single square until the average catch per pot has been reduced to 25% or less of its initial value and then continue fishing for an additional 7,500 pot hours. Not more than 50,000 total pot hours shall be expended in each square. For the purposes of Phase 2, the initial catch rate for a particular square shall be defined as the average catch per pot calculated from the first five sets made in that square. Soak times for these initial sets shall be at least 24 hours;

(iv) vessels shall finish fishing in one square before starting operations in another square;

(v) vessels shall attempt to distribute effort throughout the entire square and not fish the gear in the same location on every set; and

(vi) after completing fishing operations in the third square, fishing vessels shall consider Phase 2 to be completed and commence fishing in a normal fashion.

6. For the purposes of implementing normal fishing operations after Phase 2 of the experimental regime, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII shall apply.

7. Vessels shall conduct Phase 3 of the experimental regime at the end of their second season of participation in the experimental regime. For the purposes of Phase 3, the following conditions shall apply:

(i) a vessel shall begin conducting Phase 3 of the experimental regime approximately one week prior to the conclusion of its second fishing season. A vessel's fishing season shall be concluded if the vessel leaves the fishery voluntarily of if the fishery is closed because the TAC has been attained;

(ii) if a vessel captain voluntarily concludes fishing operations, the vessel shall begin implementing Phase 3 approximately one week prior to the conclusion of its fishing operations;

(iii) the CCAMLR Secretariat shall notify (according to the guidelines set out in Conservation Measure 61/XII) all Contracting Parties that are conducting operations in their second experimental fishing season to begin Phase 3 when approximately one week remains before the TAC is attained and the fishery is closed; and

(iv) to conduct Phase 3, every vessel shall return to the three squares it depleted during Phase 2 of the experimental regime and expend between 10,000 and 15,000 pot hours of effort in each square.

8. To facilitate analysis of data collected during Phases 2 and 3, vessels shall report the coordinates defining the boundaries of the squares where fishing occurred, date, fishing effort (number and spacing of pots and soak time), and catch (numbers and weight) for each haul.

9. Data collected during the experimental harvest regime up to 30 June in any split-year shall be submitted to CCAMLR by 31 August of the following split-year.

10. Vessels that complete all three phases of the experimental regime shall not be required to conduct experimental fishing in future seasons. However, these vessels shall abide by the guidelines set forth in Conservation Measure 91/XIV.

11. Fishing vessels shall participate in the experiment independently (e.g., vessels may not cooperate to complete phases of the experiment).

12. Crabs captured during the experimental regime shall be considered part of the prevailing TAC for the current fishing season (e.g., for 1995/96, experimental catches shall be considered part of the 1,600 tonne TAC outlined in Conservation Measure 91/XIV).

13. The experimental regime shall be instituted for a period of three split-years (1995/96 to 1997/98), and the details of the regime may be revised by the Commission during this period of time. Fishing vessels that begin experimental fishing in the 1997/98 split-year must complete the regime during the 1998/99 split-year.

Annex 90/A

Locations of Fishing Areas for the Experimental Regime of the Exploratory Crab Fishery

TABLE 1.—NORTHEAST CORNERS FOR TWELVE 0.5° LATITUDE BY 1.0° LONGITUDE BLOCKS THAT ARE CONSIDERED TO BE THE OPERATIONAL AREA FOR FISHING VESSELS CONDUCTING PHASE 1 OF THE EXPERIMENTAL CRAB FISHERY REGIME (CONSERVATION MEASURE 90/XIV)

Block No.	Coordinates of Northeast Corner	
	Latitude	Longitude
A	53°30.0′ S	39°00.0′ W
B	53°30.0′ S	38°00.0′ W
C	53°30.0′ S	37°00.0′ W
D	53°30.0′ S	36°00.0′ W
E	53°30.0′ S	35°00.0′ W
F	54°00.0′ S	36°00.0′ W

TABLE 1.—NORTHEAST CORNERS FOR TWELVE 0.5° LATITUDE BY 1.0° LONGITUDE BLOCKS THAT ARE CONSIDERED TO BE THE OPERATIONAL AREA FOR FISHING VESSELS CONDUCTING PHASE 1 OF THE EXPERIMENTAL CRAB FISHERY REGIME (CONSERVATION MEASURE 90/XIV)—Continued

Block No.	Coordinates of Northeast Corner	
	Latitude	Longitude
G	54°00.0′ S	35°00.0′ W
H	54°30.0′ S	35°00.0′ W
I	54°30.0′ S	34°00.0′ W
J	55°00.0′ S	36°00.0′ W
K	55°00.0′ S	35°00.0′ W
L	55°00.0′ S	34°00.0′ W

Conservation Measure 91/XIV

Limits on the Exploratory Crab Fishery in Statistical Subarea 48.3 in the 1995/96 Season

The following Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. The crab fishery is defined as any commercial harvest activity in which the target species is any member of the crab group (Order *Decapoda*, Suborder *Reptantia*).

2. In Statistical Subarea 48.3, the crab fishing season is defined as the period from 4 November 1995 to end of the Commission meeting in 1996, or until the TAC is reached, whichever is sooner.

3. The crab fishery shall be limited to one vessel per Member.

4. The total catch of crab from Statistical Subarea 48.3 shall not exceed 1 600 tonnes during the 1995/96 crab fishing season.

5. Each Member intending to participate in the crab fishery shall notify the CCAMLR Secretariat at least three months in advance of starting fishing of the name, type, size, registration number, radio call sign, and research and fishing operations plan of the vessel that the Member has authorized to participate in the crab fishery.

6. All vessels fishing for crab shall report the following data to CCAMLR by 31 August 996 for crabs caught prior to 31 July 1996:

(i) the location, date, depth, fishing effort (number and spacing of pots and soak time), and catch (numbers and weight) of commercially sized crabs (reported on as fine a scale as possible, but no coarser than 0.5° latitude by 1.0° longitude) for each 10-day period;

(ii) the species, size, and sex of a representative subsample of crab sampled according to the procedure set out in Annex 91/A (between 35 and 50 crabs shall be sampled every day from the line hauled just prior to noon) and by-catch caught in traps, and

(iii) other relevant data, as possible, according to the requirements set out in Annex 91/A.

7. For the purposes of implementing this conservation measure, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII shall apply.

8. Data on catches taken between 31 July 1996 and 31 August 1996 shall be reported to CCAMLR by 30 September 1996 so that the date will be available to the working group on Fish Stock Assessment.

9. Crab fishing gear shall be limited to the use of crab pots (traps). The use of all other methods of catching crabs (e.g., bottom trawls) shall be prohibited.

10. The crab fishery shall be limited to sexually mature male crabs—all female and undersized male crabs caught shall be released unharmed. in the case of *Paralomis spinosissima* and *P. formosa*, males with a minimum carapace width of 102 mm and 90 mm, respectively, may be retained in the catch.

11. Crab processed at sea shall be frozen as crab sections (minimum size of crabs can be determined using crab sections).

Annex 91/A

Data Requirements on the Exploratory Crab Fishery in Statistical Subarea 48.3

Catch and Effort Data

Cruise Descriptions

cruise code, vessel code, permit number, year.

Pot Descriptions

diagrams and other information, including pot shape, dimensions, mesh size, funnel position, aperture and orientation, number of chambers, presence of an escape port.

Effort Descriptions

date, time, latitude and longitude of the start of the set, compass bearing of the set, total number of pots set, spacing of pots on the line, number of pots lost, depth, soak time, bait type.

Catch Descriptions

retained catch in numbers and weight, by-catch of all species (see Table 1), incremental record number for linking with sample information.

TABLE 1.—DATA REQUIREMENTS FOR BY-CATCH SPECIES IN THE EXPLORATORY CRAB FISHERY IN STATISTICAL SUBAREA 48.3

Species	Data requirements
Dissostichus eleginoides.	Numbers and estimated total weight.
Notothenia rossii	Numbers and estimated total weight.
Other Species ...	Estimated total weight.

Biological Data

For these data, crabs are to be sampled from the line hauled just prior to noon, by collecting the entire contents of a number of pots spaced at intervals along the line so that between 35 and 50 specimens are represented in the subsample.

Cruise Descriptions

cruise code, vessel code, permit number.

Sample Descriptions

date, position at start of the set, compass bearing of the set, line number.

Data

species, sex, length of at least 35 individuals, presence/absence of rhizocephalan parasites, record of the destination of the crab (kept, discarded, destroyed), record of the pot number from which the crab comes.

Conservation Measure 92/XIV

Catch Limit on *Dissostichus eleginoides* in Statistical Subarea 48.4 for the 1995/96 Season

1. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.4 in the 1995/96 season shall be limited to 28 tonnes.

2. For the purposes of the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.4, the 1995/96 fishing season is defined as the period from 1 March to 31 August 1996, or until the TAC for *Dissostichus eleginoides* in Subarea 48.4 is reached, or until the TAC for *Dissostichus eleginoides* in Subarea 48.3, as specified in Conservation Measure 93/XIV is reached, whichever is sooner.

3. Each vessel participating in the *Dissostichus eleginoides* fishery in Statistical Subarea 48.4 in the 1995/96 season shall have at least one scientific observer, including one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

4. For the purpose of implementing this Conservation Measure:

(i) the Five-day Catch and Effort Reporting System set out in

Conservation Measure 51/XII shall apply in the 1995/96 season, commencing on 1 March 1996; and

(ii) the Effort and Biological Data Reporting System set out in Conservation Measure 94/XIV shall apply in the 1995/96 season, commencing on 1 March 1996.

5. Directed fishing shall be by longlines only. The use of all other methods of directed fishing for *Dissostichus eleginoides* in Statistical Subarea 48.4 shall be prohibited.

Conservation Measure 93/XIV

Limits on the Fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 for the 1995/96 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 1995/96 season shall be limited to 4,000 tonnes.

2. For the purposes of the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 1995/96 fishing season is defined as the period from 1 March to 31 August 1996, or until the TAC is reached, whichever is the sooner.

3. Each vessel participating in the *Dissostichus eleginoides* fishery in Statistical Subarea 48.3 in the 1995/96 season shall have at least one scientific observer, including one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

4. For the purpose of implementing this Conservation Measure:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XII shall apply in the 1995/96 season, commencing on 1 March 1996; and

(ii) the Effort and Biological Data Reporting System set out in Conservation Measure 94/XIV shall apply in the 1995/96 season, commencing on 1 March 1996.

5. Directed fishing shall be by longlines only. The use of all other methods of directed fishing for *Dissostichus eleginoides* in Statistical Sabarea 48.3 shall be prohibited.

Conservation Measure 94/XIV

Effort and Biological Data Reporting System for *Dissostichus eleginoides* in Statistical Subareas 48.3 and 48.4 for the 1995/96 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. At the end of each month each Contracting Party shall obtain from each of its vessels the haul-by-haul data required to complete the CCAMLR fine-scale catch and effort data form for longline fisheries (Form C2, latest version). These data shall include numbers of seabirds and marine mammals of each species caught and released or killed. It shall transmit those data to the Executive Secretary not later than the end of the following month.

2. At the end of each month, each Contracting Party shall obtain from each of its vessels a representative sample of length composition measurements from the fishery (Form B2, latest version). It shall transmit those data to the Executive Secretary not later than the end of the following month.

3. For the purpose of implementing this Conservation Measure:

(i) length measurements of fish should be of total length to the nearest centimeter below; and

(ii) representative samples of length composition should be taken from a single fishing ground.[1] In the event that the vessel moves from one fishing ground to another during the course of a month, then separate length compositions should be submitted for each fishing ground.

4. Should a Contracting Party fail to transmit the fine-scale catch and effort data or length composition data to the Executive Secretary by the deadline specified in paragraph 2, the Executive Secretary shall issue a reminder to the Contracting Party. If at the end of a further two months those data have still not been provided the Executive Secretary shall notify all Contracting parties of the closure of the fishery to vessels of the Contracting Party which has failed to supply the data as required.

Conservation Measure 95/XIV

Limitation of the By-catch of *Gobionotothen gibberifrons, Chaenocephalus aceratus, Pseudochaenichthys georgianus, Notothenia rossii* and *Lepidonotothen squamifrons,* in Statistical Subarea 48.3

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

In any directed fishery in Statistical Subarea 48.3 in any fishing season, the by-catch of *Gobionotothen gibberifrons* shall not exceed 1,470 tonnes; the by-catch of *Chaenocephalus aceratus* shall not exceed 2,200 tonnes; and the by-catch of *Pseudochaenichthys georgianus, Notothenia rossii* and *Lepidonotothen squamifrons* shall not exceed 300 tonnes each.

These limits shall be kept under review by the Commission taking into account the advice of the Scientific Committee.

Conservation Measure 96/XIV

Precautionary TAC for *Electrona carl bergi* in Statistical Subarea 48.3 for the 1995/96 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. For the purposes of this Conservation Measure the fishing season for *Electrona carlsbergi* is defined as the period from 4 November 1995 to the end of the Commission meeting in 1996.

2. The total catch of *Electrona carlsbergi* in the 1995/96 season shall not exceed 109,000 tonnes in Statistical Subarea 48.3.

3. In addition, the total catch of *Electrona carlsbergi* in the 1995/96 season shall not exceed 14,500 tonnes in the Shag Rocks region, defined as the area bounded by 52°30′S, 40°W; 52°30′S, 44°W; 54°30′S, 40°W and 54°30′S, 44°W.

4. In the event that the catch of *Electrona carlsbergi* is expected to exceed 20,000 tonnes in the 1995/96 season, a survey of stock biomass and age structure shall be conducted during that season by the principal fishing nations involved. A full report of this survey including data on stock biomass (specifically including area surveyed, survey design and density estimates), age structure and the biological characteristics of the by-catch shall be made available in advance for discussion at the 1996 meeting of the Working Group on Fish Stock Assessment.

5. The directed fishery for *Electrona carlsbergi* in Statistical Subarea 48.3 shall close if the by-catch of any of the species named in Conservation Measure 95/XIV reaches its by-catch limit or if the total catch of *Electrona carlsbergi* reaches 109,000 tonnes, whichever comes first.

6. The directed fishery for *Electrona carlsbergi* in the Shag Rocks region shall close if the by-catch of any of the species named in Conservation Measure 95/XIV reaches its by-catch limit or if the total catch of *Electrona carlsbergi* reaches 14,500 tonnes, whichever comes first.

7. if, in the course of the directed fishery for *Electrona carlsbergi,* the catch of any one haul of any species other than the target species exceeds 5%, the fishing vessel shall move to

[1] Pending the provision of a more appropriate definition, the term fishing ground is defined here as the area within a single fine-scale rectangle (0.5° latitude by 1° longitude).

another fishing location not closer than 5 n miles distant.[1] The fishing vessel shall not fish within 5 n miles of location in which the catch of species, other than the target species, exceeded 5%, for a period of at least five days.[2]

8. For the purpose of implementing this Conservation Measure:

(i) the Catch Reporting System set out in Conservation measure 40/X shall apply in the 1995/96 season; and

(ii) the Monthly Effort and Biological Data Reporting System set out in Conservation Measure 52/XI also shall apply in the 1995/96 season. For the purposes of Conservation Measure 52/XI, the target species is *Electrona carlsbergi*, and 'by-catch species' are defined as any cephalopod, crustacean or fish species other than *Electrona carlsbergi*. For the purposes of paragraph 6(ii) of Conservation Measure 52/XI a representative sample shall be a minimum of 500 fish.

Conservation Measure 97/XIV

Limitation of the Total Catch of *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 1995/96 Season

The Commission adopted this Conservation Measure in accordance with Conservation Measure 7/V:

1. The total catch of *Champsocephalus gunnari* in the 1995/96 season shall not exceed 1 000 tonnes in Statistical Subarea 48.3.

2. The fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 shall close if the by-catch of any of the species listed in Conservation Measure 95/XIV reaches its by-catch limit or if the total catch of *Champsocephalus gunnari* reaches 1 000 tonnes, whichever comes first.

3. If, in the course of the directed fishery for *Champsocephalus gunnari*, the by-catch in any one haul of any of the species named in Conservation Measure 95/XIV exceeds 5%, the fishing vessel shall move to another location not closer than 5 n miles distant.[1] The fishing vessel shall not fish within 5 n miles of the location in which the by-catch exceeded 5%, for a period of at least five days.[2]

4. The use of bottom trawls in the directed fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 is prohibited.

5. The fishery for *Champsocehalus gunnari* in Statistical Subarea 48.3 shall be closed from 1 April 1996 until the end of the Commission meeting in 1996.

6. Any vessel of any Member intending to participate in the directed fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 during the 1995/96 season shall be required to undertake a scientific survey carried out in accordance with the survey design specified in the Draft Manual for Bottom Trawl Surveys in the Convention Area (SC–CAMLR–XI, Annex 5, Appendix H, Attachment E). A list of proposed trawl survey stations shall be transmitted to the Executive Secretary at least one month before the start of the survey.

7. Each vessel participating in the directed fishery for *Champsocephalus gunnari* in Subarea 48.3 in the 1995/96 season shall have a scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

8. For the purpose of implementing paragraphs 1 and 2 of the Conservation Measure:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XII shall apply in the 1995/96 season; and

(ii) the Effort and Biological Data Reporting System set out in Conservation Measure 98/XIV shall apply for *Champsocephalus gunnari*.

Conservation Measure 97/XIV

Effort and Biological Data Reporting System for *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 1995/96 Season

This Conservation measure is adopted in accordance with Conservation Measure 7/V:

1. At the end of each Contracting Party shall obtain from each of its vessels the haul-by-haul data required to complete the CCAMLAR fine-scale catch and effort data form for trawl fisheries (Form C1, latest version). It shall transmit those data to the Executive Secretary not later than the end of the following month,

2. At the end of each month, each contracting Party shall obtain from each of its vessels a representative sample of length composition measurements from the fishery (Form B2, latest version). It shall transmit those data to the Executive Secretary not later than the end of the following month.

3. for the purpose of implementing this Conservation Measure:

(i) length measurements of fish should be of total length to the nearest centimeter below; and

(ii) representative samples of length composition should be taken from a single fishing ground.[1] In the event that the vessel moves from one fishing ground to another during the course of a month, then separate length compositions should be submitted for each fishing ground.

4. Should a Contracting Party fail to transmit the fine-scale catch and effort data or length composition data to the Executive Secretary by the deadline specified in paragraph 2, the Executive Secretary shall issue a reminder to the Contracting Party. If at the end of a further two months those data have still not been provided the Executive Secretary shall notify all contracting parties of the closure of the fishery to vessels of the Contracting Parry which has failed to supply the data as required.

R. Tucker Scully,

Director, Office of Oceans Affairs.

[FR Doc. 95–30248 Filed 12–11–95; 8:45 am]

BILLING CODE 4710–09–M

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[1] This provision is adopted pending the adoption of a more appropriate definition of a fishing ground by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.

[1] Pending the provision of a more important definition, the term fishing ground is defined here as the area within a single fine-scale grid rectangle (0.5° latitude by 1° longitude).

[Public Notice No. 2300]

Shipping Coordinating Committee, Subcommittee for the Prevention of Marine Pollution; Notice of Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on January 3, 1996, at 9:30 AM in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC.

The purpose of this meeting will be to inform the public of the accomplishments at the Marine Environment Protection Committee (MEPC) 37, to discuss what will be on the Agenda at MEPC 38, and set forth a strategy for establishing the U.S. position on these issues. MEPC 38 will take place from July 1–10, 1996 in London, England.

The major items for discussion will be the following:

1. The adoption of amendments to Annex V of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78) to require placards, garbage management plans and record keeping on ships;

2. The approval of a draft Assembly resolution on follow-up action to the U.N. Conference on the Environment and Development (UNCED);

3. The adoption of an MEPC resolution on Guidelines on the Application of the Precautionary Approach;

4. Plans for a special meeting of entities involved with the carriage of materials subject to the Irradiated Nuclear Fuel (INF) Code;

5. The proposed new Annex VI to MARPOL on prevention of air pollution from ships;

6. The future work of the committee on ''The Human Element'';

7. Port State Control procedures;

8. Unwanted aquatic organisms in ballast water; and

9. The work plan for the international Convention on Oil Pollution, Preparedness, Response and Co-operation (OPRC) intersessional meeting which will take place from 27 February—1 March 1996 in London, England.

For further information or documentation pertaining to the SPMP meeting, contact Lieutenant Commander Ray Perry, U.S. Coast Guard Headquarters (G–MOS–4), 2100 Second Street, S.W., Washington, D.C. 20593–0001, Telephone: (202) 267–2714, Facsimile: (202) 267–4690.

Dated: December 1, 1995.

Richard T. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 95–30120 Filed 12–11–95; 8:45 am]

BILLING CODE 4710–07–M

TRADE AND DEVELOPMENT AGENCY

SES Performance Review Board

AGENCY: Trade and Development Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the Trade and Development Agency's Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Deirdre E. Curley, Assistant Director for Management Trade and Development Agency, State Annex–16, Room 309, Washington, D.C. 20523–1602, (703) 875–4357.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5), U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personal Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The following have been selected as acting members of the Performance Review Board of the Trade and Development Agency: Jessalyn L. Pendarvis, Director of Equal Opportunity Programs, Agency for International Development; James D. Murphy, Deputy Director Office of Procurement, Agency for International Development; and Edward Dragon, former Regional Legal Advisor, Senior Foreign Service, Agency for International Development.

Dated: December 6, 1995.

Deirdre E. Curley,

Assistant Director for Management.

[FR Doc. 95–30263 Filed 12–11–95; 8:45am]

BILLING CODE 8040–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition From Robert G. Gingher

This notice sets forth the reasons for the denial of a petition submitted to the NHTSA under 49 U.S.C. 30162(a)(2).

In August 1995, Mr. Robert G. Gingher petitioned the National Highway Traffic Safety Administration (NHTSA) to issue an order concerning the notification and remedy of a defect in certain 1987 through 1993 Taurus, Sable, and Continental model vehicles, produced by the Ford Motor Company, because of an alleged defect in the design of the steering system tie rods. Specifically, Mr. Gingher alleges that the tie rods can break, causing loss of control of the vehicle, and that accidents have occurred because of this failure. The petitioner proposes that these vehicles be recalled and that their tie rods be replaced by a more recently designed tie rod.

This matter was the subject of an investigation by NHTSA (EA94–008) which was closed on February 27, 1995. The results of that investigation did not indicate that a safety-related defect trend existed. As a result, that investigation was closed.

Mr. Gingher bases his petition on several allegations. First, he infers that the replacement parts sales indicate a high rate of occurrence of the alleged safety defect. This is not necessarily correct because of the existence of more than one failure mode for the part. The investigation showed that fracture of the tie rod was the only failure mode that had any potential safety consequence, that fracture was a rare occurrence in service, and that the tie rods were far more likely to have been replaced because of wear, which had no identified safety consequence. Accordingly, replacement parts sales do not accurately reflect the number of occurrences of this alleged defect.

Second, Mr. Gingher states that ''the VRTC did not evaluate steering degradation.'' The Vehicle Research and Test Center did, in fact, evaluate steering performance degradation in several driving maneuvers, including straight ahead stopping, various right and left hand constant radius turns, low speed steering maneuvers, and several collision avoidance maneuvers. In only one condition, the double lane change maneuver, was the steering performance of the vehicle degraded with a separated tie rod.

Mr. Gingher has not presented any new information which was not already considered by the agency during its previous investigation. Accordingly, there is no reason to reopen the investigation. Thus, after considering all of the issues raised by this petition, recognizing the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the agency has decided to deny the petition.

Issued on: December 7, 1995.

Michael B. Brownlee,

Associate Administrator for Safety Assurance.

[FR Doc. 95–30251 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

Proposed Information Collection Activity; Public Comment Request: Certification of Training, Notice of Intent To Employ a Veteran, Employer's Application for Approval of a Job Training Program, and Application for a Certificate of Eligibility; VA Forms 22–8929, 22–8930, 22–8931, and 22–8932

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for

comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before February 12, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0396.

Title and Form Number: Certification of Training, Notice of Intent to Employ a Veteran, Employer's Application for Approval of a Job Training Program, and Application for a Certificate of Eligibility.

Type of Review: Revision of currently approved collection.

Need and Uses: The employer uses: the Certification of Training to apply for reimbursement for training a veteran; the Notice of Intent to Employ a Veteran to notify VA that the employer is going to hire a veteran; and the Application for Approval of a Job Training Program to request VA approval of a job training program. The veteran uses the Application for a Certificate of Eligibility to apply for a certification of eligibility for job training.

Current Actions: Public Law 102–484 established the Service Members Occupational Conversion and Training Act (SMOCTA). This program is administered by the Department of Veterans Affairs (VA) based on an agreement between the Secretary of Defense, the Secretary of Labor, and the Secretary of Veterans Affairs. Under current legislation no funds can be obligated under SMOCTA after September 30, 1995. However, VA will continue to reimburse an employer beyond September 30, 1995, throughout the approval length of the training program by September 30, 1995.

The sole form currently approved for use under SMOCTA is VA Form 22–8929, Certification of Training. Continued use of this form is necessary to authorize reimbursement after September 30, 1995. Approval for the form has been extended through April 30, 1997, under OMB Control Number 2900–0396. OMB extended approval of the form on September 18, 1995. Congress is currently considering legislation to fund SMOCTA beyond September 30, 1995. In anticipation of continued funding, we will request approval of the following additional forms: VA Form 22–8930, Notice of Intent to Employ a Veteran; VA Form 22–8931, Employer's Application for approval of a Job Training Program; and VA Form 22–8932, Application for Certificate of Eligibility.

Affected Public: Business or other for-profit, Individuals or Households, State, Local or Tribal Government, and Not-for-profit institutions.

Estimated Annual Burden: 26,400 hours.

Estimated Average Burden Per Respondent: 45 minutes per application.

Frequency of Response: On occasion.

Estimated Number of Respondents: 59,400.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, Telephone (202) 565–8266 or Fax (202) 565–8267.

Dated: December 4, 1995.

By Direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–30249 Filed 12–11–95; 8:45 am]

BILLING CODE 8320–01–P

Proposed Information Collection Activity; Public Comment Request: Electrical Systems Inspection Report (Manufactured Home), VA Form 26–8731b

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before February 12, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0244.

Title and Form Number: Electrical Systems Inspection Report (Manufactured Home) VA Form 26–8731b.

Type of Review: Extension of a currently approved collection.

Need and Uses: This form is used by inspectors to record findings for electrical systems of used manufactured homes proposed as security for guaranteed loans. The information is used to determine acceptability of units for VA financing.

Current Actions: VA Form 26–8731b is required in conjunction with the approval of loans guaranteed for the purchase of used manufactured homes. Section 3712(h)(l) of Title 38 U.S.C., prohibits the guaranty of any loans which does not meet standards prescribed by the Secretary. This form serves as an inspection report on the electrical system of a used unit. VA standards require tests of systems and components as described on the form. Inspections are ordered by lending institutions and performed by experienced electricians or manufactured home service personnel. VA Form 26–8731b is completed by the inspector after the tests described on the form have been made. The lender submits the report form to the applicable VA regional office with its report of loan closing.

Affected Public: Individuals or households, Business or other for-profit, and Small businesses or organizations.

Estimated Annual Burden: 240 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 120.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, Telephone (202) 565–8266 or Fax (202) 565–8267.

Dated: December 4, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–30250 Filed 12–11–95; 8:45 am]

BILLING CODE 8320–01–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 238
Tuesday, December 12, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 95–30204.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, December 14, 1995, 10:00 a.m. Meeting Open to the Public.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA:

Disclaimers Final Rules: Announcement of Effective Date.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 95–30377 Filed 12–8–95 2:46 pm]

BILLING CODE 6715–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Forwarded to the Federal Register on Wednesday, December 6, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, December 13, 1995.

CHANGES IN THE MEETING: Deletion of the following open item(s) from the agenda:

Proposed policy statement describing how interest rate risk will be measured and evaluated for supervisory purposes (proposed earlier for public comment; Docket No. R–0802).

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 7, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–30318 Filed 12–7–95; 5:09 pm]

BILLING CODE 6210–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 11, 18, 25, 1995 and January 1, 1996.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of December 11

Tuesday, December 12

2:00 p.m.
Briefing on Materials Events Data Base (Public Meeting)
(Contact: Samuel Pettijohn, 301–415–6822)

Thursday, December 14

10:00 a.m.
Briefing on Industry Restructuring and Deregulation (Public Meeting)
2:00 p.m.
Briefing on EEO Program (Public Meeting)
(Contact: Vandy Miller, 301–415–7380)

Week of December 18—Tentative

Tuesday, December 19

10:00 a.m.
Briefing on Mechanism for Addressing Generic Safety Issues (Public Meeting)
2:00 p.m.
Briefing on Generic Implications of Recent Events Involving Ingestion of Radioactive Material at Research Facilities (Public Meeting)
(Contact: John Glenn, 301–415–6187)

Week of December 25—Tentative

There are no meetings scheduled for the Week of December 25.

Week of January 1—Tentative

Friday, January 5

10:00 a.m.
Briefing by NRC Staff on Industry Restructuring and Deregulation (Public Meeting)
(Contact: Scott Newberry, 301–415–1183)
1:30 p.m.
Discussion on Full Power Operating License for Watts Bar (Public Meeting)
(Contact: Fred Hebdon, 301–415–2024)

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill, (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–4154–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: December 8, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–30407 Filed 12–8–95; 8:45 am]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 60, No. 238
Tuesday, December 12, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket Number TB-95-17]

Removal of Selected Regulations

Correction

In rule document 95–29792 beginning on page 62974 in the issue of Thursday, December 7, 1995, make the following correction:

§ 29.131 [Removed and reserved]

On page 62975, in the second column, the heading above amendatory instruction 2 should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-CE-36-AD; Amendment 39-9336; AD 95-17-07]

Airworthiness Directives; Fairchild Aircraft SA226 Series Airplanes

Correction

In rule document 95–20278 beginning on page 43359 in the issue of Monday, August 21, 1995, make the following correction:

§ 39.13 [Corrected]

On page 43360, in the second column, in the amendment to § 39.13, in the table, in the second column, the first entry should read ''T201 through T275 and T277 through T291.''.

BILLING CODE 1505–01–D

federal register

Tuesday
December 12, 1995

Part II

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Solicitation for Applications for Fiscal Year 1996 National Research Initiative Competitive Grants Program; Amendment; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Solicitation for Applications for Fiscal Year 1996 National Research Initiative Competitive Grants Program, Amendment

The National Research Initiative Competitive Grants Program (NRICGP) published a solicitation for Applications for Fiscal Year 1996 on Friday, October 13, 1995 (60 FR 53476). The NRICGP amends this solicitation to include the following definitions.

Project Types

II. Agricultural Research Enhancement Awards

(c) Strengthening Awards: Institutions in USDA EPSCoR states are eligible for strengthening awards. For FY 1996, USDA EPSCoR states consist of the following:

Alaska
Arkansas
Connecticut
Delaware
Hawaii
Idaho
Maine
Mississippi
Montana
Nevada
New Hampshire
New Mexico
North Dakota
Rhode Island
South Carolina
South Dakota
Vermont
West Virginia
Wyoming
All U.S. territories and possessions, including the District of Columbia.

Investigators at small and mid-size institutions (total enrollment of 15,000 or less) may also be eligible for Strengthening Awards. An institution in this instance is an organization that possesses a significant degree of autonomy, as determined by reference to the December, 1994 issue of the Codebook for Compatible Statistical Reporting of Federal Support to Universities, Colleges, and Nonprofit Institutions, prepared by Quantum Research Corporation for the National Science Foundation. Copies may be obtained from Quantum Research Corporation, 7315 Wisconsin Avenue, Suite 631W, Bethesda, MD 20814.

Institutions which are among the top 100 universities and colleges, except those in USDA EPSCoR states, are ineligible for strengthening awards. The top 100 institutions, as published in Selected Data on Federal Support to Universities and Colleges, Fiscal Year 1993 (National Science Foundation, NSF 95–320), are as follows:

Baylor College of Medicine
Boston University
California Institute of Technology
Carnegie-Mellon University
Case Western Reserve University
Colorado State University
Columbia University
Cornell University
CUNY Mount Sinai School of Medicine
Duke University
Emory University
Georgia Institute of Technology
Harvard University
Indiana University
Iowa State University of Science and Technology
John Hopkins University
Louisiana State University
Massachusetts Institute of Technology
Michigan State University
New York University
North Carolina State University at Raleigh
Northwestern University
Ohio State University
Oregon Health Sciences University
Oregon State University
Pennsylvania State University
Princeton University
Purdue University
Rockefeller University
Rutgers the State University of New Jersey
Stanford University
State University of New York Stony Brook
State University of New York at Buffalo
Texas A&M University
Thomas Jefferson University
Tufts University
University of Alabama Birmingham
University of Arizona
University of California Santa Barbara
University of California San Francisco
University of California Irvine
University of California San Diego
University of California Davis
University of California Los Angeles
University of California Berkeley
University of Chicago
University of Cincinnati
University of Colorado
University of Dayton
University of Florida
University of Georgia
University of Illinois Urbana
University of Illinois Chicago
University of Iowa
University of Kansas
University of Kentucky
University of Maryland Baltimore Prof Sch
University of Maryland College Park
University of Massachusetts Amherst
University of Massachusetts Med Schl Worcester
University of Medicine and Dentistry of New Jersey
University of Miami
University of Michigan
University of Minnesota
University of North Carolina Chapel Hill
University of Pennsylvania
University of Pittsburgh
University of Rochester
University of Southern California
University of Tennessee Knoxville
University of Texas Health Science Center Houston
University of Texas MD Anderson Cancer Center
University of Texas Health Sci. Center San Antonio
University of Texas at Austin
University of Texas SW Medical Center Dallas
University of Utah
University of Virginia
University of Washington
University of Wisconsin Madison
Utah State University
Vanderbilt University
Virginia Ploytech Institute and State University
Virginia Commonwealth University
Wake Forest University
Washington University
Washington State University
Wayne State University
Woods Hole Oceanographic Institute
Yeshiva University

See the FY 1996 Program Description for complete details on programs and eligibility.

Conflicts of Interest

For purposes of conflict of interest, determination of academic and administrative autonomy of an institution will be made by reference to the December, 1994 issue of the Codebook for Compatible Statistical Reporting of Federal Support to Universities, Colleges, and Nonprofit Institutions, prepared by Quantum Research Corporation for the National Science Foundation. Copies may be obtained from Quantum Research Corporation, 7315 Wisconsin Avenue, Suite 631W, Bethesda, MD 20814.

Done at Washington, D.C., this 1 day of December 1995.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–29786 Filed 12–11–95; 8:45 am]

BILLING CODE 3410–22–M

federal register

Tuesday
December 12, 1995

Part III

Department of Justice

Antitrust Division

American Bar Association; Response of the United States to Public Comments; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. American Bar Association Civ. No. 95–1211 (CRR) (D.D.C.,); Response of the United States to Public Comments

Pursuant to Section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), the United States publishes below the written comments received on the proposed Final Judgment in *United States* v. *American Bar Association*, Civil Action No. 95–1211 (CRR), United States District Court for the District of Columbia, together with the response of the United States to the comments.

Copies of the written comments and the responses are available for inspection and copying in Room 207 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530 (telephone: (202) 514–2481) and for inspection at the Office of the Clerk of the United States District Court for the District of Columbia, Room 1825A, United States Courthouse, Third Street and Constitution Avenue, NW., Washington, DC 20001.

Rebecca P. Dick,

Deputy Director of Operations.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. American Bar Association, Defendant. Civil Action No. 95–1211 (CRR).

United States' Response to Public Comments

Pursuant to the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16 (b)–(h), the United States is filing this Response to public comments it has received relating to the proposed Final Judgment in this civil antitrust proceeding. The United States has carefully reviewed the public comments on the proposed Final Judgment. Entry of the proposed Final Judgment, with some limited modifications, will be in the public interest. After the comments and this Response have been published in the Federal Register, under 15 U.S.C. 16(d), the United States will move the Court to enter the proposed Final Judgment.

This action began on June 27, 1995 when the United States filed a Complaint charging that the American Bar Association (''ABA'') violated Section 1 of the Sherman Act, 15 U.S.C. 1, in its accreditation of law schools. The Complaint alleges that the ABA restrained competition among professional personnel at ABA-approved law schools by fixing their compensation levels and working conditions, and by limiting competition from non-ABA-approved schools. The Complaint also alleges that the ABA allowed its law school accreditation process to be captured by those with a direct interest in its outcome. Consequently, rather than setting minimum standards for law school quality and providing valuable information to consumers, the legitimate purposes of accreditation, the ABA acted as a guild that protected the interests of professional law school personnel.

Simultaneously with filing the Complaint, the United States filed a proposed Final Judgment and a Stipulation signed by the defendant consenting to the entry of the proposed Final Judgment, after compliance with the requirements of the APPA.

Pursuant to the APPA, the United States filed a Competitive Impact Statement (''CIS'') on July 14, 1995. The defendant filed a Statement Of Certain Communications on its behalf, as required by Section 16(g) of the APPA, on July 12, 1995, and amended its statement on October 16, 1995. A summary of the terms of the proposed Final Judgment and CIS, and directions for the submission of written comments relating to the proposal, were published in the The Washington Post for seven days from July 23, 1995 through July 29, 1995. The proposed Final Judgment and the CIS were published in the Federal Register on August 2, 1995. 60 Fed. Reg. 39421–39427 (1995). The 60-day period for public comments began on August 3, 1995 and expired on October 2, 1995.[1] The United States has received 41 comments, which are attached as Exhibits 1–41.

I. Background

The proposed Final Judgment is the culmination of a year-long investigation of the ABA. The Justice Department interviewed numerous law school deans, university and college presidents, and others affected by the ABA's accreditation process. Twenty-seven depositions were conducted pursuant to Civil Investigative Demands (''CIDs'') the Department issued. In addition, the Department reviewed over 500,000 pages of documents in connection with this investigation.

At the conclusion of its investigation, the Department determined that the ABA accreditation process and four specific rules arising from that process violated the Sherman Act. The Department challenged the four rules and, more importantly, the accreditation process itself, and it negotiated a proposed Final Judgment with the defendant that adequately resolves its competitive concerns. The ABA indicated its willingness to reform its accreditation process before the Complaint was filed. After preliminary discussions with the Department, the ABA began to implement the reforms. The Department, however, insisted that the elimination of anticompetitive behavior should be subject to the terms of a court-supervised consent decree.

The focus of this case was the capture of the ABA's law school accreditation process by those who used it to advance their self-interest by limiting competition among themselves and from others. The case was not based on any determination by the Department of Justice as to what, specifically, most individual accreditation rules should provide. The Department is not particularly qualified to make such an assessment and has not attempted to do so. The Department concluded that the process that had produced the present rules was tainted. The appropriate solution—and the relief imposed by the proposed decree—was to reform the process, removing the opportunity for taint, and then to have the cleansed process establish new rules.

II. The Legal Standard Governing the Court's Public Interest Determination

A. General Standard

When the United States proposes an antitrust consent decree, the Tunney Act requires the court to determine whether ''the entry of such judgment is in the public interest.'' 15 U.S.C. § 16(e) (1988). As the D.C. Circuit explained, the purpose of a Tunney Act proceeding ''is not to determine whether the resulting array of rights and liabilities 'is one that will *best* serve society,' but only to confirm that the resulting settlement is 'within the *reachs* of the public interest,' '' *U.S.* v. *Microsoft Corp.*, 56 F.3d 1448, 1460 (D.C. Cir. 1995) (emphasis in original); *accord*, *United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir.), *cert. denied*, 114 S. Ct. 487 (1993); *see also United States* v. *Bechtel*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975.[2] Hence, a court should not reject a decree ''unless 'it has exceptional confidence

[1] The United States has treated as timely all comments that it received up to the time of the filing of this Response.

[2] The *Western Elec.* decision involved a consensual modification of an antitrust decree. The Court of Appeals assumed that the Tunney Act standards were applicable in that context.

that adverse antitrust consequences will result—perhaps akin to the confidence that would justify a court in overturning the predictive judgments of an administrative agency.' '' *Microsoft,* 56 F.3d at 1460 (quoting *Western Elec.*, 993 F.2d at 1577). Congress did not intend the Tunney Act to lead to protracted hearings on the merits, and thereby undermine the incentives for defendants and the Government to enter into consent judgments. S. Rep. No. 298, 93d Cong. 1st Sess. 3 (1973).

Tunney Act review is confined to the terms of the proposed decree and their adequacy as remedies for the violations alleged in the Complaint. *Microsoft,* 56 F.3d at 1459. The Tunney Act does not contemplate evaluating evaluating the wisdom or adequacy of the Government's Complaint or considering what relief might be appropriate for violations that the United States has not alleged. *Id.* Nor does it contemplate inquiring into the Government's exercise of prosecutorial discretion in deciding whether to make certain allegations. Consequently, a district court exceeds its authority if it requires production of information concerning ''the conclusions reached by the Government'' with respect to the particular practices investigated but not charged in the Complaint, and the areas addressed in settlement discussions, including ''what, if any areas were bargained away and the reasons for their non-inclusion in the decree.'' *Id.* at 1455, 1459. To the extent that comments raise issues not charged in the Complaint, those comments are irrelevant to the Court's review. *Id.* at 1460. The Court's inquiry here is simply whether the accreditation process set in place by the proposed decree will cure the taint of self-interest that, the Complaint alleges, had infected the process.

In addition, no third party has a right to demand that the Government's proposed decree be rejected or modified simply because a different decree would better serve its private interests in obtaining accreditation or being awarded damages. For, as this Circuit has emphasized, unless the ''decree will result in positive injury to third parties,'' a district court ''should not reject an otherwise adequate remedy simply because a third party claims it could be better treated.'' *Microsoft,* 56 F.3d at 1461 n.9.[3] The United States—not a third party—represents the public interest in Government antitrust cases. *See, e.g., Bechtel Corp.*, 648 F.2d at 660, 666; *United States* v. *Associated Milk Producers* 534 F.2d 113, 117 (8th Cir.), *cert. denied,* 429 U.S. 940 (1976). The decree is intended to set in place a fair process that will produce fair results for those seeking accreditation. It is not designed to transfer to the Department the process of accreditation itself and require the Department to determine who should or should not be accredited.

Moreover, comments that challenge the validity of the Government's case and assert that it should not have been brought are beyond the scope of this Tunney Act proceeding. It is not the function of the Tunney proceeding ''to make [a] de novo determination of facts and issues'' but rather ''to determine whether the Department of Justice's explanations were reasonable under the circumstances'' for ''[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General.'' *Western Elec.*, 993 F.2d at 1577 (internal quotations omitted). Courts have consistently refused to consider ''contentions going to the merits of the underlying claims and defenses.'' *Bechtel,* 648 F.2d at 666.

B. Special Commission

Finally, the fact that the consent decree includes a condition that will occur after its entry is not a bar to its entry now. Many courts have approved consent decrees requiring defendants, after entry of the decree, to take actions that must be approved by the Government or the court. For example, courts have entered consent decrees with provisions requiring defendants to divest assets within a certain time period after entry of the decree to a company approved by the Government and requiring the court to oversee divestiture by a trustee if the defendant did not meet the divestiture deadline. In *United States* v. *Browning-Ferris Industries,* 1995–2 Trade Cas. (CCH) ¶ 71,079 (D.D.C. 1995) (Richey, J.), this Court entered a decree requiring the defendant to divest assets within 90 days after entry, unless the Government agreed to a partial divestiture. The decree gave the Government authority to determine whether the buyer was a viable competitor. Moreover, if Browning-Ferris did not meet the 90-day deadline, the Court would appoint a trustee whose activities the Court would oversee. *Id.* at pp. 75,166–67. Several courts have entered very similar decrees. *E.g., United States* v. *Baroid Corp.*, 1994–1 Trade Cas. (CCH) ¶ 70,752 (D.D.C. 1994); *United States* v. *Outdoor Systems, Inc.*, 1994–2 Trade Cas. (CCH) ¶ 70,807 (N.D. Ga. 1994); *United States* v. *Society Corp.*, 1992–2 Trade Cas. (CCH) ¶ 68,239 (N.D. Ohio 1992) (similar decree provisions); *United States* v. *General Adjustment Bureau, Inc.*, 1971 Trade Cas. (CCH) ¶ 73,509 (S.D.N.Y. 1971); *United States* v. *Mid-America Dairymen,* 1977–1 Trade Cas. (CCH) ¶ 61,509 (W.D. Mo. 1977) (mandating divestiture within two years after entry and allowing Government to object to proposed sale in court).

Other decrees have included conditions that must be implemented after their entry. In *United States* v. *Baker Commodities, Inc.*, 1974–1 Trade Cas. (CCH) ¶ 74,929 (C.D. Cal. 1974), the district court entered a decree requiring each consenting defendant, within 90 days after entry, to independently re-establish its prices and to file with the court and the United States an affidavit stating that they have complied. Moreover, within two years after entry, defendant Baker was required to divest certain interests to a person approved by the Government or the Court upon a proper showing by Baker. *Id.* at pp. 96,160–61. Finally, if the Government objected to certain future acquisitions, then the court would decide the matter, with Baker having to show that the acquisition would not substantially lessen competition. *Id.* This is akin to the hearing that could ensue here if the Government challenged the Special Commission's revisions as antitrust violations.[4]

In other cases, decrees have required defendants, after entry of the decree, to eliminate from their bylaws or codes any sections that are inconsistent with the decree. *E.g., United States* v. *American Inst. of Architects,* 1990–2 Trade Cas. (CCH) ¶ 69,256 (D.D.C. 1990) (Richey, J.); *United States* v. *Hawaii Island Contractors' Ass'n,* 1988–1 Trade Cas. (CCH) ¶ 68,021 (D. Hawaii 1988); *United States* v. *Society of Authors' Reps.*, 1982–83 Trade Cas. (CCH) ¶ 65,210 (S.D.N.Y. 1982). In addition, defendants have been ordered to independently re-establish their prices after the decree is entered and to file statements with the Government

[3] *Cf. United States* v. *Associated Milk Producers, Inc.*, 534 F.2d 113, 116 n.3 (8th Cir.) (''The cases unanimously hold that a private litigant's desire for [the] *prima facie* effect [of a litigated government judgment] is not an interest entitling a private litigant to intervene in a government antitrust case.''), *cert. denied,* 429 U.S. 940 (1976).

[4] *See also United States* v. *Primestar Partners, L.P.*, 1994–1 Trade Cas. (CCH) ¶ 70,562 (S.D.N.Y. 1994) (decree prohibited defendant, after entry, from taking programming actions without prior Government approval); *United States* v. *Pilkington PLC,* 1994–2 Trade Cas. (CCH) ¶ 70,842 (D. Ariz. 1994) (defendants forbidden after entry to assert certain patent claims except upon proper showing to Government); *United States* v. *Industrial Electronic Engineers,* 1977–2 Trade Cas. (CCH) ¶ 61,734 (C.D. Cal. 1977) (decree required defendant, within 90 days after entry, to write a policy statement approved by Government).

explaining their basis. *E.g., United States* v. *Brownell & Co., Inc.*, 1974–1 Trade Cas. (CCH) ¶ 74,945 (W.D. Tenn. 1974); *United States* v. *First Washington Net Factory, Inc.*, 1974–1 Trade Cas. (CCH) ¶ 74,941 (N.D. Ala. 1974); *United States* v. *Capital Glass & Trim Co.*, 1973–1 Trade Cas. (CCH) ¶ 74,388 (M.D. Ala. 1973).

III. Entry of the Decree is in the Public Interest

Entry of the proposed decree is clearly well within the reaches of the public interest under the standards articulated in *Microsoft* and other decided cases. It prevents the ABA from fixing faculty compensation and from enforcing its boycott barring ABA-approved law schools from offering transfer credit for courses completed at state-accredited laws schools and enrolling in their LL.M. programs graduates of state-accredited law schools and members of the bar. Most important, the proposed consent decree ends the capture of the accreditation process.

Much as in most cases, the decree here requires subsequent action that does not necessitate delay in its entry. The problem identified in the Complaint—the capture of the ABA's accreditation process—has been eliminated. Absent that capture problem, the ABA should be allowed to set standards in areas principally involving educational policy. This Court retains jurisdiction to ensure that the ABA's Special Commission does not produce standards that are the product of capture. Nothing more is legally required.

We received over 40 comments, which we have divided into seven categories: other accrediting agencies; faculty; university administrators; law schools not approved by the ABA; graduates and students at non-ABA approved law schools; practicing attorneys; and the general public.

A substantial number of the comments raise educational policy questions and are directed to issues outside the allegations in the Complaint. For example, they propose the ABA require additional clinical education, modify the rules about required seating in the library, or use bar passage rates to assess law school quality. Such comments, while relevant to educational policy, go beyond the allegations in the Complaint. Hence, they are not relevant to the Tunney Act proceeding. Other comments criticize the Government for bringing suit or argue that the Complaint is not justified. For example, the former ABA Consultant on Legal Education contends that the ABA has not conspired to fix faculty salaries. But comments about the underlying merits and defenses are irrelevant in a Tunney Act proceeding, as explained above. In addition, some commentators complained about state rules requiring approval from an ABA-accredited law school prior to taking the bar examination. Others complain about other state government activities. Under *Parker* v. *Brown*, 317 U.S. 341 (1943), such state actions are exempt from antitrust prosecution. Some state-accredited law school students and graduates complained about ABA-approved law schools denying them transfer credit or refusing to admit them to LL.M. programs. The decree stops the ABA from forbidding law schools from offering such credit or enrolling these students. But the individual decision of whether to do so remains up to the individual school.

Furthermore, some commentators worried that the decree prevents accrediting agencies from assessing the quality of educational institutions engaging in legitimate accreditation activities. The decree is directed only at the activities of the ABA. By preventing the ABA from violating the antitrust laws, the decree ensures that the ABA will engage in the legitimate accreditation activity of assessing the quality of legal education programs. Four accrediting agencies argued that the proposed decree is inconsistent with the *Marjorie Webster* decision and that there may be an implied repeal of antitrust enforcement because accreditation is regulated by the Department of Education. *Marjorie Webster Junior College Inc.* v. *Middle States Ass'n of Colleges & Secondary Schools, Inc.*, 432 F.2d 650 (D.D. Cir.), *cert. denied*, 400 U.S. 965 (1970). But *Marjorie Webster* itself held that antitrust laws would apply to restrictions with a commercial motive and practices that fix compensation and enforce a boycott have. In addition, the agencies' *Marjorie Webster* argument goes directly to the merits of the underlying claims and defenses, an inquiry that is irrelevant in a Tunney Act proceeding, as noted above. Furthermore, under the case law, there is no implied repeal and the Department of Education has specifically deferred to the Justice Department on the antitrust issues.

The Massachusetts School of Law (''MSL''), a private plaintiff in antitrust actions in Pennsylvania and Massachusetts, recommends altering the decree, delaying its entry, and requests the production of documents from the Government's files. The Government opposes the modifications and recommends no delay in entering the decree. Some of MSL's comments go beyond the allegations in the Complaint. While MSL may believe that its recommended changes are the ones that will ''best serve society,'' the issue in a Tunney Act proceeding is only whether the settlement is ''within the reaches of the public interest.'' *Microsoft*, 56 F.3d at 1460. No third party may demand that the proposed decree be rejected or modified just because a different decree would better serve its private interests. We further oppose MSL's discovery request, as we believe it is improper to grant discovery collaterally in a Tunney Act proceeding to a party whose discovery requests have been denied in its own case.

The parties' agreement that the Special Commission should have the first opportunity to report on issues that involve education and antitrust policies is a reasonable accommodation. That the Special Commission's report, ABA Board approval, and a possible Justice Department challenge will occur after entry of the decree is no bar to entry of the decree now. The decree prohibits a number of practices for which there were no apparent educational policy justifications. The accreditation standards on which the Special Commission will report do not on their face constitute naked antitrust restraints, but the Government seriously questioned the process by which these standards were administered. The defendant had taken measures to reform its accreditation process before agreeing to the consent decree and affording it the first opportunity to address the remaining issues is a reasonable compromise. The public has had the opportunity to comment on the process and on the subject matter of these issues, although only a few chose to do so. The Special Commission's report will be made public and third parties will have the opportunity to provide the Justice Department with possible objections.[5]

Because the proposed decree is within the scope of the public interest, the Court should enter it after the Government's responses to the public comments are published in the Federal Register and the Government certifies compliance with the APPA and moves for entry of judgment.

IV. Response to Public Comments

This case has generated a large number of comments, despite the absence of any apparent organized effort

[5] Additionally, as part of its supervisory powers, the Court could, after entry of the decree, require the parties to report on the Special Commission's report.

to solicit comments. Because of the number of comments, the Government has organized its Response based on the categories of those who submitted comments.

A. Other Accreditation Agencies

The Department received five comments from other accrediting agencies and one from an individual who has headed an accrediting agency since 1973. These comments are generally critical of the severity of the proposed Final Judgment and are concerned with its possible effect on the practices of other accrediting agencies.

1–2. The Association of Specialized and Professional Accreditors (''ASPA'') (Exhibit 1), and National Office for Arts Accreditation in Higher Education (Exhibit 2)

ASPA is an umbrella organization with a membership of 40 specialized accrediting agencies (one of which is itself an umbrella agency for 17 allied organizations). The National Office for Arts Accreditation in Higher Education consists of four separate accrediting agencies for schools of art and design, music, theater, and dance. ASPA believes that the consent decree could produce ''unintended consequences'' for other accrediting agencies by equating the presence of expertise in an accreditation area with its automatic capture by a vested interest and criticizes the data collection and other limitations imposed by the consent decree as unnecessarily restrictive or unnecessarily prescriptive. ASPA fears that the requirements of the consent decree will create a climate in which fraudulent institutions may use ''antitrust terrorism'' against accrediting agencies.

We share ASPA's concern that this action should not be used to diminish accreditation's legitimate role as a guarantee of quality and a source of information to the public. The requirements of the proposed Final Judgment apply only to the defendant and only for the duration of the decree. The terms of the decree are designed to remedy the defendant's anticompetitive practices. They are not meant to be a generalized prescription for other accrediting agencies.

The limitations in the decree on the collection and use of certain data are directed only to remedy the defendant's conduct. The ABA required by law schools to respond to detailed annual and site inspection questionnaires that included providing extensive salary data. The defendant used the data to raise the salaries of law school deans, full-time faculty, and professional librarians during the accreditation process. Because of this abuse, the proposed consent decree prohibits the defendant from conditioning accreditation on the compensation paid professional personnel or collecting salary data that could be used to determine individual salaries.

Nor does the Government seek to discourage the participation of individuals with ''professional expertise'' in the accreditation process and the consent decree will not have that effect. The defendant permitted its accreditation activities, however, to be captured by legal educators who used it to advance their own personal interests. The proposed consent decree remedies the defendant's abuses. The Government is not suggesting it apply to other accrediting agencies whose accreditation processes promote quality rather than the self-interest of a group that controls the process.[6]

ASPA's concern that the proposed consent decree may promote ''antitrust terrorism'' against accrediting agencies by institutions seeking accreditation is unwarranted. This is the first Justice Department antitrust case brought against an accrediting agency in the 105-year history of the Sherman Act. The Government cannot prevent the filing of meritless or harassing actions by private institutions, but does note that such actions are costly to the plaintiff, and meritless actions are subject to court sanctions.

Finally, ASPA points out that some of the requirements of the proposed Final Judgment may conflict with the requirements of the Higher Education Act. The Justice Department consulted with the Department of Education concerning this objection. Sections VI (C)(1), (D)(1) and E(1) of the decree require that elections and appointments to the Council, the Accreditation Committee, and the Standards Review Committee of the Section of Legal Education and Admission to the Bar (''Section of Legal Education'') must be subject to the approval of the ABA's Board of Governors (''Board'') for a period of five years. This provision appears to conflict with 20 U.S.C. 1099b, requiring agencies to be ''separate and independent'' of related trade associations. The Department of Education recognizes the Section of Legal Education as a specialized accrediting agency for law schools and has determined that the ABA is a related trade association from which the Section must be ''separate and independent.'' Giving the ABA's Board power to ''approve'' elections and appointments to the Section's Council and Committees thus may breach the ''separate and independent'' requirement of § 1099b. Consequently, the United States and the ABA have proposed to modify the decree by substituting a notification requirement in Section VI for the approval requirement.[7] The parties intended that these and other requirements in the proposed consent decree would assist in the ABA's oversight of the Section of Legal Education's accreditation activities. Changing the approval requirements should not impair the ABA's oversight while simultaneously ensuring that the requirement of 20 U.S.C. 1099b is not offended.

The National Office for Arts Accreditation joins in ABA's comments. The National Office is particularly concerned that the Justice Department may be setting an inappropriate precedent or providing loopholes that may prevent accrediting bodies from working effectively with problem institutions. While we are sympathetic to the National Office's concern, the Justice Department believes that the remedies in the proposed consent decree are directed just to the facts in this case, not to the activities of other accrediting agencies. The Department does not believe that effective antitrust enforcement—which requires entry of the relief in this case—is at all incompatible with quality accreditation.

3. Association of Collegiate Business Schools and Programs (''ACBSP'') (Exhibit 3)

ACBSP has 500 business school members and is one of two accrediting agencies in the business school area. ACBSP commented that a number of States require that their state business schools must obtain accreditation from the other business school accrediting agency, thereby locking out ACBSP. The actions of States are exempt from the antitrust laws under the ''state action'' doctrine announced in *Parker* v. *Brown*, 317 U.S. 341 (1943), and its progeny. Consequently, the activities ACBSP complains of are beyond the reach of antitrust enforcement and outside of the matters in the Complaint.

4. American Library Association (''ALA'') (Exhibit 4)

The ALA commented on two points: the size and composition of

[6] ASPA questions other specific consent decree provisions, not because they are unwarranted in this proceeding, but because their application to other accrediting agencies would produce bad results. The provisions of the proposed Final Judgment, of course, apply to the ABA.

[7] The proposed modification is attached as Exhibit 42.

accreditation site inspection teams; and the proposed consent decree's effect on accreditation agencies' functions. Without citing specific examples, the ALA believes that the remedies in the consent decree are overly prescriptive and may promote a bureaucratic and regulatory environment antithetical to the analysis and accreditation of higher education. The consent decree should not affect the composition of ALA accreditation teams or its accreditation practices. The decree is designed to ensure that the accreditation process proceeds on the basis of legitimate academic concerns; the decree does not confine or constrain the process in any other way.

5. Bernard Fryshman (Exhibit 5)

Dr. Fryshman has headed a nationally-recognized accrediting body since 1973 and has been very active in the accreditation field.[8] Dr. Fryshman's principal point is that the cooperative nature of higher education is intended to produce different bottom-line results than commercial enterprises. Accordingly, Dr. Fryshman believes that higher education should not be judged under antitrust standards. In his wide-ranging comment, Dr. Fryshman appears to question the applicability of the antitrust laws to any of the defendant's practices challenged in this action, including the imposition of higher salaries. Dr. Fryshman suggests a review of the corrective actions in the proposed consent decree.

Admittedly, higher education differs in some important respects from commercial enterprises; but it is a significant and growing part of the national economy. While this Circuit has held that the antitrust laws do not apply to the ''non-commercial'' aspects of post-secondary accreditation, *Marjorie Webster*, 432 F.2d at 650, the efforts of an accrediting agency to fix the salaries and perquisites of professional staff and engage in other guild activities unrelated to quality assurance are clearly commercial activities that restrain trade. We agree with Dr. Fryshman that it is ''inappropriate for government to determine how lectures are to be delivered, what books are to be read and what facilities are appropriate,'' but disagree that antitrust enforcement has no role in eliminating anticompetitive distortions of the process.

[8] We believe that Dr. Fryshman's agency accredited rabbinical and Talmudic schools.

6. Accrediting Bureau of Health Schools, Accrediting Council of Continuing Education and Training Accrediting Council for Independent Colleges and Schools, and National Accrediting Commission of Cosmetology Arts and Sciences (''Four Agencies'') (Exhibit 6)

These Four Agencies have filed a joint comment and request a hearing concerning possible modification and entry of the proposed Final Judgment. The Four Agencies suggest that the proposed consent decree is inconsistent with the *Marjorie Webster* decision and that there may be an ''implied repeal'' of antitrust enforcement in this area because accreditation is regulated by the Department of Education. The Four Agencies request that Section XI(C) of the proposed Final Judgment be amended by adding: ''Nothing in this judgment shall be construed to modify any of the provisions of the Higher Education Act of 1965, as amended, or any of the regulations adopted pursuant thereto, or any existing law concerning the recognition of private accrediting agencies, or the activities of such agencies relating thereto.''

This Circuit's decision in *Marjorie Webster* does not prevent the Court from finding entry of this proposed consent decree is in the public interest. In *Marjorie Webster*, the Court held that an accrediting agency's refusal to accredit a junior college solely because it was organized as a for-profit corporation did not violate the antitrust laws because the Sherman Act does not apply to the noncommercial aspects of the liberal arts.[9] The Court noted that antitrust policy would be applicable to restrictions that had a commercial motive. 432 F.2d at 654–55.[10]

An institution's form of organization should not be the basis for totally excluding it from an industry,including the provision of a legal education. Significantly, the ABA eliminated its Accreditation Standard 202, which denied the accreditation of for-profit law schools, during the Justice Department's investigation. In its enforcement activities in industries in which some competitors are organized as not-for-profits and some as for-profits (e.g., hospitals), the Antitrust Division does not find that an entrant's particular form of organization is of decisive significance in antitrust analysis. Nor do courts. *See United States* v. *Rockford Mem. Corp.*, 898 F.2d 1278 (7th Cir. 1990), *cert. denied*, 498 U.S. 920 (1990); *FTC* v. *University Health, Inc.*, 938 F.2d 1206, 1214–16 (11th Cir. 1991). Since the ABA has already abandoned Standard 202, since its ''market power'' is signficantly greater than that of the defendant in *Marjorie Webster*, and since entry into the law school field should not be unreasonably restricted, the Four Agencies' comment that the relief of the proposed Final Judgment is inconsistent with *Marjorie Webster* is incorrect and, therefore, no bar to the Court's finding that entry is in the public interest.

Subsequent to *Marjorie Webster*, the Supreme Court held that the Sherman Act applies to all anticompetitive restraints, regardless of the non-profit status of the defendant. *Goldfarb* v. *Virginia State Bar*, 421 U.S. 773, 787–89 (1975). To the extent *Marjorie Webster* suggests a ''liberal arts'' exemption from the antitrust laws, that suggestion has been rejected. As one district court observed, ''*Marjorie Webster* is of questionable vitality after *Goldfarb*, to the extent that it draws bright lines between education and business or accreditation policy and commerce.'' *Welch* v. *American Psychoanalytic Ass'n*, 1986–1 Trade Cas. (CCH) ¶ 67,037 (S.D.N.Y. 1986).

The Four Agencies also contend that there is an ''implied immunity'' from the antitrust laws for the activities of accrediting agencies because they are subject to Department of Education oversight. The implied immunity doctrine is not nearly so broad as the Four Agencies would suggest. The leading case on this point is the Supreme Court's decision in *National Gerimedical Hospital versus Blue Cross*, 452 U.S. 378 (1981). Prior to *Gerimedical*, the Supreme Court had held that antitrust repeal was implied only if necessary to make the regulatory statute work, and even then only to the minimum extent necessary. *Silver* v. *New York Stock Exchange*, 373 U.S. 341 (1963). In *Gerimedical*, the Supreme Court clarified this standard, holding that: ''Implied antitrust immunity is not favored and can be justified only by a convincing showing of *clear repugnancy* between the antitrust laws and the regulatory system.'' 452 U.S. at 390–91 (emphasis added). The Four Agencies have not, and cannot, make this clear

[9] In reaching its decision, the Court doubted that Marjorie Webster ''will be unable to operate successfully * * * unless considered for accreditation,'' 432 F.2d at 657; Marjorie Webster has since passed from existence. The Court also noted that the defendant did not possess monopoly power over accreditation, something the ABA clearly possesses in the 42 States where graduation from an ABA school is a prerequisite to taking the bar examination.

[10] In fact, in a civil antitrust action, liability may be shown by proof of either an unlawful motive or an anticompetitive effect. *United States* v. *United States Gypsum Co.*, 438 U.S. 422, 436 n.13 (1978).

showing.[11] Indeed, in the Department of Education's ''Staff Analysis of the ABA's Section of Legal Education's Interim Report on its Standards to DOE and Massachusetts School of Law's Compliant,'' the staff noted:

One aspect of MSL's complaint against the Council that is totally outside of the Department's purview is the charge that the Council has violated federal antitrust laws for the economic benefit of law professors, law deans, and law librarians but to the detriment of students. That matter is currently before the Justice Department.[12]

Amending the proposed consent decree in the manner requested by the Four Agencies is unnecessary. While the comment claims that the Government and the ABA are asking the Court to approve ''a broad, in-depth intrustion of the Sherman Act * * * that will have a chilling effect on the entire accreditation process * * *'' (comment, p. 5), the proposed Final Judgment addresses three specific practices (it prevents the ABA from fixing salaries and engaging in a boycott). The decree does not interfere with the day-to-day accreditation process that determines whether law schools offer quality educations. The decree simply ensures that the process rests on legitimate educational principles. Nor does it conflict with controlling precedent in this Circuit or the doctrine of ''implied immunity.'' The decree binds only the parties to it. The Four Agencies fail to show how it will prevent the defendant from carrying out its accrediting obligations under the Higher Education Act or how it will prevent other accrediting agencies from doing so.

B. Law School Faculty

The Justice Department received nine comments from administrators and faculty at ABA-approved law schools.[13] The substance of these comments vary enormously, but all recommend some modification of the proposed Final Judgment.

1, Clinical Legal Education Association (''CLEA'') (Exhibit 7)

CLEA maintains that, because the accreditation process has been dominated by legal academics (i.e., research scholars) and deans, it has not served the function of insuring that law school graduates are adequately prepared to practice law. CLEA claims that the proposed consent decree will further entrench the power of legal academics and will interfere with the ability of accreditation to improve the quality of lawyers. CLEA further believes that requiring a university administrator not affiliated with a law school on each site inspection team will entrench legal academics since university administrators are concerned that law schools are not sufficiently ''academic,'' i.e., research-oriented. Additionally, according to CLEA, the proposed consent decree will not change the ABA standards that favor legal academics over clinicians with respect to tenure and law school governance. CLEA also believes that the proposed Final Judgment is not ''final'' because of the pendency of the report of the Special Commission and because the Government retains authority to review changes in the accreditation process.

Whether legal education is better served by emphasizing legal scholarship or practical clinical instruction is neither an antitrust issue nor an issue addressed in the Complaint. CLEA raiss an issue of educational policy, not antitrust policy, that should not be governed by the consent decree. Furthermore, to the extent that these comments raise issues not alleged in the Complaint, they are outside the scope of a Tunney Act review. *Mircosoft,* 56 F.3d at 1448, 1459. The inclusion of non-law school university administrators on site inspection teams is intended to reduce the likelihood that accreditation will be used to advance the narrow economic interests of law school faculty and administrators.

CLEA supports the provision in the proposed consent decree requiring the ABA to reconsider its standards regarding student-faculty ratios, but is concerned that the Special Commission is scheduled to make its report after entry of the consent decree. The Special Commission's August 3, 1995 preliminary report noted the wide-spread dissatisfaction with the past manner in which student-faculty ratios were computed for accreditation purposes and will report on this issue. CLEA also claims that the proposed consent decree gives the Government authority to review all changes in the ABA's accreditation process. This seems to be an unduly expansive reading of the Government's rights under Section VIII(D) and Section X of the proposed Final Judgment.

2. Howard B. Eisenberg (Exhibit 8)

Mr. Eisenberg is dean of Marquette Law School and a former dean at the Arkansas-Little Rock Law school. Dean Eisenberg expresses concern that the Government's law suit was ''commenced and settled without input from legal educators or consumers of legal education.'' He is also dissatisfied that Section VII of the proposed consent decree ''leaves open for future determination five issues of extraordinary importance to legal education.'' Dean Eisenberg believes that leaving these matters to the Special Commission strikes him ''as a guarantee that the Court will be involved in protracted and difficult litigation in the future over these matters.'' Consequently, Dean Eisenberg urges that entry of the proposed consent decree now is premature and not in the public interest, or that Section VII should be deleted entirely.

We believe that Dean Eisenberg has vastly overstated the likelihood of protracted and difficult litigation, or the possibility of any litigation at all, and also has exaggerated the breadth of the Government's involvement in the remaining five issues. The decree simply sets in place procedures to ensure that the accreditation requirement of paid sabbaticals, the computation of student-faculty ratios, and other standards should not be manipulated by a control group to further its own interests. The Special Commission may make recommendations that, as difficult questions of educational policy, cna be fairly disputed, but the Government does not anticipate that the Special Commission and the Board will fail to resolve our antitrust policy concerns or that the Special Commission's analysis will spark litigation.

3. John S. Elson (Exhibit 9)

Mr. Elson is a professor at Northwestern Law School. He has been on the Section of Legal Education Accreditation Committee, is a former chair of the Section's Skills Training Committee, and has served on about 15 site inspection teams since 1986. Professor Elson sees the proposed Final Judgment as offering a ''unique opportunity'' to return ABA accreditation to its only proper purpose, ''the adequate preparation of law students for competent and ethical legal practice.''

[11] In an advisory opinion, the Federal Trade Commission informed another accrediting agency, the Accrediting Commission on Career Schools and Colleges of Technology, that the 1992 Higher Education Act Amendments, specifically, 20 U.S.C. § 1099b(a)(5), relied upon by the Four Agencies, conveyed no implied repeal of the antitrust laws, finding no broad or inherent conflict between the antitrust laws and the Department of Education's regulatory regime. January 19, 1995 FTC Advisory Opinion, File No. P94 4015; *see* 5 Trade Reg. Rep. (CCH) ¶ 23,755.

[12] December 5–6, 1994 Staff Analysis appended as Exhibit 43.

[13] One of these comments is from the Clinical Legal Education Association, an organization of more than 400 clinical teachers who ''have a dual identity as law teachers and practicing lawyers.'' Comment, p. 1. Four of the nine faculty comments were from clinical instructors.

Professor Elson, therefore, proposes adding the following injunctive provision to Section IV of the proposed consent decree:

The ABA is enjoined and restrained from: * * *

(E) adopting or enforcing any standard, interpretation, rule or policy that is not needed in order to prepare law students to participate effectively in the legal profession.

Professor Elson is also concerned that the proposed consent decree will leave law school academics in control of the process. They will continue to emphasize the production of scholarship as a priority and relegate clinical training to a lesser role. Professor Elson also expresses his dissatisfaction with the Special Commission's initial report, which he believes affirms the priority given to legal scholarships and its explicit rejection of proposals emphasizing practical training. Professor Elson believes that his proposed modification will fairly and effectively protect the public interest in having adequately prepared law graduates without denying market entry to those who can satisfy that public interest.

While criticizing the provision of the proposed Final Judgment that seeks to open participation in the accreditation process, Professor Elson does not specifically address what procedures he would prefer. We agree that, in law school accreditation, just as in accreditation in other areas, participation in the process is more apt to come from people within the discipline and who have a stake in the effect of accreditation. The proposed consent decree makes reasonable efforts to include more outsiders. For example, no more than 50% of the membership of the Council, Accreditation Committee or Standards Review Committee may be law school deans or faculty. The term limitation will also produce greater turnover among those participating in the process.

Professor Elson plainly thinks that legal education should give a higher priority to practical training. This is a matter of educational, not antitrust, policy and it is outside the limits of the Complaint and proposed consent decree.

4. Jeffrey L. Harrison (Exhibit 10)

Mr. Harrison is the Chesterfield Smith Professor of Law at the University of Florida College of Law. His principal hope is that the Antitrust Division will devote further study to the issues of the proposed market definition, competitive harm, and the appropriate remedy. Other than the prohibition against price fixing in Section IV(A) of the proposed consent decree, Professor Harrison recommends abandoning all of the other prohibitions in the decree, at least until there is data showing that the ABA's accreditation process has unreasonably restricted entry. In the alternative, Professor Harrison believes the decree should be modified to permit the collection and dissemination of ''past'' compensation data because it ''can be critical'' in diagnosing the problems of a law school. Professor Harrison also recommends dropping the 50% membership limitation of legal academics on the Council, its Accreditition Committee, and the Standards Review Committee, describing them as ''counter-productive.''

While perhaps useful as an academic exercise, Professor Harrison's objections to the alleged theoretical weaknesses of the Government's case are not appropriate for a review of whether entry of the proposed Final Judgment is within the reaches of the public interest. The Court should assume that there is some basis to the allegations in the Complaint and determine whether the proposed consent decree sufficiently remedies the alleged violations. A value of the consent decree process is that it releases the Court and the parties from the time and expense of a Rule of Reason inquiry into all of the issues raised in the Complaint.[14]

The Government strongly disagrees with Professor Harrison's suggestion that ''past'' compensation data can be used as a surrogate for measuring quality. Observations of outputs are a more reliable measure of quality.

5. Gary H. Palm (Exhibit 11)

Mr. Palm is Clinical Professor of Law at the University of Chicago Law School. Professor Palm currently serves on the Council of the Section of Legal Education, was a member of the Accreditation Committee from 1987 to 1994, is a past member of the Clinical Education and Skills Training Committee, and served on 14 ABA site inspections from 1984 to 1994, nine of which were in Europe. Professor Palm believes that the proposed consent decree does not recognize that ''the real conspiracy'' involved just law school deans and academics, not other faculty, and that the proposed consent decree ''will likely result in a lessening of vigorous enforcement of accreditation standards.'' Professor Palm makes a number of proposals in his comprehensive comment. He recommends that another section of the ABA or some other entity should perform law school accrediting, claiming that the ABA has been a ''paper tiger'' with respect to ensuring adequate training in legal skills and values.

Finding a substitute for the Section of Legal Education would not be easy since a new agency will have to obtain Department of Education and state certifications. Additionally, the ABA initiated accreditation reforms before the consent decree discussions started. The Justice Department seldom, if ever, seeks to eliminate an entrant as antitrust relief and, unlike monopoly or merger cases, partial divestiture here is not a realistic remedy.

Professor Palm's comment, and those of other clinicians, are critical of the ABA accreditation requirement with respect to skills training. This is essentially a question of education, not antitrust, policy. Professor Palm believes that there is a need for substantial, additional diversification in the accreditation process, particularly the continued or greater involvement of clinicians on site inspection teams or as part of the law faculty representation on the Council and committees. Again, whether clinicians should be included among faculty appointments to site inspection teams and governing committees is not an antitrust issue.

Professor Palm also criticizes procedural difficulties with respect to the report of the Special Commission. He urges either that the public be given a chance to comment on the report or that the consent decree not be entered until after the Special Commission makes its report.

Professor Palm also makes specific comments with respect to several of the subjects on which the Special Commission will report. He criticizes the current computation of student-faculty ratios for excluding as ''faculty,'' adjuncts and part- and full-time skills teachers who have short-term employment contracts.

He defends the current application of the facilities standards. The precise contours of the facilities standard are not challenged by the Department nor are they before the Court. The Department does not intend to constrain the setting of legitimate educational

[14] We do not wish to ''try'' the issue of output restriction but do question the manner in which Professor Harrison uses statistics. Rather than the 30-year comparison in his comment (p. 3), a more appropriate period would be from when the current Standards were made applicable (1975) and when the Consultant's office regularized the ABA's current accreditation regulatory regime (late 1970s). Roughly halving the 30-year period used by Dr. Harrison, comparing 1980–81 statistics with those of 1994–95, the number of ABA-approved law schools increased only from 171 to 177 (+3.4%) and total J.D. enrollment in ABA-approved schools increased only from 119,501 to 128,989 (+7.9%).

standards. Because the facilities standards raise issues of legitimate educational policy that are within the Special Commission's expertise, the Department believes the Commission should have the first opportunity to reconcile the issues of antitrust and educational policy. Professor Palm also argues that the ''adequate resources'' standard should be applied to reallocate greater resources for skills instruction. This is neither an antitrust issue nor one raised in the Complaint. Professor Palm has suggested an appointment, as an *amicus curiae*, of a representative for the public interest. The Justice Department represents the public interest in this proceeding and Professor Palm has shown no breach of that representation. Most of Professor Palm's suggestions seem intended to advance clinical training at law schools. This is an educational policy issue that is irrelevant here and certainly one that does not call for a court-appointed representative.

6. Millard H. Ruud (Exhibit 12)

Former ABA Consultant on Legal Education Millard Ruud submitted an extensive comment criticizing the proposed consent decree.[15] He doubts that the ABA violated the antitrust laws. He believes that the ABA accreditation process is not a guild and that it has not been captured by legal educators. He also doubts that there was an agreement to ratchet up law teachers' salaries. Professor Ruud does not believe that deans want the ABA to impose unreasonably high salary requirements for full-time faculty and argues that deans only want to meet the competition set by market forces. He contends that leading law schools must compete with major law firms for highly-qualified faculty, and must offer competitive salaries to retain and recruit these faculty.

Professor Ruud also comments that the ABA has not ''monopolized'' accreditation through its own actions because state supreme courts and bar admission authorities gave the ABA the power to approve law schools. He notes that there are competitive disadvantages for unapproved law schools because these schools are considered to be lower in quality. ABA-approved schools have an advantage in recruiting quality students and faculty. Professor Ruud also questions the meaning of the phrase ''state-accredited'' law schools in the decree and correctly points out the decree only prohibits the ABA from requiring ABA-approved law schools not to accept credit for work at state-accredited schools.

Professor Ruud questions the decree's requirement that a university administrator who is not affiliated with a law school be included on site evaluation teams. He claims that it is present ABA practice to include university administrators when the law school is affiliated with a university. He asks why university administrators should be included in evaluating law schools that are not part of a university.

Professor Ruud further believes that the consent decree is an excessive intrusion into ABA governance and questions some specific decree provisions. He assets that the issues the Special Commission is to examine go beyond antitrust. He further believes that the decree should not set term limits for membership on the Council, Accreditation Committee, or Standards Review Committee. Finally, Professor Ruud describes the basic purpose of accreditation: ensuring that the school meets the basic requirements of quality and informing other schools that a degree from an accredited school should be recognized by them.

The purpose of this proceeding is not to evaluate the merits of the Government's case. To the extent comments challenge the Department's decision to bring this case, they are beyond the scope of this decision.

7. Roy T. Stuckey (Exhibit 13)

Mr. Stuckey is a professor in the Department of Clinical Studies at University of South Carolina Law School. Professor Stuckey served on the Council of the Section of Legal Education from 1988 to 1994 and the Standards Review Committee from 1990 to 1995. He has been a member of about 11 site inspection teams since 1982.

Professor Stuckey objects to entry of the proposed Final Judgment unless it is modified:

(1) to allow the ABA to continue gathering data about faculty compensation; (2) to allow the ABA to continue considering compensation as one factor in determining the quality of a law school's program of education; and (3) to allow the ABA to permit some people to serve at least six years on the Standards Review Committee.

Professor Stuckey believes that compensation is related to quality, knows of no data showing that law school faculty are compensated disproportionately to similarly qualified judges and lawyers, and points out that the ABA's data collection was reliable but will now have to be done by someone else.

The an on salary data collection is for only the 10-year term of the decree and is intended as a prophylactic. The defendant's practice, compiling a ''peer group'' salary comparison prior to a site inspection and pressuring the law school (or, more frequently, university administrators) to raise salaries without a finding that the law school was unable to attract and retain competent faculty, was an anticompetitive practice that artificially inflated law school personnel salaries. The consent decree prevents the defendant from collecting salary information to reduce the likelihood that the behavior alleged in the Complaint will recur. During the time that the consent decree limitations apply, site inspectors will be able to use such direct measurement of faculty quality like classroom instruction, scholarly production, and bar and practical skills preparation. The ABA is not enjoined from continuing to collect and disseminate other law school data.

The Standards Review Committee has in the past been totally dominated by law faculty. In addition to proposing new Standards, the Committee also adopted Interpretations that were not fully subject to public and Board review and were, at times, protective of law school professional personnel in an anticompetitive manner. The Standards Review Committee has staggered terms so that it will have varying levels of experience. The one-term limitation on service on the Standards Review Committee is a reasonable prophylactic provision designed to get more individuals involved in law school accreditation.

8. Lawrence A. Sullivan and Warren S. Grimes (Exhibit 14)

Mr. Sullivan and Mr. Grimes are professors at Southwestern University School of Law. Professors Sullivan and Grimes fear that the proposed consent decree may lead to a relaxation of accreditation standards that will be particularly harmful in California. They

[15] Professor Ruud was the ABA's first Consultant on Legal Education, serving from 1968 to 1973; was the Executive Director of the American Association of Law Schools which conducts joint law school accreditation inspections with the ABA; has participated in numerous law school site inspections; and has extensive experience in ABA and AALS law school accreditation. Professor Ruud was involved in drafting the Standards under which the ABA operated for many years. These include the Standards fixing faculty compensation. Professor Ruud has conducted over 40 site inspections, although all but three of these were before 1979. He is currently a professor at the University of Texas.

University of Texas Provost and its former law dean Mark Yudof has a somewhat different view of the consent decree than Professor Ruud. ''Yahoo!'' was the first response from Mark Yudof'' after he was told of the consent decree, the *Texas Lawyer* reported. Provost Yudot called the ABA's process an ''accreditation hammer'' that did not recognize diverse models of legal education. *Texas Lawyer*, July 3, 1995 at 7 (Lexis, News Library).

also oppose the prohibition against the defendant's collecting and disseminating salary data.

California has 16 ABA-approved law schools, 19 state-accredited law schools, and 37 uncertified law schools, according to the comment. Professors Sullivan and Grimes note that, while, admittedly, the ABA-approved schools are able to attract better qualified students, the August, 1994 California bar results for first-time takers show that the average pass rate for each of the ABA-approved schools was higher than those for any law school in each of the other two categories. The comment suggests that this raises consumer protection issues since students at non-ABA-approved schools are investing much time and money with a diminished likelihood of passing the bar or finding legal employment.[16] This case is not intended to inhibit in any way the setting of legitimate educational standards and the proposed Final Judgment does not do so. Accreditation is a consumer protection service. It informs students that an accredited school meets appropriate educational standards. The proposed Final Judgment leaves in place a process to provide this service.

	ABA-approved (percent)	State-accredited (percent)
July 1993	69–92	0–89
February 1993*	40–87	0–75
July 1992	63–90	25–75
February 1992*	54–85	5–61

*Most takers in February are repeaters and the results are for all takers.

The comment also fears that the consent decree will relax standards in two areas—student-faculty ratios and library facilities—permitting new schools to be accredited, thereby injuring the 12 ''second-level'' ABA-approved schools in California. The consent decree, however, does not address library facilities, and simply requires that student-faculty ratio standards be reassessed by an unbiased group.

Professors Sullivan and Grimes also believe that the collection of salary data serves a number of legitimate and important functions. We agree, but believe it should be kept separate from ABA accreditation because of past abuses.[17] A school that attracts a higher-quality faculty at a lower cost should be rewarded in the marketplace and not punished in an accreditation inspection. Consequently, the proposed consent decree restricts the ABA from this activity for its 10-year duration. The comment properly points out that other organizations, without the incentives of this one, should be able to collect this information.

9. Bardie C. Wolfe, Jr. (Exhibit 15)

Bardie C. Wolfe, Jr. is a professor of law and the law library director at St. Thomas University School of Law in Miami, Florida. Professor Wolfe submitted comments about the ABA annual questionnaire and Standards. The ABA sends out a questionnaire each year seeking law school operations information. Professor Wolfe believes that the annual questionnaire section on library resources should include computerized, not just paper, collections. Otherwise, the ABA, in effect, forces law schools to purchase expensive books and other paper publications that are available in electronic form. Professor Wolfe also is concerned about the ABA Standards for law libraries. He advocates law school libraries sharing electronic resources through networks and the Internet. This would enable libraries to share expensive but little used titles. He would also like to see electronic resources held by other parts of the university counted as part of the law schools' resources.

It may be a laudable goal to decrease library expenses by sharing electronic information. But the issue of what resources libraries must have for student and faculty research implicates issues of educational policy, not antitrust issues and is outside the ambit of this case and the Tunney Act proceeding.

10. Marina Angel (Exhibit 16)

Ms. Angel is a professor of law at Temple Law School. Her comment was transmitted on October 16, two weeks after the close of the comment period.

Professor Angel complains that Section IV(A) of the proposed consent decree, prohibiting the collection of salary data, may prevent the enforcement of ABA Accreditation Standards 211–213 that prohibit discrimination. While Professor Angel does not state it, salary data showing apparent discrepancies between protected and other groups may be a basis for pursuing discrimination claims. The consent decree does not prevent law schools, however, from maintaining that data. Additionally, as Professor Angel has noted, Section V of the decree notes that nothing in the proposed decree prohibits the ABA from conducting a *bona fide* investigation of whether a law school is complying with its accreditation standards.

C. University Administrators

1. Bernard J. Coughlin, S.J. President of Gonzaga University (Exhibit 17)

Gonzaga University President Bernard J. Coughlin, S.J., believes that 40% of a site inspection team should be people who are not law school deans or law faculty. He further believes that the consent decree should mandate the Special Commission to consider whether to revise ABA practices regarding control of financial resources. Father Coughlin is concerned that the ABA gives law school deans and faculty too much control of financial resources contributed to or generated by the law school. Father Coughlin also expressed concern that the ABA's proposed decree notification did not identify the officer to whom comments should be sent.

The ABA accreditation process was captured by legal educators. Section VI of the decree is designed to remedy this problem. The decree requires that site teams include a university administrator not affiliated with the law school and other public members. It also requires that law faculty make up no more than 50% of the Accreditation Committee and Council. Together, these provisions will significantly open up the process. Requiring site teams to include more people who are not law faculty may make it difficult to fill the teams. Being a member of a site team involves a substantial amount of work.

Intra-university resource allocation raises issues of educational policy. The resources standard will be initially addressed by the Special Commission.

Finally, Father Coughlin expressed concerns about notification by the ABA. In accord with the Antitrust Civil Process Act, the Justice Department published the proposed Final Judgment and CIS in the Federal Register and newspapers, informing members of the public that they may submit comments to the Antitrust Division of the Justice Department. The ABA, on its own, individually notified presidents of universities with ABA-approved law schools of the proposed Final Judgment.

[16] We have the 1992 and 1993 California bar results, but not for 1994. The results do not show what percentage of graduates of each law school ultimately passed the California bar. We agree with the comment's observation that better qualified applicants generally will choose to attend an ABA-approved school because, among other reasons, gradation from an ABA-approved school is a bar prerequisite in most States. The range of pass rate in 1992 and 1993 for July first-time takers and all takers in February is:

[17] The dean of one very high salary law school criticized the ABA's persistence in obtaining his school's salary data, stating that obviously his law school's salaries were adequate and the ABA was using the salary data to ''ratchet up'' salaries at lower paying law schools.

The legal education community is now well acquainted with this case and the proposed Final Judgment.

D. Law Schools Not Approved by the ABA

The Department received three comments from law schools not approved by the ABA.[18] They are generally critical of the limited scope of the Final Judgment.

1. University of La Verne (Exhibit 18)

The University of La Verne (''LA Verne'') is a law school accredited by the State of California but not approved by the ABA. While the California state court will admit graduates of California-accredited schools to its bar, most state bar admission rules require graduation from an ABA-approved school. First, La Verne believes that the consent decree does not restrain the ABA's support of bar admission or employer requirements that applicants graduate from ABA-approved law schools. Second, La Verne is concerned about the decree provisions relating to the physical facilities Standards and Interpretations. La Verne thinks that the ABA has required costly facilities in the past and is particularly worried that ABA Interpretations will continue to prohibit the leasing of law school facilities. Third, La Verne is opposed to the ABA's requirements about law library seating. Fourth, La Verne wants the Justice Department and Court to carefully review the Special Commission's proposals regarding calculating the faculty component of student-faculty rations. Fifth, La Verne fears that ABA inspection teams will use salary data available for other sources. Finally, La Verne believes that the ABA should ascertain the quality of law schools by measuring such outcomes as bar passage rates.

Preliminarily, we note that the consent decree is tailored to remedy the antitrust violations alleged in the Complaint: The ABA's acting as a guild for legal educators, and the resulting competitive distortion of the accreditation process. In addition, the decree is designed to remedy the four ABA accreditation practices that were alleged in the Complaint as Sherman Act violations. This is the purpose of a consent decree: to provide relief appropriate for the allegations in the Complaint. *Microsoft*, 56 F.3d at 1448, 1459.

La Verne's first concern, whether the ABA has encouraged States to require graduation from an ABA-approved school for bar membership, is outside the scope of charges in the Complaint and, consequently, is not addressed in the proposed Final Judgment. Moreover, in general, an organization's lobbying of state agencies is immune from antitrust liability under *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), and its progeny. The fact that individual employers may require graduation from an ABA-approved law school is not itself an antitrust violation and is outside the scope of the Complaint and relief in this case.

Second, La Verne is concerned about the ABA's rules on facilities. As we alleged in the Complaint, while adequate physical facilities is a relevant factor in assessing an educational program's quality, the facilities standards may have been applied inappropriately to enhance working conditions for law faculty. The ABA's facilities standards and practices, like others addressed in Section IV(D) of the Complaint, raise what are, in essence, educational policy issues. Hence, under the decree, they have been initially referred for re-evaluation to the Special Commission.

Third, the issue of library seating is not raised in the Complaint and is, thus, not a part of this proceeding.

Fourth, with regard to the student-faculty ration issue, the Department has required that this question of educational policy be reconsidered through a process not infected by capture. The Department will carefully review the Special Commission's report.

Fifth, the consent decree expressly forbids the ABA from taking any actions that impose salary requirements or using law school compensation data in connection with the accreditation or review of any law school. Consequently, ABA inspection teams cannot use any such data, regardless of its source, without the defendant risking contempt sanctions.

Finally, outcomes, like bar review passage rates, may be a useful measure of educational quality. This is, however, an issue of educational policy, not an antitrust issue and is outside the matters alleged in the Complaint.

2. Reynaldo G. Garza School of Law (Exhibit 19)

Reynaldo G. Garza School of Law (''Garza'') is a Texas law school that is not approved by the ABA. The Texas Supreme Court mandates that bar applicants be graduates of ABA-approved law schools. Garza complains that the proposed consent decree does not deal with the requirement that bar applicants be graduates of ABA-approved law schools and the effect of this Standard on graduates of unapproved law schools. Second, Garza alleges that the consent decree does not address the ABA requirement of a core library collection. Third, the decree does not address the ABA's requirement that law schools have a full time law librarian.

We respond by noting, first, that the decree was tailored to address the antitrust violations alleged in the Complaint. The Complaint does not challenge state requirements that bar applicants must graduate from ABA-approved schools. The actions of States are exempt from the antitrust laws under the ''state action'' doctrine announced in *Parker* v. *Brown, supra.*

The ABA Standards on core library collection and full-time librarian administrators are not challenged in the Complaint as antitrust violations and appear to involve solely questions of educational policy.

E. Graduates of Unapproved Law Schools

The United States received 13 comments from students and graduates of law schools that are not accredited by the ABA. Among the schools represented are Texas Wesleyan School of Law, the Commonwealth School of Law in Massachusetts, an unnamed state-accredited law school in Alabama, and five California schools: Western State University in San Diego; West Los Angeles School of Law; Glendale University College of Law; People's College of Law; and an unnamed law school. The majority of these comments describe the consequences of ABA accreditation for graduates of law schools not approved by the ABA.

Ten graduates and students criticized the rules in various States that require bar applicants to graduate from ABA-approved law schools only. They suggested that the consent decree abolish or weaken these rules. These graduates were: Deborah Davy (Western State University) (Exhibit 20); Joel Hauser (People's College of Law) (Exhibit 21); Wendell Lochbiler (West Los Angeles School of Law) (Exhibit 22); Larry Stern (Glendale College of Law) (Exhibit 23); Julie Ann Giantassio (Western State University) (Exhibit 24); Robert Ted Pritchard (enrolled in unnamed non-ABA approved law school) (Exhibit 25); Donald H. Brandt, Jr. (Texas Wesleyan University) (Exhibit 26); David White (Western State University) (Exhibit 27); Bill Newman (an unnamed unaccredited California law school) (Exhibit 28); and Russell R. Mirabile (school not named) (Exhibit 29).

[18] MSL's comment is responded to in Section IV.H.

Ms. Davy, Mr. Pritchard, and Mr. Stern suggested that graduates of state-accredited law schools should be allowed to take any state's bar examination. Mr. Mirabile proposed waiving graduates of all unapproved schools into the bar. Mr. Brandt proposed eliminating the ABA's power to accredit law schools. Mr. Brandt alleges that his school, Texas Wesleyan University, was granted provisional ABA approval on the condition that it graduate its third-year class before receiving that approval. Hence, Mr. Brandt did not graduate from an ABA-approved law school.

The ABA does not itself set state bar admission criteria. Approximately 42 States require graduation from an ABA-approved school as a condition for sitting for the bar. Such state requirements fall within the ''state action'' immunity from antitrust prosecution recognized by the Supreme Court in *Parker* v. *Brown, supra,* and its progeny. Consequently, we did not and cannot address state bar admission requirements in the proposed Final Judgment.

Five comments discuss graduates of unapproved law schools being denied admission into advanced legal degree (''LL.M'') programs at ABA-approved law schools. Ms. Davy contends that the ABA intrudes upon the discretion of the law schools and proposes amending the Final Judgment to make all individuals holding a Juris Doctor degree eligible for admission into ABA-approved LL.M. programs. Mr. Lochbiler explained that he was denied admission into a number of ABA-approved LL.M. and J.D. programs; each institution refused to accept a graduate of an unaccredited school. Mr. Stern said that he was denied admission into LL.M. programs because no ABA-approved school would consider him without risking its accreditation. Mr. White was recently denied admission to an LL.M. program at an ABA-accredited Florida law school. He claimed the school would not change its policy regardless of the consent decree. Mr. Brandt noted that has continued educational options have been limited, but did not describe these options.

Under the consent decree, the ABA may not bar a law school from enrolling a member of the bar or a graduate of a state-accredited law school in an LL.M. or other post-J.D. program. Previously, the ABA Standards had barred law schools from doing so. The decree permits individual law schools the discretion to admit whom they want in their graduate programs.

Five comments focus on the ABA's rules prohibiting approved schools from offering transfer credit for courses at unapproved law schools.

The author of one comment, who wished to remain anonymous, graduated from a state-accredited, but not ABA-approved, law school and is a member of the bar (Exhibit 30).[19] He wrote that the dean of an ABA law school in another State refused to grant credit for any of his courses. The dean was aware of the proposed Final Judgment. The author believes that the proposed Final Judgment should be modified to prevent approved schools from refusing to grant credit. Mr. Prichard described an admissions representative of an ABA-approved California law school who told him that the institution does not accept any credits earned at a non-ABA school. The admissions representative allegedly stated that the consent decree did not change this. Mr. Prichard advocates several modifications to the proposed Final Judgment, including requiring all law schools to sign the consent decree and mandating that all state-accredited law schools be automatically granted provisions approval by the ABA.

In his comment, Frank DeGiacomo proposes deleting from the proposed Final Judgment the phrase in Section IV(D)(2) that allows the ABA to require that ''two-thirds of the credits required for graduation must be successfully completed at an ABA-approved law school.'' (Exhibit 31). Mr. DeGiacomo contends that the provision deters competition from non-ABA law schools. He alleges that ABA-approved schools have few seats for transfer students and that transfer applicants from unaccredited schools are viewed less favorably than students from ABA-approved law schools who are perceived as having achieved greater academic achievement.

James B. Healy submitted to the Government a background brief by himself and three other students detailing the closure of the unaccredited Commonwealth School of Law. The closure prevented them from graduating (Exhibit 32). The four unsuccessfully sought to transfer to 15 law schools with credit for their courses at Commonwealth. Mr. Healy inquires whether the students have any recourse. Finally, Mr. Mirabile believes ABA-approved schools should give complete credit for all work at unapproved law schools.

Under the consent decree, the ABA may not prevent ABA-approved schools from offering transfer credit for work successfully completed at a state-accredited law school. The decree allows the ABA to require that two-thirds of the credits required for graduation be successfully completed at an ABA-approved law school. As with the LL.M. programs, the decree leaves the choice of whether to offer transfer credits to the individual school. Some schools may choose to do so; others may not.

Mr. DeGiacomo proposes eliminating the requirement that two-thirds of the credits be completed at an ABA-approved law school and Mr. Mirabile proposes granting credit for all work at unapproved law schools. For reasons of educational policy, an accrediting agency may require that the bulk of an education be completed at the degree-granting institution. The two-thirds requirement allows the ABA to ensure quality control—the legitimate purpose of accreditation. The decree provision rests on the ABA's existing parallel rule for credit for courses completed at foreign law schools, a rule that did not so directly implicate the guild interests that distorted the rule for transfers from domestic schools.

In addition to comments about bar admission and LL.M. requirements, Mr. Stern pointed out that the ABA's student-faculty ratio rules that no rational application to educational quality because they excluded part-time faculty from the ratio. Evidence that anticompetitive purposes had distorted the formulation of the present student-faculty ratio rule was the basis of the Department's allegation in the Complaint. But low student-faculty ratios may ensure smaller classes and more student-faculty contact, desirable educational outcomes. Because of this, the Special Commission will have the first opportunity to address this educational policy issue.

F. Other Practicing Attorneys

The Justice Department received comments from five other practicing attorneys.

1. William A. Stanmeyer (Exhibit 33)

William A. Stanmeyer is a practicing attorney and former law professor. He commends the Justice Department for bringing this action. He believes that many of the ABA's Standards are irrelevant to quality legal education, sometimes vague, and often applied arbitrarily. Mr. Stanmeyer is troubled by outgoing ABA President George Bushnell's denial of any wrongdoing and fears that the ABA will resist real change.

[19] The author requested having his name and address withheld from the comment because he has an application pending with an ABA-approved law school. We have redacted this information in the copy of the comment filed with the Court.

The Justice Department agrees that some of the ABA's accreditation practices had little to do with quality. The decree is designed to remedy these problems. In terms of Mr. Bushnell's comment, a defendant is not required to admit to the charges in the Complaint as part of a settlement. This is one of the incentives to enter a decree instead of proceeding to trial. Finally, the Department expects that the contempt sanction will be sufficient to ensure that the ABA will abide by the decree.

2. Four Concerned Lawyers (Exhibit 34)

The Justice Department received an anonymous comment from ''4 Concerned Lawyers.'' They congratulate the Department on the consent decree. They are concerned about having the ABA's Consultant on Legal Education, Jim White, reporting to the ABA's Executive Director, Bob Stein. They fear that friendship between White and Stein will prevent the latter from effectively supervising the former. Second, the four wish that the Justice Department would investigate the relationship between Consultant White and Indiana University, where he teaches, and examine the payment arrangements between them.

In response, we note, preliminarily, that the decree does not require the Consultant to report to the Executive Director. Moreover, there are strong incentives to ensure that the terms of the decree are carried out. Violations of the consent decree are punishable by contempt sanctions. In fact, the Consultant and Executive Director must sign annual certificates acknowledging this. In addition, the decree opens up the ABA's accreditation operations to more scrutiny. The Accreditation Committee, Council, and Standards Review Committee will have many members who are not affiliated with law schools. The payment antitrust concern or relate to the antitrust violations alleged in the Complaint.

3. Frederick L. Judd (Exhibit 35)

Frederick L. Judd is an attorney, certified public accountant, and a graduate of Brigham Young University (''BYU'') law school. He fears that the ABA's requiring law schools to set schedules that limit the amount of time students can work excludes students who need to work to pay for law school. Mr. Judd wished to work as a C.P.A. while a full-time BYU student, but was prevented from setting up a class schedule that would enable him to work during the day.

The ABA's Standard limiting full-time students to 20 hours of work per week does not raise antitrust concerns or relate to the violations alleged in the Complaint. There may be strong educational policy reasons to limit students' work so they may devote more time to their studies.

4. Michael L. Coyne (Exhibit 36)

Michael L. Coyne is an attorney in private practice in North Andover, Massachusetts, and is also associate dean of MSL. In his comment, Dean Coyne complains about deposition testimony of former Accreditation Committee Vice Chairman Claude Sowle and ABA Consultant on Legal Education James White, taken by MSL in its private action against the ABA. Dean Coyne believes that their testimony about salaries is at odds with Paragraphs 15 and 16 of the United States' Complaint, in which we allege that the ABA collected salary data for peer schools and found that schools which paid salaries below the median were non-compliant. Dean Coyne says that Mr. Sowle testified in the private action that the ABA has not paid attention to geographic or competitive salary information for some time. He asks the Department to clarify whether this testimony contradicts documentary evidence held by the Justice Department.

Dean Coyne also seeks disclosure of materials that were obtained under the Antitrust Civil Process Act, 15 U.S.C. §§ 1311–1314. The Act imposes strict disclosure limits on the Government (15 U.S.C. 1313 (c) and (d), and the Government must comply with them.

The ''Government's Opposition To MSL's Motion For Intervenor Status and For Determinative Documents And Materials,'' filed on October 10, 1995, addresses MSL's request for documents in more detail. Were the Court to order production of the documents, there would be a substantial chilling effect on the Department's work. Defendants would be less willing to enter consent decree because they would fear it would lead to the production of their documents. MSL has a private action against the ABA and has sought discovery in that action. That is the proper forum for MSL's discovery requests.

Dean Coyne also attached pages 207–08 of Mr. Sowle's testimony to his comment. On those pages, Mr. Sowle admitted that the Accreditation Committee considered how salaries paid by a school compared to those paid by its peers. Dean Coyne's concern as to the substance of the deposition testimony regarding the use of salary information does not seem directly relevant to the issue in this APPA proceeding. That issue is whether entry of the proposed consent decree is in the public interest. Regardless of the testimony, the relief proposed adequately deters the defendant from using the accreditation process to fix salaries.

5. Jackson Leeds (Exhibit 37)

Mr. Leeds believes that the consent decree will allow state courts to violate antitrust laws in regulating admissions to the bar.[20] Mr. Leeds believes that the New York Court of Appeals wrongly requires law schools to be approved by the ABA, American Association of Law Schools, or the New York State Department of Education. Moreover, Mr. Leeds apparently requested from the City University of New York Law School at Queens College (''CUNY'') a copy of the ABA's site inspection report for CUNY. CUNY apparently refused because distribution of the report is limited to those authorized to receive it by the ABA's Council of the Section of Legal Education. Mr. Leeds also is upset that CUNY admits students with low traditional indicators (test scores and GPAs), and claims that CUNY does not enforce class attendance policies.

In response, the Justice Department notes that, under *Parker* v. *Brown, supra,* and its progeny, the actions of the state courts in determining bar admissions or in approving law schools are immune from antitrust prosecution. CUNY's apparent refusal to give Mr. Leeds the inspection report, CUNY's admissions standards, and its class attendance policies do not raise antitrust issues and are not related to the subject matter of the Justice Department's Complaint in this action.

G. Members of the General Public

The Justice Department received comments from three individuals whom we cannot identify as being in any of the preceding categories.

1. Robert Reilly (Exhibit 38)

Robert Reilly is concerned about practicing lawyers who are graduates of unapproved law schools but who are unable to practice in many States because those States require graduation from ABA-accredited law schools. Mr. Reilly believes that the States impose this requirement to limit competition and to deny graduates of unapproved law schools the ability to practice law in the place they wish to live.

State bar admission requirements restricting bar membership to graduates of ABA-approved schools may limit competition, but they cannot be

[20] It is not entirely clear that Mr. Leeds is a practicing attorney. His letter indicates legal training and, hence, we have classified him here as such.

challenged under the antitrust laws because of the ''state action'' immunity doctrine announced by the Supreme Court in *Parker* v. *Brown, supra.* Consequently, such requirements are beyond our enforcement jurisdiction.

2. Robert W. Hall (Exhibit 39)

Robert Hall, President and Director, Hawaii Institute for Biosocial Research, expressed dissatisfaction with the proposed Final Judgment, primarily because he believes that it does not remedy the ABA's role in ''anticompetitive admissions processes required by the ABA in the accreditation process.'' In particular, he criticized the control of the Law School Admissions Council (''LSAC'') by ABA-approved law schools. He does not believe that law schools should use the LSAC's aptitude test (the ''LSAT'') in the admissions process.

While the ABA's Accreditation Standards require that law schools use the LSAT, or a comparable aptitude test, we do not know that the ABA requires law schools to maintain median LSAT scores. The ABA's requirement appears consistent with Department of Education regulations mandating that accrediting agencies require that accredited schools employ a suitable aptitude test to screen applicants. Whether the LSAT, or any other test, is a reliable indication of an aptitude for a field of study seems to involve educational, not antitrust, policy questions. This issue is also not raised in the Complaint.

Mr. Hall also criticized the domination of the law school accreditation process by insiders and the lack of public involvement in the accreditation process. We recognize this problem and the consent decree remedies it by introducing more people outside of legal education into the accreditation process and by setting term limits for members of the committees that oversee law school accreditation. Mr. Hall further believes that the insider status of some members of the Special Commission may have the effect of putting the fox in charge of the chicken house. The proposed consent decree answers this, too, by requiring that the ABA's Board of Governors review the Special Commission's findings. Additionally, the Justice Department may challenge the Special Commission's recommendations in this case.

Mr. Hall further believes that the ABA has boycotted any law school that does not have small classes for at least some part of its total instructional program. He believes it will be costly for a proprietary school to offer small classes. In response, we note that the size of classes usually raises issues of educational policy. An accrediting agency may require some small classes so students benefit from greater teacher contact.

Finally, Mr. Hall criticizes the ABA Interpretation requiring law schools to have facilities that are owned rather than leased. He points out that this may be a problem in areas where land and buildings are extremely expensive. In response, the Justice Department notes that the decree is tailored to the antitrust violations alleged in the Complaint. The ABA is not charged with violating the antitrust laws by virtue of all of its facilities standards, including its rules regarding leased facilities or their implementation.

3. Amrit Lal (Exhibit 40)

Amrit Lal wrote to congratulate the Justice Department on the consent decree. Dr. Lal believes that state bar examiners allegedly manipulate bar exam results to limit bar admissions. The Supreme Court, in *Hoover* v. *Ronwin,* 466 U.S. 558 (1984), held that the state action immunity doctrine protected one state supreme court's bar admissions restrictions from an antitrust claim that made similar allegations. Dr. Lal also alleges that the Pennsylvania Board of Law Examiners discriminate on the basis of age, ethnic identity, and national origin. These concerns do not relate to the matters alleged in the Complaint.

H. Massachusetts School of Law (Exhibit 41)

MSL has filed a massive 83-page comment with an Appendix and about 400 pages of Exhibits. MSL previously filed an Intervention Motion that both parties oppose. MSL was denied accreditation by the ABA in 1994 and has filed an antitrust case against the ABA in the Eastern District of Pennsylvania. Last month, MSL filed a second action against the ABA in a Massachusetts state court, alleging unfair competition, fraud, and other matters. MSL's comment recommends numerous changes in the proposed Final Judgment, the delay of its entry, and the vast production of documents and materials from the Justice Department's investigatory files. The Government opposes the requested modifications and recommends no delay in the entry of the Final Judgment. We also oppose MSL's ''discovery'' request, believing that it is particularly inappropriate to grant discovery collaterally in an APPA proceeding to a party whose discovery requests have been denied in its own litigation.

1. Capture

MSL does not believe that the proposed consent decree adequately remedies the ''capture'' of the ABA accreditation process by the group that benefited from it. MSL suggests, as more effective remedies, requiring the ABA to choose ''procompetitive'' nominees for the Council and Committee (MSL provides the names of 21 possible nominees), and banning any members of the ''insider'' group (MSL lists about 47 ''insiders'' and about 32 of their ''helpers'') from further participation in accreditation. It urges that the decree should ban ''the ABA from violating the Sherman Act through use of its other accreditation criteria to achieve anticompetitive purposes.'' Comment, p. 11. The Government believes that it is inappropriate for it or the Court to micromanage the defendant's accreditation activities to require that certain people be designated to participate in accreditation and others prohibited. Such relief would be extraordinary and unique among consent decrees. Enjoining the ABA from violating the Sherman Act in its application of its remaining accreditation criteria is at the other extreme—so vague as to add little effective relief. This is because such a provision requires a Rule of Reason trial just to enforce a contempt action. The consent decree's limits on law school faculty participation on governing committees, the required involvement of ''outsiders'' on site inspections, and the close involvement of the ABA's Board, itself undoubtedly independent from accreditation ''insider'' control, are reasonable measures to eliminate the capture of the accreditation process.[21]

MSL claims that the ABA has violated the consent decree by adding an extra academic to the Section of Legal Education's Nominating Committee and that the new data questionnaire circulated by the ABA to law schools requests data from which average and, possibly, individual salaries can be calculated is in violation of the decree. Our information, however, is that no additional academics have been added to the Nominating Committee since the decree was filed, and that the event that MSL describes took place last year. The 1995–96 Nominating Committee has one legal educator.[22] As to the data

[21] The ABA's Board, independent of consent decree requirements, has also required the Consultant of the Section of Legal Education to report to the ABA's Executive Director.

[22] The Nominating Committee members are a California practitioner, a law school librarian, a university president (who is a former law school dean), a Nebraska practitioner, and a non-lawyer

questionnaire, our understanding is that average salaries cannot be calculated, except in the most gross fashion, and that individual salaries cannot be calculated in any fashion from the data being collected. Moreover, the aggregated salary expense data the ABA collects is not given to the Accreditation Committee, the Council or members of site teams, and is not used in connection with law school accreditation. The Justice Department does not object to the collection of this data as long as it cannot be disaggregated.

2. Secrecy

MSL points out that the ABA's accreditation Standards and Interpretations are often quite general. Their content has been supplied by the enforcement process and by the policies followed by enforcement officials. MSL believes that a simple cure for monitoring the ABA's actual accreditation practices would be to require that all documents created during the accreditation process be made public.

The proposed Final Judgment does require the defendant to publish annually the names of those who participate in domestic and foreign site inspections and the schools inspected. Additionally, the Council must report to the Board all schools under accreditation review and the reason the law schools are still under review. The Council must also approve and the Board review all annual and site inspection data questionnaires sent to law schools. Our interviews indicated that some individuals thought that schools and site inspectors might be inhibited in some respects if their free exchange of views during the accreditation process were made public. Since this appears to be a matter implicating legitimate accreditation process concerns, the Government was reluctant to include total disclosure as required antitrust relief.

3. The Special Commission

MSL attacks the composition of the Special Commission, claiming that they were appointed by the two immediate past Chairmen of the Council and that at least 8 of the 15 commissioners ''are part of the heart and soul * * * or are closely tied to the capturing inside groups.'' [23] Comment, p. 20. While many of the members of the Special Commission have had close ties to the ABA and its accreditation activities, its membership is six legal academics (including one well-known critic of ABA accreditation), two judges, one university president (a past ABA president and Council Chair), five practitioners (including one critic of ABA accreditation), and one public member (the president of the League of Women Voters). The Special Commission had been established by the ABA, prior to settlement negotiations with the Government, to make a comprehensive review of the ABA's accreditation of law schools. The Government will closely examine its report. The proposed decree leaves matters that have legal educational policy implications to the Special Commission. The ABA had initiated the Special Commission in response to criticisms prior to the filing of the Department's case and it is reasonable to give the first opportunity to address these policy interests to the Commission. The Special Commission's recommendations are subject to the approval of the ABA's Board. The Government may challenge any proposal with respect to the six subjects enumerated in the proposed consent decree.[24] The Government expects that it and the defendant will resolve any differences that may develop so that court involvement in the process will be unnecessary.

MSL claims that this process involves lengthy delays, possibly 15–18 months, and requests that either the Court delay entry of the decree until the Special Commission's report is adopted and approved by the Board and Justice Department, or that the Court should allow third parties the opportunity to comment.

While we do not expect anything so lengthy as a 15–18-month delay, entry of the decree should occur now.[25] The decree has established a reasonable, defensible remedy to treating the allegations in the Complaint. Specific practices that clearly violate the antitrust laws and cannot be justified on educational policy ground have been immediately enjoined. The process that produced these and other accreditation rules is in the process of reformation, with the initial work being done by the ongoing Special Commission, subject to later approval by the ABA Board and Justice Department.

The public has had the opportunity to comment on the subject areas referred to the Special Commission and some, including MSL, have. Certainly, if third parties have comments or complaints about the Special Commission's report, which will be made public, the Justice Department welcomes and will consider those comments.[26] We have often initiated judgment enforcement proceedings based on information from third parties. Public comments will be valuable in forming our response and in our discussions with the defendant after the Special Commission's report.

MSL claims that use of the Special Commission circumvents the Tunney Act. The consent decree establishes a process rectifying the conduct alleged in the Complaint. The public has had the opportunity to comment on the process as well. The Department will welcome comments when the Special Commission's report is public. In the unlikely event the two parties cannot reconcile differences on the Special Commission's report, the proposed consent decree provides that the Court will resolve the Government's challenge, applying a Rule of Reason analysis.

MSL believes that such a challenge should be decided under a ''quick look'' analysis. In a recently decided case, however, the Third Circuit remanded for a Rule of Reason analysis a district court decision that had applied a ''quick look'' analysis where elite Northeastern universities fixed the *price* charged to commonly-admitted students who also received financial aid. *United States* v. *Brown University, et al.*, 5 F.3d 658 (3rd Cir. 1993). The subjects referred to the Special Commission do not directly restrain price and do not seem as appropriate for a ''quick look'' analysis.

MSL also comments on some of the topics on which the Special Commission will report. It notes that the student-faculty ratio standard has been applied by the ABA against law schools to require the employment of the capturing group—full-time legal theorists—and discourages the use of judges and practitioners.

The proposed consent decree left the initial recommendation regarding the correct use of student-faculty ratios to the Special Commission for several reasons. Student-faculty ratios are generally regarded as a useful legitimate accreditation tools, as is the requirement of a core full-time faculty. The Government expects that the Special Commission and the ABA Board will suitably assess the continuing utility of student-faculty ratios in a manner that

public member. The term of the individual mentioned by MSL expired last summer.

[23] Only two of the Commissioners are listed in MSL's enumeration of the 79 ''insiders'' and ''helpers'' group. Comment, p. 6 n.4.

[24] The six subjects are a small part of the Special Commission's entire report.

[25] The decree can be entered once the comments and the Response have been published in the Federal Register and the Government has certified to the Court compliance with the APPA.

[26] Only a few of the 41 comments discuss the Special Commission.

does not skew the outcome to promote guild interests.

MSL also criticizes the ABA's use of the vague facilities accreditation standards to micromanage law schools and to require the construction of what it terms ''Taj Mahal'' law school facilities. The use of this standard to enhance unnecessarily full-time faculty working conditions is an appropriate concern. Since adequate facilities can be clearly related to educational quality, but the construction of unnecessary facilities imposes costs on universities and state governments, the Special Commission should have the opportunity to recommend a standard and practice that will consist wholly of legitimate educational concerns.

4. ''Procedural'' Matters

MSL believes that the proposed relief is inadequate to eliminate the capture problem. MSL anticipates that the ABA will claim that it was not ''feasible'' to include practitioners to staff 6–7 person inspection teams and staff them with insiders.[27] The proposed consent decree does require that the composition of site teams be made public. This will make it easier for the public, and the Government, to see if the defendant is living up to its obligations under the decree. MSL raises the specter of other possible abuses by a Legal Consultant intent on evading, at a minimum, the spirit of the consent decree. The decree cannot address all possible outcomes but a systematic evasion of its mandate is cause for a contempt hearing. On balance, the decree makes a reasonable effort to eliminate capture of the accreditation process while preserving the ABA's ability to perform legitimate and important accreditation work. This case has also captured the attention of the ABA's leadership, which has personal and economic incentives to avoid a repetition of the conduct that caused the United States to bring this suit.

5. Reliance on ABA Leadership

MSL doubts that the ABA's leadership can be trusted to effect changes in the accreditation process, relying, in particular, on the ABA's outgoing president's statement denying antitrust liability. A value of the consent decree process is that it permits the Government to obtain effective and immediate relief that the defendant may accept in part because it does not require an admission that can be used collaterally. Whether the defendant believes it has violated the antitrust laws is not as important as whether it intends to comply with the decree. Further, unlike defendants in most antitrust cases, the ABA's leadership did not economically benefit from the conduct alleged in the Complaint, nor, perhaps, did the ABA itself. Benefit accrued to legal academics in the Section of Legal Education, not ABA leaders who have an economic incentive to avoid conduct that may be costly to their organization. The leadership adopted changes and entered this decree over the apparent opposition of the leadership of the Section of Legal Education.[28] MSL's recitation of ABA antitrust ''insensitivity,'' involving far different subjects several decades ago, is of little relevance.

6. ABA Antitrust Compliance Officer

MSL also objects to the provision of Section VIII of the proposed Final Judgment that requires an antitrust compliance program, including the appointment of an antitrust compliance officer. Compliance programs have been a fairly standard provision in civil antitrust cases brought by the Government and settled by consent decrees since the *Folding Carton* case in the late 1970s.[29] The compliance program is, if anything, somewhat more rigorous than in other consent decrees.

We expect that the ABA's General Counsel will be named as the compliance officer. This, too, typically occurs in Government antitrust consent decree proceedings. We know of no case in which the ''identity, professional background and views of the Compliance Officer'' was an issue in an APPA proceeding. Clearly, since the compliance officer may be required to provide advice to the defendant's officials, one cannot expect the compliance officer to be one chosen by MSL.

MSL claims that it is ''an incomprehensible lacuna'' for the proposed consent decree not to give the antitrust compliance officer ''supervisory responsibilities'' with respect to the Special Commission. But, we see no there, there. The Special Commission's charge is to reconcile the educational policy questions in the six subjects it is to report on. While it may be seeking antitrust advice, there is no reason why its work, which also includes a comprehensive review of law school accreditation, must be supervised by the antitrust compliance officer or why that should be required by the Court.

MSL also claims that the Department of Education's review of ABA accreditation ''has been wholly ineffective to date in assessing quality.'' It believes that Section VI(L) of the proposed consent decree may be related to that claimed failure by the Department of Education.[30] MSL concludes that ''it is perplexing that the Antitrust Division would now rely on the DOE as a vehicle for assuring quality or for precluding self-interested conduct.'' Comment, p. 58. The Justice Department disagrees with MSL's statement about the Department of Education and has no doubt that the Department of Education has carried out its mandate under the Higher Education Act. MSL's claims does not relate to whether entry of the proposed Final Judgment is within the reaches of the public interest, the issue now before the Court.

7. MSL Discovery Requests

MSL's comment restates the arguments made in its September 26 Intervention Motion for discovery of the Government's investigative files. As its first ground, MSL contends that it is entitled to discovery of a ''wide spectrum of documents, evidence, memoranda and other evidence that can be determinative'' under § 16(b) of the APPA. The APPA calls for the Government to file ''materials and documents *which the United States considered determinative in formulating* [the proposed consent decree]'' (emphasis added). Usually, there are no such documents and there were none in this proceeding.[31]

MSL again heavily relies on *United States v. Central Contracting Co.,* 537 F. Supp. 571 (E.D. Va. 1982). since *Central Contracting* was decided, however, two courts in this District have rejected requests for documents not identified by the United States as ''determinative.'' *United States v.* LTV Corp., 1984–2 Trade Cas. (CCH) ¶66,133 at 66,335 n.3, *appeal dismissed,* 746 F.2d 51, 52 (D.C. Cir. 1984); *United States v.* Airline

[27] There is no requirement that the size of inspection teams be that great. ABA inspection teams have doubled in size over the past 20 years.

[28] Within a month of the filing of the consent decree, the chairpersons of the Council and Accreditation Committee had resigned, sharply criticizing the settlement.

[29] *U.S. v. Alton Box Board Co.,* 1979–2 Trade Cas. (CCH) ¶62,992 (N.D. Ill. 1979). The then-Assistant Attorney General of the Antitrust Division described the antitrust compliance program as ''innovative provisions that add a new dimension to . . . [a] recent emphasis on preventive antitrust.'' P. 1, *Legal Times of Washington,* July 9, 1979.

[30] MSL's venturing into unrelated subjects and gratuitous attacks on a Cabinet agency is further reason why it should not have party or *amicus curiae* standing in this proceeding.

[31] The Government attached three documents as exhibits to its Memorandum Opposing Intervention that, while not ''determinative,'' were relevant to the proposed consent decree since they showed the ABA was reforming its accreditation of law schools before settling this case.

Tariff Pub. Co., 1993–1 Trade Cas. (CCH) ¶70,191 at 69,894. MSL attacks at great length the Government's certification in most APPA proceedings that there were no 16(b) ''determinative'' documents. All of the APPA proceedings were court-supervised and the courts entered the consent decrees. The Government previously briefed this issue and incorporates that brief by reference.[32]

As a second prong for discovering the Government's investigative files, MSL claims that 16(e) of the APPA provides for such discovery in the public interest when there is ''. . . a need to protect the interests of injured parties by making available to them documents and information gathered by the Government that will 'assist in the effective prosecution of their claim.''' Comment, p. 68. Of course, no court has ordered such discovery in the 20-year history of the Tunney Act and none of the other 40 comments in this proceeding requested such discovery. MSL's stated purpose for its request is improper—to intrude into the Government's deliberative process to second-guess its use of prosecutorial discretion. Nor should MSL be able to use the APPA proceeding here to obtain discovery it was denied in its pending case against the ABA in the Eastern District of Pennsylvania. The discovery sought by MSL goes far beyond the limited purpose of an APPA proceeding, which is the review of the decree itself, not a review of the actions or behavior of the Justice Department.

MSL's attempt to obtain discovery under 16(e) should be denied for a number of reasons. MSL should not use this proceeding to obtain discovery it was unable to gain in its two pending cases against the ABA. If anything, the APPA was designed to protect injured parties who are uninformed as to the source of their injury, not disappointed litigants. The purpose MSL states for its discovery request goes well beyond the limited purpose of an APPA proceeding and no court has required such production under § 16(e). Additionally, requiring the production of investigative files will harm the public interest by discouraging other antitrust defendants from entering into consent decrees, and will make more difficult compliance with CIDs during Antitrust Division investigations.

[32] At pages 11–20 of our October 10 Memorandum opposing intervention, we briefed the Court on the § 16(b) determinative documents requirement.

8. Non-Decree Matters

In its comment, MSL requests the Government to give further consideration to three subjects outside the Compliant and proposed Final Judgment. The subjects are the accreditation requirements that substantially all law school first-year courses be taught by full-time faculty, the prohibition against full-time law students working more than 20 hours per week, and the library facilities and core collection requirement. MSL correctly recognizes that these matters are outside the scope of this APPA proceeding. *Microsoft,* 56 F.3d at 1459–60.

Conclusion

For these reasons, the Court should enter the consent decree upon the Government's certification to the Court of compliance with the APPA.

Dated: October 27, 1995.

Respectfully submitted,

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Certificate of Service

On October 27, 1995, I caused a copy of ''United States' Response To Public Comments'' to be served by hand-delivery upon:

David L. Roll,
Richard L. Whiting,
Roger E. Warin,
Steptoe & Johnson, 1330 Connecticut Avenue, NW., Washington, DC 20036

and by Federal Express upon:

Ronald S. Flagg, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006

David T. Pritikin, Sidley & Austin, One First National Plaza, Chicago, Illinois 60603

Darryl L. DePriest, 541 N. Fairbanks Court, Chicago, Illinois 60611

D. Bruce Pearson

In the United States District Court for the District of Columbia

[Civil Action No. 95–1211 (CRR)]

United States of America v. American Bar Association.

United States' Response To Public Comments; Exhibits

Exhibits

Comment of Association of Specialized and Professional Accreditors (''ASPA'')
Comment of National Office for Arts Accreditation in Higher Education
Comment of Association of Collegiate Business Schools and Programs (''ACBSP''
Comment of American Library Association (''ALA'')
Comment of Bernard Fryshman
Comment of Accrediting Bureau of Health Schools, Accrediting Council of Continuing Education & Training, Accrediting Council for Independent Colleges and Schools, and National Accrediting Commission of Cosmetology Arts & Sciences (''Four Agencies'')
Comment of Clinical Legal Association (''CLEA'')
Comment of Howard B. Eisenberg
Comment of John S. Elson
Comment of Jeffrey L. Harrison
Comment of Gary H. Palm
Comment of Millard H. Ruud
Comment of Roy T. Stuckey
Comment of Lawrence A. Sullivan and Warren S. Grimes
Comment of Bardie C. Wolfe, Jr.
Comment of Marina Angel
Comment of Bernard J. Coughlin, S.J., Gonzaga University
Comment of University of La Verne
Comment of Reynaldo G. Garza School of Law (''Garza'')
Comment of Deborah Davy
Comment of Joel Hauser
Comment of Wendell Lochbiler
Comment of Larry Stern
Comment of Julie Anne Gianatassio
Comment of Robert Ted Pritchard
Comment of Donald H. Brandt
Comment of David White
Comment of Bill Newman
Comment of Russell R. Mirabile
Comment of an Author to remain Anonymous
Comment of Frank DeGiacomo
Comment of James B. Healy
Comment of William A. Stanmeyer
Comment of ''Four Concerned Lawyers''
Comment of Frederick L. Judd
Comment of Michael L. Coyne
Comment of Jackson Leeds
Comment of Robert Reilly
Comment of Robert W. Hall
Comment of Amrit Lal
Comment of Massachusetts School of Law (''MSL'')
Proposed modification to consent decree
December 5–6, 1994 Staff Analysis

Association of Specialized and Professional Accreditors

September 25, 1995.

John F. Greaney, Chief,
Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW.—Room 9903, Washington, DC 20001

Dear Chief Greaney: The Association of Specialized and Professional Accreditors (ASPA) appreciates the opportunity to provide comment on the issues and actions proposed to settle the antitrust suit of the United States of America against the American Bar Association, filed June 27, 1995, as Civil Action No. 95–1211(CR). A list of ASPA's 40 member specialized and professional accrediting agencies is enclosed.

ASPA does not presume legal expertise in this case, but does see and wishes to comment on the potential impact of the proposed settlement on accreditation theory and practice as it affects the education of students and the improvement of institutions and programs. ASPA does not take issue with prohibitions against the use of accreditation to establish specific dollar figures for compensation paid to faculty, administrators or other employees. ASPA has no comment regarding settlement terms associated with transfer of credit based on the profit or not-for-profit status of an institution.

ASPA supports the principle of a free and open market in the education arena and believes that educational quality should be pursued in ways that promote such a free market. After careful reading of the Competitive Impact Statement filed on July 27, 1995, ASPA concludes that the Department of Justice, in its interactions with the American Bar Association, has gone beyond the identification and remediation of specific problems and has created theories and potential precedents that could do serious damage to educational quality and to the practice of accreditation. ASPA's comments are intended, in part, to help reduce the unintended consequences that are likely to result if the proposed Final Judgment is not modified prior to being finalized.

1. The document, in its tone, equates the presence of expertise with the automatic capture of a field against the public interest, long service with conflict of interest, and confidentiality with collusion for sinister purposes.

We believe that in the vast majority of cases, expertise helps to build and maintain excellence and the kind of progress that creates and sustains a free market. Long service contributes to the development of expertise, wisdom and consistent application of standards and criteria in the accreditation process, as in other situations. Surely this is one reason that most judges are appointed for life. Likewise, appropriate confidentiality enables serious and honest reviews of institutions and programs by minimizing superficiality and the defensiveness that are often imposed by public relations considerations when deliberations are not confidential.

2. In a data-based society, it is excessive and inappropriate to prohibit the collection or dissemination of data by an accrediting agency or professional association.

The Justice Department has identified a problem with the particular uses of data. The identified problem does not focus on the existence of the data or the fact of its collection. Accrediting agencies and affiliated professional associations collect and publish data as a resource. That collection does not seem to be an antitrust issue, or if so, it extends beyond accreditation into other higher education arenas. The settlement, in our view, can appropriately focus on the appropriate use of data, while not focusing on or limiting its existence or generation.

3. To prohibit any use of compensation and similar data could create a chilling effect on self-assessment and other benign practices.

A truly comprehensive review of all elements involved in the work of a particular university or program can require the use of compensation and other similar data. There is a clear distinction between using statistics to set salary and similar requirements and using such statistics (along with other data) in local management decisions. Data facilitate comparisons of performance against a school or program's mission, goals and objectives. To restate, the focus of the Competitive Impact Statement should be to limit the inappropriate use of data, not any use.

4. The proposed final judgment inappropriately imposes specific numerical requirements on:

a. the composition of various decision-making bodies.

The specific numbers outlined in the Competitive Impact Statement will not in-and-of-themselves ensure either a free market or educational quality, nor will any other set of numbers. We are not aware of any validity and reliability study proving that the presence of professionals or public members in certain proportions changes the values of an accrediting agency, increases fairness or integrity, or brings about true representation of a profession or the public as a whole.

While we strongly favor the presence of professional expertise and public oversight in accreditation activities, we believe that the federal government should not dictate particular distributions, especially as this could be viewed as an attempt to use precedent to set national policies in these areas.

b. the length of terms of office.

When volunteers who serve on decision-making bodies or accrediting teams are prevented by stringent term-limits from developing sufficient experience or expertise, agency staff can have a disproportionate influence on the accreditation process. While we favor appropriate limits on terms, such limits are best set by the agencies themselves. There is no evidence that suggests that shorter terms promote the Department of Justice's antitrust and free-market objectives.

c. the size and composition of accrediting teams.

If extrapolated over the accreditation community as a whole, the effect of such stipulations on size and composition of site visit teams could increase the cost of accreditation site visits by as much as 200%-to-300% with little benefit except for the symbolic value of representation. An accrediting agency must have appropriate standards, well-trained volunteer personnel, and written policies and protocols that are consistent with free-market objectives. However, when an agency has such mechanisms in place, it is wasteful and unnecessary to require participation formulas that are based on place of work.

5. The specified appeal and reporting requirements between the ABA's Accreditation Committee, Council and Board of Governors appear to directly conflict with the U.S. Department of Education's requirement for increased separation and independence of the accrediting arm from the professional association.

Section 602.3(b)(1)–(3) of the USDoE's Procedures and Criteria for Recognition of Accrediting Agencies requires accrediting agencies with gatekeeping responsibilities to maintain an arm's length ''separate and independent'' distance from their professional associations (see enclosure). In addition, another section of the DoE Criteria requires that accrediting agencies must not report to their professional associations any accreditation information that is not also reported to the public. Thus, accreditors are faced with two different points of view and with conflicting requirements. It is our contention that oversight by a larger or parent body will neither automatically create nor prevent conflict of interest.

6. Annual publication of schools visited and their site visitors would bring accreditation personnel decisions into a public relations context, damage important conditions of confidentiality and overemphasize the role of site visitors in the final accreditation decision.

Settlement terms such as this publication requirement are likely to reduce volunteer participation in accreditation, especially by distinguished individuals from prestigious institutions. We see no linkage between this concept and the maintenance of a free market. We do see a number of harmful, probably unintended, side effects.

7. Taken together, the issues raised in 1–6 above will produce a climate and create doctrine and precedents that will offer incentives for fraudulent institutions and programs to use a kind of ''antitrust terrorism'' against accrediting agencies.

Under the consent decree proposed by the Department of Justice, an institution engaged in unfair or even illegal hiring and compensation practices could not be questioned by an accreditor, using data, without being threatened with an antitrust action.

In summary, ASPA believes that the Department of Justice, in its zeal to pursue perceived antitrust violations, has gone beyond what is necessary. In doing this, inappropriate indicators of compliance were designed. If accepted, these indicators could be extremely destructive to the legitimate efforts of accrediting agencies to consider the full range of available information and to work to deploy a wide range of expertise in the service of higher education and the public.

Accrediting agencies are expected to identify the problems an institution or program has in complying with the accreditation standards but are not expected to dictate how those problems should be addresses as that is the prerogative of the specific institution or program. In a similar way, ASPA asks that the Justice Department identify the problems of concern and ask the specific agency, in this case the ABA, to develop and defend a solution. The Justice Department should not dictate the solution, especially in light of the potentially harmful consequences that are likely to extend beyond this particular case to the broader arena of accreditation and higher education. For this reason, ASPA asks that prior to final filing the Final Judgment be shortened and focused to address only those practices that directly produce anticompetitive conditions.

We appreciate the opportunity to submit these comments and would also appreciate

any opportunity to discuss these matters with you more fully.

Sincerely,

Milton Blood,

Chair, ASPA, Director of Accreditation, American Assembly of Collegiate Schools of Business.

cc: Members, ASPA Board of Directors
ASPA-member Accrediting Agencies
Regional Accrediting Agencies
Cynthia A. Davenport, ASPA Executive Director

Enclosures:
ASPA-Member Accrediting Agencies
DoE *Criteria* § 602.3 re: Separate and Independent

MB/cd

ASPA Membership Roster

1. Acupuncture: National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine (NACSAOM)
2. Allied Health: Commission on Accreditation of Allied Health Education Programs (CAAHEP)—CAAHEP serves as an umbrella agency for 17 separate allied health Committees on Accreditation (CoAs)
3. Architecture: National Architectural Accrediting Board, Inc.
4. Art & Design: National Association of Schools of Art and Design
5. Business: American Assembly of Collegiate Schools of Business (AACSB)
6. Chiropractic: Commission on Accreditation for the Council on Chiropractic Education
7. Clinical Laboratory Science: National Accrediting Agency for Clinical Laboratory Sciences (NAACLS)
8. Computing Sciences: Computing Sciences Accreditation Board, Inc.
9. Construction: American Council of Construction Education
10. Counseling: Council for Accreditation of Counseling and Related Education Programs (CACREP)
11. Dance: National Association of Schools of Dance (NASD)
12. Dentistry: Commission on Dental Accreditation, American Dental Association (CDA/ADA)
13. Dietetics: Commission on Accreditation/Approval, American Dietetic Association (CAADE/ADA)
14. Engineering: Accreditation Board for Engineering and Technology, Inc. (ABET)
15. Forestry: Society of American Foresters
16. Health Education: Accrediting Bureau of Health Education Schools (ABHES)
17. Home Economics: American Association of Family and Consumer Science
18. Interior Design: Foundation for Interior Design Education Research (FIDER)
19. Journalism: Accrediting Council—Journalism and Mass Communication (ACEJMC)
20. Landscape Architecture: American Society of Landscape Architects
21. Librarianship: American Library Association (ALA)
22. Music: National Association of Schools of Music (NASM)
23. Nuclear Medicine: Joint Review Committee (JRC) in Nuclear Medicine Technology
24. Nurse Anesthesia: Council on Accreditation of Nurse Anesthesia
25. Nursing: National League for Nursing, Inc. (NLN)
26. Occupational Therapy: American Occupational Therapy Association (AOTA)
27. Optometry: Council on Optometric Education, American Optometric Association
28. Pharmacy: American Council of Pharmaceutical Education (ACPE)
29. Physical Therapy: American Physical Therapy Association (APTA)
30. Planning (City & Regional): Planning Accreditation Board
31. Podiatry: Council on Podiatric Medical Education, American Podiatric Medical Association (APMA)
32. Psychology: American Psychological Association (APA)
33. Public Health: Council of Education for Public Health
34. Public Affairs: National Association of Schools of Public Affairs and Administration
35. Radiology: Joint Review Committee (JRC) in Education in Radiologic Technology
36. Recreation & Parks: Council on Accreditation, National Recreation and Park Association (NRPA/AALR)
37. Rehabilitation Counseling: Council on Rehabilitation Education (CORE)
38. Speech-Language-Hearing: American Speech-Language-Hearing Association (ASHA)
39. Teacher Education: National Council for Accreditation of Teacher Education (NCATE)
40. Theatre: National Association of Schools of Theatre (NAST)

DEPARTMENT OF EDUCATION

34 CFR Part 602

RIN 1840–AB82

Secretary's Procedures and Criteria for Recognition of Accrediting Agencies

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Secretary's recognition of accrediting agencies in order to implement provisions added to the Higher Education Act of 1965 (HEA) by the Higher Education Amendments of 1992, and the Higher Education Technical Amendments of 1993. The purpose of the Secretary's recognition of accrediting agencies is to assure that those agencies are, for HEA and other Federal purposes, reliable authorities as to the quality of education or training offered by the institutions of higher education or higher education programs they accredit.

Note: ''Separate and Independent'' issues are addressed in Section 602.3 below. See the specific definition in subsection (b).

§ 602.3 *Organization and membership.*

(a) The Secretary recognizes only the following categories of accrediting agencies:

(1) A State agency that—

(i) Has as a principal purpose the accrediting of institutions of higher education, higher education programs, or both; and

(ii) Has been listed by the Secretary as a nationally recognized accrediting agency on or before October 1, 1991;

(2) An accrediting agency that—

(i) Has a voluntary membership of institutions of higher education;

(ii) Has as a principal purpose the accrediting of institutions of higher education and that accreditation is a required element in enabling those institutions to participate in programs authorized under this Act; and

(iii) Satisfies the ''separate and independent'' requirements contained in paragraph (b) of this section;

(3) An accrediting agency that—

(i) Has a voluntary membership; and

(ii) Has as its principal purpose the accrediting of higher education programs, or higher education programs and institutions of higher education, and that accreditation is a required element in enabling those institutions or programs, or both, to participate in Federal programs not authorized under this Act; and

(4) An accrediting agency that, for purposes of determining eligibility for Title IV, HEA programs—

(i)(A) Has a voluntary membership of individuals participating in a profession; or

(B) Has as its principal purpose the accrediting of programs within institutions that are accredited by another nationally recognized accrediting agency; and

(ii)(A) Satisfies the ''separate and independent'' requirements contained in paragraph (b) of this section; or

(B) Obtains a waiver from the Secretary under paragraph (d) of this section of the ''separate and independent'' requirements contained in paragraph (b) of this section.

(b) For purposes of this section, ''separate and independent'' means that—

(1) The members of the agency's decision-making body—who make its accrediting decisions, establish its accreditation policies, or both—are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization;

(2) At least one member of the agency's decision-making body is a representative of the public, with no less than one-seventh of the body consisting of representatives of the public;

(3) The agency has established and implemented guidelines for each member of the decision-making body to avoid conflicts of interest in making decisions;

(4) The agency's dues are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and

(5) The agency's budget is developed and determined by the agency without review by or consultation with any other entity or organization.

(c) The Secretary considers that any joint use of personnel, services, equipment, or facilities by an accrediting agency and a related, associated, or affiliated trade association or membership organization does

not violate the provisions of paragraph (b) of this section if—

(1) The agency pays the fair market value for its proportionate share of the joint use; and

(2) The joint use does not compromise the independence and confidentiality of the accreditation process.

National Office for Arts Accreditation in Higher Education

11250 Roger Bacon Drive, Suite 21, Reston, Virginia 22090, 703–437–0700

September 29, 1995.

John F. Greaney, Chief,
Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W.—Room 9903, Washington, DC 20001

Dear Mr. Greaney: I write on behalf of the National Association of Schools of Music, National Association of Schools of Art and Design, National Association of Schools of Theatre, and National Association of Schools of Dance. These organizations represent over 850 programs and institutions concerned with professional education and training in the arts. Each is recognized by the United States Secretary of Education, and each has a distinguished history of accreditation service.

We appreciate the opportunity to comment on the proposed settlement of the antitrust suit of the United States of America against the American Bar Association filed June 27, 1995, in Civil Action No. 95–1211(CR). The four associations wish to support and endorse positions and ideas contained in the letter about this action from the Association of Specialized and Professional Accreditors (ASPA) to you dated September 25, 1995.

Since each of the above arts accreditors has voluntary membership, and since there are no connections in the arts between accreditation and licensure, we are traditionally supportive of free market principles in higher education. We appreciate the role the Justice Department has played in raising antitrust policy issues for the accreditation community. We look forward to a positive and productive result from the continuation of your deliberations. However, without presuming to enter into legal questions beyond our expertise, we urge you and your colleagues to heed the warnings contained in the ASPA letter and to be especially sure that in pursuing issues and concerns with a particular accrediting body, the Justice Department does not set inappropriate precedents or provide loopholes that will preclude accrediting bodies from working effectively in their most difficult situations with problem institutions. By following the recommendations of the ASPA letter, the Justice Department should be able to create clarity on pure antitrust issues without unintended counterproductive results.

Please do not hesitate to contact us if we may provide any additional clarification or information.

With best regards, I remain

Sincerely yours,

Samuel Hope,

Executive Director.

SH:ck

cc: Cynthia Davenport, Executive Director, Association of Specialized and Professional Accreditors

Association of Collegiate Business Schools and Programs

July 27, 1995.

Anne K. Kingaman,
Assistant Attorney General, United States Department of Justice, Antitrust Division, 10th and Constitution Avenue NW., Washington, D.C. 20530

Dear Ms. Bingaman: I am writing this letter in reaction to the recent ruling by the U.S. Justice Department on the American Bar Association accreditation activities.

In the professional field of business there are two accrediting bodies: (1) The Association of Collegiate Business Schools and Programs (ACBSP) which is seven years old, and (2) The American Assembly of Collegiate Schools of Business (AACSB) which was established more than 70 years ago. For many years the AACSB accrediting body dominated the professional field of business in terms of accreditation with stringent requirements for faculty research and faculty release time to conduct research. Our association, ACBSP, was created to provide an opportunity to institutions with a primary mission of teaching to have an opportunity to become accredited without having a heavy research emphasis.

ACBSP has maintained, since its inception, that it should complement AACSB. The association would exist to address the unmet needs of institutions which were not served by AACSB. Thus, ACBSP views its market niche as business schools and programs offered by the mid-sized and small institutions, as well as the community and junior colleges.

There are approximately 2400 institutions that conduct business programs in American higher education. About ½ of these are two year colleges and the other half are four year colleges, some of which have graduate programs. Business education as a professional field of study is four times as large as the next largest professional field which is teacher education. AACSB does not allow the two year colleges to be members of its association and of its 657 members only 293 are accredited by AACSB. Our association, ACBSP, has approximately 500 members and 175 of these are accredited. In addition, our association allows two year colleges to be members as well as four year colleges. Take A and B summarize some of the differences between the two organizations.

TABLE A.—DIFFERENCES IN AACSB AND ACBSP

	AACSB	ACBSP
Mission	Fosters excellence in research	Advances excellence in teaching; stresses articulation/transfer policy statements and agreements.
Organization	657 U.S. Colleges and Universities, 293 accredited. Only accredited schools vote on standards.	475 U.S. Colleges, 9 Int'l. institutions, 175 accredited. All member schools vote on standards.
Accreditation Philosophy	Mission-based: (new) encourages diversity	Mission-based: encourages creativity and innovation.
Types of Accreditation	Bachelors, Masters, Doctorate	Associate, Bachelors, Masters.
Evaluation	Process of review and evaluation required	Outcomes assessment program with results used for improvement required.
Costs	See Table B	See Table B.

Table B presents a comparison of membership and accreditation expenses.

TABLE B.—A COMPARISON OF MEMBERSHIP AND ACCREDITATION EXPENSES

	AACSB	ACBSP
Annual Dues	*$2,000–$3,400	$800
Non-accredited Institutions	**800	
Initial Accreditation:		
Application	***3,000–5,000	1,350
Continuing Analysis	***3,000–5,000	100
Reaccreditation	***4,000–6,500	1,350

TABLE B.—A COMPARISON OF MEMBERSHIP AND ACCREDITATION EXPENSES—Continued

	AACSB	ACBSP
Candidacy:		
Application	***2,000–3,000	350
Maintenance	1,000–1,500	0
Total	15,000–24,400	3,600

* The annual dues of $2,100 are for business administration accreditation; the annual dues of an additional $1,300 are required for Accounting accreditation for a total of $3,400. ACBSP does not have a differential fee for accredited institutions.

** Non-accredited AACSB institutions pay an annual fee of $800.

*** Initial accreditation fee is $3,000 for Business or Accounting; $5,000 for Business and Accounting. Reaccreditation fee of $4,000 for Business or Accounting and $6,500 for Business and Accounting. Candidacy fee is $2,000 for Business or Accounting and $3,000 for Business and Accounting.

Some states have taken the position that their public institutions must obtain AACSB accreditation and these schools are prohibited from obtaining accreditation from our association. The reason for this is partly because AACSB as an organization and its membership (which represents the large doctoral granting universities) have been very jealous of our existence and they try numerous schemes to prevent us from obtaining additional membership. One scheme is to form a ''lock-out'' in state systems of higher education which forces the public institutions to seek accreditation from AACSB. Where licensing is involved, such as accountants sitting for the CPA exam, some states have used the ''lock-out'' system to require individuals that sit for the CPA exam to have attended an AACSB accredited institution.

We feel that the above practices represent restraint to trade and are in direct opposition to the antitrust laws of this country. To add to our dilemma, ACBSP is currently recognized by the U.S. Department of Education and the other association; AACSB is not. AACSB is recognized by a fairly new organization called the Commission on Recognition of Postsecondary Accreditation (CORPA).

The accreditation process of ACBSP is very rigorous and requires that institutions meet 26 standards of quality and integrity. Despite the fact that these standards are more rigorous than those imposed by AACSB, some states continue to give AACSB an unfair advantage by granting this organization a virtual monopoly in their jurisdiction.

We would like very much to have a ruling from you concerning the legality of states locking out our nationally recognized accrediting body from being used to accredit business programs in public institutions. With such a ruling we will be able to deal with states such as Louisiana, Tennessee, Maryland, Florida, etc.

Thank you for your assistance in this matter.

Sincerely,

Harold W. Lundy, Ph.D.,

Executive Director.

cc: ACBSP Board of Directors

American Library Association, Office for Accreditation

50 East Huron Street, Chicago, Illinois 60611–2795, U.S.A., 312–280–2432, 800–545–2433, Ext. 2432, Fax: 312–280–2433

September 29, 1995.

John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Room 9903, Washington, D.C. 20001

Dear Mr. Greaney: On behalf of the Committee on Accreditation of the American Library Association, I would like to comment on the following issues related to Civil Action No. 95–1211(CR) against the American Bar Association. We do so from a desire to preserve the values inherent in the voluntary accreditation process now in place in American higher education, and to ensure that the practices undertaken by accrediting agencies are of the highest quality and benefit both to the American public and to the educational institutions themselves.

The integrity of accreditation rests in part on the values inherent in peer review; that is, each peer must take responsibility to ensure that others' behavior does not compromise the process. This is a self-regulatory process and each member must encourage the entire community to meet the standards and expectations for good practice. Thus, we welcome vigilance that results in improved practice.

We strongly endorse self-regulation and express our concern that the proposed settlement may promote a bureaucratic and regulatory environment that his antithetical to achieving excellence in higher education.

Specifically, we wish to comment on two points: directives relating to the size and composition of accrediting teams and the degree to which the competitive impact statement may unintentionally affect the ability of accrediting agencies to perform their function in a free and open environment.

The American Library Association recently revised its accreditation standards and practices. The revisions were prompted not by external pressures from outside regulators, but by a real desire for self-improvement. As a result of these revisions, we believe that our current procedures reflect best practices. Our procedures stipulate that size and composition of the external review panels who evaluate the programs may vary according to the complexity and focus of the program. Our panels consist of both visiting and non-visiting members, and have historically included both practicing professionals and faculty. Each member of a panel represents a financial investment on the part of the program, and an investment of time, energy and expertise on the part of the panelist. Most of our panel members have a broad range of experience and a single individual may be both a practitioner and a faculty member (adjunct faculty, for example, represent the practitioner and educator perspective) or they may be veterans of careers that have included both practice and teaching at various times. Setting quotas for certain types of individuals seems to us to set a dangerous precedent and introduce unnecessarily regulatory practices that serve the best interests of no one.

Similarly, the overall aim of accreditation as we see it is to produce a diagnostic accreditation report and to provide incentives to address the identified problems. We expect programs to comply with our standards, but we do not presume to dictate solutions. We believe the solutions must arise from the particular context of the program within its institution, its region, and its identified constituency. This is a fundamental principle and one that we believe applies to problems identified through the peer review of accrediting agencies themselves. Therefore, we cannot support prescriptive solutions such as the one proposed in the case of the American Bar Association.

We appreciate the opportunity to comment on these issues.

Sincerely yours,

Prudence W. Dairymple, Ph.D.,

Director, Office for Accreditation.

cc:

Brooke Sheldon, Ph.D. Chair, ALA Committee on Accreditation

Elizabeth Martinez, Executive Director,American Library Association

Bernard Fryshman, Ph.D.

1016 East Second Street. Brooklyn, N.Y. 11230, (718) 253–4857

October 2, 1995.

Re: Civil Action No. 95–1211 (CR) [United States of America vs. American Bar Association]

John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, AntiTrust Division; Room 9903, 555 4th Street, NW., Washington, DC 20001

Dear Mr. Greaney: I have headed a nationally recognized accrediting body since 1973, and served for two terms on the National Advisory Committee on Accreditation and Institutional Eligibility (now the National Advisory Committee on Institutional Quality and Integrity). In addition, I have been teaching at the university level since 1962. I believe I have a perspective which you may find helpful in reviewing your personal Final Judgment in the above named case. I very much appreciate this opportunity to comment.

I. The Focus of My Comments

It would be presumptuous of me to enter into the debate between the Department of Justice and the ABA. Where I do address ABA issues, it is only to be able to react to Department of Justice contentions, which, by extrapolation, can be applied to other accrediting agencies.

II. Are Anti-Trust Considerations Relevant To Higher Education?

Higher education is characterized by a sense of mission against which all considerations of commerce and competition must be weighed. Higher education in America traces its antecedents to a culture of service which pervades Academe and influences day to day policy. Two examples will suffice to illustrate my point.

(I) Most colleges and universities survive on the basis of student tuition and research. Consider a student who is doing poorly in his studies and enrolls in the class of a professor who opens up the excitement of learning. At the end of the term, in consultation with this professor, the student concludes that his career would be better served by transferring to another institution.

The professor does everything possible to facilitator this move, including contacting colleagues, writing letters of recommendation and helping the student search for applicable scholarships and fellowships. The professor knows full well that her classes will be the poorer for the student having transferred, and the student's tuition dollars will now help pay someone else's salary. Yet, everyone associated with the school recognizes the welfare of the student and his ultimate contribution to knowledge as the true goals of the institution.

(II) A senior research professor at a university works with his graduate students in an area of current research, helps them attain their Ph.D.'s and then moves heaven and earth to try to place them in tenure track positions at other universities. Knowing full well that these students will now be competing with him for research dollars and for quality graduate students.

In a word, postsecondary institutions have a bottom line which is quite different from that of commercial enterprises.

III. Accreditation is an Integral Part of the Culture of Higher Education

Accreditation agencies emanate from the community of schools they sever, and are guided by the same sense of mission. Accrediting bodies have an uninterrupted record of opening their doors to ever increasing number of schools. Highly paid professionals give gladly of their time to serve on site visiting teams, on committees and commissions, for little or no recompense.

Accreditation professionals spend untold hours working with applicant institutions to help them meet standards. Visitors are encouraged to make helpful suggestions to institutions which they visit. The fact that so few institutions are turned down in petitions for renewal of recognition, even in this period of service competition for students, is inconsistent with accusations that accreditors have been stifling competition.

IV. Accreditation Involves the Application of Standards

Whenever standards are applied, there will be those who fail to meet those standards. Where judgement is involved, there will always be questions.

Scholarly journals publish only refereed papers. If I, a physicist, submit a research paper to a journal, it will be reviewed by someone working in the same field and therefore competing with me for recognition and research grants. If my paper is not accepted for publication, the outside observer might conclude that there was a desire to stifle competition. Yet, no one in the world of science, no matter how aggrieved, would come to this conclusion.

Accreditation, like all of higher education, is not an exact science. Judgement plays a large role in the decision making process, and disagreement is inevitable. But the honest application of standards is a far cry from an intent to stifle competition.

V. States Determine Eligibility for Bar Exams

ABA standards are universally recognized as establishing the quality of a law school; and any seeming restrictions on competition are a function of those who use the ABA list of accredited schools—not of the ABA itself! Thus, the fact that 40 states open the bar exams only to ABA graduates is not the fault of the ABA. Rather the states should be asked to open the bar exam process. Can an accrediting body be blamed for the misuse of its accreditation list?

VI. ''Capture of the Accreditation Process''

It is important to recognize that law schools educate students in the law, whereas the bar examination and the states create lawyers. The distinction is important since it is educators, not practitioners, who are best qualified to judge the functioning of a school. Whether a school creates effective attorneys is a question entirely distinct from its ability to educate students in the law. It is counterproductive for the Department of Justice to force accrediting bodies to include people who are not educators to judge an educational institution.

VII. Professional Staff Compensation

A high salary structure, together with an emphasis on full-time faculty, can ensure that faculty remain fully focused on their teaching and research responsibilities without the pressures of an outside job. For some students, faculty availability outside class is as important as the lecture itself. High salaries will also ensure that schools will attract high quality faculty. In any case, it is not clear to me why such a clause is anti-competitive. Schools not accredited by the ABA, and therefore not required to pay exceedingly high salaries, could charge a much lower tuition, thereby competing effectively for students.

VIII. Facilities

Proper facilities are integral to the educational process. It is inappropriate for government to determine how lectures are to be delivered, what books are to be read, and what facilities are appropriate for any given educational system.

IX. Public View

Bringing the public eye into deliberations involving standards can cripple the accreditation process and discourage site visitors from expressing true opinions and making difficult judgements.

X. Other Schools Can Compete

It would be extremely troubling were the Justice Department to force accrediting agencies to expand their scope to areas outside their competence. Well run non-ABA schools are able to attract students, and in many states their students can sit for the bar examination. Such schools can even organize their own (Department of Education Recognized) accrediting body. How is the ABA's unwillingness to accredit proprietary institutions a barrier to competition?

XI. An Alternative Approach

Recognized agencies must satisfy federal regulations which require, among others, that standards be reviewed regularly for reliability, validity and relevance. If there is any indication that standards are not relevant to quality education, the Department of Education can be very effective in ensuring change, particularly if a third party comment is properly structured.

XII. Conclusion

Higher education and accreditation have characteristics and a culture which may make certain anti-trust considerations irrelevant. Perhaps a reconsideration of the findings in this case, in light of the special nature of accreditation, is in order. Certainly a review of the proposed corrective actions should be made.

Thank you again for this opportunity to comment.

Respectfully,

Dr. Bernard Fryshman

Whiteford, Taylor & Preston,

1025 Connecticut Avenue, NW., Washington, D.C. 20036–5405, 202 659–6800, Fax 202 331–0573

October 2, 1995.

Via Hand Delivery

John F. Greaney,
Chief, Computers and Finance Section, Antitrust Division, Department of Justice, Room 9903, 555 4th Street NW., Washington, DC 20001

Re: U.S.A. v. American Bar Association, U.S. District of Columbia, Civil Action No. 95–1211 (CR), WTP No. 00732/00408

Dear Mr. Greaney: Pursuant to Section V of the Competitive Impact Statement filed in the above captioned action on July 14, 1995, we

submit herewith the Comments of the below listed nationally recognized accrediting agencies on the proposed Final Judgment against the American Bar Association.

Accrediting Bureau of Health Education Schools (ABHES)
Accrediting Council for Continuing Education & Training (ACCET)
Accrediting Council for Independent Colleges and Schools
National Accrediting Commission of Cosmetology Arts & Sciences

You will note that we have asked for a hearing before the Court. We would appreciate a copy of any response to our Comments that you may file with the Court.

Sincerely,

C. William Tayler

CWT:das
Enclosure

cc:
U.S. Department of Education (w/encl.)
Participating Accrediting Agencies (w/encl.)
William C. Clohan, Jr., Esq. (w/encl.)
David T. Pritken, Esq. (w/encl.)

United States District Court for the District of Columbia

United States of America, Plaintiff, v. American Bar Association, Defendant. Civil Action No.: 95–1211(CR), Judge Charles R. Richey, Deck Type: Antitrust.

Comments and Suggested Modification of Proposed Final Judgment and Request for Hearing

The undersigned recognized accrediting agencies (''the agencies''), by counsel, hereby submit the following Comments and Suggested Modification to the proposed final judgment in this manner. The agencies also respectfully request a hearing concerning modification and entry of the proposed final judgment in this matter.

Introduction

The agencies are all formally recognized by the United States Department of Education. They submit that the proposed final judgment is inconsistent with current antitrust law in this circuit with respect to the applicability of the antitrust laws in the field of accreditation and in those areas subject to oversight by Congress and other federal government agencies. In this connection, the proposed final judgment fails to recognize the significant role of the United States Department of Education in accreditation as mandated by the Congress in the Higher Education Act of 1965, as amended. 20 U.S.C. § 1099b. The agencies submit that this Court should ensure that the proposed final judgment not undermine or otherwise limit the important purposes of the Higher Education Act.[1]

Thus, the agencies respectfully submit that the proposed final judgment be modified by adding an additional sentence to Part XI(C) as follows: ''Nothing in this judgment shall be construed to modify any of the provisions of the Higher Education Act of 1965, as amended, or any of the regulations adopted pursuant thereto, or any existing law concerning the recognition of private accrediting agencies, or the activities of such agencies relating thereto.''

The Framework of Recognition of Private Accrediting Agencies

Private accrediting agencies are recognized by the Department of Education under the provisions of the Higher Education Act of 1965 (HEA), Pub. L. 89–329, 20 U.S.C. 1001, et seq. as amended, and are subject to a significant oversight by the Secretary of Education. Recognition is a process by which the Secretary of Education determines that an accrediting agency is a ''reliable authority as to the quality of education or training offered'' at the institutions accredited by the agency. 20 U.S.C. 1099b(a). Accreditation by a recognized accrediting agency is a prerequisite to the ability of students to obtain federal financial assistance. See 20 U.S.C. § 1085(c).

For an accrediting agency to be ''recognized,'' the Secretary must conduct a comprehensive review and evaluation of the accrediting agency to determine whether the agency meets the standards established by the law. 20 U.S.C. 1099b(n). An accrediting agency may be recognized for a period of no more than five years and must apply to be re-recognized by the Secretary. 20 U.S.C. 1099b(d).

An accrediting agency seeking recognition from the Department of Education must have accrediting standards which assess the following areas of activity of educational institutions:

1. Curricula
2. Faculty
3. Facilities, equipment and supplies
4. Fiscal and administrative capability
5. Student support services
6. Recruiting and admissions policies
7. Academic calendars, catalogues, publications, grading and advertising
8. Program length
9. Tuition and fees
10. Measures of program length
11. Course completion, State licensing examination and job placement rates
12. Default rates
13. Student complaints
14. Compliance with program responsibilities

20 U.S.C. 1099b(a). The Secretary of Education is required by the Congress to conduct oversight activities even during periods of recognition. 20 U.S.C. 1099b(n). Thus, it is clear that the oversight role of the Department of Education is, as required by Congress, extensive. In this connection, the Secretary has further authority to promulgate regulations concerning the recognition process. 20 U.S.C. 1099b(o).

Application of the Antitrust Laws to Accrediting Agencies

Since at least 1970, the courts have shown substantial deference to accrediting agencies in recognition of their expertise in the area of educational accreditation.[2] In the case of *Marjorie Webster Junior College, Inc. v. Middle States Association of Colleges and Secondary Schools*, 432 F.2d 650 (D.C. Cir. 1970), the United States Court of Appeals for the District of Columbia Circuit specifically rejected an antitrust challenge to the actions of private accrediting agencies: ''We do not believe that Congress intended this concept [accreditation] to be molded by the policies underlying the Sherman Act.'' *Id.* at 655. As recently as 1993, federal courts have recognized the continuing viability of *Marjorie Webster,*[3] and it remains the law in this Circuit. The continued applicability of *Marjorie Webster* in the field of accreditation has never been questioned in court decisions.

Five years after *Marjorie Webster* was decided, the Supreme Court was called upon to address the applicability of the antitrust laws in circumstances where there is an inconsistency with federal agency activity. In *U.S.* v. *National Ass'n of Sec. Dealers*, 422, U.S. 694 (1975) and *Gordon* v. *New York Stock Exchange*, 422 U.S. 659 (1975), the Supreme Court held that when there is an inconsistency between a federal regulatory scheme and the antitrust laws, there is an implied immunity from the antitrust laws for the conduct subject to the agency's scheme. This rule has been recognized and applied in the context of several federal statutory frameworks, including the Federal Communications Commission,[4] the Securities and Exchange Commission,[5] and the Interstate Commerce Commission.[6]

Ramifications of the Proposed Final Judgment

The Department of Justice is asking this Court to approve a broad, in-depth intrusion of the Sherman Act into the field of educational accreditation that will have a chilling effect on the entire accreditation process and conflict with the Higher Education Act of 1965, as amended. Nowhere in the proposed final judgment does the Department of Justice attempt to reconcile this intrusion in light of the existing precedent in this Circuit and the implied immunity doctrine relating to activities subject to federal agency oversight.

Arguably, many accrediting agency standards adopted in connection with 20 U.S.C. § 1099b(a)(5) could be the basis for claims of anticompetitive activity. Yet the Congress has clearly legislated that these

[1] By submitting these comments, the agencies are not taking a position on the merits of the current litigation.

[2] See *Marjorie Webster Junior College, Inc. v. Middle States Association of Colleges and Secondary Schools*, 432 F.2d 650 (D.C. Cir. 1970); *Wilfred Academy of Hair and Beauty Culture v. Southern Ass'n of Colleges and Schools*, 957 F.2d 210 (5th Cir. 1992); *Medical Inst. of Minnesota v. National Ass'n of Trade and Technical Schools*, 817 F.2d 1310 (8th Cir. 1987); *Peoria School of Business, Inc. v. ACCET*, 805 F. Supp. 579 (N.D. Ill. 1992); *Transport Careers, Inc. v. National Home Study Council*, 646 F. Supp. 1474 (N.D. Ind. 1986): *Parsons College v. North Central Ass'n of Colleges and Secondary Schools*, 271 F. Supp. 65 (N.D. Ill. 1967).

[3] See *U.S. v. Brown University, et al.*, 5 F.3d 658 (3rd. Cir. 1993).

[4] See *Phonetelle, Inc.* v. *American Telephone and Telegraph Co.*, 664 F.2d 716 (1981).

[5] See *Finnegan* v. *Campeau Corp.*, 915 F.2d 824 (2nd. Cir 1990); *Shumate & Co., Inc.* v. *NYSE, Inc.*, 486 F. Supp. 1333 (N.D. Tex. 1980).

[6] See *Waldo* v. *North American Van Lines*, 669 F. Supp 722 (W.D.Pa. 1987).

standards, the purpose of which is to ensure a level of quality assurance in the area of educational accreditation, should be the subject of oversight by the Department of Education. It would be unfortunate if this Court's endorsement of the proposed final judgment were construed as a blank check to pursue antitrust claims against nonprofit, recognized accrediting agencies already subject to significant oversight by the Secretary of Education.

Accordingly, the agencies submit that the suggested modification to the proposed final judgment will protect the integrity of private accreditation and the important oversight activity of the Department of Education mandated by Congress in 20 U.S.C. § 1099b. The proposed modification is consistent with the precedent in this Circuit and the limited immunity doctrine set forth in *United States* v. *National Association of Securities Dealers,* 422 U.S. 694 (1975) and *Gordon* v. *New York Stock Exchange,* 422 U.S. 659 (1975).

Conclusion

For all the reasons set forth herein, the agencies respectfully request this Court modify the proposed final judgment in this matter to be consistent with existing law and the Higher Education Act of 1965, as amended.

Respectifully submitted,

Whiteford, Taylor & Preston, L.L.P.

C. William Tayler (Bar No. 012930)

Kenneth J. Ingram (Bar No. 145698)

1024 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036, (202) 659–6800.

Counsel for Accrediting Bureau of Health Education Schools (ABHES), Accrediting Council for Continuing Education & Training (ACCET), Accrediting Council for Independent Colleges and Schools (ACICS), National Accrediting Commission of Cosmetology Arts & Sciences (NACCAS)

Dated: October 2, 1995.

Exhibit A—The Organizations Filing Comments

ABHES. The Accrediting Bureau for Health Education Schools (ABHES) is a non-profit organization that accredits both institutions and programs. The institutions are private postsecondary institutions that primarily provide allied health programs. The programs are either medical assisting or medical laboratory assisting and can be provided by private institutions or public institutions. Its accredited membership consists of:

- 78 institutions providing allied health programs.
- 93 medical assisting and medical laboratory technician programs.

ABHES is located in Arlington, Virginia and has filed under the Virginia Nonstock Corporation Act to have its Indiana corporation merged with a new corporation in Virginia.

ABHES is currently recognized (approved) by both the U.S. Secretary of Education and the Commission on Recognition of Postsecondary Accreditation (CORPA), a nonprofit, nongovernmental organization that evaluates accrediting agencies for their ability to determine the quality of educational offerings and administrative capability at postsecondary institutions. Institutional accreditation by ABHES, under the Secretarial recognition, is often one of the prerequisites for students attending those institutions to be eligible for federal student assistance from programs authorized by the Higher Education Act of 1965, as amended.

ACICS. The Accrediting Council for Independent Colleges and Schools (ACICS) is an independent and autonomous body which accredits private, postsecondary career colleges and schools through a peer review evaluation process. Located in Washington, D.C. and incorporated under the Virginia Nonstock Corporation Act, ACICS is a nonprofit corporation organized and operated exclusively for education purposes, holding 501 (c)(3) Federal tax exempt status. The Council is composed of a Board of Directors and two commissions—the Commission on Postsecondary School Accreditation (COPSA) and the Commission on College Accreditation (COCA). Council members include representatives from institutions, education-related government agencies or other sectors of higher education, and the general public. Public members come from business, industry, or other professions. COPSA accredits noncollegiate, postsecondary institutions that offer programs of two years or less. COCA accredits collegiate institutions (i.e., junior and senior colleges). Its accredited membership consists of:

♦ 338 noncollegiate, postsecondary institutions at 338 main campuses with 129 branch campuses and 59 learning sites.

♦ 81 collegiate institutions at 81 main campuses with 55 branch campuses and 14 learning sites.

Since 1956, the U.S. Secretary of Education and his predecessor, the Commissioner of Education, have officially recognized ACICS as a nationally recognized accrediting body of postsecondary institutions offering primarily business and business-related programs of study. ACICS is also recognized by the Commission on Recognition of Postsecondary Accreditation (CORPA), a non-governmental organization dedicated to promoting and insuring the quality and diversity of American postsecondary education.

ACCET. The Accrediting Council for Continuing Education & Training (ACCET) was established in 1974 as a private, non-profit corporation for the purpose of establishing standards for accreditation and a peer-review-based evaluation process by which institutions providing continuing education and training programs could seek accredited status. Since 1978, ACCET has been officially recognized by the United States Department of Education under the criteria and procedures established by the U.S. Secretary of Education to identify accrediting agencies determined to be reliable authorities as to the quality of education or training provided by the institutions they accredit. Under the Higher Education Act of 1965, Pub. L. 89–329, 20 U.S.C. Section 1001 et seq., as amended, ACCET accreditation serves as one element of eligibility for its members to participate in HEA Title IV programs of federal financial assistance for their students.

Under the ACCET Bylaws, an Accrediting Commission, consisting of not more than 15 nor fewer than 11 Commissioners, 5 of which must be public members, are empowered to promulgate policies and procedures required to operationalize the standards for accreditation, and to determine whether institutions seeking accreditation meet those standards. With offices in Arlington, Virginia, an Executive Director, with a full-time staff of 10, administers the day-to-day operation subject to the policies, procedures and directives of the Commission. Currently, ACCET member institutions consist of both for-profit and non-profit institutions totaling 245 main campus operations with a combined total of approximately 800 training sites across the United States.

NACCAS. The National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS) is an autonomous, independent accrediting commission constituted as a non-profit [501(c)(3)] Delaware corporation, with its main offices located in Arlington, Virginia. The Commission's origins date back to 1969, when two accrediting agencies in the field merged to form the Cosmetology Accrediting Commission (CAC), which became NACCAS in 1981.

NACCAS is directed by a Board of Commissioners. Between 1996 and 1998 the size of the Commission shall be reduced from 17 to 13 members. Seven will represent accredited schools; three will represent the salon industry, and three will be educators who represent the public interest. Currently it is 9, 4 and 4 respectively. The Commission comes together twice a year to review school files and holds two conference call meetings for school file review. It holds one meeting a year dedicated to reviewing quality standards, policies and operations.

Committees carry out preliminary policy review and make recommendations to the full Commission. Several interim committees have the authority to take action on complaints, applications for changes such as changes of ownership, and to review interim visit reports and annual reports.

Since 1969, NACCAS has become recognized by the U.S. Department of Education as a national agency for the institutional accreditation of postsecondary schools and departments of cosmetology arts and sciences, including specialized schools.

NACCAS currently accredits 1,300 private postsecondary institutions which educate and train cosmetologists, barbers, estheticians, manicurists and other professionals in the cosmetology field.

Clinical Legal Education Association

6020 South University Avenue, Chicago, Illinois 60637–2786, Phone 312/702–9611, Fax 312/702–2063

October 1, 1995.

John F. Greaney

Chief, Computers and Finance Section, U.S. Department of Justice—Antitrust Division, 555 4th Street, N.W., Washington, D.C. 20001

Re: *U.S.A. v. American Bar Association,* No. 95–1211.

Dear Mr. Greaney: Enclosed please find the comments of the Clinical Legal Education Association on the proposed Consent Decree to be entered in the above case. CLEA is very concerned that the proposed decree will exacerbate the very problems it identifies by further entrenching the power of legal academics, and, more importantly, may not fully serve the public interest by interfering with the ability of accreditation to improve the quality of lawyers.

There are two ways in which this ''final'' judgment will not really be final. First, many of its most important terms await the outcome of recommendations to be made by the ''special commission'' and reviewed by the United States. Second, the United States retains the authority to review all changes in accreditation standards, interpretations and rules. CLEA would greatly appreciate the opportunity to participate in these ongoing processes. We believe that we can be a useful voice in insuring that accreditation serves the needs of students to learn how to practice law and the needs of their future clients for competent lawyers. Additionally, we would be happy to meet with you at any time to discuss the concerns expressed in the attached comments.

Sincerely,

Mark J. Heyrman,

Secretary-Treasurer.

Enclosure.

Comments of the Clinical Legal Education Association on the Proposed Consent Decree Between the United States of America and the American Bar Association

The Clinical Legal Education Association (CLEA) is an organization of more than 400 clinical teachers affiliated with more than 125 law schools. It is the only independent organization of clinical teachers. Because clinical teachers have a dual identity as law teachers and practicing lawyers, we believe that we are in a unique position to address issues concerning the relationship between law schools and the bar and to evaluate the competing demands upon law schools which make the accreditation process so difficult.

1. Law schools have two major purposes: (1) to prepare students for the competent, ethical and effective practice of law; and (2) to conduct research designed to increase our understanding of law and legal institutions with the ultimate aim of improving our system of justice. Any system of accreditation must be designed to increase the likelihood of achieving these purposes. It must also recognize that law is a diverse and complex field and that a sound legal education system will include law schools that are diverse in their methods and practices and in the balance they chose to strike between these sometimes competing goals.

2. Because of law's complexity, few non-lawyers are able adequately to assess the ability of lawyers to perform on their behalf. Additionally, few prospective law students are able to assess the skills and qualities of mind that they will need to practice law effectively. Thus, the ordinary market mechanisms are insufficient to insure either that law students demand an appropriate legal education or that clients, the ultimate consumers of legal education, can with confidence locate lawyers who are capable of competently assisting them. On the other hand, most law faculty derive the largest share of their prestige within the legal education community from their scholarly output. Consequently, while the accreditation process should enhance the ability of law schools to produce scholarship, there is far less need for outside pressure to insure that this important goal will be met. Thus, the consent decree must be designed to insure that its efforts to eliminate anti-competitive practices do not interfere with the most important goal of accreditation: the need to improve the quality of lawyers. (See ¶33 of the Complaint, describing the legitimate goals of accreditation.)

3. Because, as alleged in the Complaint (¶¶9–14), the accreditation process has been dominated by academics and deans, it has not been able to serve the function of insuring that students are adequately prepared to practice law. The failure of law schools to prepare students to practice law competently and ethically has been documented repeatedly, most recently in *Legal Education and Professional Development: An Educational Continuum,* the 1992 Report of the ABA Task Force on Law Schools and the Profession: Closing the Gap (this Report is commonly referred to as the MacCrate Report after the Task Force's chairman, Robert MacCrate). Thus, CLEA supports those aspects of the proposed decree which will improve the likelihood that accreditation serves students and clients, not deans and academics.

4. Unfortunately, the proposed consent decree will not necessarily further that goal. Indeed, it may weaken an accreditation process which is already quite weak. One of the ways in which the decree may weaken the accreditation process is its insistence that each site visit team include ''one university administrator who is not a law school dean or faculty member'' (Decree, p. 4). This requirement is apt to increase the likelihood that law school resources are expended on research rather than on education. University administrators have neither an ethical obligation to, nor a highly developed interest in, insuring that the quality of lawyering be improved. Indeed, the principle tension between law schools and the universities with which they are affiliated is the concern the law schools are not sufficiently academic. Since the prestige of most universities is most commonly measured by the scholarly output of its faculty, these administrators are apt to pursue the goal of improving scholarly output as their highest priority. Finally, if the Complaint is correct in alleging that accreditation has been taken over by a ''guild'' of academics, then it seems odd to add to the accreditation process persons so completely identified as running the guild.

5. The requirement that site visit teams include a university administrator, when coupled with the new requirement that the majority of each team not be full-time faculty members, is also apt to reduce the likelihood that these teams contain clinical teachers. Since clinical teachers are the only full-time members of most faculties who practice law, this result may exacerbate the imbalance between research and the education of lawyers which already exists.

6. More importantly, the Proposed Consent Decree does little to change or challenge existing standards and practices which enhance the power of academics at the expense of the needs of students and their future clients. For example, the existing standards mandate that legal academics be granted tenure, but do not provide this protection to many clinical teachers who are involved in preparing students to practice law. Standard 405(d), (e). The standards also require law schools to permit legal academics to participate in the governance of the law school, but have not been interpreted to mandate that clinical teachers be allowed to partake in governance. Standard 304. This differential treatment serves to preserve the status quo in which the research and other needs of academics are given priority over the needs of students and their future clients. That is because clinical teachers and adjuncts, who often are the only members of law faculties with substantial interest in how law is practiced, are often denied a voice in governance.

7. As set forth in the Complaint (¶ 21), the current accreditation standards specify student-faculty ratios. Standard 402. However, under this standard, many clinical teachers and adjunct faculty primarily engaged in preparing students for the competent and ethical practice of law are not included in the faculty component of the ratios. (Complaint, ¶ 21). This omission discourages law schools from employing many persons whose primary role in the law school is to prepare students to practice law. CLEA supports the provision in the proposed consent decree which requires the ABA to reconsider its standards concerning faculty-student ratios. (Decree, p. 8)

8. The proposed Consent Decree also does nothing to change the fact that the current accreditation standards do not even require law schools to provide students with any experience in the practice of the law. Indeed, the self-interested nature of the standards is demonstrated by the fact that they are virtually silent concerning curriculum. This silence permits academics to pursue their own teaching interests without concern for the effect on students or their future clients. Thus, while the superiority of clinical methodology for preparing professionals is well documented (see, for example, D. Schon, *The Reflective Practitioner* (1983)), the accreditation standards do not require law schools to provide any clinical experience for students and many law schools do not so provide. The Consent Decree should prohibit the ABA accreditation process from being used to protest the interests of academics by mandating standards that, at a minimum, treat the obligation of law schools to prepare students to practice law as being of equal importance to their obligation to conduct research.

9. CLEA supports the continued role of the American Bar Association in accreditation. However, the current process has failed, not because the standards are too vigorously enforced, but because they are misdirected. Given the interests of legal academics and

law school administrations, accreditation standards can serve to heighten competition and serve consumers only if they are focussed primarily on curriculum and are designed to insure that curricula reflect the needs of consumers in addition to those of the academy.

10. In order to improve consumer choice, the accreditation process should require law schools to provide information to applicants to improve their ability to make informed choices among schools. (Complaint, ¶ 33.) This information should reveal the actual availability of courses and programs and the extent to which each school is able to prepare students for the practice of law. The Consent Decree should require the special commission provided for in Section VII of the proposed decree (pp. 7–8) to review the standards relating to disclosures to prospective students.

Marquette University Law School, Office of the Dean

September 20, 1995.

Mr. John F. Greaney, Chief,

Computer and Finance Sections, Antitrust Division, United States Dept. of Justice, Room 9903, 555 Fourth Street, N.W., Washington, D.C. 20001

Re: United States v. American Bar Association, Case No. 95–1211 (D.C.D.C.)

Dear Mr. Greaney: I am writing to express my substantial concern with the terms of the Consent Decree proposed by the American Bar Association and the Government in the above entitled matter.

I am troubled that this litigation was commenced and settled without input from legal educators or consumers of legal education and legal services. Still, I could live with most of the provisions of the settlement, but I cannot live with the provisions of Section VII.

Section VII leaves open for future determination five issues of extraordinary importance to legal educators, including, faculty teaching hours; leaves of absence for faculty; calculation of faculty component of the student/faculty ratio; physical facilities; and the allocation of resources of the law school by the law school or its parent university. Frankly, these five issues are of much greater importance to me and to most legal educators than anything actually resolved in the settlement. These issues strike at the heart of the fiscal integrity of law schools, as well as the basic structure of law school faculties. I cannot conceive of a reason why the Government and the ABA would want to leave these five matters on the table for further resolution. I strongly oppose such action. Allowing these matters to officially remain open and unresolved strikes me as a guarantee that the Court will be involved in protracted and difficult litigation in the future over these matters. Until and unless these matters are definitively resolved, I think any settlement is premature, unwarranted, and not in the public interest or in the interest of this Court.

Thus, while I generally oppose the settlement before the Court, I particularly urge the Court to reject the provisions of Section VII of the proposed judgment and direct the parties to either delete entirely these six issues or to propose a settlement of the issue before the matter is approved by the Court.

The Court's consideration of my views on this matter is greatly appreciated.

Yours respectfully,

Howard B. Eisenberg,

Dean and Professor of Law.

Northwestern University School of Law

357 East Chicago Avenue, Chicago, Illinois 60611–3069, (312) 503–8573, (312) 503–8977 Fax

September 13, 1995.

Mr. John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W., Room 9903, Washington, D.C. 20001

Re: Comments on modifications of proposed Final Judgment in *U.S.A. v. American Bar Assoc.*, (D.Ct. D.C.; C.A. No. 95–1211).

The proposed Final Judgment offers a unique opportunity to restore ABA accreditation to its original and only proper purpose of safeguarding the public interest in the adequate preparation of law students for competent and ethical law practice. Unless, however, the proposed Judgment is modified to make the accomplishment of this purpose an explicit requirement of the planned reconstruction of the accreditation process, the Judgment will become an instrument for the degradation of both legal education and the practice of law.

I, therefore, propose that the Judgment be modified to add the following language to Section IV, which defines prohibited ABA conduct:

The ABA is enjoined and restrained from:

(E) adopting or enforcing any standard, interpretation, rule or policy that is not needed in order to prepare law students to participate effectively in the legal profession.

As the case law interpreting the Sherman Act makes clear, a professional society's regulations that raise cost barriers to market entry must be justified by their role in protecting the public interest in competent professional services. *See e.g., National Society of Professional Engineers v. U.S.*, 435 U.S. 679, 696 (1978); *Wilk v AMA*, 719 F.2d 207, 226 (7th Cir. 1983). The ABA House of Delegates recently recognized the importance of this public protection role of accreditation when it amended Standard 301 to require that law schools maintain educational programs designed to prepare students for effective participation in the legal profession as well as for admission to the bar.

Nevertheless, the proposed Judgment's plan for reforming law school accreditation leaves the ABA free to establish an accreditation process that has little regard for law schools' duty to prepare students for their professional roles. As a result of the Judgment's laissez-faire approach toward the substantive ends of the accreditation process, the legal academics, who will inevitably continue to control that process, will naturally seek to maintain a system of accreditation that reinforces their notions of ''quality'' legal education. Those are the notions that have elevated the production of scholarship as the highest law school priority and relegated students' professional preparation as an obligatory burden that should not interfere with academics' higher intellectual calling. Under the proposed Judgment, therefore, the conduct of accreditation will be the conduct of business as usual.

The very fact of the ABA's consent to the Judgment, however, guarantees that a credible accreditation process cannot be carried on as business as usual. The significance of the ABA's now well-publicized willingness to settle over the fervent opposition of those who administer the accreditation process will not be lost on university and law school administrators, who will appreciate that lawsuits, or the threat thereof, can be more economical than compliance with unwanted accreditation requirements. Unless the reformed accreditation process can be justified by its manifest promotion of the public interest in adequately prepared law graduates, it will remain as vulnerable to attack as the present system has been. A toothless or timid accreditation process would obviously undermine the public's reliance on law degrees as an assurance of minimal competence.

The proposed Judgment does seek to avoid legal academics' conduct of accreditation business as usual and, thereby, assure both anti-trust compliance and an effective accreditation process by changing the composition of the groups that will make accreditation decisions. Concluding that legal academics have ''captured'' the accreditation process for their own and their cohort's economic self-interest, the Judgment would dissipate academicians' influence by increasing the representation of practitioners and non-law school university administrators on the Section of Legal Education's Council and Accreditation and Standard Review Committees. The Judgment would also involve the ABA Board of Governors more actively in the current reformation and ongoing administration of accreditation.

For the reasons discussed below, this strategy will neither avoid the continuing ''capture'' of the accreditation process by the legal academics nor rationalize the often conflicting goals of open market competition and professionally adequate legal education. I base this conclusion primarily on my experience as a member during the last year on the ABA Accreditation Committee, on my participation on 15 ABA or AALS (American Association of Law Schools) site inspection teams, on my 23 years of laws school teaching primarily in a clinical setting and my years of graduate school training in education.

First, with rare exception, practitioners both on site inspection teams and at accreditation committee meetings defer on questions of educational policy to the legal academics, whose expertise on such matters they quite understandably respect. Although nonacademics' outside perspective on accreditation issues is important to the process, they generally do not have sufficient time, interest, confidence in their own educational expertise and, most important, the will to become an effective counter-force

to the academic administrators' dominance of the accreditation process.

Second, non-law school university administrators will also likely defer to their law school colleagues' educational judgments, except in one area of special concern to central university administrations. University administrators will undoubtedly challenge legal academics' use of accreditation to limit the percent of law school revenues a central administration can divert for its own discretionary use. There is a serious public policy question as to whether the important cause of general higher education justifies a university's confiscation of the high law school revenues that are made possible by legal education's current relatively low cost and high tuitions. Although the public ultimately pays for such high tuitions through higher legal costs, universities' appropriation of much of that tuition deprives the public of the benefit such tuition would otherwise derive through improved legal education. However these conflicting interests can be best accommodated, there is no question that elevating the role of university administrators in the accreditation process is likely to decrease the quality of legal education without any corresponding increase in competitiveness.

The personnel changes contemplated by the proposed Judgment will, thus, not significantly diminish legal educators' dominance of the accreditation process. There is, in sum, nothing in the Judgment that would cause the law school deans who have dominated, and will continue to dominate, ABA accreditation, to change their priorities so that the preparation of law students for competent, ethical practice would become accreditations' primary mission. As indicated by the ABA's much heralded Wahl Commission Report's affirmation of the basic elements of the present accreditation process and its explicit rejection of proposals that would make preparation for practice a far more significant goal of accreditation, the ABA appears incapable of generating by itself any systemic alteration of the existing priorities of law school accreditation.

The Wahl Commission Report did make some largely hortatory concessions to the recent concerns expressed in the MacCrate Task Force Report and in the ABA House of Delegates for greater attention to the preparation of students for practice. Far more significant, however, was the Commission's ringing endorsement of an accreditation process that has reinforced a system of legal education in which scholarship production is the most rewarded faculty activity and teaching for practice competence the least rewarded. Concrete curricular reforms that would make available to all students the opportunity to become professionally competent through supervised practical learning experiences taught by skilled teachers would impose unacceptable economic burdens on law schools, according to the Wahl Commission. The Commission would, thus, do virtually nothing to change the priorities of an educational system in which students' limited opportunities for experiential learning would continue to be relegated to a so-called special interest group of second-class citizens—mainly non-faculty adjuncts, legal writing instructors and, very often, clinical teachers.

The language I propose for addition to the Final Judgment would not run afoul of the Wahl Commission's strictures against imposing on law schools either uniform programs or prohibitive expenditures. What such a mandate would do, however, would be to assure that whatever cost barriers to entry into the legal education market the ABA decides to impose would have a clear relation to promoting the public interest in the adequate preparation of law graduates for practice.

Such a mandate will, of course, not be a panacea and will undoubtedly be vigorously opposed by most legal academics who will see it as an intrusion on their prerogative to determine ''quality'' legal education. This objection should be rejected. As noted above, most legal academics presume that the highest quality legal education takes place in law schools with the most prestigious legal scholars, regardless of those scholars' interest in or aptitude for preparing students for practice. It is legal academia's inverse correlation between ''quality'' education and the attention a faculty pays to preparing students for practice that has resulted in the Government's present accusations of antitrust conspiracy. ABA accreditation will not be reformed if the proposed Judgment allows this mentality to continue to hold sway.

Furthermore, the academics' warning against using ABA accreditation to suppress educational diversity sounds a false alarm. An accreditation process narrowly tailored to achieve its public protection purposes will not prevent legal academics from implementing their own visions of a ''quality'' or scholarly legal education in their own schools and through their own membership organizations. It will, however, prevent them from using the quasi-governmental power of ABA accreditation to deny market entry to those who do not share or cannot afford the more prestigious academics' vision of whatever they think a ''quality'' legal education should be.

In sum, enforceable restrictions on entry to the legal education market are necessary, but they can be justified only to the extent they protect the public interest in assuring that law students are receiving the education necessary for initial readiness to practice law both competently and ethically. Failure to incorporate this insight as an explicit mandate in the Final Judgment would forfeit a unique opportunity to develop an accreditation process that will fairly and effectively protect the public interest in adequately prepared law graduates without denying market entry to those who can satisfy that public interest.

Sincerely,

John S. Elson,

Professor of Law.

University of Florida, College of Law, Offices of the Faculty

PO Box 117625, Gainesville, FL 32611–7625, (904) 392–2211, Fax (904) 392–3005

August 29, 1995.

Dear Mr. Greaney: Please excuse all the confusion. The comment I mailed on the 24th had many typographical errors. Yesterday, the 28th, I mailed a corrected copy by first class mail. After sleeping on it, though, I realized I would feel more comfortable sending the corrected copy by express mail so that you will have it tomorrow. Please regard the enclosed comment as my ''official'' comment.

Thank You,

Jeffrey L. Harrison

University of Florida, College of Law, Offices of the Faculty

PO Box 117625, Gainesville, FL 32611–7625, (904) 392–2211, Fax (904) 392–3005

August 29, 1995.

Mr. John Greaney,

Chief, Computers and Finance Section, Antitrust Division, Department of Justice, Room 9901, JCB Building, 555 4th St. N.W., Washington D.C. 20001

Re: United States of America v. American Bar Association

Dear Mr. Greaney: I am writing to comment on the pending consent degree with respect to the above referenced case. Although I oppose certain elements of the proposed consent decree, my more pressing hope is that the Antitrust Division will devote further study to the issue of the proper market definition, competitive harms and the appropriate remedy. This is all in the context of whether the changes in the accreditation process will further the public interest in having low cost and high quality legal services available to all Americans.

Let me begin by noting that there appear to be three possible markets involved here. One market is the market for post graduate study. Law schools operate as sellers in this market and concerns in this market would be on the buyers. Another market is for individuals selling services as law teachers (full time or adjuncts) or administrators. The antitrust concern would be that law schools may have market power as buyers of the services of these individuals (monopsony power). Please note that monopsony power is used by buyers to force prices below competitive levels Antitrust Law and Economics (1993).

The third market is the market for legal services. Obviously, law schools provide the educational opportunities that are combined with other inputs by individuals who want to become attorneys. If the input is too expensive, legal services would become scarce and expensive. My view and, I am confident, the view of the great majority of Americans is that this is the only relevant market. Any intermediate market—like the sale of legal training by laws schools—is only relevant to the extent it bears on the primary market. In this regard it is important to note that the most costly aspect of attending law school is probably not tuition. Whether the student can afford to give up the income forgone while in law school is likely to be a more critical factor. My point is that one

cannot fully assess the importance of the accreditation standards and tuition costs outside the context of a more comprehensive examination of the costs of legal education and the rate of return to that investment.

If I understand he main thrust of the Complaint, it focuses on the market for selling legal training with the theory being that the A.B.A. Section of Legal Education has attempted to raise the cost of new entrants into this ''business.'' My concern about this theory is that the incumbent law school can only raise the costs of potential rivals by raising their own costs. In other words, I do not understand the Complaint to be saying that the costs are raised for new entrants only. Instead, the possible salary floor, faculty-student teaching ratios, sabbatical requirements and the like are also costs the incumbent law schools must incur.

This strikes me as a possibly illogical strategy that would if undertaken, ultimately backfire. Every college student makes a decision about a post graduate activity. A great number of them choose no post graduate study and this is an opportunity that competes heavily with a decision to study law. In addition, many students do choose to pursue other forms of post graduate education. My point is simply this: In a world in which law school applicants have declined from 93,800 in 1990–91 to 78,200 in 1994–1995 (or put more technically, in which the demand for legal education, at least in the short run, is falling) and in which there is competition among sellers of post graduate study, it may make little sense for law schools to embark on a strategy that would raise their own costs and decrease the attractiveness of a legal education generally.

The critical matter is one of defining the relevant market. If the market is only ''legal education,'' such a strategy may work. If the market includes other post graduate opportunities including employment, the strategy will fail. In short, the foundation of the theory of the Justice Department is the market definition which can only be ascertained through an empirical investigation.

As for the second market—law faulty and administrators, I think it would more likely that any price fixing by law schools would be in the hiring market with the goal of using monopsony power to keep salaries low with respect to entry level hiring or the hiring of adjunct professors. Of course, there is no suggestion of this in the Complaint and ultimately law schools as buyers probably have insufficient market power to lower faculty or administrator salaries. Still, law schools are both buyers and sellers and concern for the public interest requires attention to both sides of the market.

The third market here is the market for legal services. Typically, one would expect a professional association to limit opportunities to enter the profession. In fact, as I recall, the American Medical Association pursued a policy of ''professional birth control'' for some years. The A.B.A. has generally taken a different course. The number of accredited law schools has increased from 135 to 176 over the past 30 years. Enrollment has increased from 46,666 to 128,989 over the same time period. Finally, bar admissions have increased from 10,788 to 39,710. See American Bar Association, A Review of Legal Education in the United States 67 (1995).

By involving legal educators—those whose welfare depends on *supplying* legal education—the A.B.A. has probably only encouraged the increased availability of legal education and legal services. For this reason, I find the assertion that ''Legal Educators Have Captured the ABA's Law School Accreditation Process'' (Complaint, p. 4) rather odd. If there has been any ''capture'' it certainly does not appear to be one that has benefitted the individual A.B.A. member. That interest would best be served by a far more restrictive accreditation process—one that would effectively slow down the explosion in the number of law school graduates.

Summary

1. The question of whether law schools can further their competitive interests by raising their own costs of operation in a market in which there is competition for students and a recently decreasing demand for legal education is a pivotal empirical question. The key to the answer lies on proper market definition.

2. If there is an inconsistency between the aims of the A.B.A. and the Section of Legal Education, it is an inconsistency that works in favor of greater competition in the market for attorneys' services.

Proposals

1. Other than prohibiting price fixing as described in section IV.A. of the proposed consent decree, the Justice Department should abandon all of its recommendations at least until there is data indicating that the accreditation process has unreasonably restricted entry into the legal profession. This would require careful attention to the relevant market.

2. Failing this reconsideration I propose the following two steps:

a. Modify item IV.(B) of the consent decree so that it reads as follows: ''collecting from or disseminating to any law school data concerning compensation paid to deans, administrators, faculty, librarians, or other employees.'' The purpose of this change would be to permit the exchange of information about *past* compensation. The exchange of past information in a market that is not concentrated is unlikely to result in competitive harm. On the other hand, this information can be critical in diagnosing the problems of a law school that has fallen below acceptable qualitative standards.

b. Delete items VI.(C)(3); VI.(D)(3); VI.(E)(3); and VI.(F). These requirements suggest that the interest of legal educators is to stem the supply of legal services. This is counterintuitive and is not supported by available data.

I hope these comments are of use. I am ready to consult or comment further if necessary.

Respectfully,

Jeffrey L. Harrison,

Chesterfield Smith Professor of Law.

The University of Chicago—The Law School 111 East 60th Street, Chicago, Illinois 60637, Telephone (312) 702–9611, FAX: (312) 702–2063

October 2, 1995.

Via Facsimile Number: (202) 616–5980

Mr. John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Room 9903, Washington, D.C. 20001

Re: Comments as to modifications of proposed Final Judgment in *U.S.A. v. American Bar Assoc.,* (D. Ct. D.C. C.A. No. 95–1211)

Dear Mr. Greaney: I have decided to file comments about the proposed consent decree because (i) it does not recognize that the real conspiracy was of academics and deans and not all faculty to control the accreditation process and (ii) the proposed reforms will likely result in a lessening of vigorous enforcement of accreditation standards. Both results are not in the public interest of providing dramatically different and better legal education so that lawyers of the future can redeem the reputation of the profession by providing better representation to their clients and improving our system of justice.

I. My Involvement in the ABA Section of Legal Education and its Accreditation Process

After serving for many years on the American Bar Association's (hereinafter ''ABA'') Section of Legal Education and Admission to the Bar's (hereinafter ''Section of Legal Education'') Clinical Education and Skills Training Committees, I was appointed by the Chair of the Section to the Accreditation Committee in 1987 and was re-appointed in 1990. I served on the Accreditation Committee for a total of seven years (1987–1994). In 1994, the Nominating Committee of the Section on Legal Education nominated me to one of the twelve-at-large positions on the Council of the Section. I was unanimously elected by the Section to a three-year term of office in 1994. I participated in all the decisions at issue in this case with the exception of when I recused. I spent anywhere from 30–40 hours preparing for each of the 2–3-day long meetings each year. I did not receive any compensation for the 200 hours I spent on the Accreditation Committee's work (I spent another 100–200 hours each year on domestic and foreign site visits). (Contrary to the supposed embarrassment of receiving one round-trip plane ticket to Europe each year to inspect one or two foreign programs which took 20–30 hours each, I feel it was an earned ''perk''.) Of course, the ABA could have paid my customary hourly rate.

I have also been part of a political movement of clinical teachers to drastically reform legal education so that issues relating to serving the client, instruction in lawyering skills, and knowledge about the legal rights and needs of the poor would begin to be covered in law schools. I have seen meritorious proposals submitted by clinical teachers and recommended by the Skills Training Committee repeatedly rejected by the Council of the Section of Legal Education. I believe that the Council, the

officers and the Section itself have been controlled by academic faculty and Deans and lawyers and judges who had been deans and academics. Many on the Council and the Accreditation Committee have served previously in leadership positions in the Association of American Law Schools, (''AALS'') the trade association of law schools. Indeed the AALS has been routinely allocated one position on each site evaluation team.

I believe that persons representing other aspects of legal education have been excluded from leadership in the Section or are grudgingly accepted into the Section's Committees and the Council only after making major political demands and efforts. For example, in the early 1980's clinical and professional skills teachers sought to be involved in the Section of Legal Education but were repeatedly rebuffed. Finally, out of desperation, a group of these teachers ran an alternative slate for election to the Council and for the officer positions. Only then were these groups invited to participate.

Even then, only a handful of accreditation site visit teams included a skills teacher or a clinical teacher. After many efforts to urge the increased use of persons knowledgeable in these areas and several resolutions from the Skills Training Committee did the Section of Legal Education begin to send out skills and clinical teachers on a regular basis. Recently the Section has assigned a clinical teacher to nearly every team. The Section's Wahl Commission has also recognized the importance of including skills and teachers on the teams. I urge the Justice Department to strengthen the consent decree by assuring that there is truly outside regulation apart from the academic faculty and deans. Maybe a different Section of the ABA or a new entity should conduct the accreditation of legal education.

But whoever does accreditation should be much more vigorous than the ABA has been. Yet the Justice Department seems to take the position that there has been over-enforcement. The reality is that the ABA has been a ''paper tiger'' and has not sufficiently pushed to improve legal education to train our students to be prepared to practice. The ABA has been a ''paper tiger'' by not adopting and enforcing Accreditation Standards which relate to providing adequate education in skills and values needed by lawyers. Indeed only after a concerted initiative by certain members of the House of Delegates did the Section agree to amend the Accreditation Standards to require that each Law School ''shall maintain an educational program that is designed to * * * prepare them [students] to participate effectively in the legal profession.'' Before this change, the ABA only required that schools have a program designed ''to qualify its graduates for admission to the bar.'' Many aspects of law schools that do not directly relate to teaching such as scholarly, theoretical research have been the basis for strong action, but the quality and type of teaching has not been as carefully and thoroughly addressed in the accreditation process.

In my areas of concern and interest, the official action taken by the Council and the Accreditation Committee has been grossly inadequate to improve the legal education of American law students. Although clinical education has been the most significant change in law school teaching methods in the last 30 years, it is not even mentioned once in the Accreditation Standards. The Justice Department seems satisfied with the current state of legal education. Apparently it has not examined the many reports and studies which show a widespread dissatisfaction about the lack of training for practice. Such reports include the Cranton Report and the Report on the Future of the In-House Clinic. If an evidentiary hearing were held, the Justice Department would find that legal education is still mired in the past with large lecture classes, a bar examination orientation or esoteric theoretical courses of interest only to the faculty. The schools have been slow to change. The ABA has been responsible for what little progress toward teaching more about lawyering skills, using live client representation, preparing students to do *pro bono* to serve the poor and offering well-supervised externships have come through the ABA's House of Delegates and grudgingly from the Section of Legal Education.

Years ago, Chief Justice Burger summarized the conclusion earlier reached by many knowledgeable persons, that the trial bar was ''incompetent.'' Yet still many schools limit the number of courses a student can take in litigation skills, including interviewing, counseling, pre-trial, trial and post-trial, trial and post-trial skills (sometimes to as few or six credits on a quarter system). Some schools still do not provide a live client clinic even though educational literature shows that this method of close supervision and collaboration with a law professor in serving a real client is the best way to teach students in a service profession and to teach adult learners. Yet many schools still do not provide credit for clinical instruction or severely limit the amount of credit that can be earned for clinical work.

II. My Appeal Within the American Bar Association

When the possibility of a consent decree was raised, I opposed it because I did not believe it was in the public interest. I was allowed to attend the Board of Governors meeting when it was considered, but was not given the privilege of the floor. Upon the advice of the legal counsel of the ABA that I could challenge the actions of the Board of Governors by appealing to the Secretary of the ABA, I filed two appeals with the Secretary. President Bushnell ruled that the appeals were mooted by the agreement to enter into the Consent Decree. I have decided not to pursue these appeals further, not because they are moot as indicated in president Bushnell's letter, but because I have sadly and regretfully concluded that the Board of Governors' decisions were justified in part.

I challenged the Board's actions because (i) they were taken in violation of proper procedures required by the controlling ABA governing documents and due process of law and (ii) the actions including the consent decree were not in the public interest of effective accreditation of law schools—the responsibility assigned to the American Bar Association by the highest courts of the states; and (iii) were not in the best interest of the ABA. Based on the positions taken by the Council and officers of the Section of Legal Education this spring and summer, I have reluctantly concluded that the Board of Governors was justified in deviating from the normally required procedures because of the emergency nature of the matters under consideration.

Recent decisions by the officers and the Council of the Section show that the Board of Governor's decision to enter into the consent decree was correct. The Council has acknowledged that the consent decree is justified by its failure to present a theory of the case or otherwise defend its accreditation practices (within the ABA or publicly) from the Justice Department's accusations. As far as I am aware, I have never been a party to any effort to raise salaries of faculty and Deans for any reason other than to improve the quality of legal education.

I now also believe that the reforms adopted were partially justified but do not go nearly far enough. Through the years, the Council of the Section of Legal Education has failed to include enough ''outsiders,'' (such as adjuncts, legal writing instructors, clinical teachers, practicing lawyers, younger lawyers, judges and public members) and has unduly relied on full-time *academic* faculty and deans and those allied with them. I urge the Justice Department to recognize that the process needs substantial additional diversification to include more clinical teachers, adjunct faculty, externship supervisors, writing instructors, younger lawyers, law students and judges and practicing lawyers who have not been full-time *academics* or deans previously. I agree with the conclusion in the competitive impact statement that the accreditation process has been captured by the deans and faculty of American law schools. I disagree though that it was captured by all types of full-time faculty. Rather the ''guild'' is composed of the academics and deans and those aligned with the academics.

III. Student/Faculty Ratio

The Justice Department is correct that the student-faculty ratio did not allow adequate consideration of the importance of many at the institution who teach and hold lesser status than full-time tenured faculty. Thus, as noted in the impact statement, the groups excluded from the count, included many important teachers in the skills area:

(1) Adjunct professors who often provide all or nearly all the teaching staff for skills courses;

(2) Clinical teachers who hold short-term contracts or are not accorded security of position similar to tenure; and

(3) Legal research and writing instructors who are nearly all employed on one-year contracts.

The purpose of the ratio, though, has been well-intended—to move towards smaller classes and increased student-faculty contact. Other circumstances have undercut accomplishing those purposes, such as the imposition of very low teaching load limits on academics by the schools and by the ABA and the increasingly extensive outside

practice of many of our most distinguished and effective full-time tenured faculty. Indeed what is particularly shocking is that while Congress provided $14 million dollars a year through the U.S. Department of Education for clinical education (until the recent election of 1994), much of that money was only used for temporary hires. At the same, time, the law schools used their increased revenues from raises in tuition to increase the size of the academic faculty and increase scholarly production without adding equally to the permanent, full-time faculty committed to clinical and skills instruction with security of position equivalent to tenure under Standard 405(e).

IV. Physical Facilities

In the portion of the Competitive Impact Statement about facilities, the Justice Department makes some flaws of logic. The Statement indicates that one-third of all ABA approved law schools were ''put'' on report for inadequate facilities by the Accreditation Committee in 1994. It takes many years to build new buildings so schools are on report for inadequate buildings for maybe a decade or more. Schools with prior violations are in the process of correcting them by building additions or adding heating and ventilation and the like. So the one-third must have been put on report over a seven-year sabbatical period.

But the more troubling aspect of the facility portion is that the Justice Department apparently wants one rule for ''law schools of recognized distinction'' and another rule for those schools that it would not recognize as ''law schools of recognized distinction.'' The problem is one of equal treatment and the public interest. Those who teach at ''schools of recognized distinction'' know how much room they have to improve in terms of the quality of legal education provided their students. Some of those schools have been particularly reluctant about entering into clinical education and skills instruction and have slowly, and in some cases, only recently increased their commitment in this regard. The need for assuring that even students who go to law schools of ''recognized distinction'' are prepared to represent individuals in major criminal cases and civil cases of significance after graduation upon passing the Bar is just as great as it is for other law schools. To apply one standard at schools of ''recognized distinction'' and a substantially higher standard to others would be wrong. Hopefully, the Justice Department will indicate that it did not intend this result and will correct the impression left on Page 8.

If the Justice Department is concerned about improving the process to have more equal treatment, it should require the ABA to provide more funding to add staff to improve the evenness of the decisionmaking. The overreliance on volunteers at every stage of the process has resulted in some unintended differences in treatment. But, by and large the volunteers have done very well at implementing the Standards established by those in control of the process.

V. Resources

The problem of in adequate resources is not only with the total resources available to the law school but also more importantly, the prioritization of its use. Since schools are required by ABA Standards to be controlled by the full-time academic faculty, they naturally tend to favor adding additional academic faculty over full-time skills and writing instructors and full-time clinical teachers. The public interest demands a change in priorities and an improvement in the methods of instruction for all students at *all* schools. The ABA has not done enough in this regard. It has not required that law schools provide instruction in the core professional skills to all students who want this instruction, let alone to all students. Clinical education is not even mentioned once in the Accreditation Standards.

More money is needed to reduce the teaching ratios to something more appropriate to professional education or graduate education—where ratios are set as low as 3 to 1. Increased sums are needed and if the Justice Department does not recognize the importance of increases in resources for legal education, then it really is not aware of the realities of funding for different parts of the university and the needs of legal education. The failure to require additional resources for law schools may be the result of an effort, which is apparent throughout the decree, to respond to the complaints of the regulated—the presidents of universities. Indeed, overall the decree seems to be more a response to individual constituent complaints than legitimate anti-trust concerns.

VI. Remedies

The requirement that no more than 50 percent of the Council members should be law school deans or faculty, should provide that at least one of those should be a clinical teacher or else the Committee will be controlled exclusively by academics. Likewise, the provision that 40 percent of the members of the Nominating Committee shall be law school deans or faculty, should be changed to require that at least one of those be a full-time clinical or skills teacher. Again, with respect to the Accreditation Committee, one of the members of the Accreditation Committee should be a clinical teacher, or else up to 50 percent of the Accreditation Committee may be academics or deans. Likewise, with the Standards Review Committee, a clinical or skills teacher must be included. Each site team should include one clinical teacher. The AALS should no longer be allocated one position on each site team. It should be noted that the Justice Department is seeking to include one non-law school university administrator. It may be that this addition will replace the clinical teacher, who has been on nearly all teams recently, a practice of which the Wahl Commission approves. This would be a most disastrous result.

I am particularly concerned that the non-law school university administrator, who will most likely reflect the views of the regulated entity that is refusing to provide the resources necessary to improve the quality of legal education, will be siding with the University in the face of demonstrable needs for legal education. But, if the Justice Department is intent upon putting the regulated entity into the process, then certainly the decree should provide that that person not displace the one non-academic full-time teacher on the team.

VI. Over-Enforcement

With respect to the consent decree, it should be noted that the Justice Department has agreed that the ABA can continue to adopt reasonable standards, interpretations and rules and that it can enforce its standards and interpretations even with respect to the ability of a law school to attract and retain a competent faculty. This ratification of the accreditation process is a good sign. Yet, in many places in the competitive impact statement the Justice Department undercuts that recognition and seems to indicate that it believes there has been over-enforcement of the accreditation standards. Even though American legal education needs great improvement, the Justice Department does not want the accreditation process to play a significant role in assuring that future law students are actively prepared to practice law.

VII. Discrimination Against Clinical and Skills Teachers

Some Deans and academic faculty have alleged that clinical teachers, including extern faculty supervisors and other skills teachers have ''captured'' the Section on Legal Education's accreditation apparatus. To my knowledge, no active clinical teacher has chaired a site evaluation team. No more than one clinical teacher has served on the Accreditation Committee at one time. Likewise, only one clinician serves on the Council. Only recently has a clinical teacher been included on nearly all site evaluation teams.

The following shows the kind of discriminatory treatment accorded clinical and skills instructors by the ABA:

Differential Treatment Between Academics and Skills in the Standards and Interpretations

Skills

1. Skills Curriculum

(a) Schools need only ''offer instruction in professional skills. There is no requirement that all students who want to take ''core skills courses'' must be accommodated. For example, trial practice courses at many schools are overbooked and students are turned away. Likewise, many students who want courses in interviewing, counseling, negotiation, alternative dispute resolution, pre-trial practice, problem solving, representing organizations and other skills courses are turned away.

(b) Schools are not required to offer clinics to all, nor even to those students who want this training. Indeed the ABA has not been chosen to recommend that schools offer clinics by using a ''*should offer*'' standard.

2. Status

(a) School are *not required* to give tenure or any job security to full-time faculty members whose primary responsibilities are in its professional skills program.

(b) The requirements of tying faculty salaries to the prevailing compensation of

comparably qualified private practitioners and government attorneys led to the anomaly where the Accreditation Committee and the Council would not require schools to raise the salaries for clinical and skills teachers if they were close to the salary levels of legal aid lawyers and government lawyers (prosecutors and public defenders) at the state and local level. This stifled any effort to diversify the faculty teaching in clinical programs by attracting persons in private practice at large and small firms and with qualifications more like those hired to the academic faculty. Many schools argued that 405(a) allowed them to keep clinical salaries very low and the leadership of the ABA has agreed. The Accreditation Committee has not required comparable salaries for skills faculty because the Committee has concluded time and time again, over objections by some Committee members, that compensation is not a *''perquisite''* of the position under 405(e).

(c) Most often those on the clinical professional track are not allowed to vote on appointments to the academic faculty and in many instances are not allowed to vote at all. In some schools, professors holding clinical ranks are not even allowed to attend faculty meetings. Short-term contract clinicians are afforded no involvement whatsoever in governance at most schools. They cannot attend faculty meetings, do not serve on committees, and sometimes are not even listed in the catalogue. The ABA does not require that clinical and skills teachers be allowed to participate in governance.

3. Physical Facilities

The Accreditation Committee has ruled that the absence of space for a clinical program or professional skills instruction does not violate Standard 702. The Standard 701 requires that the physical plant is adequate for both its current program and for such growth in program should be anticipated in the immediate future. Many schools will report in their self-studies that they would very much like to have a clinical program in house, but do not have the facilities or lack the resources.

4. Adequacy of Financial Resources

(a) Standard 201(b) has been repeatedly applied so that schools do not have to provide skills instruction or clinical education if they plead that they lack adequate resources to do so.

Differential Treatment Between Academics and Skills in the Standards and Interpretations

Non-Skills

1. Academic Curriculum

(a) ''Shall offer to *all students* instructions in those subjects generally regarded as the core curriculum.'' Standard 302(a)(i).

(b) ''Shall offer to *all students* at least one rigorous writing experience.'' Standard 302(a)(ii).

2. Status

(a) Schools are required to provide eligibility for tenure status for academic faculty under Standard 405(d).

(b) Until recently Standard 405(a) the academic faculty were required to be provided conditions adequate to attract and retain a competent faculty. The standard included that the compensation should be sufficient to attract and retain persons of high ability and should be reasonably related to the prevailing compensation of comparably qualified practitioners and government attorneys and of the judiciary. This standard of course has been eliminated in the consent decree. It was applied in the past in a way to increase academic salaries while putting a lid on clinical and skills salaries.

(c) Under Section 405, professors on the academic faculty are usually allowed to vote on all matters, including appointments and tenure on the selection on the Dean and, often, on budgetary matters as well.

3. Physical Facilities

Standard 702 requires ''classrooms and seminar rooms to permit reasonable rescheduling of all courses.''

4. Adequacy of Financial Resources

(a) There must be adequate resources to accomplish the objectives of its educational program.

The ABA uses a *''should''* standard to recommend that schools ''should afford to full-time faculty members whose primary responsibilities are in its professional skills program, a form of security of position reasonably similar to tenure and perquisites reasonably similar to those provided other full-time faculty members'' Standard 405(e). This standard originally was a ''shall'' standard that was mandatory with respect to a predominant number of the full-time skills faculty. However, when the deans of some schools (the Justice Department would call them ''schools of recognized distinction'') organized to defeat this standard and the Association of American Law Schools came out in opposition, the Council of the Section of Legal Education reversed its previous recommendation that there be a ''shall'' standard and changed it to a ''should'' standard. The clinical teachers then organized a campaign to support a resolution introduced before the House of Delegates by the Section on Criminal Justice, that the ''should'' standard be changed back to a ''shall'' standard. The Council of the Section on Legal Education opposed this. The proposal was then defeated in a close vote on the floor of the House of Delegates. Likewise, the efforts by the deans of the elite schools to eliminate even a ''should'' standard was resoundingly defeated by the House of Delegates with the Section opposing it. Recent practice of the Accreditation Committee is only to express a concern about lack of compliance with Standard 405(e) and not to find a violation. (The medical accrediting authorities would find a violation when a school lacks a good justification for not following a ''should'' standard). The short-term contract clinicians have absolutely no security of contract even under the ''should'' provisions of Standard 405(e).

VIII. Procedural Difficulties With the Incomplete Decree

Another problem is that the Justice Department and the ABA did not resolve several matters. Six years were left for later determination. The result of this approach could be to deprive the public of a chance to comment on those actions. This approach may also preclude review and approval by the Court. The ABA has until February 29, 1996 to act. The Justice Department will either agree with the actions taken or it can challenge them within 90 days. But the public apparently will not be given an opportunity to express its views about the public interest. Essentially, there will either be a trial or a second consent decree as to these six areas.

Since the Justice Department has made crystal clear its conclusion that tough standards and tough enforcement to improve legal education are inappropriate for the ABA, the likely result of this process will be to come up with watered-down new standards that will get by Justice Department scrutiny. It is very strange for the Justice Department, which is supposed to be protecting the public interest, to take the position that it wants less vigorous enforcement to improve legal education. Even worse, is its use of an approach that will preclude effective public involvement. Therefore, I request either that (i) when the Justice Department decides on its response to the ABA's recommendations, the public be given a new chance to take part and submit its response and comments or (ii) that the consent decree be held open and not be deemed a final judgment and that the court continue the matter until the completion of the Wahl Commission and ABA process and Justice Department's decision on whether to agree or oppose the ABA's recommendations.

Indeed, given the reluctance of the Justice Department to support strong, vigorous, tough accreditation of American law schools for the improvement of legal education, the Court should go further and appoint an *amicus curiae* to represent the public interest in improved legal education. Surely the performance of the legal profession has never been held in lower regard by the public than it is today. The next generation of lawyers needs a different end better education in skills and values to improve the profession. The Justice Department seems too much concerned with satisfying different discrete constituents and not really bringing about major reforms in legal education. The American Bar Association on the other hand has been too concerned with the costs of litigation, the loss of its effectiveness with the Justice Department and others in Washington and perhaps the disclosure of embarrassing details that might surface. Much more is at stake and the Court should act to protect the public interest in improving legal education even if the Justice Department and the ABA will not.

Respectfully submitted,

Gary H. Palm

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September 28, 1995.

John F. Greaney, Esq.,

Chief, Computers and Finance Section, Department of Justice, 555 Fourth Street, N.W., Room 9903, Washington, D.C. 20001

Re: United States of America v. American Bar Association Civil Action No. 95–1211 (CR), U.S. District Court for D.C.

Dear Mr. Greaney: *My Interest.* I became involved in the national accreditation of law schools in September 1968 when I became the first Consultant on Legal Education to the American Bar Association (ABA). I became the Executive Director of the Association of American Law Schools (AALS) in September 1973 and served in that role for 11 years. AALS accredits law schools by admission to membership—the historic method. After retiring from the AALS in 1987, in 1989 I became a member of the ABA Council's Standards Review Committee. While with the AALS, I was active in the Council on Postsecondary Accreditation Committee on Professional and Specialized Accreditation. In these capacities and as a law teacher, I have inspected many laws schools and long dealt with accreditation issues.

My experience and knowledge of the history of legal education and accreditation compels me to help the court understand what the Department of Justice () has done and the court is asked to do. The proposed Final Judgment manifests a gross misunderstanding of legal education and accreditation. Its understanding is not enlightened by knowledge of the history of legal education.

Legal Educators' Guild and Capture. DOJ uses the pejorative ''guild'' to describe the law teachers and deans involved in the ABA accreditation process. This defames the hundreds of law teachers and deans who have given faithfully of their time to the process without compensation or other reward and in the public interest. It also defames the judges, practitioners, and bar examiners who served the process faithfully, especially those who have for years been the majority members of the Council. The implication of the charge is that these lawyers have been dupes, fools, or co-conspirators.

Before the DOJ issued its command, the 19 officers and members of the 1994–1995 Council were three members of state supreme courts, six practitioners, one bar admission administrator, six law school deans, one law school librarian, and two professors, one of whom is retired and formerly was a college president and law school dean. If the purpose of the conspiracy was to ''ratchet up'' the salaries of law teachers, there was only one individual with a direct interest in the purported conspiracy.

DOJ apparently assumes that the interest of law teachers and deans are identical. If it had a realistic understanding of law school budgeting, it would understand that they are not; while attracting and retaining highly qualified and valued law teachers is obviously an objective of the dean. There are other important objectives of expenditure, such as scholarships, library collection, adequate admissions and placement programs, and student co-curricular activities. Deans of inspected schools certainly do not want unreasonable requirements imposed on them, especially unreasonably high salary requirements for full-time faculty. They want to meet the competition set by market forces but not pay unnecessarily high salaries. DOJ gives as evidence that legal educators dominate the law school accreditation process the fact that 90 percent of the members of the Section are legal educators. It neglects to note that the Section plays little or no role in the accreditation of law schools. The role of Section members is largely to elect the officers and members of the Council. Like many other ABA Sections and nonprofit organizations, the electoral process largely affirms the decisions made by the nominating committee.

ABA ''Monopoly'' of Accreditation. The ABA did not acquire by its action the ''monopoly'' to accredit law schools and have its approval exclusively relied upon by most bar admission authorities. State supreme courts and bar admission authorities gave that authority to the ABA. These authorities have confidence in the Standards defining quality and in the process evaluating adequately the schools.

In *La Bossiere* v. *Florida Board of Bar Examiners,* 279 So. 2d 288 (FL 1973) the Florida Supreme Court observed: ''We were persuaded to follow the American Bar Association Standards relating to accreditation of law schools because we sought to provide an objective method of determining the quality of the educational environment of prospective attorney. * * * (W)e were unequipped to make such a determination ourselves because of financial limitations and press of judicial business. * * * (I)t is * * * patently obvious that judicial bodies are singularly ill-equipped to bring to bear the resources and expertise necessary to conduct a case-by-case evaluation.''

Cognizant of the trust placed upon it by bar admission authorities, the ABA Council has for many years involved members of state supreme courts in its work—as members of the Council, site evaluation teams, and other committees of the Council. It also sends to all supreme courts and other bar admission authorities, among others, all proposed amendments to the Standards. Officers and the Consultant from time to time attended meetings of the National Conference of Chief Justices to discuss the Council's accreditation activities.

The Department of Education (D.Ed.) now recognizes the Council of the ABA Section of Legal Education and Admissions to the Bar as the sole accreditation agency for law schools. While the AALS has been accrediting law schools by admission to membership since 1900, the Department of Education recognizes only one accrediting organization for law. It is the Council.

The United States' recognition of accreditation agencies who admit as members or approve educational institutions assures the federal government that the students who attend the accredited institutions are receiving a quality of postsecondary education that justifies the government student loan and grant programs to those students.

It is these two organizations that grant to the ABA Council what ''monopoly'' the Council has with respect to legal education. It is not any action by the Council of the ABA that gives it activity this monopoly. It is their ''fault'' that the ABA Council plays the critical role.

Basic Characteristics of Accreditation. Historically accreditation of educational institutions served two purposes. First, it informs prospective students and their parents that the education provided by an accredited institution at least meets the basic requirements of quality. Secondly, it informs other educational institutions that the credit or a degree earned by a student at an accredited institution is entitled to be recognized by other educational institutions. Later accreditation has been used to assure professional licensing institutions, such as legal and medical profession admission authorities, that the degree earned at an accredited institution represented an adequate professional education.

Accreditation is a peer review process. Professional educators evaluate educational institutions' conformance to quality standards. It is understandable therefore that legal educators are involved in evaluating programs of legal education.

In 1970 the Council decided that site evaluation teams should contain, in addition to legal educators, practitioners, judges, bar admission administrators and the like. This practice has been followed since then.

In the mid-1970's the Bureau of Competition, Federal Trade Commission questioned the involvement of the American Medical Association in the accreditation of medical schools through its partnership with the Association of American Medical Colleges in the Liaison Committee on Medical Education. The concern was about any role for the practitioners of medicine in professional education for the profession. The concern was that doctors would use accreditation to serve the economic interests of those in the profession. In the mid-1990's DOJ is taking an opposite position concerning the accreditation of law schools. Curious?

On the other hand, it is clear that the profession has not used ABA accreditation to hold down law school enrollment or the increase in the number of approved law schools. Responding to the great growth in demand for legal education and interest in establishing new law schools, the 1971 ABA presidential Commission on Professional Utilization noted the large unserved need for legal services and welcomed this growth.

Relevance of Faculty Compensation. The proposed Final Judgment prohibits the ABA from considering compensation paid full-time faculty in its accreditation of law schools. Whatever is the alleged conduct that forms the basis for the DOJ prohibition, it is beyond dispute that a law school's compensation structure directly affects the quality of those whom it can recruit and retain. Is it mere coincidence that the law schools that compensate its faculty best are also those that have the most highly regarded programs of legal education?

Law schools are not immune from market forces. Other law schools and law firms are a school's principal competitors. Major law firms and law schools compete for the same

group of graduates of well regarded law schools. This group is composed of those who were officers or members of a law review, and graduated with honors, including Order of the Coif. Matters other than compensation are factors, but compensation remains a significant factor.

The ABA understandably has chosen to reduce its large litigation costs by entering a consent decree and so has not contested this DOJ charge. But the fact remains that the charge has a weak foundation in fact.

Competitive Disadvantage of Unapproved Law Schools. If accreditation has any meaning, it means that some law schools will not have the established quality standards and so not earn approval. The approved law schools have an obvious advantage in recruiting quality students and faculty. The ''market'' informs potential students and faculty of the quality advantages of the approved law schools. Is accreditation an unreasonable ''restraint of trade''? It would be shocking if DOJ said it was.

The evidence is clear that law schools in their initial period of approval experience a very significant increase in applications by better qualified students. A number of law schools during my experience as Consultant found that one-half of the students admitted in the previous year would not have been admitted had they applied after the school received approval. Approval, in other words, improved the competitive position of the school.

During my five years as Consultant, I dealt with a number of established unapproved law schools that wanted to become ABA approved. My assigned role was to help the schools to redesign their programs to comply with the ABA standards. The present consultant has the same responsibility. I never lost an applicant. Except for a for-profit law school unwilling to use the resources needed and a current applicant, this has been the current consultant's experience, too. If the Council's program of accreditation has been aimed at reducing competition for the approved law schools, it has done a very poor job. Many new law schools have been approved since the explosion of demand for legal education began in 1968.

There are two additional badges of quality a law school may earn—membership in the AALS and having a chapter of the Order of the Coif. To some extent the schools who have one or both of these have a competitive advantage over the approved law schools that do not. A ''restraint of trade''?

State Accredited Law Schools. The Final Judgment enjoins the ABA from adopting or enforcing any Standard, Interpretation, or Rule prohibiting an approved law school from ''enrolling a member of the bar or graduate of *a state-accredited law school*'' in a post-J.D. program or from offering transfer credits for any course successfully completed at a *state-accredited law school.*''

If DOJ used the term ''accredited'' with care and precision and with knowledge of accreditation in the United States, this prohibition applies to very few unapproved law schools.

''Accreditation is the process by which educational institutions work together and with others to establish standards, evaluate and improve educational quality, and provide public evidence of this quality.'' Elaine El-Khawas, Accreditation: Self Regulation p. 555 in UNDERSTANDING ACCREDITATION (Kenneth E. Young, ed.) Jossey-Bass Publishers (1993).

''Accreditation means the status of public recognition that an accrediting agency grants to an educational institution or program that meets the agency's established standards and requirements.'' Section 602.2, Department of Education, Procedures and Criteria for Recognition of Accrediting Agencies, 34 CFR Part 602.

The foregoing establishes that the essential elements of accreditation are (i) established standards concerning quality of the educational institution or program, (ii) site evaluation to determine whether the educational institution or program complies with the standards, and (iii) periodic re-evaluation of the institution or program's conformance to the Standards.

Some state supreme courts authorize graduates of unapproved law schools within their state to take their bar examination. In some states, such as Texas, authorization has been given on an ad hoc basis for graduates of unapproved law schools that failed to get ABA provisional approval before its first class graduates. A major consideration was concern for the grave situation in which the school's failure placed its graduates. Accordingly, this recognition of the unapproved law school's degrees is generally for a short time. It is often based on the time needed by the school to get provisional approval. A few states, on the other hand, accept a state's unapproved law school's degree as satisfying the legal education requirement for eligibility to take the bar examination. This recognition cannot accurately be called accreditation.

The proposed Final Judgment prohibits only the ABA from directing approved law schools not to recognize credit or degrees earned at unapproved law schools. Approved law schools will make their own quality educational judgments. Credits or degrees earned at unapproved schools are unlikely to pass the individual law schools' quality test.

University Administrator on Site Evaluation Team. The proposed Final Judgment requires that each site evaluation team include ''one university administrator who is not a law school dean or faculty member.''

It is present practice to involve university administrators who do not have a law school connection on many evaluations of law schools that are parts of a university, especially a major university. The role of a university administrator in the evaluation of a law school that is not part of a university seems uncertain. Does DOJ require their appointment in those evaluations? Why?

It is unusual for an individual to be at the same time a university administrator and law school dean or professor. The individual might be on leave from her law school position, but rarely from a deanship. Just what does DOJ mean? Is this another example of DOJ's ignorance of legal education and its administration?

Excessive Intrusion Into ABA Governance and Issues of Legal Education. The legitimate jurisdiction of DOJ is confined to its allegation that the ABA has violated the Sherman Act. It is the U.S. Department of Education (D. Ed.) that has jurisdiction over the ABA Standards and accreditation process' evaluation of the quality of legal education offered by approved law schools.

Many aspects of the proposed Final Judgment address matters not within its limited jurisdiction. The requirement of a university administrator on a site evaluation team is clearly only a question of quality and not unreasonable restraint of trade. The requirement of validation of the Standards and Interpretation by an outside consultant is clearly a matter for D. Ed. The anti-trust relevance of most of what the Special Commission is to study under VII(A) of the Proposed Final Judgment seems remote; they are concerned with quality of legal education.

DOJ seems intent on reforming legal education. That is not its business. To a limited extent it is the business of D. Ed.

DOJ's very doubtful conclusion that the ABA has violated the antitrust laws raise serious questions about its justification for the excessive intrusion into the ABA's operation of its accreditation program. For example, the proposed Final Judgment specifies three-year terms for members of the Council, Accreditation Committee, and Standards Review Committee. Those serving on the Council and Accreditation A committee may serve a second term but those on the Standards Review Committee may not.

While three-year terms may be a good idea, it should be up to the Section to decide that. Who should be eligible to serve should also be a policy left to the Section or the ABA. It is curious that the Standards Review Committee is mentioned at all. It has only the power of recommendation to the Council. It is the Council that decides. Members of the Standards Review Committee must know institutional history. Under the DOJ mandate it is the group that must rely most on others.

Sincerely yours,

Millard H. Ruud

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P.S.: These comments, of course, represent my views and not those of The University of Texas or its School of Law or officer or staff member, or of any committee of the ABA Section of Legal Education and Admission to the Bar.

University of South Carolina, Department of Clinical Legal Studies School of Law

September 29, 1995.

Mr. John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, Room 9903, 555 4th Street, N.W., Washington, D.C. 20001

Re: Comments on proposed Final Judgment in *U.S.A. v. American Bar Association,* (D.Ct. D.C., C.A. No. 95–1211).

Dear Mr. Greaney: Two provisions of the proposed Consent Decree should be modified: 1) the absolute prohibition against the collection or use of compensation data in the accreditation process; and 2) the limitation of three years service on the Standards Review Committee. These

conditions are unnecessary to accomplish the objectives on the Consent Decree, and they are likely to affect negatively the quality of legal education and the accreditation process.

I am a professor at the University of South Carolina School of Law. I served two successive three year terms on the Council of the ABA Section of Legal Education and Admissions to the Bar (1988–1994), and I served on the Standards Review Committee for five years (1990–1995).

Compensation

My understanding is that the Justice Department had two primary concerns about the ABA's practices with respect to compensation:

1. The ABA asked each law school being inspected to identify other law schools which it considered to be its peer institutions. The ABA then compared the salaries of the respective faculties and criticized the law school if its salary scale was below the median. I agree this practice was inappropriate, whether or not it violated any antitrust laws.

2. ABA Accreditation Standard 405 also suggested that law faculty salaries should be ''reasonably related to the prevailing compensation of comparably qualified private practitioners and government attorneys and the judiciary.'' It is my understanding that the ABA had stopped using this as a factor related to accreditation well before the Justice Department began its investigation. The Standards Review Committee had drafted a revised version of the relevant provision before the investigation began, and it further revised the language on advice of counsel for the ABA after counsel had discussed the problem with attorneys for the Justice Department. The proposed language would have allowed the ABA to consider compensation only as one factor in determining whether a law school was maintaining conditions sufficient to attract and retain a competent faculty. This should have alleviated the Justice Department's primary concerns.

The proposed Final Judgment has two key provisions related to compensation. The first condition would ''eliminate the adoption or enforcement of any Standard, Interpretation or Rule or the taking of any action that imposes requirements as to the base salary, stipends, fringe benefits, or other compensation paid to law school faculty, administrators or other law school employees.''

It is the second condition which is unnecessary and inappropriate. It would ''eliminate the collection or dissemination of compensation data for deans, administrators, faculty, librarians, or other employees, and the use of compensation data in connection with the accreditation of any law school.''

I cannot see any rationale for this language. Surely, the Justice Department cannot believe compensation is unrelated to the quality of a faculty or to the quality of legal education. There is no data showing that the ABA has driven faculty salaries to such a high level that members of law faculties are paid disproportionately to similarly qualified lawyers who are in private practice, or even the judiciary. At most schools they are paid significantly less.

I am not suggesting that the ABA should be allowed to use information about compensation to drive salaries upward, generally. However, the ABA should be allowed to consider compensation of faculty as one factor in measuring the quality of a law school's educational program. It makes no sense to prohibit the ABA from mentioning compensation, even if the ABA discovers that inadequate compensation is clearly contributing to high faculty turnover and making it difficult for a particular school to attract and retain competent faculty. This restriction is unwarranted and harmful to legal education.

The ABA should also be allowed to continue collecting data about salaries. If it visits a school at which the faculty is complaining that low salaries are harming the educational program, the ABA needs reliable data to be able to determine whether the salaries are really out of line or if the faculty is whining unjustifiably. Prohibiting the ABA from collecting salary data will not make it less available, just less reliable. Salary data will continue to be collected and shared whether or not the ABA continues doing it. Several other organizations already collect salary data or plan to do so if the ABA cannot. The ABA's data collection system has proven its reliability, the others' have not.

To conclude my discussion of compensation, it is important to understand that the goals of legal education and the interests of consumers are not served by encouraging a complete free market economy. Many lawyers would rather teach than practice, regardless of the salary offered, especially those lawyers who are not finding success in law practice. Many of the law schools at the lower end of the quality scale face significant economic pressures which could lead them to offer salaries which are insufficient to attract successful lawyers and judges into the academic world. Without a highly qualified faculty, law schools cannot prepare law students adequately for the practice of law. Ultimately, public consumers, i.e., clients, will suffer the consequences.

Standards Review Committee

The Consent Decree imposes a three year limit for service on the Standards Review Committee. This is unwarranted and will have a detrimental impact on the accreditation of law schools.

The Consent Decree incorporates the preexisting six year limit for service on the Council and Accreditation Committee. Before the Consent Decree, there was no limit on the length of service on the Standards Review Committee. I have been unable to unearth any explanation for this provision of the Decree. Unlike the Council and the Accreditation Committee, the Standards Review Committee has no rule-making or decision-making power. Its function is to consider proposed amendments to the Standards and make recommendations for consideration by the Council. The Council is free to accept, reject, or modify such advice.

If any limit is to be imposed, it should be a longer, not a shorter, term than for the Council or Accreditation Committee.

As a former member of the Council and the Standards Review Committee, I can attest that it takes longer to become acclimated to the work of the Standards Review Committee than to that of the Council and that there is a greater need for longevity of service. It is not uncommon to take longer than three years to process a proposed amendment to the Standards. For example, Standard 405(e) took six years from initiation to fruition; and Interpretation 2 of Standard 306 took over three years. The recodification project, the first stage of which is expected to be completed in August, 1996, will have taken much longer than three years to process.

It is important to the quality of the finished product that some people be allowed to remain on the Standards Review Committee from start to finish of proposed modifications to the Standards. The proposed three year limit will not permit this.

For the reasons stated above, I object to the proposed Final Judgment unless it is modified as follows: 1) to allow the ABA to continue gathering data about faculty compensation; 2) to allow the ABA to continue considering compensation as one factor in determining the quality of a law school's program of education; and 3) to allow the ABA to permit some people to serve at least six years on the Standards Review Committee.

Respectfully submitted,

Roy T. Stuckey

Southwestern University School of Law

September 29, 1995.

Mr. John Greaney,

Chief, Computers and Finance Section, Antitrust Division, U.S. Department of Justice, JCB Building, 555 4th St., NW., Washington, DC 20530

United States v. American Bar Association Civil Action No. 95–1211 (CR)

Dear Mr. Greaney: We write to express our concerns about the impact of the above-captioned consent decree, with particular reference to legal education in the State of California (Part I), and to indicate our concern with a particular provision concerning the collection and dissemination of salary data (Part II).

Part I (The Impact of the Decree on Legal Education in California)

The self-regulatory mechanism for American legal education is an unlikely target for antitrust enforcement. It is true, as Lord Acton warns us, that power corrupts—the greater the more absolutely. Reviewing the publicly available materials on this case, it is apparent that law schools and those who regulate them are not free of the venial sins common to all human endeavors. It may well be that some of this activity contravenes the Sherman Act (and we have no objection to the decree insofar as it is narrowly drawn to address any such violations).

We are concerned, however, about more intrusive aspects of the decree which seem motivated by a deregulatory animus. Current ABA regulation of accreditation standards has been targeted by some within the law school community who see it as stifling creativity, innovation and, perhaps, efficiency in legal education. Some, or even a great deal, of this criticism may have merit.

But, aside from the bureaucratic momentum that stifles change in any self-regulatory mechanism, there is no evidence that the traditional antitrust concern, market power, underlies this resistance to change. And, as we suggest below, there is legitimate controversy within the law school community about the wisdom of wholesale changes in accreditation standards.

The vast majority of men and women who have chosen to teach in American law schools do so because they believe in, and truly enjoy, the teaching and writing that is the core of the profession. For the most part, individuals who make this choice could have opted for higher paying jobs in the private bar or, perhaps, in government. The deans and administrators of law schools come from the ranks of these academics. They share with their colleagues strong commitments to the profession that they serve, the students that they teach, and the institutions that they lead.

The decisions of those who have led American legal education have not prevented development of a fiercely competitive market. Among the 178 ABA accredited law schools (there have been roughly 40 additions to this number over the past three decades) are a great range of institutions in all parts of the nation. The programs, the teaching methods, the tuition rates, and the reputations of these institutions vary widely. One example of this diversity, and the kind of program innovation it generates, is found at our own law school, which offers an ABA approved 24-month program leading to a J.D. degree.[1] The program discards traditional law school courses in favor of instructional units that stress concepts common to many subjects of the law. The existence of such programs tends to refute claims that ABA accreditation requirements stifle experimentation and creativity.

For reasons that we explain below, our fear is that the decree may result in relaxation of ABA accreditation standards, thereby heightening information problems for matriculating law students and distorting the allocation of legal educational services. Although the impact of the consent decree will be felt in all states, it is helpful to focus on the decree's potential impact in California. Aside from being the most populous State, California also has the most open system of legal education of any of the fifty states.

There are three categories of law schools now operating in California:

(1) ABA accredited law schools (16 schools);

(2) law schools certified by the State Bar (19 schools);

(3) law schools lacking certification from the State Bar (24 schools and an additional 13 correspondence schools).

Tuition demanded by these schools varies widely, as do the teaching methods, faculty student ratios, the percentage of full time instructors, library facilities, and other student support services. Unaccredited and uncertified schools may have no library facilities, few if any full time instructors, and few support services for students or faculty. Schools falling in the second category (certified by the State Bar) tend to offer some of these advantages but not to the extent of ABA accredited schools. Although accreditation standards are stiff, seven of the sixteen ABA accredited schools have achieved that status since 1960.[2]

Students attending the various categories of schools do not perform equally on the State Bar examination. The chart below compares the 1994 passage rate for first time takers from each of the three categories of law schools.

CALIFORNIA STATE BAR EXAMINATION PASSAGE RATE FOR FIRST-TIME TAKERS

[Calendar Year 1994][3]

	Took	Pass	Pass (percent)
California ABA Accredited Law Schools	3555	3048	85.7
State Certified Law Schools	1090	572	52.5
Unaccredited Law Schools (including correspondence schools)	159	59	37.1

The figures are skewed because the most gifted students tend to select among the ABA accredited schools. Indeed, students do not treat all ABA accredited schools as equivalent, discriminating among these schools based upon reputation, location, and tuition. Whatever the reason, the low bar-passage rates for many of the schools raise troubling consumer protection questions. There is ongoing debate about whether schools should be allowed to recruit students to pay out thousands of dollars of tuition and dedicate three or four years of their lives to obtain a legal education, only to find that their chances of passing the bar are quite low. The California Legislature has seen fit to require a ''baby bar examination'' for all students attending unaccredited and uncertified law schools.[4] Students are required to pass this examination before commencing their second year of studies at these unaccredited or uncertified institutions.

Even if students pass the bar examination, the market for jobs is skewed against those who attend unaccredited or state certified schools. The reputation of the school (and its status as an accredited, certified, or unaccredited institution) are considered by employers, making job prospects bleak indeed for those who have attended unaccredited schools.

These realities about bar passage rates and job prospects are probably understood by most matriculating law students. Students are aided in their understanding by the clear distinctions among the three categories. It is our sense that most applicants who have a choice will choose among ABA accredited schools, further refining their choice by assessing the reputation of an individual school. Indeed, some students who fail to gain admission to an ABA accredited school may decide not to pursue a legal education. We doubt that anything suggested in the decree will alter these fundamental market realities. On the other hand, the direction in which the decree appears to push ABA law school—toward relaxation of accreditation requirements such as faculty-student ratios and library facilities—will blur distinctions between ABA and non-ABA accredited schools, and make it easier for schools that lack that advantages now needed for ABA accreditation to obtain it. For reasons that we explore below, this may create greater information problems for applicants and pressure second-level, currently accredited law schools[5] to relax quality standards.

We digress at this point to offer an overview of such second-level law schools. At present, each of the ABA-accredited law schools in California operates as a non-profit, educational institution. Most have excellent law libraries, highly respected full-time

[1] Southwestern's Conceptual Approach to Legal Education, or ''SCALE'' as it is commonly known.

[2] California law schools that have gained ABA accreditation since 1960 are: University of San Diego (1961); California Western (1962); University of California-Davis (1968); University of the Pacific (McGeorge) (1969); southwestern University (1970); Pepperdine University (1972); and Whittier College (1978).

[3] This data is compiled from figures provided by the State Bar for the February and August 1994 administrations of the examination.

It is also significant that there is little overlap in the results among the various categories. For example, in the August 1994 administration of the bar examination, the passage rate for first-time-takers, calculated for individual ABA accredited schools, ranged from 77.9% to 94.4%. For State Certified schools, the rates for individual schools range from 16.7% to 76.3%.

[4] State Bar Act, § 6060(g). We understand that a bill has been introduced in the legislature to repeal this requirement. Its changes of success are unclear.

[5] We use the term ''second-level'' law schools to describe those ABA accredited schools that tend not to compete for the top five or ten percent of law school applicants, but will generally deny admission to those not meeting minimum objective qualifications. Our rough definition probably includes about twelve of the sixteen ABA accredited schools in California.

professors, and a solid commitment to both teaching and scholarship. Our own school, for example, has one of the finest law libraries in the State and a reputation for being a ''teaching'' law school.[6] The school also operates an academic support program for interested first year students. And, as is the case with most second-level law schools, it has for some years aggressively recruited and supported minority law students.

Although the primary mission of the second-level law school is teaching, these schools serve the community in other ways. Law libraries are generally open to practicing attorneys and students from other law schools. These schools also contribute substantially to scholarship on cutting edge issues. And full-time faculty and staff contribute to the community through membership in, and pro bono work for, various bar groups and community organizations.

Relaxed ABA accreditation standards probably would not affect second-level law schools if information flow and comprehension among law school applicants were optimal. Our school, for example, would chose to continue emphasizing its role as a teaching law school (maintaining its high full-time faculty to student ratio), as a leader in the recruitment and support of a large pool of minority applicants, as a promoter of legal scholarship, and as a provider of a first-class law library for the benefit of students, faculty and the surrounding legal community. Under optimal conditions, these features of the school would be valued by the community and the student applicant pool, ensuring the school's success in recruiting students.

We claim no prescience as to what the future may hold. But the very existence of accreditation standards (and other regulatory steps such as California's Baby Bar Examination) suggests that substantial information problems are inherent in running a system of legal education. Further evidence of these information problems is the heavy emphasis most law schools place on achieving a favorable rating from private surveys that rank law schools. Many legal educators regard these ratings as superficial and perhaps even misleading.[7] But because matriculating law students pay attention to these surveys in making their choices, law schools are very sensitive to the resultant rankings.

Although we have conducted no cost benefit analysis of the ABA's current accreditation requirements (and doubt whether a reliable one could be conducted), we believe that standards such as those governing the ratio of full-time faculty to students and the library collection are important to a quality legal education and to providing other community values that law schools serve. To the extent that such requirements are relaxed, currently non-accredited schools, with relatively few sunk costs in library and physical facilities, and fewer full-time faculty, will be in a position to obtain accreditation. Their status as ''accredited schools'' will not affect elite schools such as Stanford, which will doubtless continue to attract the most gifted law students. But the newcomers may, because of their substantially lower costs, be in a position to siphon away students from second-level accredited schools.

These consumer protection concerns are real. Schools, particularly those operated on a for profit basis, will have an incentive to avoid building libraries and hiring full-time faculty with teaching loads that permit non-classroom contact hours. Such schools certainly will be able to reduce their costs and their prices. If they can also present themselves to the market place with full accreditation credentials, currently accredited second-level schools will be forced to compromise important standards currently protected by ABA accreditation. Lower tuition costs would be a welcome development, but only if they can be achieved without injury to the important education and community values.

To summarize, we believe that to the extent that the consent decree pushes the nation's law schools toward relaxation of quality standards that bear on the education, research, and related community goals served by law schools, the decree will be counterproductive. As the system of legal education in California suggests, creating well-defined categories of law schools can serve an important consumer-information function, making it easier for matriculating law students to make wise choices about whether and where to pursue a legal education. To the extent that these distinctions are blurred, information problems for incoming students could be exacerbated and the market allocation mechanism for legal education services distorted.

Part II (The Collection and Dissemination of Salary Data)

Part IV(B) of the consent decree enjoins the ABA from ''collecting from or disseminating to any law school data concerning compensation paid or to be paid to deans, administrators, faculty, librarians, or other employees.''

Because we believe that the collection and dissemination of salary data serves a number of legitimate and important functions, we urge that this provision be removed from the decree.

Information about salary and benefit levels is a useful market indicator. Indeed, as a general matter, and especially where as here the structure of the market is plainly competitive, markets function better when players on all sides of a transaction are knowledgeable about market conditions. Although the exchange of information has sometimes been prohibited in oligopolistic markets, as when a trade association uses information exchange as a step in achieving uniformity in prices for a standardized product, there is no history of ABA accredited law schools attempting or achieving such uniformity in salaries or benefits. Nor do applicants regard legal education among law schools to be a standardized product.

Moreover, withholding market information about salary levels increases the possibility of exploitation of those with less knowledge and power. In the law school context, such salary information might be used by employees or faculty to gauge their market value based on what others in comparable positions receive. Those most likely to be underpaid are generally those with the most limited ability to obtain market information. Another way in which such information could be useful is in negotiations between a law school dean and a university president concerning the amount to be budgeted for law school salaries. Market information about salary and benefit levels would be helpful in budget discussions that ensure that the law school remains competitive.

We do not object to provisions of the decree that prohibit the ABA from setting salary or benefit standards, or making compensation levels a condition of accreditation. Our concern is rather that data collection and dissemination, which serve an important function by making the market more visible and less susceptible to exploitation, not be hampered by the decree.

Because there is a legitimate need for salary and benefit data, it is likely that other organizations (such as the American Association of Law Schools) would seek to collect and disseminate it even if the ABA cannot do so. These groups should be allowed to do so. But there is no reason for forcing this data collection out of the ABA's domain, with the attendant transactional costs involved in shifting this responsibility.

Sincerely,

Lawrence A. Sullivan,

Professor.

Warren S. Grimes,

Professor.

St. Thomas University School of Law

July 7, 1995

Roger Jacobs,

Director of Library, Member of Council, Notre Dame Law School, Kresge Library, Notre Dame, IN 46556

Dear Roger: I am not able to come to the AALL meeting in Pittsburgh to attend and to make a presentation about the proposed Library Standards. In addition, I have not seen the June final draft of the Library Standards. Thus, the following comments are subject to change and clarification based upon what is in the final draft of the proposed Library Standards.

Although not separately stated in either the Department of Education's regulations or the June 27, 1995, *Final Judgment of U.S.* vs. *ABA*, I interpret both documents to include law libraries and their operations under the category, ''physical facilities''. If law library

[6] According to a survey that the school commissioned, our graduates, and the graduates of one other California school (McGeorge), performed better on the State Bar examination than students with equivalent LSAT scores graduating from other California ABA accredited law schools. The widely held view among our colleagues is that the accessibility of the full-time faculty, the emphasis on attendance and class preparation, and the school's strict grading policy contribute to our students' success on the bar examination.

[7] By contrast, the ABA accreditation process, upon which students also rely, makes threshold judgements about whether schools meet relatively objective standards, but does not attempt to rank the various accredited schools. An ABA publication encourages students to ''consider a variety of factors in making their choice among approved schools.'' ABA, A Review of Legal Education in the United States, 2 (Fall 1991).

operations are included within the grasp and meaning of the term, I contend that the proposed Standards (I am referring to the January 11, 1995, proposed revision) do not comply with the DOE regulations as to the required documentation to justify the changes in the Standards or the *Final Judgment* of June 27, 1995, requiring the proposed Standards be submitted to the Board for review, followed by the Board filing its report with the United States District Court for the District of Columbia and the Justice Department for their review to determine whether to challenge any of the proposals. In Addition, under the *Final Judgment,* there is an antitrust compliance program that may not be in place. With these restrictions, (especially the *Final Judgment*), I contend that the proposed Standards (the January 11, 1995, revision or either the June 1995 or July 1995 revision) are not ripe for Council to submit its recommendation for action of the ABA House of Delegates at the August, 1995 Meeting. Within the time frames indicated in the June 27, 1995, *Final Judgment,* August 1996 would appear to me to be the earliest time under which the ABA House of Delegates could take any action relating to the proposed Library Standards. I do note that a *Final Judgment* has not been entered, but note in the *Stipulation* that the ABA agrees to be bound by the provisions of the *Final Judgment.* I view the agreement to be in force as of June 27, 1995.

As you may be aware, I have received ABA comprehensive library statistics and special statistics for selected schools for over ten years, including statistics based on Fall 1994 information. These statistics have been used to assess St. Thomas' growth and development, its operations and the Law Library plan of action, which is required under the 1986 Standards. Based on my assessments of these statistics, I have serious and considerable concern with the present methods of (a) collecting statistical information, (b) categories used in the collection document or vehicle (annual questionnaire), and (c) publishing and using the statistics in this present form.

As presently designed, the statistical information creates a very significant economic impact to the disadvantage of newer as well as smaller schools with less than 700 FTE students. There are approximately 63 schools with 700 FTE students or more and 115 schools with less than 700 FTE students. Note, however, the ABA does not include graduate students and special students in identifying the FTE student count used for analysis of library operations only full time and part time JD students are used. There are over 100 schools with graduate students, that are excluded from the analysis of library statistics. Important comparisons of book dollars per student and retrieval usage per student are *overstated* when graduate students are excluded; thus, in several instances, statistical information is somewhat, if not totally, skewed with misleading and incorrect information.

The elimination of students from the student side of the formula created in several instances a higher expense of book dollars per FTE student and higher retrieval usage per student, resulting in a higher mean and median. The constant and continuing pressure through the accreditating process for schools to reach and exceed the mean or median of information for all schools is based upon an incorrect foundation of statistical information.

The 1986 Standards, as part of the core collection requirements, specifically recognized and added online services (and probably the CD–ROM and other electronic resources) as a basic category of collection and information resources which schools have to use to support the academic program. Other changes were made in the 1986 revision, which can be interpreted to reinforce this conclusion—the elimination of some of the Shepard's Citations requirements and state statutes requirements, existing in pre-1986 Standards. These changes and others would, I contend, lead to the conclusion that the Standards did eliminate the ownership/warehouse concept for all ABA approved libraries to support academic programs. The Accreditation Committee and Council have provided no written ground rules or other information relating to the use of electronic information as part of the core collection requirements, and, specifically, whether these electronic resources could be used in place of hard copy or microform resources. While the January 1995 revision of the Standards appears to provide some way to incorporate electronic sources as an integrated part of total collection resources, the language in the entire document is fuzzy and leads to considerable interpretation, resulting in little or no guidance for library operations or what should be in the written plan. This would lead to subjective fact finding through onsite inspections and written reports. (As earlier noted, I have not seen or reviewed the June or July revision of the Standards)

Even the ABA document provided to onsite inspectors to use as part of the questioning for and collecting of information from libraries has not been updated with the 1986 ABA Standards. I contend that the financial form which a library is required to complete as part of the inspection questionnaire, is based on pre-1986 Standards.

The ABA through its Accreditation Committee and Council has not accepted electronic resources as part of the basic and *only* foundation upon which the ABA statistics are collected, developed, made available to directors and others as well as published (selective information only) in the *Law Library Journal.* The ABA uses only hard copy and microform equivalents to identify the grouping and the size of the collection in terms of volume count.

Since 1986, the ABA has not provided any way to determine equivalent volumes of electronic resources. The formula used by the ABA to determine collection size specifically excludes electronic resources of any type, the very source of information the ABA added to the Standards in 1986. Thus, reliance and use of the existing ABA library statistics are totally off base, being unreliable and useless for comparative purposes for any reason.

The ABA continues this omission through publishing only hard copy and microform equivalent counts in its *Review of Legal Education;* electronic resources, as best as I can determine from a review of the publication, are not included in any manner. The economic impact of the exclusion of electronic resources from statistical analysis of ABA information has adversely affected most, if not all, schools by resulting in increased costs to continue and maintain hard copy collections through publisher dominated lists of titles libraries must maintain to satisfy accreditation requirements.

The attempt of the June 1994 revision of the Standards was to, for all practical purposes, eliminate the consideration of electronic resources as part of the core information resources a library must use—the January 1995 revision, apparently, attempted to weaken this dark age approach for collection support of academic programs for accreditation purposes. I have not seen the June 1995 revision, which is to be discussed in Pittsburgh.

I am not sure, but would assume that work by the Standards Review Committee or others has not been done on the collection vehicle, the annual questionnaire, or the statistical format used to provide statistical analysis of the information collected through the annual questionnaire. The statistics are used in preparing on-site reports. The existing problems with the annual questionnaire and the statistical information produced there from would, I contend, lead to the conclusion that these have to be revised at the same time the Standards are revised. These, in most instances, were not updated and revised as a result of the revisions in the Standards made in 1986, resulting in subjective fact finding through the inspection process and procedure as well as faculty analysis by the Accreditation Committee and Council based upon the inspection reports. On this ground, I register a protest and complaint that the proposed Standards do not comply with the DOE regulations, (effective July 1994) and specifically contend that the attempt (at least as I presently understand the procedure) to obtain Council's recommendation for action by the August ABA House of Delegates violates the *Final Judgment* requirements, identified June 27, 1995.

I have not seen any documentation by the Standards Review Committee or others specifically relating to the proposed Standards, and especially relating to collection resource requirements. Choices have been made in setting accreditation requirements, but written documentation to justify the choices is lacking. On this ground, I register a protest and complaint that the proposed Standards do not comply with the DOE regulations (effective July 1994), and specifically contend that the proposed Standards have not satisfied the requirements of the *Final Judgment* of June 27, 1995, for Council action for a final recommendation for action by the August ABA House of Delegates.

The annual questionnaire and the ABA produced statistical information requite urgent and mandatory revision. Unless and until volume equivalences are determined for electronic sources and information, volume counts have to be eliminated from the

questionnaire and statistics. The reliance and dependence on volume counts as the only measuring device in the statistics have to be eliminated. Some means have to be established to eliminate the wrong or incorrect information in the statistics. As an example, in the recently produced comprehensive tables, Column 65c–3, several schools provided information that they are open more hours that there are hours in a seven day week; for some schools, information is column 44 and 46 appears to be crossed and included in the wrong column. There are probably others errors.

The continued use of gross information for volume added counts requires a revisit. A total revamp is required for the use of this information in statistical analysis. I have read speeches that have provided statistical comparison using the gross volumes added without indicating that the net is what produces the collection growth. This net information is provided to the ABA, but the statistics specifically exclude the information in volumes added columns.

Information relating to technology-driven formats, such as on-line, CD–ROM, INTERNET, etc., has to be developed to a greater extent for the annual questionnaire and statistics. As examples, equipment and other costs directly associated with technology-driven formats should be, I contend, part of the total acquisition expenses, just as postage and handling and insurance charges (of 8 to 20% for many titles) are added to serials and book or other information expenses reported. Users can not obtain access and use these sources without the proper equipment. At present, expenses for LEXIS and WESTLAW are considered part of acquisitions and information expenses per student, column 14–6 of the tables. I further contend that costs associated with bibliographical systems or in-house computerized public catalogs should be a basic and integral part of information expenses to reflect that these resources are part of the information resources provided to students and faculty.

With electronic resources increasing in importance in all libraries, the existing Standards, the proposed Standards, the annual and on-site questionnaire, and library statistics need to reflect an ''open environment'' and atmosphere'' for libraries to respond to their direct goal of supporting the law school education program, including the training of students in a number of different research skills. I view the proposed Standards, the annual and on-site questionnaires and the statistics as major hurdles, which are preventing libraries from maximizing the use of technology for the benefit of faculty and students as part of the education program. I can not see or determine any difference in using OCLC or other systems to locate title information for a variety of purposes and using CD–ROM or WESTLAW to locate title information for ordering purposes, verification or ILL. In one case, expenses are part of information resources, and in the other case, expenses are excluded from information resources and treated in a totally different manner.

This area must be revisited by the ABA. The Standards, the annual and on-site questionnaires, and library statistics must represent the present and future aspirations and goals of legal education. In several instances, at least through the January 1995 revision of the Standards (Note, I have not seen or assessed the June 1995 revision), several of the Standards and Interpretations clearly represent the mandated requirements of hard copy holdings from a limited number of publishers, even though the same basic legal information (excluding copyright material) is available through electronic sources at less cost in many instances that the hard copy costs. The basic difference is that a different publisher or vendor provides the electronic sources. On this ground, I register a protest and complaint that the proposed Standards do not comply with the DOE regulations of documentation justifying the mandated accreditation requirements, and specifically contend that the proposed Standards have not satisfied the requirements of the *Final Judgment* of June 27, 1995, for Council action for a final recommendation for action by the 1995 August ABA House of Delegates.

I am aware of the salary collection issues being discussed on INTERNET. As I read the June 27, 1995, *Final Judgment* in *U.S.* vs. *ABA*, the ABA, including the accreditation committee and Council (and I would also include the on-site inspectors), is prohibited from *any* consideration of salary or other compensation as a fact or factor in the accreditation or review of any law school program. This would preclude and prohibit the inclusion of this information as part of any accreditation or review process, even to discussions with on-site inspectors of any comparative salary information regardless of source used to obtain the comparative information. At least for the period of time in which the *Final Judgment* remains in place or is modified, salary issues are not an issue upon which the ABA can report. The language of the *Final Judgment* is absolutely clear in this matter. I would further contend that libraries, groups of libraries, and any association not involved in accreditation, and private vendors could collect the salary and compensation statistics, assuming the school's policy would permit the disclosure. Since salary is not an accreditation issue under the *Final Judgment*, many schools may prohibit or limit the release of salary information. The salary statistics collection issue is not part of the Standards or proposed Standards and must not detract from the issues and problems with the proposed Standards, and annual and on-site questionnaires and statistics.

There are several other problems and issues within the proposed Standards, the 2 questionnaires and statistics to be addressed. For one, I seriously question the process of including interpretations of the proposed Standards along with the Standards for Council action for the ABA House of Delegates action. If approved in this format, the interpretations will take the form of Standards that will require a more complex procedure to change or amend rather than the less cumbersome procedure for adopting interpretations. The *Final Judgment* makes changes in the procedure for this matter. I oppose this part of the approach by the Standards Review Committee. In some instances, the interpretations limit and completely restrict choices of libraries to do things differently, especially with the changes technology has brought and will bring to library operations. In some instances, the interpretations appear to be new statements, not even interpreting the existing Standards. On this ground, I register a protest and complaint that the proposed Standards and Interpretations do not comply with the DOE regulations of documentation justifying the mandated accreditation requirements, and specifically contend that the proposed Standards and Interpretations have not satisfied the requirements of the *Final Judgment* of June 27, 1995, for Council action for a final recommendation for action by the 1995 August ABA House of Delegates.

The ''rush to judgment'' to seek approval of the proposed Standards and Interpretations within the next 30 days or less flies directly in the face of the requirements of the *Final Judgment* of the *U.S.* v. *ABA* of June 27, 1995. I contend much more has to be done before approval is sought. I am aware of Internet comments regarding the upcoming Pittsburgh meeting on the Standards and Interpretations to the effect that there is an appearance and perception of a ''farce'' regarding the meeting and comments made. I sincerely hope this is not the case, and that the report has not yet been written for Council's action.

I have attempted to provide some information on some issues I am concerned with as these relate to the Standards, the proposed Standards and Interpretations, the questionnaires and statistics. I regret very much not being able to attend the AALL meeting in Pittsburgh for the comment portion. However, I do look forward to receiving any information about the meeting and comments made. As soon as I am back to work in a couple of weeks, I hope to be able to address and assess the June 1995 proposed Standards and Interpretations.

Roger, I would appreciate this document being added to the comments for the AALL Pittsburgh meeting. Thanks.

Sincerely yours,

Prof. Bardie C. Wolfe, Jr.,

Professor of Law and Law Library Director.

cc: Anne Bingaman, Dept. of Justice
Darryl Depriest, General Counsel—ABA
Dean Rudolph Hasl, St. John's
Dean Steven Smith, CSU
Jim White, ABA—Consultant
Dean Dan Morrissey, St. Thomas
Prof. Roy Mersky, Texas
Prof. Pat Kehoe, American University
Prof. Larry Wenger, Virginia
Florida Academic Law Library Directors

St. Thomas University School of Law

July 7, 1995.

Roger Jacobs,

Director of Library, Member of Council, Notre Dame Law School, Kresge Library, Notre Dame, IN 46556

Dear Roger: I write to inform you of several concerns I have with the ABA Library Standards as adopted in August 1995, including the Interpretations. In addition, I also write about concern with current Fall

1995 Annual Questionnaire—Part III Law Library. Among the concerns are the following:

A. Annual Questionnaire

1. While I view the Annual Questionnaire as tracking the ABA Standards and Interpretations, the continued exclusion from published reports of recognizing computer—technology driven resources enables the ABA to publish in its *Review of Legal Education* and the AALL *Law Library Journal* (Statistics) misleading, inadequate and incomplete data about Law Library operations and their support of academic programs—see questions 8–14 in the Annual Questionnaire. I am in the process of updating my 1991 report on the economic impact of the reported ABA library statistics. See separate report attached. From the Fall 1994 statistics, total expenses in 93/94 of 176 schools are $282,843,440 (2 schools not reporting) with 99 or 56.3% of the schools (those over 300,000 columns) having 69.2% of total expenses and 61 schools (those with 200,000 to 300,000 volumes) or 34.7% of the schools having 26.2% of the total expenses. This imbalance creates significant problems.

2. There appears to be substantial activities regarding Internet, legal resources and law library activities—see recent article September 95, *ABA Journal.* As best as I can determine, the Annual Questionnaire does not include questions about Internet usage, but does include questions about CD–ROMS. I view the August 1995 Standards and Interpretations as eliminating the warehouse concept and ownership requirements of library resources—see various interpretations under the August 1995 Standards. The Annual Questionnaire, in my view, continues and emphasizes, as the ABA questionnaire has included in the past, the warehouse and ownership requirements of resources. The Standards do not support this.

Because of a variety of changes in how OCLC—RLIN and other bibliographical systems are being used to provide reference assistance, I urge the inclusion of these expenses as part of Collection Development Resources and the elimination of separate lines for the other categories included—Serials, online services, other, binding and preservation. In addition, consideration should be given to including in Collection Development Resources the cost of computers both hardware and software and microform readers and reader printers and cabinets as Collection Development resources. I do not see any difference of including postage and handling, service charges, etc,. as part of regular acquisition and excluding the above. Perhaps the inclusion of these costs as Collection Development resources will encourage law libraries to update equipment as part of Collection Development.

Although the Questionnaire asks for LEXIS and WESTLAW usage, there are other usages of computer resources including library networks, law school networks, Internet, CD–ROMS. This usage can be metered and the Questionnaire should reflect this usage.

5. In terms of comparative information, the ABA continues to publish comparative law library information based on JD students only. While there are apparently over 100 schools with graduate programs, graduate students are excluded by the ABA in publishing library statistics. Thus, the information about libraries in terms of usage per student and expenses per student is inaccurate and overstated.

Since the Annual Questionnaire is used as part of the inspection and accreditation process as well as its data being published by the ABA and by other publishers, the questionnaire should collect the appropriate data as reflected by the Standards. I do not think this is the case with the 1995 Questionnaire.

B. Standards

My primary concerns relate to Standards 606 and its Interpretations and to Interpretation of 602. Regarding 606 (a) if followed to its logical sequence, Interpretation 5 of Standards 606(a) relating to sharing information resources completely inhibits and reduces the possibilities of sharing of electronic resources by several libraries thru wide area networks and Internet. At the same time existing resource sharing programs by a state or regional consortium may not be in compliance. Interpretation 5 of 606(a) read in conjunction with interpretation 1 of 606(b) significantly reduces the possibilities of libraries sharing expensive but little used titles. I view the Standards and Interpretations at setting minimum Standards for compliance. To indicate as minimum requirements that all schools have to have all published regulations for the federal government and the reported decisions of the highest appellate court for each state is in my opinion, a substantial addition to earlier ABA Library Standards. I disagree that these are minimum requirements for accreditation purposes. In addition, I do have concern about the requirement of an annotated code from each state. Annotated code is a descriptive word or phrase of paper products. This term could be constructed to include only paper editions while electronic resources can and do include statutory, administrative, and case law. Thus, this term, annotated code, could be interpreted by the ABA to exclude the electronic resources simply because the term, annotated code, is used.

Regarding Interpretation of 602, the operational system for implementation of electronic resources could involve other University components beside the Main Library. The Interpretation is too restrictive and should be expanded to include the supervision of electronic resources as well.

As experience is gained with the new Standards and Interpretations, I will write to keep you informed of my concerns. In the case of the Annual Questionnaire, Fall 1995, time is very important since libraries are presently completing it. This Fall 1995 Data could be used for upcoming Accreditation reports. Regarding the concerns about the Standards and Interpretations, I would request a continuing review. As financial resources for legal education become tight, the Standards and Interpretations must provide great flexibility for law libraries to support their academic programs within the means available. The sharing of resources, including electronic resources, will become important in the near future. I simply do not view the present Standards and Interpretations as encouraging and supporting this flexibility. In regards to the Questionnaire, I would not publish the number of volumes until the ABA has decided the equivalent for electronic resources.

Sincerely yours,

Prof. Bardie C. Wolfe, Jr.,

Professor of Law and Law Library Director.

cc: Anne Bingaman, Dept. of Justice
Darryl Depriest, General Counsel—ABA
Dean Rudolph Hasl, St. John's
Dean Steven Smith, CSU
Jim White, ABA—Consultant
Dean Dan Morrissey, St. Thomas
Prof. Roy Mersky, Texas
Prof. Pat Kehoe, American University
Prof. Larry Wenger, Virginia
Florida Academic Law Library Directors

St. Thomas University School of Law

April 1, 1991.

To: Dean Jacqueline Allee
From: Bardie C. Wolfe, Jr.

Re: Economic Impact of Large Schools on National Mean and Median—Law Library Comparative Information Based on the ABA Law Library Statistics.

The ABA collects statistics from all ABA libraries and publishes the data. From this data, national mean and median, such as size of collection, budgets, salaries, etc., are established. The national mean and median of various categories of law library statistics are used for a variety of purposes.

The large schools, that is, schools with a FTE student body above 650 FTE and/or a collection of over 300,000 volumes, have a major and substantial economic impact on driving upward the national mean and median of most, if not all, measurable law library statistical categories. This process would, apparently, be normal and of little concern. However, the magnitude of the differences between the schools at the top and the schools at the bottom is great. The unbalanced differences do impact very significantly the establishment of the national mean and median for all schools.

Of the 176 schools, 109 or 62 percent have a collection of less than 300,000 volumes; of the 109 school, 35 schools or 20 percent of the total 176 schools have a collection of less than 200,000 volumes. The remaining 67 schools or 38 percent of the total have a collection of more than 300,000 volumes. Of the 176 schools, there are 96 schools or 55 percent with a student body of less than 650 FTE, and the remaining 80 schools or 45 percent have a student body of more than 650 FTE.

The duplication of materials, graduate programs and international and foreign law collections are basic factors in many schools. These factors are not measured or taken into account by the existing ABA statistics or identified separately when national mean and median in categories are developed from all the statistics from the 176 schools. The inclusion of the resources in, including staff, salaries, etc., and the economic impact of these resources on the establishment of national mean and median are unknown.

They may be overlooked when national mean and median are used for statistical comparisons.

The size of the collection, that is, the number of hard copy and microform volumes, has been the ABA measuring tool. All comparative information available from the ABA statistics is based on the size of collection. There are five broad categories: Collection size from 0 to 100,000 volumes; 100,000 to 200,000 volumes; 200,000 to 300,000 volumes; 300,000 volumes and over; and collection size 0 to all volumes. These categories were established many years ago when few libraries had over 300,000 volumes. At present, there are 67 libraries which contain over 300,000 volumes. In fact, there are approximately 16 libraries with more than 500,000 volumes, and approximately 34 libraries with more than 400,000 volumes, including the 16 above.

This report is an attempt to provide information about the establishment of the national mean and median of law library statistical categories. Please note that the new technologies, including on-line services, CD–ROM, video, etc., have not been built into the measuring tool used by the ABA, that is the size of collection. In addition, microform statistics for titles added or held are not reliable to provide this information to add to the hard copy title added or held categories. The number of students, specialized programs in some schools, or their missions also have not been built into the measuring tool, except in two areas, information resources per student and computer retrieval per student per year. In these two areas, the ABA mixes two years of information, and this use may not be a correct assessment of a library's program.

Thus, for the above reasons, and with exceptions, the report is an analysis of traditional academic law libraries, and the measuring tool for the analysis is what the ABA uses, the size of collection.

The following tables provide an overview of the economic impact of the inclusion of the data from large schools on the establishment of national means and medians for various law library statistical categories. The information has been taken from the Fall 1990 ABA Law Library Comprehensive Statistical Table Data. The law library has enhanced the basic information to create the tables, comparisons and characteristics indicated. All tables use COLLECTION SIZE RANGE OF VOLUMES for the comparison with the exception of two tables which were created by the law library and are based on FTE size of student body with range. Without reinputting all data from all schools, there is no possibility of creating the same tables for the other comparisons used in the report. The two tables created by the law library do support the conclusion that the large schools have a major and substantial economic impact on driving upward the national mean and median of all schools, simply because of size and the resources needed to sustain the academic program because of size.

The tables are as follows:

TABLE 1.—TOTAL LAW LIBRARY BUDGETS FOR 1990–91

Collection size range of volumes	Mean budget for 1990–91	Number of schools	Total budget of all schools	Percent of total
0 to 100,000	0	0	0	0
100,000 to 200,000	$804,634	34	$27,357,556	12
200,000 to 300,000	1,127,992	73	82,343,416	36
300,000 and Over	1,824,354	65	118,583,010	52
All schools reported mean	1,327,232	172	228,283,909	

Note—Federal Work Study funds are not included. Of the 176 law schools only 172 reported 1990–91 budgets.

TABLE 2.—TOTAL LAW LIBRARY EXPENSES FOR 1989–90

Collection size range of volumes	Mean expenses for 1989–90	Number of schools	Total expenses of all schools	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	$782,072	34	$26,590,448	12
200,000 to 300,000	1,080,107	73	78,847,811	36
300,000 and Over	1,744,301	66	115,123,866	52
All schools reported mean	1,274,925	173	220,562,025	

Note—Federal Work Study funds are not included. Of the 176 law schools only 173 reported 1989–90 expenses.

TABLE 3.—TOTAL INFORMATION RESOURCES EXPENSES FOR 1989–90

Collection size range of volumes	Mean expenses for 1989–90	Median expenses for 1989–90	Total expenses all schools	Percent total
0–100,000	0	0	0	0
100,000 to 200,000	$372,223	$356,105	$12,655,582 (34)	13
200,000 to 300,000	502,535	484,102	36,685,055 (73)	38
300,000 and Over	732,289	700,033	48,331,074 (66)	50
All schools reported mean and median	564,576	525,415	97,671,648 (173)	

Note—Total information resources expenses include expenses for all forms of information, including serials, monographs, microforms, binding, computer-based services, others such as video and audio. Of the 176 law schools only 173 reported 1989–90 expenses for information resources.

TABLE 4.—INFORMATIONAL RESOURCES EXPENSES PER STUDENT (SEE NOTE)

Collection size range of volumes	Books dollars per student—mean—	Mean FTE number of students	Book dollars per student—median—
0–100,000	0	0	0
100,000 to 200,000	$851.89	475 (34)	$823.80
200,000 to 300,000	885.17	625 (74)	807.70

TABLE 4.—INFORMATIONAL RESOURCES EXPENSES PER STUDENT (SEE NOTE)—Continued

Collection size range of volumes	Books dollars per student—mean—	Mean FTE number of students	Book dollars per student—median—
300,000 and Over	912.53	865 (67)	902.20
All schools reported mean and median	889.07	688 (175)	855.10

Note—Book dollars per student are determined by the FTE student count as of October 1990 and the total information resources' expenses for 1989–90. ABA tables do not identify this category as either 1990–91 or 1989–90. The mix of the two year information may not be a correct assessment of this information. SEE TABLE 5, 6, and 7 for additional analysis.

TABLE 5.—COLLECTION SIZE ANALYSIS OF INFORMATIONAL RESOURCES EXPENSES PER STUDENT (SEE NOTE)

Collection size range of volumes	Mean expenses for 1989–90	Mean FTE number of students—89	Book dollars per student—Mean
0 to 100,000	0	0	0
100,000 to 200,000	$372,223 (34)	466 (45)	$798.76
200,000 to 300,000	502,535 (73)	636 (73)	790.15
300,000 and Over	732,289 (66)	875 (57)	836.90
All Schools	564,576 (173)	668 (176)	845.17

Note—This table developed by law library from both the 1989 and 1990 ABA law library comprehensive statistical table data. This table is NOT an accurate indication of book dollars per student, since there were shifts in the number of students in the two categories for the two years. The ABA Fall data for 1989 indicates 45 schools with a collection count of 100,000 to 200,000 and 57 schools with a collection count of 300,000 volumes or more; this compares to the ABA Fall data for 1990 in which the ABA reports 34 schools with a collection count of 100,000 to 200,000 and 66 schools with a collection count of 300,000 volumes or more. The number of schools with a collection count of between 200,000 and 300,000 volumes stayed the same, although the data for Fall 1990 would, apparently, indicate that the schools at the high end of approaching 300,000 volumes in 1988–89 moved into the 300,000 volumes or more category by the end of 1989–90. The same would be true of the number of schools in the 100,000 to 200,000 volume category in 1988–89 moving into the next category of 200,000 to 300,000 volumes. This shift of 10 or more schools into the next and higher category would impact any assessment using the two years of information, Fall 1989 and Fall 1990, when the collection size range of volumes category is used as the ABA has used them. See next two tables, developed by the Law Library and based on FTE students and not on collection size.

TABLE 6.—FTE ANALYSIS OF INFORMATIONAL RESOURCES EXPENSES PER STUDENT (SEE NOTE)

FTE size of school—range with 1990 FTE and 1989–90 expenses	Mean expenses for 1989–90	Median expenses for 1989–90	Per student mean expenses	Per Student median expenses
0 to 450 students	$382,795	$373,824	$1,149.49	$1,072.20
451 and 650 students	512,122	477,332	966.04	957.80
651 to 875 students	584,010	585,301	784.57	768.10
876 to 1,100 students	666,873	638,239	671.18	626.40
1,101 and Over	862,503	742,222	641.64	619.00
All Schools	564,576	525,415	889.17	855.10

Note—In October 1990, there were 32 schools in the 0–450 category with an average of 341 FTE (1 school did not report expenses). There were 64 schools in the 451–650 category with an average of 532 FTE (4 schools at low end included 437 FTE −443 FTE). There were 45 schools included in the 651–875 category with an average of 749 FTE. There were 18 schools in the 876–1,100 category with an average of 988 FTE. There were 20 schools in the 1,101 and over category with an average of 1,319 FTE.

TABLE 7.—FTE ANALYSIS OF INFORMATION RESOURCES EXPENSES PER STUDENT (SEE NOTE)

FTE size of school—range with 1989 FTE and 1989–90 expenses	Mean expenses for 1989–90	Median expenses for 1989–90	Per student mean expenses	Per student median expenses
0 to 450 students	$384,199	$386,579	$1,184.22	$1,112.99
451 to 650 students	529,607	513,127	991.63	954.80
651 to 875 students	581,536	585,301	791.81	778.44
876 to 1,100 students	581,536	585,301	678.85	695.01
1,101 and Over	881,627	742,222	670.02	610.61
All Schools	564,576	525,415	845.17	868.45

Note—In October 1989, there were 37 schools in the 0–450 category with an average FTE of 338 (1 school did not report expenses). There were 59 schools in the 451 to 650 category with an average of 535 FTE. There were 43 schools in the 651 to 875 category with an average of 742 FTE (1 school did not report expenses). There were 17 schools in the 876 to 1,100 category with an average of 990 FTE. There were 19 schools in the 1,101 and over category with an average of 1,301 FTE.

This table developed by the Law Library. The ABA does not use FTE size as a measuring factor; the ABA uses collection size.

TABLE 8.—TOTAL COLLECTION SIZE ANALYSIS

Collection size range of volumes	Mean size at start of 90–91	Median size at start of 90–91	Total size at start of 90–91	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	165.333 (35)	167,591	5,786,665	11
200,000 to 300,000	245,613 (74)	250,839	18,175,362	33
300,000 and Over	455,320 (67)	395,672	30,506,440	56
All Schools	309,480 (176)	267,945	54,468,480	.....

Note—Volumes include hard copy and microform volume equivalency.

TABLE 9.—VOLUMES ADDED ANALYSIS FOR 1989–90

Collection size range of volumes	Mean volumes added 89/90	Median volumes added 89/90	Total volumes added 89/90	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	11,588 (35)	7,378	405,580	16
200,000 to 300,000	11,555 (74)	10,442	855,070	33
300,000 and Over	19,790 (67)	16,569	1,325,930	51
All Schools	14,696 (176)	11,368	2,586,496	.....

Note—Volumes added included hard copy and microform volume equivalency.

TABLE 10.—TITLES ADDED ANALYSIS FOR 1989–90

Collection size range of volumes	Mean titles added—89/90	Median titles added—89/90	Total titles added—89/90	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	1,198 (35)	1,166	41,930	11
200,000 to 300,000	1,633 (73)	1,620	119,209	32
300,000 and Over	3,100 (67)	2,665	207,700	56
All Schools	2,108 (175)	1,692	368,900	.....

Note—Only hard copy titles are included in this table. The count of microform titles either added or held is not reliable to produce statistical comparisons.

TABLE 11.—TITLES HELD ANALYSIS AT START OF 1990–91

Collection size range of volumes	Mean titles held	Median titles held	Total titles held	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	21,328 (34)	21,341	725,152	7
200,000 to 300,000	37,782 (74)	34,724	2,795,868	27
300,000 and Over	102,151 (66)	76,276	6,741,966	66
All Schools	58,983 (174)	38,710	10,263,042	.....

Note—Only hard copy titles are included in this table. The count of microform titles held is not reliable to produce statistical comparisons.

TABLE 12.—SERIAL SUBSCRIPTIONS ANALYSIS AT START OF 1990–91

Collection size range of volumes	Mean serial subscriptions	Median serial subscriptions	Total serial subscriptions	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	2,367 (35)	2,444	82,845	12
200,000 to 300,000	3,587 (73)	3,487	233,629	32
300,000 and Over	5,600 (67)	5,364	375,200	52
All Schools	4,114 (175)	3,760	719,950	.....

TABLE 13.—SERIAL SUBSCRIPTIONS EXPENSES ANALYSIS FOR 1989–90

Collection size range of volumes	Mean expenses subscriptions	Median expenses subscriptions	Total expenses subscriptions	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	$278,132 (34)	$268,284	$9,456,488	13
200,000 to 300,000	381,289 (73)	376,149	27,834,097	38
300,000 and Over	544,141 (66)	514,715	35,913,306	49
All Schools	423,144 (173)	401,846	73,203,912	

TABLE 14.—SERIAL TITLES ANALYSIS AT START OF 1990–91

Collection size range of volumes	Mean titles active subs.	Median titles active subs.	Total titles active subs.	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	2,238 (35)	2,210	78,330	12
200,000 to 300,000	3,267 (72)	3,366	235,224	37
300,000 and Over	4,916 (67)	4,622	329,372	51
All Schools	3,695 (174)	3,446	642,930	

TABLE 15.—DUPLICATIONS OF SUBSCRIPTIONS ANALYSIS FOR 1990–91

Collection range of volumes	Mean serial subscriptions	Mean serial titles	Estimated projection of duplication of serial subscriptions		Percent of total
			Difference	Percent of mean subs	
0 to 100,000	0	0	0	0	0.
100,000 to 200,000	2,367	2,238	130	5	31.
200,000 to 300,000	3,587	3,267	320	9	76.
300,000 and Over	5,600	4,916	684	12	Off sc. and above.
All Schools	4,114	3,695	419	10	63.

Note—This table provides an overview of the extent of duplication of serial subscriptions; as an example, more than 1 copy of the Federal Reporter 2d, the ALR series, etc. *This table should be used in conjunction with the serial subscription expenses' table on this page.*

TABLE 16.—COMPUTER RETRIEVAL EXPENSES FOR 1989–90

Collection size range of volumes	Mean expenses retrieval	Median expenses retrieval	Total expenses retrieval	Percent of total
0 to 100,000	0	0	0	0
100,000 to 200,000	$33,341 (34)	$31,067	$1,133,594	16
200,000 to 300,000	39,713 (73)	36,494	2,890,049	40
300,000 and Over	48,533 (66)	41,023	3,203,178	44
All Schools	41,826 (173)	36,286	7,235,898	.....

TABLE 17.—COMPUTER RETRIEVAL TO TOTAL INFORMATIONAL RESOURCES EXPENSES FOR 1939–90

Collection size range of volumes	Mean expenses all information	Mean expenses only retrieval	Percent
0 to 100,000	.....	.....	.....
100,000 to 200,000	$372,223	$33,341	9
200,000 to 300,000	502,535	39,713	8
300,000 and Over	732,289	48,533	7
All Schools	564,576	41,826	7

TABLE 18.—FTE STUDENTS FOR 1990–91

Collection size range of volumes	Mean number students FTE	Median number students FTE	Total number students FTE	Percent of total
0 to 100,000	0	0	0	0

TABLE 18.—FTE STUDENTS FOR 1990–91—Continued

Collection size range of volumes	Mean number students FTE	Median number students FTE	Total number students FTE	Percent of total
100,000 to 200,000	475 (34)	471	16,150	14
200,000 to 300,000	625 (74)	614	46,250	39
300,000 and over	865 (67)	783	57,955	49
All Schools	688 (173)	629	119,024	

TABLE 19.—RETRIEVAL USAGE FOR 1989–90

Collection size range of volumes	Mean retrieval usage 89/90	Median retrieval usage 89/90	Total retrieval usage 89/90	Percent of total
0 to 100,000	0	0	0	0
100,000 to 200,000	2,733 (35)	2,449	95,655	11
200,000 to 300,000	4,319 (74)	3,866	319,606	38
300,000 and Over	6,342 (66)	6,097	418,572	50
All Schools	4,765 (175)	4,048	833,875	

TABLE 20.—RETRIEVAL USAGE PER STUDENT PER YEAR COMPARISON (SEE NOTE)

Collection size range of volumes	Mean retrieval 1990 FTE students	Mean retrieval 1989 FTE students
0 to 100,000	0	0
100,000 to 200,000	6.0 (34)	5.9 (45)
200,000 to 300,000	7.1 (74)	6.8 (73)
300,000 and Over	7.7 (66)	7.3 (57)
All Schools	7.1 (174)	7.1 (176)

Note—The ABA uses the 1989–90 retrieval hours with the October Fall FTE 1990 student count to determine retrieval usage per student per year. The law library has, for this table, used in the first column the exact figures from the Fall 1990 ABA Law Library Comprehensive Statistical Table Data. For the second column, the law library used the 1989–90 retrieval hours but also used the FTE student count from the 1989 ABA Law Library Comprehensive Statistical Table Data. As noted above the number of schools in the categories has shifted because of the base of collection size.

TABLE 21.—OTHER INFORMATIONAL RESOURCES' EXPENSES FOR 1989–90

[Note—Serial and Retrieval Expenses and Binding Not Included]

Collection size range of volumes	Mean expenses 1989–90	Median expenses 1989–90	Total expenses 1989–90	Percent of total
0 to 100,000	0	0	0	0
100,000 to 200,000	$53,357 (34)	$36,030	$1,814,138	12
200,000 to 300,000	72,992 (72)	57,170	5,255,424	35
300,000 and Over	120,224 (66)	107,989	7,934,478	53
All Schools	87,234 (172)	65,617	15,004,248	

TABLE 22.—STAFF SIZE COMPARISON—1990–91 STAFF FTE

[Note—All Staff Except Students]

Collection size range of volumes	Mean of staff size	Median of staff size	Total of staff	Percent of total
0 to 100,000	0	0	0	0
100,000 to 200,000	12.5 (35)	11.0	437.5	13
200,000 to 300,000	15.1 (74)	15.2	1,117.4	33
300,000 and Over	27.5 (67)	21.3	1,842.5	54
All Schools	19.3 (176)	16.6	3,396.8	

TABLE 23.—PROFESSIONAL STAFF SIZE COMPARISON—1990–91 FTE

[Note—includes only professional staff]

Collection size range of volumes	Mean of staff size	Median of staff size	Total of staff	Percent of total
0 to 100,000	0	0	0	0
100,000 to 200,000	5.7 (35)	5.0	199.5	14
200,000 to 300,000	6.8 (74)	6.5	503.2	34
300,000 and Over	11.3 (67)	9.8	757.10	52
All Schools	8.3 (176)	7.0	1,460.8	

TABLE 24.—PROFESSIONAL STAFF SALARY COMPARISON—1990–91 SALARIES

Collection size range of volumes	Mean of staff size	Median of staff size	Total of staff	Percent of total
0 to 100,000	0	0		
100,000 to 200,000	$29,876 (35)	$28,690		
200,000 to 300,000	32,669 (72)	31,525		
300,000 and Over	36,378 (65)	34,783		
All Schools	33,502 (172)	32,179		

TABLE 25.—STUDENT STAFF—NUMBER OF HOURS AND PAY—COMPARISON 1989–90

Collection size range of volumes	Mean of number hours per year	Mean of wage per hour
0 to 100,000	0	0
100,000 to 200,000	7,255 (35)	$4.79 (34)
200,000 to 300,000	10,832 (73)	5.05 (72)
300,000 and Over	14,531 (67)	5.51 (66)
All Schools	11,364 (175)	5.18 (172)

TABLE 26.—SALARY ANALYSIS FOR ALL FTE STAFF FOR 1989–90 EXPENSES

[Note—Does not include student wages, Work Study federal share, or temporary part time]

Collection size range of volumes	Mean salary expenses for 1989–90	Median salary expenses for 1989–90	Total salary expenses for 1989–90	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	$257,330 (34)	$233,527	$8,749,220	11
200,000 to 300,000	355,654 (73)	339,584	25,962,742	34
300,000 and Over	638,385 (65)	519,361	41,495,025	54
All Schools Mean	443,064 (172)	375,493	76,207,008	.....

TABLE 27.—FRINGE BENEFITS' EXPENSES ANALYSIS FOR 1989–90

Collection size range of volumes	Mean salary expenses for 1989–90	Median salary expenses for 1989–90	Total salary expenses for 1989–90	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	$54,623 (34)	$49,408	$1,857,182	10
200,000 to 300,000	84,537 (71)	85,616	6,002,127	34
300,000 and Over	155,540 (64)	130,780	9,954,560	56
All Schools Mean	105,408 (169)	93,520	17,813,952	.....

TABLE 28.—WAGE EXPENSES ANALYSIS FOR 1989–90

[Note—Includes student wages, not federal work study portion, temporary part time]

Collection size range of volumes	Mean wages for 1989–90	Median wages for 1989–90	Total wages for 1989–90	Percent of total
0 to 100,000	0	0	0	0
100,000 to 200,000	$22,006 (31)	$19,679	$682,186	8

TABLE 28.—WAGE EXPENSES ANALYSIS FOR 1989–90—Continued

[Note—Includes student wages, not federal work study portion, temporary part time]

Collection size range of volumes	Mean wages for 1989–90	Median wages for 1989–90	Total wages for 1989–90	Percent of total
200,000 to 300,000	43,173 (73)	33,595	3,151,629	39
300,000 and Over	66,821 (65)	60,324	4,343,365	53
All Schools	48,386 (169)	34,459	8,177,234	.....

TABLE 29.—GRAND TOTAL—ALL SALARIES, WAGES AND FRINGE BENEFITS—EXPENSES FOR 1989–90

[NOTE.—Does Not Include Federal Work Study Funds, Federal Share]

Collection size range of volumes	Mean salary expenses for 1989–90	Median salary expenses for 1989–90	Total salary expenses for 1989–90	Percent of total
0 to 100,000	0	0	0	0
100,000 to 200,000	$332,017 (34)	$301,528	$11,288,578	11
200,000 to 300,000	481,047 (73)	451,329	35,116,431	34
300,000 and Over	858,353 (65)	696,258	55,792,945	55
All schools	594,174 (172)	521,210	102,197,928	

TABLE 30.—FEDERAL WORK STUDY CONTRIBUTION ANALYSIS EXPENSES FOR 1989–90

Collection size range of volumes	Mean share for 1989–90	Median share for 1989–90	Total share for 1989–90	Percent of total
0 to 100,000	0	0	0	0
100,000 to 200,000	$15,630 (29)	$11,392	$453,270	12
200,000 to 300,000	13,368 (55)	10,472	735,240	20
300,000 and Over	52,034 (49)	13,759	2,549,666	68
All schools	28,107 (133)	11,342	3,738,231	

TABLE 31.—NUMBER OF HOURS OF PROFESSIONAL ON DUTY ANALYSIS FOR 1990–91

[NOTE.—Number of Hours per Week—Regular Semester Schedule]

Collection size range of volumes	Mean hours library has on duty	Mean hours reference available
0 to 100,000	0	0
100,000 to 200,000	62 (35)	62 (35)
200,000 to 300,000	69 (74)	72 (73)
300,000 and Over	70 (67)	70 (67)
All schools	68 (176)	70 (175)

TABLE 32.—SPECIAL COMPARISON—INFORMATION RESOURCE AND SALARIES TO TOTAL EXPENSES—1989–90

[NOTE—Federal Work Study Funds are not Included In This Table Comparison]

Collection size range of volumes	Mean total all library expenses 1989–90	Total information expenses 1989–90	Percent	Total salaries expenses 1989–90	Percent
0 to 100,000	0	0	0	0	0
100,000 to 200,000	$782,072	$372,223	48	332,017	42
200,000 to 300,000	1,080,107	502,535	47	481,047	45
300,000 and Over	1,744,301	732,289	42	858,353	49
All Schools	1,274,925	564,576	44	594,174	47

Note: Salary expenses includes all salaries, wages and fringe benefits except for federal work study portion of student wages. Remainder of expenses not included are expenses of operaitons, such as supplies, computer-bibliographic systems, automation, conferences and travel, etc.

TABLE 33.—SPECIAL COMPARISON—LIBRARY BUDGET FOR 1990–91 AND LIBRARY EXPENSES FOR 1989–90 PER STUDENT ANALYSIS.

Collection size range of volumes	Mean budget for 1990–91	FTE students October 90	1990–91 estimated budget per student for library program
0 to 100,000	0	0	0
100,000 to 200,000	$804,634	475	$1,693.97
200,000 to 300,000	1,127,992	625	1,804.79
300,000 and Over	1,824,354	865	2,109.08
All Schools	1,327,232	688	1,929.12

Collection size range of volumes	Mean expenses for 1989–90	FTE students October 89	1989–90 estimated expenses per student for library program
0 to 100,000	0	0	0
100,000 to 200,000	$782,072	466	$1,678.27
200,000 to 300,000	1,080,107	636	1,698.28
300,000 and Over	1,744.301	875	1,993.49
All Schools	1,274,925	668	1,908.57

Note: Table 33 does not include federal work funds, either in 1990–91 budget or 1989–90 expenses.

TABLE 34.—SPECIAL COMPARISON OF PER STUDENT EXPENSES

Collection size range of volumes	1989–90 Estimated expenses per student for library program	1989–90 Estimated salary expenses per student for library program	1989–90 Estimated information expenses per 89 FTE student for library program
0 to 100,000	0	0	0
100,000 to 200,000	$1,678.27	$746.02	$798.76
200,000 to 300,000	1,698.28	777.38	790.15
300,000 and over	1,933.49	1,040.44	836.90
All schools	1,908.57	931.56	845.17

Note.—Information taken from TABLE 33, TABLES 29 and 30 COMBINED, AND TABLE 5. In these tables, several schools did not report data and special comparison may be off. Salary information does include federal work study funds. However, it is believed that the characteristics of this table are true—that is that the libraries, generally, with less than 300,000 volumes spend more for information resources than for salaries and fringes while libraries, generally, with more than 300,000 volumes spend more for salaries and fringes than for information resources.

These tables are an attempt to document the economic impact of the schools with more than 300,000 volumes on the establishment of the national mean and median of various law library statistical categories of all 176 schools. Based on the Fall 1990 ABA statistics, there are 67 schools or 38 percent of all schools with more than 300,000 volumes.

In summary, the ABA uses SIZE OF COLLECTION as the basic measuring tool to determine the national mean and median of all law library statistical categories. The direct consequence of this use is that the schools with more than 300,000 volumes exert a very significant and substantial economic impact on driving upward the national mean and median in various statistical categories for all schools with less than 300,000 volumes. For schools with less than 200,000 volumes, the economic impact has major consequences for them to comply with the national mean and median.

In important categories of statistical analysis in comparing law libraries, the total resources, based on the mean of all schools with less than 300,000 volumes, do not equal the total resources of the schools with more than 300,000 volumes. From the tables, the information reveals.

Category	Total resources all schools with less than 300,000 volumes (109 schools)	Total resources all schools with more than 300,000 volumes (67 schools)
1. Table 1—Budget for 1990–91	$109,700,972	$118,583,010
2. Table 2—Expenses for 89–90	$105,438,259	$115,123,866
3. Table 3—Information Expenses for 1989–90	$48,340,637	$48,331,074
4. Table 8—Total Collection in Number of Volumes	23,962,027	30,506,440
5. Table 9—Volumes added 89–90	1,260,650	1,325,930
6. Table 10—Titles added 89–90	160,839	207,700
7. Table 11—Titles held at start of 1990–91 (Hard Copy Only)	3,521,020	7,741,966
8. Table 12—Serial Subscriptions	316,474	375,200
9. Table 13—Serial Expenses	$37,290,585	$35,913,306
10. Table 14—Serial Titles	313,554	329,371
11. Table 15—Duplication of Serial Subscriptions	450	684
12. Table 16—Retrieval Expenses	$4,023,643	$3,203,178
13. Table 18—FTE students '90	62,400	57,955

Category	Total resources all schools with less than 300,000 volumes (109 schools)	Total resources all schools with more than 300,000 volumes (67 schools)
14. Table 19—Retrieval use 89–90	415,261	418,572
15. Table 21—Other Information Resources (Treatises) Expenses for 89–90	$7,069,562	$7,934,478
16. Table 22—Total Number of FTE Staff	1,554.9	1,842.5
17. Table 23—Total Number FTE Librarians	702.7	757.1
18. Table 26—Salaries paid 89–90	$34,711,962	$41,495,025
19. Table 27—Fringe Benefits paid 89–90	$7,859,309	$9,954,560
20. Table 28—Wages paid 89–90	3,833,815	$4,343,365
21. Table 29—All Salary, Wages, and Fringes paid 89–90	$46,405,009	$55,792,945
22. Table 30—Federal Work Study Funds, paid 89–90	$1,188,510	$2,549,231

As noted, the basic measuring tool is *size of collection*. However, when FTE students rather than size of collection is the measuring tool, the economic impact is that larger schools are driving downward the per student analysis of all schools. Table 6 and 7 reveal the following:

For libraries with less than 200,000 volumes, the economic impact of the use of libraries with 300,000 or more volumes to establish the national mean of certain categories is major. The tables reveal the following:

Category	Mean of schools with less than 200,000 vols.	Mean of schools with more than 300,000 vols.	National mean of all schools	Percent schools less than 200,000 vols. are to schools with more than 300,000 vols.	Percent schools less than 200,000 vols. are to National mean
1. Table 1, Budget 90–91	$804,634	$1,824,354	$1,327,232	44	61
2. Table 2, Expenses 89–90	$782,072	$1,744,301	$1,274,925	45	61
3. Table 3, Information Expenses 89–90	$372,223	$732,289	$564,576	51	66
4. Table 8, Collection Size	165,333	455,320	309,480	36	53
5. Table 9, Volumes added 89–90	11,588	19,790	14,696	59	75
6. Table 10, Titles added, 89–90 Hard	1,198	3,100	2,108	39	57
7. Table 11, Titles held Hard only	21,328	102,151	58,983	21	36
8. Table 12, Serial Subscriptions	2,367	5,600	4,114	36	58
9. Table 13, Serial Expenses	$278,132	$544,141	$423,144	51	66
10. Table l4, Serial Titles	2,238	4,916	3,695	46	61
11. Table 15, Duplication-Serials	130	684	419	19	31
12. Table l6, Retrieval Expenses	$33,341	$48,533	$41,826	69	80
13. Table 18, FTE Students 90	475	865	688	55	69
14. Table 19, Retrieval use	2,733	6,342	4,765	43	57
15. Table 21, Other information Expenses (Treatises)	$53,357	$120,224	$87,234	44	61
16. Table 22, Total Staff, FTE	12.5	27.5	19.3	45	65
17. Table 23, Total Librarians—FTE	5.7	11.3	8.3	50	69
18. Table 26, Total Salaries Paid	$257,330	$638,385	443,064	40	58
19. Table 27, Total Fringes Paid	$54,623	$155,540	$105,408	35	52
20. Table 28, Wages Paid	$22,006	$66,821	$48,386	33	55
21. Table 29, All Salary, wages fringes paid	$332,017	$858,353	$594,174	39	56
22. Table 30, Federal Work Study paid	$15,630	52,034	28,107	30	56

As noted, the basic measuring tool is size of collection. Large schools; that is, schools with a collection of more than 300,000 volumes, do have a very significant economic impact on the establishment of the national mean (as well as median) for law library statistical categories. For schools with less than 200,000 volumes, the economic impact indicates very significant problems in being able to meet the national mean of all schools.

This report provides detailed information about the establishment of the national mean and median of 176 law schools based on size of collection as the measuring tool. Thirty-four different tables have been used and twenty-two measuring characteristics based on size of collection summarize the information.

Temple University, School of Law

1719 N. Broad Street (055–00), Philadelphia, Pennsylvania 19122, (215) 204–7861, Fax: (215) 204–1185

October 16, 1995.

Mr. John Greaney,

Chief, Computers and Finance Section, Antitrust Division, U.S. Department of Justice, JCB Building, 555 4th Street NW., Washington, D.C. 20530, FAX 202 616–8544

Dear Mr. Greaney: I was shocked to learn that your interpretation of the proposed Consent Decree between the American Bar Association and the U.S. Department of Justice prohibits review of race and/or gender discrimination in salary and/or fringe benefits.

Both the ABA and the U.S. government have been on record for a long period of time in opposing discrimination on the basis of race and/or gender. Specifically, it is the job of the Department of Justice to fight discrimination on the basis of race and/or gender. I therefore do not understand your interpretation.

Section IV, Prohibited Conduct, of the proposed consent decree enjoins the ABA from,

''(B) collecting from or disseminating to any law school data concerning compensation paid or to be paid to deans, administrators, faculty, librarians, or other employees;

(C) using law school compensation data in connection with the accreditation or review of any law school;''

Section V, Permitted Conduct, states,

''Nothing herein shall be construed to prohibit the ABA from: . . . (2) investigating or reporting on whether a law school is in compliance with such Standards, Interpretations or Rules, or the cause of non-compliance; or (3) requiring that a law school take remedial action to comply with such Standards, Interpretations or Rules as a condition of obtaining or maintaining ABA approval.''

Since ABA Accreditation Standards 211 to 213 prohibit discrimination, Section V of the proposed Consent Decree clearly allows review and use of salary and fringe data for the purpose of determining whether the school is discriminating when a colorable claim of discrimination has been raised.

It is an outrage that the Clinton Administration has taken a position against the enforcement of anti-discrimination provisions. I suggest strongly that you change your interpretation of the proposed Consent Decree.

Sincerely,

Marina Angel,

Professor of Law.

Gonzaga University

Office of the President

September 5, 1995.

Dear Mr. Greaney: On August 11, 1995, I received the enclosed memorandum from the General Counsel of the ABA advising that the proposed final Judgment in the ABA anti-trust matter is subject to public comment through the end of September. The notice did not indicate to whom comments should be sent but through other sources I was advised that you were the proper person to receive those comments.

Enclosed are my comments which hopefully will be given consideration. If I have forwarded these to the wrong office, please advise.

Sincerely,

Bernard J. Coughlin, S.J.,

President.

Mr. John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Anti-Trust Division, 555 Fourth St., NW., Room 9903, Washington, DC 20001.

Enclosures

c: John E. Clute, Dean of the School of Law

Darryl L. DePriest

General Counsel

American Bar Association, 541 North Fairbanks Court, Chicago, Illinois 60611–3314, (312) 988–5215

Memorandum

To: Presidents of Universities with ABA Approved Law Schools

From: Darryl L. DePriest

Date: August 3, 1995

Re: Law School Accreditation Process

As you may have read or heard, the American Bar Association and the Department of Justice have entered into a settlement agreement concerning the Department's investigation of the ABA's law school accreditation process.

Enclosed is a copy of the proposed Final Judgment. This proposal will be subject to public comment through the end of September, after which we anticipate the Court's approval.

Allow me to suggest that you review the proposed Final Judgment in concert with the letter, dated June 14, 1995, from President Bushnell and President-Elect Ramo. I believe you will find that the ABA either had done or had already decided to do everything that will be required pursuant to the proposed Final Judgment. For your further information, I am including a copy of President Bushnell's statement explaining why the American Bar Association decided to enter into the settlement agreement.

If you have any questions about this matter, please do not hesitate to contact me.

DLD:md

Enclosures

Comments as to Proposed Final Judgment in United States of America v. American Bar Association, U.S. District Court, District of Columbia, Civil Action No. 95 1211

1. *Site Evaluation Team:* Paragraph VI, subparagraph (G) of the proposed Final Judgment should be amended to provide that at least forty (40%) percent of the members of the evaluation team be other than law school deans or faculty members. The proposal as written is satisfactory for a five (5) person team; however, if the site evaluation team includes more than five members, the proposal provides inadequate assurances as to representation.

2. *Control of Resources:* The proposed Final Judgment should be amended to state that the responsibility of the Special Commission referenced in § 7(A) of the proposed Final Judgment also includes the subject of ''Control of resources.''

Control of financial resources gives effective control of salaries, compensation, fringe benefits, stipends, and working conditions of law school faculty and personnel. The proposed Final Judgment does not directly address the matter of ''control of resources'' in § IV—Prohibited Conduct or in § VII—Special Commission.

Control and domination by legal educators of the ABA's ''law school accreditation standard-setting and enforcement process'' is a principal theme of the Complaint (see Complaint at § 9). Complaint §§ 28–33 allege that that control has been used for inappropriate purposes. For example, see Complaint § 28: ''* * * site inspection teams * * * have at times been unduly concerned with the salaries, perquisites and working conditions of their colleagues, among other things. Site inspection teams on occasion have incorporated law faculty demands and complaints into their site inspection reports.'' By imposing requirements going beyond the matter of compliance with the Standards, ''the ABA Accreditation Committee demands that the school exceed the Standard's minimum requirements or meet the law school's stated aspirational goals'' (Complaint § 29) which aspirational goals typically are set by law school faculty and personnel.

The ABA Standards and Interpretations are designed and enforced to give the law school dean and faculty effective control over resources contributed to or generated by the law school. For example, see the ABA's Interpretation of Standards 201, 209, and 210 (coupled with 105). Additionally, Standard 702 requires physical facilities to be under the ''exclusive control'' of the law school.

Unlike the Law School deans and faculty, the governing board of the University (of which the Law School is a part) is safely-distant and removed from the accreditation process. Control over resources should be the ultimate responsibility of the University and its governing board. However, the present ABA Standards, Interpretations and enforcement serve to remove control of law school resources from the University's governing board.

3. *Adequacy of Notice:* The notification from the ABA of the opportunity to comment on proposed Final Judgment did not include identification of the office to whom such comments should be sent. Though possibly not intended, that omission likely will reduce the number of public responses.

University of La Verne

September 28, 1995.

John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., Room 9903, Washington, DC 20001

Dear Mr. Greaney: The University of La Verne submits the following regarding the proposed Final Judgment in *United States* v. *American Bar Association,* and requests that they be given consideration.

The proposed Final Judgment (the ''Judgment'') does not adequately address the findings of the Department of Justice, nor does it deal with certain other anti-competitive aspects of the American Bar Association accreditation process. In the Competitive Impact Statement, the DOJ discussed the ABA's policies with regard to Student-Faculty ratios, teaching loads, resources and facilities, among other things. Despite the ABA's record in these matters, the Judgment fails to deal strongly enough with many of them.

1. RESTRICTION ON NON-ABA GRADUATES: Although the Judgment deals with the question of ABA schools accepting students and graduates from state-accredited institutions, it fails to address the full consequences of the ABA's ''capture of the accreditation process.''

Specifically, the Judgment does not restrain the ABA's support of ABA-only graduation requirements for admission or employment. The ABA states in its Standard 102 ''that every candidate for admission to the bar should have graduated from a law school approved by the American Bar Association.'' It has on at least one occasion filed an *amicus* brief in a suit by a graduate of a state-accredited school seeking admission in Nevada, a state with no ABA law school of its own. In recent years several states have abandoned admission rules which permitted non-ABA graduates to sit

for the Bar, and the Judge Advocate General branches of the armed forces have enforced an ABA-only rule. Given the DOJ findings, these states and agencies in effect require adherence to standards which are the product of anti-competitive actions by the ABA.

The Law School Admission Council, which is responsible for producing and administering the LSAT, restricts membership to ABA schools, despite the use of the LSAT by non-ABA institutions. As a result, non-ABA schools are denied access to important seminars and information about the LSAT.

The DOJ should examine the ABA's possible role in seeking ABA-accreditation exclusivity, and deal with it by enjoining such activities or by requiring remedial action.

2. FACILITIES: The ABA standards on physical facilities, and the interpretation thereof, raise serious concerns. The Competitive Impact Statement implies that the standard on physical facilities has been improperly applied, pointing out that a substantial percentage of schools have been criticized by Site Visitation Teams despite new or renovated facilities. The Judgment leaves this and other topics to a Special Commission previously formed by the ABA. That Commission (the Wahl Commission) has generated a lengthy report which rewords the physical facility standards but leaves the mechanism of interpretive abuses unchecked.

It is through the Interpretations that the Standards become reality for an institution seeking accreditation. For instance, the Interpretation to Standard 701 states that leased facilities are not in compliance. There may be a number of reasons a developing school may wish to occupy leased facilities in either the short or long term, including the economy, regional growth patterns and institutional needs. The only rational basis for the ABA's blanket restriction would seem to be the promotion of locational stability, which may itself have anti-competition ramifications. Ownership offers no guarantee that a school will not change locations. Indeed, selling a building in order to relocate may well be less difficult than early termination of a lease. In any event, the decision of whether to lease or own should be left to the institution. Students are well-taught in either kind of facility. If non-owned facilities meet the reasonable needs of the educational program, and taken together with the school's history promise reasonable locational stability, they should not be the subject of a blanket prohibition.

The cost of facilities meeting the ABA's ever-evolving and ever more expensive demands is one of the factors putting ABA accreditation out of the reach of institutions willing and able to meet reasonable educational standards but unable to afford the millions needed for state-of-the-art buildings.

3. LIBRARY: Another Interpretation, dealing with library facilities, requires seating capacity for half the school's largest division. In an era when computers allow students to access WESTLAW, LEXIS and the informational world of on-line services and the Internet from their homes, the ABA requires the allocation of precious fiscal and physical resources for empty seating. In fact, most students are provided with WESTLAW access from their personal computers as part of the school's subscription with West. Although the library provides a study hub for a law school, the facts of life for today's adult student, particularly a working adult attending school part-time, increase the likelihood of more home study than when the Interpretation was written, and decrease the need for added seats in the library.

The facts of modern electronic research also impact the ABA standards on library holdings, which generally increase the need for larger library staffs and hardcover holdings, and thereby the cost of education to students.

4. FACULTY: The Judgment leaves the calculation of the faculty component of student-faculty ratios to the Special Commission. The Wahl Commission Report acknowledges the role of teachers with administrative posts and adjunct faculty in the academic program of a law school, and this is an important development. It remains to be seen what effect this, and the DOJ action, will have on the resulting Standards and particularly on the Interpretations. The DOJ and the court should carefully review the final form and application of new standards and interpretations to assure compliance with the spirit of the Judgment.

A further concern is raised by the Judgment's language concerning the use of salary and benefits data as part of the accreditation process. Such data is gathered by organizations and subject to the Judgment, such as SALT and AALL, and is therefore available to inspection teams. The Judgment should more clearly and forcefully forbid the use of such data whatever the source.

5. OUTCOME MEASUREMENT: Ultimately, the quality of a law school's program is measured by the results it obtains with its students. The ABA Standards and the Judgment do not address outcome measurement. Although it may be difficult to measure academic outcomes, law schools have the Bar passage rate as one indicator. A high passage rate may perhaps be obtained by ''teaching to the Bar,'' and such a practice would be rightly criticized. But some state-accredited institutions in California, clearly *not* engaging in such a practice, have on occasion attained higher Bar passage rates than some ABA-accredited schools. At least with regard to that one measurement, the lack of relationship between the Standards and educational outcomes is apparent. The alumni of state-accredited schools who daily demonstrate the quality of their education on the bench, in their work in Bar Associations and in law practice, further prove the point.

The success of a law school in producing competent practitioners should be a critical component of the accreditation process. New measurement methods need to be developed and utilized as part of the accreditation process.

We are thankful for the opportunity to present these points.

Sincerely,

Kenneth Held,

Dean.

Normal Daniel Frank II

Attorney and Counselor at Law

1605 East Expressway 83, Mission, Texas 78572, 210 585–2764

September 11, 1995.

John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., Room 9903, Washington, DC 20001

RE: United States of America, Plaintiff v. American Bar Association, Defendant, Civil Action No. 95–1211 (CR), Filed: June 27, 1995

Dear Mr. Greaney: Enclosed are the comments of the Reynaldo G. Garza School of Law concerning the above referenced antitrust suit. I understand that you are the proper person to send these comments to in order for them to be filed with the U.S. District Court and published in the Federal Register.

Should you wish to contact me please do so at my above address or phone number.

We are very grateful that the Department of Justice has taken this course of action. This was something that was sorely needed.

Sincerely,

Norman Daniel Frank, II,

President, Reynaldo G. Garza School of Law.

Reynaldo G. Garza School of Law

905 North Shore Drive, San Benito, Texas 78586, (210) 399–1800

September 11, 1995

John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., Room 9903, Washington, DC 20001

RE: United States of America, Plaintiff v. American Bar Association, Defendant, Civil Action No. 95–1211 (CR), Filed: June 27, 1995

The Reynaldo G. Garza School of Law, hereinafter also called Garza Law School, is a Texas non profit corporation incorporated under the laws of the State of Texas. The Garza Law School would like to submit the following comments believing that the above referenced civil action final judgment should be modified to more satisfactorily cover the following issues:

(1) The proposed final judgment does not go far enough to rectify the great injustice that the American Bar Association (ABA) has perpetrated on victims of its illegal policies. The victims are not only the law Schools, including the Garza Law School, who have had to deal with the ABA abuse of the accreditation process they are the students who have been denied access to take bar exams and become licensed as attorneys. These students have been denied student loans, have had to make unfair sacrifices, and are to this day denied an opportunity to earn a living practicing law.

(2) The proposed final judgment does not specifically address the issue of Library collections. This is an important issue due to ABA Standard 602 which requires an ABA approved core collection. The interpretation of this requirement in the past has meant that law schools must have physical possession of paper books printed and published by a

select few printers and publishers and waste valuable financial resources warehousing these books and materials. The interpretation of ABA Standard 602 also meant that a law school could not *fully* take advantage of the latest technology in CD ROM and computer modem access to large data bases.

(3) The proposed final judgment does not specifically address the issue of ABA Standard 605 which requires a full time librarian to administer a law library. Just as the United States recognized the ABA's abuses in setting standards that require only full time faculty to teach students so too the court should consider that a law library can be equally well managed by part time librarians.

(4) The final judgment does nothing to correct any of the additional injustices done as exhibited by the Texas Supreme Court in their letter, signed by Justice John Cornyn, and attached hereto as exhibit ''A''. The Texas Supreme Court zealously supports and punitively enforces all the illegal standards created by the ABA. The letter from the Texas Supreme Court documents the following:

(a) the Texas Supreme Court, the Deans of all eight Texas ABA accredited law schools, and the chairman of the Board of Law Examiners stood in opposition to bills that would have allowed Garza Law School Students to sit for the Texas Bar Exam. Their stalwart opposition to the bills was to force the Garza Law School to comply with the illegal ABA standards. This action caused damage to the Garza Law School and its students and students who would have liked to attend the Garza Law School.

(b) the Texas Supreme Court does not want the Garza Law School and unaccredited law schools to ''get rich from the tuition dollars of their students to the damage of accredited law schools and educational standards generally.'' This statement of the Texas Supreme Court is obviously in support of the illegal guild standards as created by the ABA and unfairly gives preference to Law Schools accredited by the ABA.

I hope the United States District Court will consider the actions of the Texas Supreme Court as documented in their letter to the Texas Senate dated April 7, 1993 and enclosed herein as exhibit ''A''. It was in the hands of the Texas Supreme Court that the Garza Law School had to place itself for justice and relief from the illegal guild standards created by the ABA. The Texas Supreme Court ignored its duty and responsibilities to the people of Texas and instead zealously supported the illegal guild standards enacted by the ABA. Because of the above reasons the U.S. District Court should be able to understand that adequate relief is not in the proposed final judgment. Stronger measures and procedures that include State level enforcement are necessary in order to insure proper compliance. These measures and procedures need to be included in the final order. Please see that justice is done and that proper and adequate relief is granted.

Respectfully submitted,

Norman Daniel Frank II,

President, Reynaldo G. Garza School of Law.

The Supreme Court of Texas

Post Office Box 12248

Austin, Texas 78711, Tel: (512) 463–1312, FAX: (512) 463–1365

April 7, 1993.

The Honorable Eddie Lucio,

Texas Senate, 402 One Capitol Square, Austin, TX 78701

Re: H.B. 850 (Rep. Rodriguez), S.B. 296 (Sen. Lucio)

Dear Senator Lucio: I am writing to ask for your support in defeating H.B. 850 by Representative Rodriguez, which has passed the House with amendments, and its companion, S.B. 296 by Senator Lucio. Both of these bills would allow the graduates of the Reynaldo Garza Law School to take the bar examination even though the Rules Governing Admission to the Texas Bar promulgated by the Supreme Court require graduation from a law school accredited by the American Bar Association.

Although the court previously granted to that school's graduates a limited waiver from its rules, that waiver expired and was not renewed because of the court's waning expectation that the Garza Law School would ever become accredited by the ABA. The school then directed its attention to the legislature, which granted another limited waiver of this requirement. But instead of trying to improve the school to meet the ABA standards, even after the court granted a waiver, the school withdrew its application for ABA accreditation.

House Bill 850 has now passed out of the House and will be referred to the Senate Jurisprudence Committee, where it may be substituted for S.B. 296. As the Supreme Court liaison to the Board of Law Examiners I have already expressed concern about these bills to Senator Henderson, chairman of the Senate Jurisprudence Committee. Numerous witnesses, including myself, the chairman of the Board of Law Examiners, and the deans of all eight Texas ABA accredited law schools stand ready to testify about our opposition to these bills, but the following summarizes our concerns.

Our concerns are twofold: (1) the future of the requirement of graduation from an ABA accredited law school in Texas and what its demise may mean to the public and the legal profession on our state; and (2) the patently inadequate educational preparation being given to Garza's graduates.

None of the five Garza graduates who took the most recent bar exam passed on the first try. Compare this result with an average passage rate of 88.5% for graduates of Texas' eight ABA accredited schools. Since July 1988, the cumulative bar passage rate was 22% for Garza graduates and 82.9% for graduates of ABA accredited Texas law schools. I am personally concerned that the state of Texas would officially encourage or even condone this situation: Garza students pay tuition and work their way through the rigors and difficulties of law school, only to be thoroughly unprepared to take the bar exam. These statistics raise serious concerns about the quality of legal education afforded these students in spite of their best efforts. There can be little doubt that law students are better prepared for the bar examination and the practice of law when they graduate from a law school required to meet or exceed ABA accreditation standards.

There is also the issue of whether special treatment for graduates of Garza can be defended when graduates of out-of-state unaccredited law schools seek the same privilege. Questions of fundamental fairness, not to mention equal protection, are presented. The exemptions contained in H.B. 850 and S.B. 296 are limited to an unapproved law school within the boundaries of Texas; however, there is a serious legal question whether a state can discriminate in the bar admission process in favor of residents of its state. The Board has already been informed by graduates of out-of-state non-ABA-approved law schools that if the exemption for Garza is renewed, we can expect a court challenge of the Supreme Court rules on the basis that they discriminate against individuals who are not residents of Texas.

We must also consider whether Texas will eventually become like California, where unaccredited law schools get rich from the tuition dollars of their students to the damage of accredited schools and educational standards generally. Will Texas eventually open its bar exam to everyone, whether they graduate from an unaccredited law school—or even receive degrees for correspondence courses—or if they do not graduate from a law school at all?

The main reason for this lengthy letter is to provide you with accurate information regarding the context in which I hope you will consider these bills. At my request, representatives of the Board of Law Examiners attended the public hearing before the House Committee on Judicial Affairs and were present in the gallery during floor debate when H.B. 850 was considered on second reading; I fear that many members of the Legislature have been misled about the facts and so I offer the following background information.

Some of the proponents of the Garza bill have suggested that the issue is accreditation by the *Coordinating Board*; however, the real issue is accreditation by the American Bar Association. The first deals with the right granted by the State for a school to grant a degree; the second deals with a law school's certification as meeting a set of standards and criteria set by the American Bar Association's Section on Legal Education and Admission to the Bar.

The exemption from the law study requirment for Garza law students which is the backbone of H.B. 850 is an exemption from the Supreme Court's rule requiring that an applicant for the Texas Bar hold a Doctor of Jurisprudence degree from a ABA-approved law school. In other words, the Supreme Court has determined both under its rulemaking authority and by its inherent power under the Texas Constitution to regulate the practice of law that to be eligible to take the Texas Bar Examination, an individual must have a J.D. degree awarded by a law school which is approved or accredited by the American Bar Association. The Supreme Court does not have a rule requiring that an applicant hold a degree from a school accredited by the Coordinating Board.

However, most of the floor debate and, indeed, most of the comments made by the proponents of the bill at the public hearing in the Judicial Affairs Committee centered on Garza's inability to become accredited by the Coordinating Board, allegedly due to the Coordinating board's discriminatory policies. The rules of the Supreme Court which H.B. 850 will override have nothing to do with the Coordinating Board's accreditation or certification.

In both the committee hearing and the House floor debate on April 6th, statements were made that Garza had an application for accreditation on file, and that additional years were needed to process that application. I do not know whether Garza has an application on file with the Coordinating Board. However, I can assure you that Garza School of Law does not have an application on file for approval by the American Bar Association.

I offer the following background information:

1. Reynaldo G. Garza School of Law was incorporated in October 1983, and began conducting classes in August 1984.

2. In December 1984, Garza asked the Supreme Court of Texas to exempt its graduates from the ABA-approval requirement; the request was denied in January 1985.

3. In January 1987, Garza filed an application with the American Bar Association seeking provisional approval.

4. An ABA site inspection was scheduled for March 7–10, 1987, but was cancelled by Garza, resulting in its application fee being returned, leaving no application for approval pending.

5. In June 1987k Garza again requested exemption from the ABA=approval requirement; the Supreme Court denied the request in July 1987.

6. In November 1987, Garza filed a formal petition with the Supreme Court requesting exemption from the ABA-approval requirement. In this petition Garza stated that it has ''filed its application for initial inspection by the American Bar Association in March, 1986, and is currently pending.'' This statement was not true.

7. On January 8, 1988, after filing the petition containing the statement in item 6 above, Garza filed a second application with the ABA seeking provisional approval.

8. Based on Garza's representation that it was actively seeking ABA-approval, the Supreme Court signed an order on January 14, 1988, granting an exemption of the ABA-approval requirement to those Garza students awarded a J.D. degree from Garza between May 1988 and June 1989, allowing them to take the Texas Bar Examination in July 1988, and February and July 1989. The order specifically stated that no extension of the order would be granted.

9. On April 5, 1988, Garza School of Law withdraw its second application for ABA approval.

10. In December 1989, after the expiration of the exemption granted the school in the January 1988 order, Garza filed another petition with the Supreme Court, requesting an exemption from the ABA-approval requirement. This petition stated that Garza ''has no plans for continu[ing its existence] beyond December 31, 1989.'' The petition states that Garza students who have not completed their degree requirements upon the school's closing would do so through another institution.

11. In February 1989, the Supreme Court denied Garza's request for an extension of the exemption from the ABA-approval requirement.

12. In June 1991, the 72nd Legislature enacted a temporary legislative exemption for Garza graduates by amending Sec. 82.0241, Texas Government Code, thereby allowing Garza students who has enrolled before June 1, 1989, and wh9o received a J.D. degree by June 1, 1993, to take the Texas Bar Examination. The exemption specially expired on June 1, 1993, and thereafter, according to the 1991 legislation, all matters relating to eligibility of students at unaccredited law schools would remain in the sole jurisdiction of the Supreme Count of Texas.

13. The Raynaldo G. Garza School of Law does not have a pending application for approval by the American Bar Association. The ABA informed the Board of Law Examiners on April 7, 1993, that Garza has not filed any application for approval since the school's voluntary withdrawal of its 1988 application.

14. Representatives of the Raynoldo G. Garza School of Law visited with James P. White, the ABA Consultant on Legal Education (the executive officer of the ABA's section in charge of law school accreditation) on November 24, 1992, and told Mr. White that they would not be seeking ABA approval for at least three years from that date.

15. The accreditation process takes approximately nine months, rather than four years as represented by some Garza proponents.

Both the Board of Law Examiners and this Court believe that these facts demonstrate that the Reynaldo G. Garza School of Law has been given every reasonable opportunity to obtain the required approval by the American Bar Association for its graduates to sit for the bar exam. I am especially concerned that representatives of the school have, inadvertently or otherwise, misrepresented their efforts to seek ABA-approval. I am equally concerned that the Legislature is being misled by the repeated references to the Coordinating Board accreditation dispute which is not an issue in this controversy.

I urge you to vote against H.B. 850 or S.B. 296. I believe it would be a grave mistake to weaken the educational standards that must be met before an individual is entitled to be licensed to practice law in Texas. Thank you for your consideration.

Sincerely,

John Cornyn,

Justice.

cc: Warlick Carr, Chairman, Board of Law Examiners, Deans of ABA-Accredited Texas Law Schools

September 27, 1995.

Mr. John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., Room 9903, Washington, D.C. 20001

Dear Mr. Greaney: This comment is written in support of the United States civil antitrust suit alleging that the American Bar Association (hereinafter ''ABA'') violated Section 1 of the Sherman Act in the accreditation of law schools. The complaint alleges that the ABA restrained competition among personnel at ABA-approved law schools by fixing their compensation levels and working conditions, and by limiting competition from non-ABA-approved schools. In order to comply with the Antitrust Procedures and Penalties Act (15 U.S.C. Section 16) this comment proposes two essential modifications before the approval of the Final Judgment.

First, all individuals holding a Juris Doctor degree from a state-accredited law school should be allowed to take the bar examination in any state of their choice. Currently, bar admission rules in over forty states require graduation from an ABA-approved law school in order to satisfy the legal education requirement for taking the bar examination. Allowing state-accredited law school graduates to take the bar examination is consistent with the ABA's high standards requiring law schools to maintain an educational program designed to qualify its students for admission to the bar.

This proposal suggests treating state-accredited non-ABA-approved law school graduates similarly to ABA-approved law school graduates. A state-accredited law school graduate must comply with rigorous state requirements and procedures, passing the bar examination demonstrates that individual's qualifications to practice law in the applicable state.

Additionally, the ABA is the only agency recognized by the United States Department of Education as a law school accrediting agency. The ABA Standard which requires an individual graduate from an ABA-approved law school before admission to the bar gives the ABA power to influence where an individual can or cannot practice his or her livelihood. This flies in the face of the United States Constitution's commerce clause and is an unreasonable restraint on interstate commerce for prohibiting graduates from a non-ABA-approved school to freely move from one state to another.

This total ban on non-ABA-approved schools by the ABA has prevented my taking the Massachusetts Bar Examination. I attended Western State University College of Law, in San Diego, California, a state-accredited law school but a non-ABA-approved school. I was awarded the position of Editor-in-Chief of Law Review, participated in the regional for the Phillip C. Jessup International Moot Court Competition, and attained a certificate in the International Certificate Process. I am currently awaiting the results of the July California Bar Examination. Lifting this prohibition will allow me to take the bar examination in an additional state of my choice.

Second, all individuals holding a Juris Doctor degree should be eligible for admission in LL.M or post-Juris Doctorate programs based on the student's academic achievements and according to the admission standards of the law school. While the ABA prohibits an ABA-approved law school from

matriculating graduates of state-accredited or unaccredited law schools, it permits, under certain circumstances, the matriculation of graduates of foreign law schools (Interpretation 3 of Standard 307). The ABA only allows a law school to apply for a waiver of Interpretation 3 of Standard 307 and does not allow the affected individual to apply for a waiver on their own behalf. This rule extends too much authority to the ABA over decisions best suited to the academic institution. Additionally, allowing foreign student enrollment in advance law programs but not allowing state-accredited law students the opportunity to enroll is clearly discriminatory.

I graduated from Wells College in 1978 and continually have taken graduate classes at the Harvard Extension School and also attended the College for Financial Planning. The pursuit of higher education has always been a personal and professional goal for self improvement and one which I hope to continue in the future. The interpretation of this Standard prevents graduates from state-accredited law schools such as myself and members of the bar who have practiced with distinction from furthering their professional careers by obtaining advanced law degrees. Once again, this is fundamentally unjust and substantially affects the flow of interstate commerce.

The proposed Final Judgment should include modifications made in this comment. Such modifications will prohibit the recurrence of conduct that is plainly anticompetitive and which bars the free flow of graduates from moving interstate.

Based on the foregoing, the United States request for a permanent injunctive relief should be granted, enjoining the ABA from engaging in further violations of Section 1 of the Sherman Act.

Respectfully submitted,

Deborah B. Davy,

3814 Arnold Ave., Apt. 6, San Diego, CA 92104.

Joel Hauser

Attorney at Law, 234 Kenwood Ave., Delmar, NY 12054, 518 475–0446

September 21, 1995

John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Anti Trust Division, 555 4th Street NW., Room 9903, Washington, D.C. 20001

RE: Proposed Final Judgment, *U.S.* v. *ABA*

Dear Mr. Greaney: Pursuant to the Antitrust Procedures and Penalties Act, I would like to submit these comments regarding the Proposed Final Judgment and Consent Decree in the above referenced case.

While I am generally satisfied with the settlement your office has proposed, I am disappointed that you have not gone farther towards breaking the stranglehold the ABA has maintained over our profession. Unfortunately, even if the ABA fully complies with the terms and conditions described in the Settlement, enough of the old practices are maintained to thwart any chance for real change and progress. In particular, the Settlement fails to resolve the issues of part time faculty and student/faculty ratios, both of which were prominent and central to Justice's Complaint against the ABA. Nor does the settlement recognize the value and contribution of non-ABA accredited schools. I believe that the settlement should go on record as acknowledging that these schools may be a viable and practical alternative to the ABA schools.

As noted in Justice's Complaint, while the ABA has insisted on a high student/faculty ratio, it has never considered actual student/faculty contact or actual class size when considering accreditation. Consequently, the high ratio policy has had no significant impact on the quality of a law school education. It has, however, had a significant impact on the cost of a law school education. The high ratio does not come cheap. Similarly, denying a law school the opportunity to count part time faculty towards this ratio does little towards achieving academic excellence. It merely serves to maintain an artificially high operating cost by requiring schools to continue to hire a large number of full time faculty who devote remarkably little time to actual teaching. This high cost makes it all but impossible for new law schools to gain accreditation. And without accreditation, these new schools can't compete.

People's College of Law, which I attended, had few full time faculty members. Our instructors were, for the most part, full time attorneys actively engaged in the practice of law. They taught those subjects which they specialized in as attorneys. Our Criminal Law professors were often lawyers from the Public Defender Service. Our Constitutional Law Professors came from the ACLU. Because our professors were experts in the practice of their respective fields, they were able to teach not only the history and theory of the law, they were also able to illustrate the application of the law through their personal experience and practice. Students at PCL didn't just learn the law, we learned how to practice law. That is something which only a part time faculty can convey. It is something which all law schools should strive for. It is something which serves the profession and the public at large. Yet the ABA has, and will continue to resist such an academic goal. Your settlement should insist that the ABA abandon it's full-time faculty Standards and Interpretations. Furthermore, law schools must be permitted to count part-time faculty members when considering student/faculty ratios.

I should note that I have personally suffered great hardship as a result of the ABA's tight control over the profession. I am a graduate of People's College of Law, a California law school which is not accredited by the ABA. I was admitted to practice law in California in 1981, after taking and passing the California Bar Exam. In 1989 I waived into the Washington, D.C. Bar by motion to the Court. In 1995, I was admitted to practice in New York State, after taking and passing the New York Bar exam.

I have been admitted to practice law for more than fourteen years, devoting my career to public interest work. As a counselor and attorney with the Center for Veterans' Rights and G.I. Forum, I represented hundreds of military veterans' in discharge upgrade hearings, Veteran's Administration reviews, and Social Security proceedings. As a lawyer with California Rural Legal Assistance, I represented countless poor farm workers in a wide variety of legal matters including housing, working conditions, and public benefits. As a lawyer with Neighborhood Legal Services Program in Washington, D.C. I represented poor people faced with eviction, termination or denial of crucially needed public benefits and services, and general consumer complaints. I am extremely proud of my work as a lawyer and the good that I have done for so many people. I am equally proud of the education and training which I received at People's College of Law.

Yet, despite my accomplishments as a lawyer, I was for three years denied the opportunity to take the New York Bar Exam simply because PCL was not accredited by the ABA. Up until last year, New York State's Rules for Admission provided that only graduates of ABA approved schools could be admitted to practice. On three occasions I Petitioned the New York State Court of Appeals for a waiver of the ABA accreditation rule. Each petition was denied, without any consideration given to my practice experience or my law school education, due to the Court of Appeals' blind adherence to the ABA accreditation rule.

Fortunately for me, in 1994 an Act of the New York State Legislature modified the laws governing the admission of attorneys. Effective the winter of 1994, lawyers who had graduated from a non-ABA law school, and who subsequently practiced law for at least five years after gaining admission in their home state, could sit for the New York Bar Exam. With the passage of this legislation, I was able to take the February 1995 bar exam. I passed the exam and was admitted to practice in New York in June, 1995.

However, as a graduate of a non-ABA approved law school my right to practice in most states remains in doubt. Only a handful of States are willing to look beyond ABA accreditation. I would urge Justice to include in this settlement an acknowledgment by the ABA that its ''seal of approval'' is only one factor which the States may consider when evaluating a particular lawyer or law school graduate's application for admission. As an alternative to an education at an ABA-approved school, States should be encouraged to consider a candidate's overall work and life experiences, in conjunction with his or her training and education at a non-ABA accredited school. Only then will the stranglehold which the ABA has maintained over our profession begin to be loosened. And only then will law school tuition start to come down.

Thank you for the opportunity to comment on your settlement. If you have any questions please give me a call.

Sincerely,

Joel Hauser

Wendell A. Lochbiler III

704 Wolverine Drive, Wolverine Lake, MI 48390

September 28, 1995.

Mr. John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., Room 9903, Washington, DC 20001

RE: United States of America v. American Bar Association, Civil Action 95–1211

Dear Mr. Greaney, I am writing to comment on the proposed Final Judgment in the above captioned case and to relate the devastating effect the discriminatory practices of the American Bar Association (ABA) has had upon my life. I will keep my comments brief since I only recently learned about the Competitive Impact Statement and I want to meet the October 1, 1995, deadline. However, I would be happy to provide you with more details upon request.

I attended the University of West Los Angeles School of Law (UWLA), located in California, from 1985 through 1988. The University of West Los Angeles is a state accredited school, but it is not accredited by the ABA. At the time I decided to attend UWLA, I planned to practice law and remain in California for I strongly believe that I received an excellent legal education at UWLA. I worked very hard, did well in school, and graduated in the top third of my class.

I passed the California Bar Examination, on my first attempt. (The California Bar Exam is widely recognized as being one of the most difficult in the country). I was admitted to the California Bar on December 7, 1988. In addition I was admitted to the United States District Court for the Central District of California on May 7, 1990. I practiced law for five (5) years in California. I have an impeccable record and excellent references from all my employers.

In October, 1993, I returned to Michigan for personal reasons, my father and my wife's father each underwent two heart operations. I applied for admission to the Michigan Bar. My application was summarily denied, and the *only* reason given was the fact that I did not graduate from an ABA accredited law school. The people I contacted at the Michigan Bar indicated my application was not even considered because I could not meet that threshold requirement.

I subsequently wrote to the Michigan Bar with three alternative requests: (1) I requested a waiver of the rule which requires applicants to have a degree from an ABA accredited institution; (2) In the alternative, I asked for an opportunity to take the Michigan Bar Examination; (3) I requested a hearing on the matter before the Board of Examiners. Again, the Board denied my request, and again the only reason given was my failure to attend an ABA accredited law school. Furthermore, they would not even hold a hearing on the matter, as per their guidelines. I have attached a copy of my letter to the Board and their response.

Having no other alternative, I contacted a local ABA accredited law school and inquired about admission to their LLM program. I was informed by the program director that I would not be considered for admission, even though I may be a qualified candidate, because I did not have a degree from an ABA accredited law school. He further indicated that the school's LLM program could lose its accreditation by accepting graduates of non-ABA accredited law schools.

I then contacted virtually every other ABA accredited law school in the state of Michigan regarding admission as a transfer student. I was uniformly informed that I would not be accepted as a transfer student since I did not have a degree from an ABA accredited law school. Moreover, I was told that I would have to retake the LSAT, since my previous LSAT score was over five (5) years old.

The above events transpired over the course of approximately two years. During this time I remained unemployed. I could not work in the field of my chosen profession since I was not admitted to the Michigan Bar. In addition, I was overlooked for several non-legal positions because potential employers considered me overqualified, or were concerned by the fact that I could not practice law. I have recently found employment in a position that pays far less (nearly 50% less) than I earned as an attorney. I know for a fact at least two firms would have been interested in hiring me, if I had been admitted to the Michigan Bar.

In conclusion, I am concerned that even though, I passed the California Bar examination on my first attempt, and I am qualified to practice in California and Federal Courts, and I would be considered a worthy candidate for employment by the FBI, or the Justice Department, which accept graduates of State accredited law schools; that I am not eligible for admission to the Michigan Bar, or allowed to take the Bar Examination, or even to be admitted to another law school. I believe the proposed Final Judgment is an admirable first step toward correcting the egregious conduct of the ABA. However, I would like to see some action taken to lessen the ABA's control over the admission of attorneys in the vast majority of States. In fact, I believe that eliminating the States requirement that candidates graduate from only ABA accredited schools, would be the singe most effective measure toward preventing control over the legal profession by the ABA. I also am afraid that enforcement of the Final Judgment will be lax because it appears it will be left in the hands of people who are somehow connected to the ABA. Thank you for your diligent work.

Respectfully Submitted,

Wendell A. Lochbiler III

Wendell A. Lochbiler III

704 Wolverine Drive, Wolverine Lake, Michigan 48390, (810) 624–4286

September 21, 1994.

Mr. Dennis Donohue,

State Board of Law Examiners, 200 Washington Square North, P.O. Box 30104, Lansing, Michigan 48909

Dear Mr. Donohue: I am writing in response to your letter of August 23, 1994 and our subsequent telephone conversation concerning my request for admission to practice in Michigan without examination.

You returned my application indicating that I was ineligible since I did not graduate from a law school approved by the American Bar Association (hereinafter ABA). During our telephone conversation I requested a hearing before the board under Rule 5(C) which states:

''An applicant not satisfying Rule 5(A) will be notified and given an opportunity to appear before the Board. The applicant may use the Boards subpoena power.''

The reason I have requested such a hearing is to seek a waiver from the Board under Rule 7 which states:

''An applicant may ask the board to waive *any requirement* except the payment of fees. The applicant must demonstrate why the request should be granted.''

You suggested that I submit my request in writing which I am now doing. In addition, I have outlined a number of factors which I believe warrant consideration by the Board with regard to my request for a waiver. In the alternative, I would like to discuss the possibility of being allowed to take the Bar Exam.

Factors in Favor of Waiving Rule 5(A) in the Case of Wendell A. Lochbiler III

1. Professional Experience

I have five years of professional experience as an attorney. I was admitted to the California Bar on December 7, 1988. I passed the California bar exam on my first attempt. The California Bar exam is recognized as being one of the most difficult of all 50 states.

I have experience in managing hundreds of cases from their initial inception to their final conclusion. I have also made hundreds of court appearances in the majority of the courts located in Southern California. I have been involved in a large variety of cases ranging from: complex construction defect, professional liability, and real estate errors and omissions cases, to typical personal injury lawsuits.

I have experience as a partner of my own law firm. I have also served as the acting managing attorney of an 11 member law firm, during absences of the managing attorney.

I have excellent references. My last employers, Paul Coony and Bernhard Bihr of Coony and Bihr in Beverly Hills, California, will attest to my professionalism and qualifications to practice law. I have also listed numerous other references in my application ranging from former partners to law school professors. I am confident they will provide excellent references.

Prior to my admission to the California Bar, I was employed as a law clerk in several different positions including one of the Los Angeles County Superior Courts.

I have been a member of several different Bar Associations, including the *American Bar Association.*

I was admitted and qualified to practice law in the United States District Court for the Central District of California (Federal Court) on May 7, 1990.

2. Educational Background

I graduated from the University of West Los Angeles School of Law (hereinafter UWLA) in 1988. UWLA was chartered in February 1966, under the laws of the state of California as a non-profit institution. The law school was fully accredited by the State Bar of California in April 1978. The University was also accredited by the Western Association of Schools and Colleges in June 1983.

I completed 84 Semester Units prior to graduation. I ranked number 16 out of a class of 48. I was on the Dean's list during the 1985–86 term. I received an award for my law review article on Tender Offer Regulations: printed in UWLA Review Volume 19. While in law school I participated in the legal aid clinic, which provided free legal services to indigent people.

Although UWLA is not accredited by the ABA, it has a solid reputation within the legal community of the State of California. A large number of respected Judges and attorneys have graduated from our law school. In addition, our law school has established a good track record in preparing candidates for the bar exam. UWLA generally ranks near the top when its bar passing rate is compared to other institutions of its type. I believe UWLA's bar passing rate has occasionally exceeded the rate of some ABA accredited schools. Personally, I felt I was well prepared as evidenced by the fact that I passed the Bar exam on my *first* attempt and I would point out that many graduates of ABA accredited schools do not.

I received my Bachelor of Arts Degree from Wayne State University in 1984.

3. Other Factors

I am a native of Michigan, born in Detroit in 1961. My wife Susan is also a Michigan native. Susan is an engineer, employed by Hughes Information Technology Company, a subsidiary of General Motors. We both have large families long established in southeastern Michigan. One of the primary considerations influencing our decision to move back to Michigan was our desire to be close to our families and help provide care for our parents. The opportunity to return to Michigan arose when Susan was offered a transfer to the Hughes facility located in Troy, Michigan.

Susan and I are hard working, productive people. We have a two year old child named Thomas. We have purchased a home in Michigan and would like to remain here. We both feel that with our professional experience and educational background we have a lot to offer our local community and the state of Michigan.

Addressing the ABA Accreditation Requirement

Rule 5(A) requires that an applicant for admission to the Michigan Bar obtain a law degree from a law school which is approved by the ABA. However, Rule 7 allows the applicant to request a waiver of *any requirement* except the payment of fees.

In order to determine whether to waive the requirement that an applicant graduate from an ABA accredited School, the board must take into consideration the purpose of the rule. Obviously the purpose of the rule is to ensure that the applicant is qualified and competent to practice law. I agree that the rule works in a limited manner to fulfill its purpose. However, it appears that the rule is one of a number of factors used to establish a persons qualifications to practice law.

As practicing attorneys, we know that there are a number of qualities which make a person qualified to practice law. These include intelligence, honesty, knowledge of the law, strong communication skills, and professionalism to name a few. I believe that I have all of these qualities as demonstrated by my five years of professional experience and which can be confirmed by contacting my references. Furthermore, I find it ironic that even though I was allowed to become a *member* of the ABA after I was admitted to the California Bar, I am not eligible for the Michigan Bar because I did not attend an ABA approved law school.

As for the argument that my admission would be unfair to those who have met this requirement, I say that each application should be judged on its individual merits. Obviously, the legal profession can only be enhanced, not diminished by the admission of another well qualified candidate. If no exceptions were to be allowed under these circumstances, the drafters of the rules would have stated so explicitly in Rule 7, as they did regarding the fee requirements.

A Brief Comparison of the Arguments

By way of demonstration, I have prepared a chart comparing the factors in favor of granting admission to the Michigan Bar versus the factors against granting admission. As you can see, the factors in favor far out weigh those against.

Factors in Favor of Admission of Applicant

1. Five years of professional experience.
2. Passed California Bar Exam on first attempt.
3. Admitted and qualified to practice in Federal Court.
4. Member California Bar since 1988.
5. Member American Bar Association 1989–1992.
6. Member Los Angeles County Bar Association 1989–1991.
7. Member South Bay Bar Association 1989, 1992–1993.
8. UWLA is approved by the State of California and has an excellent reputation.

UWLA is accredited by the Western Association of Schools and Colleges.

10. Excellent References.
11. Future employment prospects are excellent.
12. Native of Michigan with strong family ties.
13. Both spouses are professional, productive members of community.
14. Applicant has excellent character.

Factors Against Granting Admission

1. Law school not accredited by ABA.

Conclusion

Based upon the foregoing, I believe I have established a solid basis for the Board to grant my admission to the Michigan Bar. Rule 7 provides an exception to the general requirement that an applicant must graduate from an ABA approved law school. My years of professional experience coupled with my demonstrated intellectual ability and numerous other factors in my favor outweigh the ABA requirement.

I am resubmitting my original application and fees of $600.00, to avoid any further delay. I am also willing to submit any addition information or references requested by the Board. I look forward to hearing from you soon regarding a hearing date.

Respectfully Submitted,

Wendel A. Lochbiler III

Larry Stern

Phone (301) 320–2693 Fax (301) 320–2694

John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Anti Trust Division, 555 4th St., NW., Room 9903, Washington, DC 20001

Re: Proposed Final Judgment, *Civil Action #95–1211, U.S.* v. *ABA*, 6/27/95.

09/26/95.

Dear Mr. Greaney: Pursuant to section 2.b. of the Antitrust Procedures and Penalties Act, I would like to object to entering the above referenced Proposed Final Judgment and Consent decree in its present form.

While the settlement your office has proposed considerably improves on the current rules, it does not go nearly far enough in breaking the stranglehold the ABA has so arbitrarily exercised over the legal profession.

First, the settlement does not right the discrimination and injury visited upon graduates of State accredited law schools. For the past two decades they were discriminated against and restricted through the efforts of the ABA. To permit this to remain unchanged is to invite the ABA to find more subtle forms of abuse. The only conscionable remedy is to grandfather in similar Bar examination rights for State accredited law school graduates, as ABA graduates enjoyed to date. Any settlement terms and Wahl Commission issues should apply from the settlement date forward.

Full compliance of the ABA with the terms and conditions of your proposed Settlement maintains enough of the old practices to thwart any incentive for real change and progress. In particular the settlement even at this late date does not acknowledge the value and contribution of non-ABA accredited schools. The ABA cannot, must not remain the sole accreditation authority to the denigration of the rights of the States.

As noted in Justice's complaint, the ABA's insistence on low student/faculty ratios was applied so as to be divorced from rational connection to the quality of education. In particular denying the schools the opportunity to count part time faculty toward these ratios eliminated the benefits of a faculty with practical experience, while at the same time raising the cost of a legal education. The results are of dubious if not outright negative effect on the quality of the graduates.

The Glendale University College of Law (GUCL) which I attended had, in addition to full time staff, a number of part time faculty. The part time faculty belonged to a number of firms specializing in the legal fields their attorneys taught at the school. We learned Intellectual Property from the head of that department for 20th Century Fox. Criminal law was taught in part by members of the District Attorney's staff. These professors were able to bring to life dry legal theory by relating to us their personal experiences in actual practice. Students at GUCL did not just learn the law, they learned how to practice law.

I have personally suffered hardship as a result of the ABA's tight control over the

profession. After graduation from Law School I chose, for a variety of reasons, to continue my former profession as an engineer. After a number of years and significant accomplishments I was awarded, on a competitive basis, a national Fellowship to Congress. I performed my duties as a legislative aide with distinction and renewed my interest in certain technology related legal fields, such as FCC and Patent law. Despite high accomplishment, despite the fact that laws I helped create and place on the books will be interpreted by attorneys without a technology background, despite the scarcity of knowledgeable attorneys in these specialized fields, I found the door to further legal education –LLM– as well as to practice effectively blocked. No ABA approved school can consider my application without putting its own accreditation at risk. I no longer reside in California, the state which would allow me the privilege of sitting for the Bar Examination. The ABA would have me start all over again, except that most law schools would be foreclosed from admitting me because of my prior—State accredited—legal education. I submit the nation is not best served by such a policy. The least Justice can do is level the playing ground for everyone.

I would urge Justice to include in this settlement an acknowledgment by the ABA that it's ''seal of approval'' is but one measure which the States *may* consider in prescribing the basic qualifications for admission to each State's Bar Examination. Full faith and credit to the rules governing admission to the Bar in the state where the candidate studied law should be a mandatory alternative to an education at an ABA approved school. Also a State should be allowed the latitude to consider the candidate's overall work and life experience, in conjunction with his or her training and education at a non-ABA accredited school. Only if these alternatives are mandated and implemented will the stranglehold of the ABA over the profession begin to be loosened.

Thank you for the opportunity to comment on your settlement. I'd be glad to answer any questions you may have.

Sincerely,

Larry Stern

Julie Anne Gianatassio, *Esq.*,
7008 Stafford Avenue, Huntington Park, CA 90255

August 30, 1995

Mr. John F. Greaney,
Chief, Computers and Finance Section, United States Department of Justice, Antitrust Division, 555 4th Street NW., Room 9903, Washington, DC 20001

Dear Mr. Greaney: After reading the proposed Final Judgment between the United States of America and the American Bar Association [ABA], I decided to write this letter to you because I have been personally affected by the ABA accreditation process. In my opinion, for the reasons which I will state herein, the accreditation process followed by the ABA is unreasonable and discriminatory. Further, I believe it is important for you, as a representative of the United States Department of Justice, to know that the practices of the ABA have had an impact on ordinary citizens like myself.

Last year I graduated from Western State University College of Law in Fullerton, California. Although I lived in Massachusetts all of my life, attended public school there, and received my undergraduate degree from Boston University, I decided to attend Western State for my juris doctor.

Western State is a fine institution and has produced thousands of successful and competent California attorneys since its foundation thirty years ago. The law school is accredited by the state of California and by the Western Association of Schools and Colleges. However, several years before I enrolled, the ABA denied accreditation to Western State University College of Law primarily because Western State is a proprietary institution.

The ABA's accreditation process is unreasonable because it emphasizes factors beyond academics when judging a law school's ability to produce competent graduates. The accreditation process should deal solely with the quality of education. Emphasis in other 'business' areas, such as how much money the faculty is paid or whether the school makes a profit, have nothing to do with basic educational standards. Unquestionably, Western State has produced many prominent California attorneys. The quality of the education I received there was outstanding and my education more than prepared me to take any bar exam. Proof that I was competently prepared by Western State is the fact that I passed the California Bar Exam [one of the most difficult bar exams in the nation].

Since the ABA has sole discretion to accredit law schools in the United States, any misuse of its discretion results in discrimination to thousands of individuals. Most states equate ABA accreditation with competency of law school graduates and permit only graduates from ABA approved schools to take the bar exam. In fact, the overwhelming majority of states, forty-two out of fifty, prohibit non-ABA law school graduates from sitting for the bar exam. No other profession faces such discrimination for thousands of its members. I have experienced this discrimination personally.

My greatest desire is to return home to Massachusetts to be with my family and establish a law practice there. However, graduating from a non-ABA accredited law school, I am prohibited from taking the bar exam in Massachusetts. Despite the fact that I have proven my competency by passing the California Bar Exam and have skillfully represented my own clients, I have been denied the opportunity to take the Massachusetts Bar Exam. Thus, I have been discriminated upon by the Massachusetts Board of Bar Examiners solely because I attended a non-ABA approved law school.

In my opinion, the Antitrust Division of the Department of Justice should step in to closely scrutinize the accreditation process of the ABA and, in the best interest of the public, should critically evaluate whether the ABA be allowed to continue accrediting law schools. Since there are many competent attorneys like myself from non-ABA approved law schools, the ABA's accreditation process fails to serve its intended purpose—to judge the quality of legal education. Because of the ABA's unfair practices, my professional opportunities as well as those of many thousands of attorneys from non-ABA accredited schools have been severely limited. Most important, however, is that the ABA accreditation process has greatly disadvantaged the public in general because it deprives the public of zealous representation by thousands of competent, concerned attorneys.

Before agreeing to the proposed Final Judgment, I urge you to closely examine the adverse effects that will be suffered by the American people if the ABA is permitted to continue misusing its discretion to accredit law schools. Evidence of the ABA's prior misuse of discretion justifies immediate government intervention and infliction of harsh penalties.

If you have any questions about my comments or if I can be of further assistance to you regarding this matter, please feel free to contact me.

Sincerely,

Julie Anne Gianatassio, Esq.

Robert Ted Pritchard
10116 Firmona Ave., Inglewood, California 90304, Ph 310–673–7007

September 2, 1995.

John F. Greaney,
Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., Room 9903, Washington, DC 20001

In reference: United States of America vs. American Bar Association

Dear Mr. Greaney: I have been made aware of the antitrust suit brought against the A.B.A. for reasons ranging from salary fixing to admissions of students transferring from non-A.B.A school to A.B.A. accredited with the credits earned at the non-A.B.A. school be transferable. One comment on the Justice Department's consent decree with the A.B.A.

On Friday, September 1, 1995, I visited the Law School Director of Admission office at the University of Southern California, University Park Campus at Los Angeles, California 90089 and had a conversation with an admission representative by the name of Melanie Macleod. I inquired if the law school will accept the credit students earn from non-A.B.A. accredited law schools. Her remark was, ''certainly no.'' Then I asked if she was speaking for the admissions committee including the director; her response was, ''Yes certainly I am.'' I then advised her of the consent decree along with its content which did not change her response nor did it appear that the conversation had an impact. I then left bewildered thinking this situation through where I then came to one conclusion that the consent decree by the A.B.A. relating to transferable credit from non-accredited law schools will not materialize or will be a sham.

The law schools are the A.B.A's co-conspirators as mentioned in the content of the government's complaint against the A.B.A. In order to ensure the consent decree will materialize is to require every A.B.A. accredited law school to sign the consent decree.

Unless the A.B.A. will require by newly established standards that all A.B.A.

accredited schools will accept transfer course credit from non-A.B.A. accredited law schools.

Thus in making the initial application for admission to law school by those who desire to pursue the profession of law, it would be justified for all law schools that are accredited by their state Bar of Law Examiners be automatically provisionally A.B.A. accredited, therefore, a requirement to continually meet their state's requirements for ongoing A.B.A. accreditation be the rule.

The A.B.A. requires all its law schools to maintain a quality student body meaning a declining L.S.A.T. and G.P.A. is grounds for dismissal from being an accredited law school or a denial for expansion. Therefore, open admissions policy by A.B.A. law schools is frowned upon when a declining L.S.A.T. and G.P.A. is present.

The Justice Department acknowledges in their complaint that most state's requirement to practice law that one be a graduate of an A.B.A. accredited school. The statistics are that four out of five applicants for admission to an A.B.A. accredited law school are denied. Therefore, in order to further pursue the profession of law by the applicant is forced to enter a non-A.B.A. law school. In return, after graduation be restricted to a territorial location to practice the profession of law. The A.B.A. has systematically boycotted non-A.B.A. accredited schools and its graduates. Although, I can reasonably see where employers are allowed as a perquisite for employment one to be an A.B.A. graduate. But not a state to require the same when the passing of a rigorous bar exam is required. After all, the bar exam is to ensure competency. Therefore, I see no need for graduates of state accredited schools be excluded in the states that allow only A.B.A. accredited graduates take the bar.

For your information I am presently enrolled in a non-A.B.A. accredited law school where the attorney that represented Rosa Lopez in the O.J. Simpson trial is a graduate, included in the school's list of graduates, a member of the State Supreme Court and several members of the Superior court. I applied to twenty A.B.A. accredited law schools and was denied.

I believe it is a necessity for the court or you to visit an A.B.A. accredited law school and a non-A.B.A. accredited law school, then contrast and compare. Please let me make some recommendations for the schools.

First the District of Columbia school of law and Duquesne school of law for the A.B.A then LaVerne school of law, Western University School of law, University of West Los Angles school of law all California state accredited schools and more important visit the Massachusetts School of Law.

I recently read a case on loss of consortium where I found a quote on reason to change law or rule and that is the following:

''The nature of the common law requires that each time a rule of law is applied, it be carefully scrutinized to make sure that the conditions and needs of the times have not so changed as to make further application of it ''the instrument of injustice.'' Whenever an old rule is found unsuited to prevent conditions or unsound, it should be set aside and a rule declared which is in harmony with those conditions and meets ''the demands of justice.'' (15 Am Jur 3rd Common Law, Section 2 page 797)

In the Fall of 1994 I attended an open house at Duquesne School of Law where Dean Ricci made the following announcement: ''We are not rejecting students because they are not capable of successfully pursuing the career of law. But, we look to your L.S.A.T and G.P.A.'' I also attended an open house at the District of Columbia School of law in the fall of 1994 and I was stunned by the filthy appearance of the school. I filed a Discrimination compliant with the A.B.A. of the office of Mr. William Powers assistant consultant on legal education to the American Bar Association in the Spring of 1995 and have yet received any results of response. Although, I have had conversations recently with Mr. Powers that produced endless results. It is to say that I doubt that if the District of Columbia school of law were to be located in California it would fail to be state accredited.

Therefore, I submit to you that the A.B.A.'s ''Standards of Rules'' have become an ''instrument of injustice'' thus ''the demands of justice'' is calling for a change.

The question I want you to ponder is how many Abraham Lincoln's, Clearance Darrells or Thurgood Marshalls been denied admission to A.B.A law schools?

Sincerely,

Robert Ted Pritchard

Donald H. Brandt, Jr.

Attorney and Counselor at Law, Donald H. Brandt, Jr., P.C., 9550 Skillman road; Suite 300; Lock Box 110, Dallas, Texas 75243

September 28, 1995.

Mr. John F. Greaney,
Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., Room 9903, Washington, D.C. 20001

Subject: comment—Proposed Final Judgment, 95–1211 (CR): United States of America v. American Bar Association

Dear Sir: My comment on the proposed Final Judgment in United States of America v. American Bar Association follows:

In 1990, I began my legal education at the then Dallas/Forth Worth School of Law. In 1992, Texas Wesleyan University (''TWU'') acquired the Dallas/Fort Worth School of Law. In August 1994, the American Bar Association (''ABA'') granted provisional accreditation of TWU's law school. As a condition precedent to that provisional accreditation, TWU was required to graduate the three hundred (300) students who were responsible for the creation and existence of the TWU's law school before that accreditation. I was one of the students affected.

Because of the arbitrary and capricious acts of TWU and the ABA, I have been personally harmed. I am denied the opportunity to be licensed to practice law in both Colorado and Florida. My employment opportunities have been limited. My continued educational options have, also, been limited. Considering the actions of TWU, its administration, and the ABA, I brought suit against those involved.

According to the Competitive Impact Statement, the proposed Final Judgment prohibits the recurrence of conduct that is plainly anticompetitive. Based upon its past conduct, the ABA should be precluded from accrediting any law school. While they is a need to accredit law schools, the ABA has shown that it has abused that responsibility. Consequently, the ABA should be denied the ability to accredit any law school. While each State has the responsibility for accrediting law schools, it appears that a vast number (including Texas) have delegated that responsibility to the ABA. By denying the ABA the ability to accredit any law school, each State will be required to re-establish its accrediting standards and procedures. This will foster an environment for improved competition and innovation.

In summary, the proposed Final Judgment merely changes faces. A fundamental change in the method and manner in which law schools are accredited is required to cure the past anticompetitive practices of the ABA.

Very truly yours,

Donald H. Brandt, Jr.,

Donald H. Brandt, Jr., P.C.

David White

3547 N.W. 35th St., Coconut Creek, FLA 33066

September 13, 1995.

Mr. John F. Greaney,
Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., Room 9903, Washington D.C. 20001

Dear Mr. Greaney, I am writing to you to give you my opinion of the Consent Decree entered into between the American Bar Association and the Department of Justice, which arose from the case against the ABA brought by the Massachusetts School of Law.

In May of 1995, I graduated from Western State University College of Law in San Diego. Western State (WSU) is a state accredited law school that has been in existence for over twenty five years. In addition, WSU has three campuses in Southern California, that fact makes it the largest law school in the United States.

At the current time I am living in Florida and because of the ABA's discriminatory practices which have prevented my school from not becoming accredited I will not be granted permission to sit for the Florida Bar exam, even though I have taken the California Bar exam and I am waiting for those results.

I will enclose a copy of a petition that I had sent to the Florida Board of Bar Examiners asking for a waiver of the ABA school graduation requirement which will fill you in more on my situation. Also enclosed will be their denial of that petition.

My primary reason for this letter is the following, approximately two weeks ago I contacted the law school at the University of Miami regarding their LL.M. program. The usual practice is to require that candidates for the program be graduates of an ABA accredited law school.

During a discussion with Tina Portuando, who to my understanding is either the director of admissions or holds a similar

position, I had mentioned the Consent Decree and the section dealing with allowing state accredited graduates into an ABA LL.M. program. Even after mentioning the Consent Decree, I was under the impression that she had no idea what she was talking about. Finally she told me that I would not be admitted to the LL.M. program regardless of any other credentials or qualifications that I may have. Her reason was that I did not graduate from an ABA school, and I was then told that was the policy at Miami and there was not now, nor would there be any intention or attempt to change that policy, Consent Decree or not. I believe that this is in direct contrast with the Decree that your department (DOJ) has worked so hard to achieve. I believe that this merits further investigation.

One final point; the reason I had to return to Florida from California is that as a graduate of a Non-ABA school there were no government or private lending programs available to me from the time of my graduation in May to the Bar Exam in late July. However several friends of mine at ABA schools were offered and had accepted this type of loan. Without this added financial support, my credit and ability to pay my bills was ruined and I had to return to Florida to live with my in-laws.

Now a resident of Florida, I will never be eligible to practice law (because of my being declared not eligible to sit for the Bar exam) and my three years in law school and the eighty-thousand dollars of debt to pay for it have been wasted. This is the greatest hardship of all, that is, not letting the Bar exam determine my competence to practice law, but letting that be determined by a group of individuals in the ABA who were not acting in the best interests of the legal profession, but rather for their own self-interests.

Respectfully submitted,

David White

David William White

3547 N.W. 35th Street, Coconut Creek, Florida 33066

August 18, 1995.

Executive Director,

Florida Board of Bar Examiners, 1300 East Park Avenue, Tallahassee, FL 32301–8051

Dear Board of Bar Examiners: I hereby petition for a waiver of the application of the Florida rule denying graduates from a non-ABA law school eligibility to sit for the Florida Bar Examination unless they have practiced law in another jurisdiction for ten years. I respectfully request permission to sit for the February 1996 Florida Bar examination.

After doing research on this rule and its application to graduates from non-ABA law schools, I am aware of its effect and its interpretation. In this letter I will present only the non-legal issues involved, saving the legal aspects of the application of the rule for judicial proceedings if necessary.

As you are well aware, the recent litigation and resulting consent decree arising from the Sherman Act/Anti-Trust action against the American Bar Association brought by the Massachusetts School of Law, has shed light on a problem that directly affects myself, and my ability to practice law in Florida.

I graduated from Western State University, College of Law in San Diego in May of this year, with a grade point average placing me in the top twenty-five percent of my graduating class. I have taken the California Bar Examination in July of this year and I am waiting for the results which are due in late November.

Some important facts about the school are as follows:

Western State University is not an ABA accredited law school.

Western State University (WSU) has been in existence since 1969.

WSU has been approved by the State of California since 1973.

WSU is a for-profit institution, one of the reasons that its application was recommended it be withdrawn when it applied for ABA approval in 1986. As part of the consent decree, this factor, a school's non-profit or for-profit status is now considered not proper in determining a schools' approval by the ABA.

A majority of the faculty of WSU are adjunct professors. Prior to the consent decree, this factor negatively affected the student teacher ratio as far as the ABA was concerned. As part of the consent decree, this factor, the full time or part time status of professors is no longer relevant for the basic computation of a student to faculty ratio.

WSU's three campuses in Southern California make it the largest law school in the United States. The fact that WSU has more than one campus also led to the belief that it would not receive ABA accreditation.

Results regarding the passage rate of the February 1994 California Bar Examination showed that graduates of WSU as first time bar examination takers had passage rate higher than that of every other California accredited school and a higher pass rate than several ABA accredited schools in California.

During the time that I was enrolled at WSU, the ABA did not allow ABA accredited schools to accept credits from a student who wanted to transfer from a non-ABA school to an ABA accredited school. As a result of the consent decree, this bar against transfer of credits is no longer permitted. Had this option been available to me at the time of my attendance at WSU, I would have, or at least could have had the opportunity to transfer to an ABA approved school in Florida.

Both the Dean and assistant Dean of WSU are Harvard Law school graduates and many of the full time faculty are nationally known scholars in their area of practice and teaching.

Based on the factors that the American Bar Association must now use, Western State University would now be in compliance for the guidelines regarding accreditation.

I understand that if I had practiced law in any jurisdiction for ten years I would be able to apply for permission to sit for the Florida Bar examination.

Unfortunately, after graduating law school, there were no lending institutions that would lend me money during my studies for the California Bar Examination, due to the non-ABA status of WSU. Given the high cost of living, stagnant economy of California, and facing bankruptcy, my wife and I had to return to Florida and live with her parents, where we now presently reside. Returning to California to practice law for ten years is not an option. Applying to an AB approved law school in Florida, transferring credits and incurring both more loans and spending more time in law school, in light of the fact that I have already graduated, is not an option.

Application of this rule will render my successful three years of quality legal education, eighty thousand dollars indebtedness to pay for it and my choice to be a lawyer absolutely null and void. As a tax paying American citizen and current resident of Florida, I stand firm in not allowing this outdated and arbitrary method of discrimination to ruin my life, professionally or financially.

With the ABA's settlement of the case against them and the involvement of the Department of Justice in their accreditation procedures and requirements, it is obvious to me that the time has come where a student of a non-ABA school that was directly and adversely affected by the ABA's discriminatory practices to have the opportunity to prove that the education they received was similar to that of an ABA school. This I can and will do at your request.

What I request is to be allowed to prove myself eligible and/or be declared eligible to take the Florida Bar Examination, it is the examination itself that determines an individuals' competency to practice law.

That is exactly what a bar examination is designed to test; an individuals' knowledge of the law, legal theory and their ability to apply it. What is most offensive, is the irrebuttable presumption that I am not competent to practice law. I request the same opportunity as an ABA student, being allowed to sit for the exam.

I also fully understand the states' interest in regulating who is allowed to practice law, but that interest can not be perceived as legitimate when a state chooses to continue to follow the ABA's past actions that were not in compliance with Federal law. As you can see, WSU is not the ''Fly-by-night'' operation that the ABA is so concerned about.

Notwithstanding the fact that twelve years have passed since the Florida Supreme Court issued their opinion in the *Hale* case, recent developments may or may not influence the court in re-examining their grant of authority to the ABA.

However, the Board of Bar examiners does have the authority to grant a waiver to the rule. In this letter I have attempted to show that the ABA's consent decree eliminated all of the irrelevant and irrational requirements of accreditation. It was those very requirements which prevented my school from ''achieving'' ABA status, which in turn rendered me a non-ABA graduate, giving rise to the need for this letter. I hope that the Board will be sympathetic to my cause, because they do have the power to rectify this unfortunate situation.

The purpose of this letter is not to advocate the repeal of the rule, or to challenge its'

constitutionally. I intended to show that due to the facts and circumstances beyond my control that my situation is unique, and I hope that the Board will consider the issues that it raises.

My sole ambition is to become a respected and contributing member of the Florida legal community.

To you this is a petition, to me, this represents the future of myself and my family.

Enclosed please find a letter from the Dean of Western State University regarding the school.

If you would kindly respond to this request as soon as possible so arrangements might be made for the formal application for the exam, or petition for review by the Florida Supreme Court.

Respectfully submitted,

David William White

Western State University College of Law

2121 San Diego Avenue, San Diego, CA 92110, (619) 297–9700

January 27, 1995.

To Whom It May Concern: I have been asked to provide information concerning the quality of the academic program at Western State University—San Diego and, in particular, to compare the program with that at ABA accredited law schools.

Western State University College of Law at San Diego boasts a young and dynamic faculty. The full-time faculty includes 21 men and women, two-thirds of whom have joined the faculty within the last four years. All are graduates of ABA approved law schools, including Harvard, Columbia, Michigan, Boalt Hall, New York University, Pennsylvania, Virginia, UCLA and Duke. The full-time faculty is supplemented by a pool of adjunct faculty, which includes a number of sitting state and federal judges, local federal and state prosecutors, and practitioners drawn from San Diego's leading law firms.

The curriculum is rigorous and diverse. So that students are actively involved, class sizes are limited to 60 students in required courses, 40 students in electives and about 20 students in skills courses. The average class has 27 students. In the fall 1994 semester, course offerings included 28 electives, such as comparative law, jurisprudence, international business transactions, federal income tax, civil rights law, mediation theory, negotiation skills, advanced criminal procedure and advanced trial advocacy.

To ensure that the faculty has adequate time to prepare for class, counsel students and engage in research, teaching loads are set at 6–9 hours per semester. Faculty promotion and pay are based on teaching effectiveness and scholarly productivity. Although most members of the faculty are relatively new to teaching, they have produced in the last four years a casebook on civil procedure and another on international law (both published by West Publishing Company, the nation's largest law publisher), a treatise on international investment law published by a major Dutch international law publisher, and a book on the nature of legal reasoning, published as part of a series on the relationship between law and modern thought edited by two Stanford law professors. They also have produced more than 40 law review articles on a variety of topics, many of which have been cited in leading casebooks or in judicial opinions.

Although the school does not currently have an application for ABA accreditation pending, it easily satisfies the few quantifiable indicators of academic quality used by the ABA. Our library has more than 90,000 volumes, which is about equal to the number held by the most recent law school to receive ABA provisional accreditation. Our student-faculty ratio of about 26–1 is well within ABA guidelines. The median LSAT of our entering class is equal to or higher than that of several ABA approved law schools around the nation.

The quality of education is demonstrated by the success of the school's alumni. The alumni have included judges on the superior and municipal courts, members of the state legislature and city council, and, currently, a member of the U.S. House of Representatives. On the February 1994 bar exam, about 60% of WSU's graduates passed the California bar exam on the first attempt. This was the highest bar pass rate of any of the California accredited law schools and was higher than that of several ABA approved law schools in California, including UCLA.

On the July 1994 bar exam, the pass rate was approximately 64%.

I hope this information is helpful. If you have any questions, please do not hesitate to contact me.

Sincerely,

Kenneth J. Vandevelde,

Acting Dean.

Florida Board of Bar Examiners

Administrative Board of The Supreme Court of Florida

September 8, 1995.

Mr. David William White,

3547 N.W. 35th Street, Coconut Creek, FL 33066

Dear Mr. White: This will acknowledge the receipt of your letter dated August 18, 1995, with enclosures.

As you know, a 1983 ruling of the Supreme Court of Florida styled: *In Re Kevin Charles Hale* (433 So. 2d 969) states in part, ''This court will no longer favorably consider petitions for waiver of Section 1.b. currently 1.a. of the Rule. We voice our opinion that the Rule, while conceivably a hardship to some, is in the best interest of the legal profession in our state.''

As the Supreme Court of Florida has ruled not to consider petitions to waive the legal educational requirements, the Board will not accept petitions for waiver of Article III, Section 1 of the Rules of the Supreme Court of Florida Relating to Admissions to the Bar. Until such time as the Supreme Court of Florida modifies its position, the Board will continue to adhere to that policy.

Thank you for your cooperation.

Sincerely yours,

Kathryn E. Ressel,

Executive Director.

June 29, 1995.

Ms. Anne K. Bingaman,

Assistant Attorney General, Antitrust Division, Room 3109, Tenth & Constitution Avenue NW., Washington, D.C. 20530

Dear Madame Assistant Attorney General Bingaman: I read the June 28, 1995 article that appeared in the New York Times and just want to take a moment of your time to applaud your efforts for investigating the American Bar Association.

I am a former resident of the State of Nevada and the only way in which to be licensed as an attorney in that state is to have graduated from an ABA accredited school.

In 1988, I was admitted to an ABA law school and after two years was academically disqualified by .5 of a point. With this disqualification, I would no longer be able to receive a J.D. degree from an ABA school. I did finish my studies at an unaccredited school here in California and am taking the General Bar Examination.

Because I graduated from a law school not approved by the ABA, I will never get the chance to take the Nevada Bar Examination. Last year I petitioned the Nevada Supreme Court for a waiver of the ABA requirement and it was denied. I think that this is so unfair. In effect, I have been banished to California, which even with all of our problems, is not too bad of a place.

The State of Nevada has precluded me from pursuing my chosen career within its borders. A life long resident of the state, graduated from local schools and degrees from three out of the four colleges within the state and I won't even be allowed to take their bar examination because of the powerful ABA cartel.

I tried to stay in school, like all of the government sponsored advertisements suggest, but I was disqualified and am now forever banned from returning home. It just doesn't make sense to me.

Thank you for your time. Keep after the ABA. If you ever need an antitrust lawyer out here in California, please look me up.

Sincerely,

Bill Newman,

3756 Cardiff Ave. #315, Los Angeles, CA. 90034–7201.

7932 Oakdale Avenue, Baltimore, Maryland 21237.

September 29, 1995.

D. Bruce Pearson, Esquire,

U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., Room 9901, Washington, D.C. 20001, Fax: 202–616–5980

Re: Case number 1:95CV01211

Dear Mr. Pearson: Please be advised that the first response faxed to you on Thursday evening was my rough draft. The attached response should replace the previously faxed copy.

I express my apologies as I become more skilled in working with this computer.

Very truly yours,

Russell R. Mirabile

7932 Oakdale Avenue, Baltimore, Maryland 21237.

September 23, 1995.

D. Bruce Pearson, *Esquire*

U.S. Department of Justice, Antitrust Division, 555 Fourth Street, N.W., Room 9901, Washington, D.C. 20001, Fax: 202–616–5980, Revised Response

Re: Case number 1:95CV01211

Dear Mr. Pearson: In response to and as input to MSL vs. ABA Anti Trust Action, and corresponding as a victim of this over twenty-year scheming by the ABA to prevent people from education and practicing law, I hope the following would be implemented.

No person, no group, no government or agency can give back a life, a livelihood as a result of the calculated law school genocide by the ABA. However, to make amends and prepare a preventive program will be a beginning against future open-handed injustices.

These vicious actions taken by the ABA to minimize one's liberties and freedom should be dealt with in a very severe manner. The ABA has produced a million dollar business by making a selective discrimination process.

First: The time limit for responses to this action should be extended. *Notice* to all offended person(s) has *not* been accomplished nor been effective.

Most graduates of non-ABA schools that were discriminated against or victims of this monopolistic scheme are in other walks of life and may not be associated with the practice of law to receive the Law Journal. Thus, these victims have no way of becoming aware of a welcomed response by the State Department.

Non-ABA schools that fell victim to those monopolistic schemes should present student enrollment lists to the ABA and the ABA should send notices to all affected students so that responses are possible. There should be a full scale effort upon the ABA; they have made millions of dollars from these victims. The price of a letter and stamp is minimal in comparison.

Second: Remuneration should be awarded to those non-ABA schools, students, etc. who were injured due to the intentional starvation of these victims.

Third: Those persons, either directly or indirectly involved with these ABA monopoly practices, should be disbarred and never allowed to practice again in any state or territory. Their licenses to practice law should be suspended until proper hearings are held, then forever be banished from practicing law.

Fourth: The ABA should be monitored for years to come for their intrusive, intentional improprieties. The group should be independent with severe sanctions and penalties attached to those millions of dollars that have been gathered from the victims' backs. *Or*, the ABA should be disbanded

Fifth: The ABA should be completely severed form any administering of education or testing of LSAT and all testing for multi-state examinations. The multi-state courses that have made millions of dollars for the ABA should be independent with no leadership or influencing input from the ABA. The ABA should not be involved in any testing or correcting of Multi-State Test scores or examinations. If contamination has not be declared or thought of, then there is plenty of room for irresponsibility and mistrust. There should be complete removal from testing by the ABA.

Sixth: Students who have graduated from non-ABA Law Schools should be waived into states or territories affected by these over twenty-year practices of the ABA.

Seventh: The non-ABA graduates that were affected by this law school genocide of the ABA should be allowed to take undergraduate courses at ABA law schools for credit for any reason.

There should be a complete acknowledgment and credit for past work, accomplishments and performances at non-ABA schools.

Eighth: Liability should be broadened and a time table should be prepared for punishment for these ABA leaders who had the intent to deprive people from the liberty and right to achieve an education and practice law as a livelihood, or for any reason.

In conclusion, if the defendants, members of the ABA and defendants that were engaged in these violations of the Sherman Act, graduate from ABA schools, then these violators are a product of an ABA education. But, the ultimate question is, ''Were they educated in Anti Trust Law, or is the ABA above the law?'' I would hope this government will protect the citizens and punish severely those involved in this ABA scandal and correct a twenty-year wrong.

The bottom line is what is the difference which law school, place and manner that one learns the laws as long as a person passes the bar exam in reference the knowledge of the law. I would hope that this government will protect the citizens.

Very truly yours,

Russell R. Mirabile

September 21, 1995.

Mr. John F. Greaney,

Chief Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street NW., Room 9903, Washington, D.C. 20001

Dear Mr. Greaney: I am writing in response to United States vs. American Bar Association, No. 951211. I have a profound concern that this order will be futile unless needed changes are made.

I graduated from a state-accredited law school in Alabama that lacks ABA accreditation, and I am fully licensed to practice law in both federal and state court in Alabama. I recently applied to an ABA accredited law school in another state in order to obtain a law license in that state. The dean of the law school was aware of the United States vs. ABA case and even had a copy of the final order on his desk. However, when I inquired about which classes would receive transfer credit, he responded that the law school was not in a position to accept any of my credits.

It appears as if either collusion exists between the ABA and the accredited law schools not to accept any credits pursuant to Section four, Part two of the order or that the law school was reluctant to act due to potential repercussions from the ABA. Furthermore, I have been advised by fellow attorneys that this same scenario has occurred at other ABA accredited law schools in different states.

I strongly believe that modifications or changes need to be considered before a final order is entered. The rule as it stands lacks any meaning because ABA accredited law schools remain free to ignore the order and continue the exact restraints on trade and competition as alleged in the lawsuit.

Due to the fact that I have an application pending with a law school in this state, I would please request that my name and address be withheld from this comment. Thank you.

Justice Department: I am writing to propose that the *Final Judgement* regarding *US* v. *ABA* (Civil Action No. 95–1211 (CR), filed 7/14/95) be modified.

Under Section IV, subsection D(2), I propose that the phrase, ''except that the ABA may require that two-thirds of the credits required for graduation must be successfully completed at an ABA-approved law school'', be dropped entirely from the *Final Judgement.*

The restrictions on offering transfer credits for coursework completed at non-ABA-approved schools is still an unreasonable restraint of grade aimed at deterring effective competition from law schools that are likely to pay less in salaries and benefits to their professional staffs.

The number of seats available to transfer students is very low compared to the number of applicants for those seats (see Barron's Guide to Law Schools), and even lower in comparison with the untold numbers who would apply if seats were more copious in number.

On top of the great statistical challenge already at hand for the transfer applicant, the difficulty of transferring becomes compounded when the applicants are from non-ABA-approved schools. They are competing against applicants from ABA-approved schools who will be looked at in a more favorable light because of the perception that they gained greater academic achievement. In fact, I suspect that many of the ABA-schools will take it upon themselves not to consider non-ABA applicants, or consider their credits transferable, thereby lessening the total number of available transfer seats. The number of potential seats for non-ABA-applicants will dwindle further when potential mid-second year and third year seats are made unavailable due to the daunting prospect of spending an additional ten to twenty thousand dollars on one's legal education because their second or third year courses won't transfer. This rings especially true to the socio-economically deprived students who benefit most from the lower costs of non-ABA-approved schools.

The bottom line will be that very few, if any, transfers will occur because the non-ABA-applicants will face a monumental statistical probability that they will not be able to successfully transfer; and a monumental financial hurdle for many who won't be able to afford to transfer. Section IV,

subsection D(2) starts to ring hollow in reality unless no limits are set on the number of credits that can transfer from non-ABA approved schools, or better yet the ABA is actually required to take affirmative action to insist schools accept *all* non-ABA-transfer credits (and accept non-ABA applicants).

Another argument for allowing unlimited transfer credits from non-ABA approved schools is that ABA approved law schools' trade is restrained unfairly when they can accept all of the credits from an applicant transferring from a foreign law school, but can't accept all the credits from a non-ABA-applicant. Furthermore, that still constitutes the remnants of a boycott of non-ABA-schools applicants.

Lastly, learning disabled applicants from non-ABA-approved schools who were forced into attending non-ABA-approved schools, and who did not properly diagnose their learning disability until late their first year of law school or later, will be unfairly discriminated against, and unlawfully discriminated against under the ADA (American's With Disabilities Act) because they will not be able to transfer their credits. This also holds true for those with other types of disabilities.

Frank DeGiacomo,

P.O. Box 79170, North Darmouth, MA 02747.

James B. Healy

519 Bloomfield Avenue, Caldwell, New Jersey 07006, (201) 228–0860

July 3, 1995

Honorable Joel I. Klein,
Deputy Assistant Attorney General, Antitrust Division, Department of Justice, Constitution Avenue & 10th Street NW., Washington, DC 20530

Dear Mr. Klein: I read with interest in *The Chronicle of Higher Education* about your role in reforming the A.B.A. accreditation process and laud your success in settling the controversy.

As one of four adult students victimized by the unyielding A.B.A. standards, I draw your attention to the enclosed *Background Brief* as it relates to our dilemma.

We applied to approximately 15 law schools requesting admission as advanced students. Five responded negatively and the remained ignored our petitions.

Given the background and circumstances, is there recourse for us to complete our law school degree program as advanced standing students?

On behalf of my colleagues, whatever you may be in a position to do on our behalf will be greatly appreciated.

Thank you.

Sincerely,

James B. Healy

Enclosure

Background Brief: The Dilemma of Minority Students of Commonwealth School of Law Massachusetts

January 15, 1990.

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Statement of Facts

On December 14, 1987, the undersigned (Hereinafter referred to as the students) were accepted by the then unaccredited Commonwealth School of Law, Lowell, Massachusetts, as part time students. All transferred from St. Matthew School of Law in Philadelphia, an institution established primarily for the needs of minority students, and each received various transfer credits from Commonwealth School of Law for law courses taken at St. Matthew, in which two completed approximately sixty-eight (68) credits and two completed forty-five (45) credits.

Each week, for two years the students journeyed over two hundred and fifty miles each way, at times twice a week, from New Jersey and New York to attend classes in Lowell. Because of family responsibilities, employment and other exigencies, the students were unable to attend conventional law school programs. Further, these students for the most part are minority students attempting to improve their station in life and sought a program which allowed them to continue full time employment during their period of studies.

While Commonwealth School of Law was not accredited at the time the students began classes in January, 1988, the administration appeared to be making favorable progress towards State accreditation and ABA approval of the School. A full time dean was appointed, full time faculty brought on board and a distinguished roster of part time faculty were hired, (See Appendix A). The instruction throughout was qualitatively excellent.

The Students became aware of internal political problems during the first semester. A splinter group, including the dean, faculty and students, severed relationships with Commonwealth School of Law and formed the Massachusetts School of Law at Andover during the spring semester, 1988. Commonwealth School of Law was left with approximately ninety students, including the minority students petitioning herein, a new dean appointed and full time faculty hired in September, 1988.

A preliminary state accreditation inspection visit was made in December of 1986 to Commonwealth School of Law by a Board of Regent's Visiting Team. A number of recommendations were made by the team, which were apparently corrected before the official evaluation. The second and official Visiting Committee completed the accreditation inspection in November, 1988. On December 5, 1988, the president of Commonwealth School of Law, Michael Boland, made the following memorandum announcement:

We have received the report from the Board of Regents Visiting Team and the news is good! The conclusion of the report was that ''Commonwealth School of Law has worked hard to address deficiencies of concern to the prior visiting committee * * *'' and the visiting committee recommends that the Board of Regents approve the school's application * * *''

(See Appendix B & C)

It appears that extensive hierarchal political power plays were taking place between April, 1988 and into the spring of 1989. The former Dean of Seton Hall Law School, John F. X. Irving, was seated with Donald H. Berman and three other candidates on the Board of Trustees, announced by memorandum to law students, on March 25, 1988, (See Appendix D). Students were advised by memorandum on June 16, 1988 that the former Law Professor Irving was elected Chairman of the Accreditation Committee and that he was also named Chairman of the Board of Trustees, effective June 1, 1988, (See Appendix E).

On April 8, 1988, by way of a memorandum to students from President Boland, an announcement issued advising that an agreement was entered into to lease a new law school facility in downtown Lowell, with an expected occupancy scheduled for June, 1989, (See Appendix F).

A memorandum to the law students, dated October 21, 1988, announced that former Senator Paul E. Tsongas was seated on the Accreditation Advisory Board ''* * * to help guide the School in its mission to serve the community as well as the legal community.'' In the same memorandum, Ms. Regina Faticanti was appointed as Student Representative to the Board of Trustees, (See Appendix G).

During this organizational juxtapositioning, the Commonwealth SBA (Student Bar Association) students began lobbying the merits of Commonwealth School of Law with the Board of Regents. Students met with Dr. Weston, Vice Chancellor of the Commonwealth of Massachusetts Board of Regents on March 10, 1988. The dialog of the meeting seems to indicate that Dr. Weston could find no reason to deny accreditation to the Commonwealth School of Law as long as the December, 1986 inspection recommendations were remediated, (See Appendix H).

Following the favorable recommendations of the Visiting Committee on Accreditation, which was conducted in November, 1988, it appeared that the administration was committed to resolving the perceived minor deficiencies, in-house turmoil notwithstanding. There was a move afoot to oust the founding president, Michael Boland, by some members of the Board of Trustees, some faculty and some students. Persisting local newspaper articles appeared questioning the moral conduct of Mr. Boland. In early spring, 1989, the Chairman of the Board of Trustees, John F. X. Irving suspiciously resigned. It was announced that former Senator Paul E. Tsongas became the Chairman. President Michael Boland was apparently discharged or resigned, and Ms. Margaret Talkington, Vice President, became President of the School, (See Appendix I).

The bases for these changes were not made clear nor were the changes documented for distribution to the students. The general consensus was that it was likely initiated by a number of issues: the newspaper articles; conflict between Boland and the Lowell Planning and Economic Development

entities; bad blood arising from the unfavorable comments made by the dean, some faculty and some students providing wrongful and distorted information and impressions to the Visiting Team, evident from the analysis of their report, (See Appendix J). At this juncture, it appears that the Commonwealth School of Law was divided by power factions. In order to quell the apprehensions of the students, Senator Paul E. Tsongas, (as Chairman of the Board), appeared before the student body sometime during the early part of the spring, 1989 semester. Mr. Tsongas informed the students that the School would be accredited and personally assured the graduating seniors that they would receive their Juris Doctor degrees and qualify to take the Massachusetts Bar examination. Twelve members of the senior class (Two of the four here) were to complete their studies by the end of May, 1989.

It seems that with the unseating of President Boland went the financial resources to sustain the cost of required remediation necessary for accreditation. Students became aware that Mr. Tsongas and the Board of Trustees were negotiating with Emerson College, who expressed an interest in absorbing the Commonwealth School of Law, driven by the Lowell financial package earlier negotiated by Boland and continued by the new executives. According to information transmitted by Regina Faticanti, student member of the Board of Trustees, to the students in the months following, the new Board of Trustees was concluding the negotiations of the financial plan with both developers and officials of the City of Lowell and Emerson College.

While this process was proceeding, former Senator Tsongas was appointed by Governor Michael Dukakis as President/Chairman of the Board of Regents. Nothing was documented relative to the resignation of Mr. Tsongas from the Board of Trustees of Commonwealth School of Law. Shortly thereafter a memorandum to Commonwealth students, dated May 16, 1989, was received from Allen E. Koenig, President of Emerson College, announcing the opening of Emerson School of Law, (See Appendix K).

The senior class did not receive the appropriate Juris Doctor degree in May of 1989 as Mr. Tsongas earlier promised so encouragingly. Whether the Senator's intentions may have been sublimated to the negotiations with Emerson College is unknown.

Emerson Law School published a catalog, which was provided to all Commonwealth School of Law students, together with an admission's application. All four of the students applied, remitting the prescribed $40 application fee and subsequently an acceptance fee of $400. Emerson acknowledged acceptance of each, both by letter and through endorsing and cashing the respective checks, (See Appendix L for specimen letter, receipts and refunds).

While the transition from Commonwealth School of Law to Emerson was in progress, announcements were made appointing Donald Berman, ex Commonwealth School of Law Trustee, as Dean of Emerson Law School, Regina Faticanti as an administrative executive, the former Commonwealth Dean Judy Jackson as Associate Dean and all full-time and numerous part-time faculty were absorbed by Emerson, (See catalog exerpt Appendix M).

On August 31, 1989, the Dean of Emerson Law School, Donald Berman, sent a letter to each of the students advising that Emerson Law School would not open. While there was an expectation among the students that some form of intervention might evolve to place the students at another law school, the letter from Dean Berman was the last official statement, (See Appendix N).

The students wrote to Mr. Tsongas as Chairman/President of the Board of Regents on September 8, 1989 and again on November 21, 1989. Mr. Tsongas did not respond, (See Appendix O for specimen letters).

Questions Presented

1. *Is the Commonwealth of Massachusetts a party to the harm and injurious consequences suffered by the students?*

It would seem that in legislating an educational policy, the Commonwealth of Massachusetts designated and empowered a Board of Regents to ''* * * develop, foster, and advocate a comprehensive system of public higher education of high quality, flexibility, responsiveness, and accountability,'' (Title II, Chapter 15A, *Annotated Laws of Massachusetts*), clearly assumed a responsibility to be accountable for the educational welfare of students attending institutions, whether public or private, within the Commonwealth of Massachusetts. That the Board of Regents, as a group and, through its members, individually, provided encouragement to Commonwealth School of Law students (upon which they relied), sanctioned visiting Commonwealth School of Law accreditation teams' evaluations, approved of the merger of Commonwealth School of Law into Emerson College and the creation of Emerson Law School (a Commonwealth of Massachusetts accredited school of higher education over which the Board of Regents exercised jurisdiction), and permitted the closure of Emerson Law School by its oversight, negligence, malfeasance, misrepresentation, concealment, and denial of due process inflicted grave and irrevocable harm to the students herein.

Beyond the Board's negligence and suspected mala in se by its failure to protect the welfare of Commonwealth School of Law students transferred and accepted by the State-approved Emerson College, it seems the Board was negligent in its statutory responsibility under Title II, Chapter 15A, Section 5, *Annotated Laws of Massachusetts.*

Emerson College, as an accredited state educational institution, as seen by its action to absorb/merge Commonwealth School of Law into its educational institution, was acting with the approval and full knowledge of the Commonwealth of Massachusetts Board of Regents of Higher Education, through its members and its agent Paul E. Tsongas, who knowingly permitted and encouraged Emerson College to expand its educational offerings through the Commonwealth School of Law takeover, placing the students welfare under the Board's jurisdiction.

The students are presumed to be protected by the Laws of Massachusetts as promulgated to the Board of Regents of Higher Education under Chapter 15A, *Annotated Laws of Massachusetts,* in that, Emerson College was under the jurisdiction of the Board of Regents at the time Emerson accepted the students and acquired the resources of the Commonwealth School of Law.

The negligence and inaction of the Board of Regents to protect the interests of the students suggests discrimination against them, wherein, the Board of Regents, by its mandate, ordinarily does act to protect the interests of students within the Commonwealth of Massachusetts. It is untenable that minority students should not be protected as other students in the Commonwealth of Massachusetts.

2. *Did the Emerson College Board of Trustees have a statutory or other responsibility to the students harmed by its failure to act an in a responsible manner and was there a duty to protect the academic credentials and make provisions to insure that the Juris Doctor degree be made available for which the students contracted and made good faith reliances thereon?*

The individual members of and the Board of Trustees of Emerson College are seen as subject to the provisions of Sections 9 & 10, Chapters 15A, *Annotated Laws of Massachusetts.* By the decision of the Board of Trustees of Emerson College, (Including Emerson Law School Division), to close Emerson Law School, thus abandoning the students and depriving them of educational opportunity, rights of appeal and due process, it would seem that the statute was violated. The Board of Regents, for its failure to oversee and protect the rights of the students, would appear similarly in violation of the statute for its failure to exercise regulatory fiduciary responsibility to the students harmed by the actions of the Emerson College Board of Trustees.

3. *The students relied on the promise of former Senator Paul E. Tsongas, by which he assured the graduating class that each would receive the Juris Doctor degree and that those other Commonwealth School of Law students would be continued in a law program, does Mr. Tsongas, in his role as an agent, and as President/Chairman of the Massachusetts Board of Regents, became liable?*

It seems clear that Mr. Tsongas, individually and as an agent for the Board of Regents for the Commonwealth of Massachusetts, is liable for breach of contract, for failing to provide Juris Doctor degrees promised and continuing legal education, misrepresentation and conflict of interest in his function with Lowell economic development, concealment, negligence, and in circumventing the rightful due process to the students.

The evidence seems to support the notion that the reason Mr. Tsongas became involved was due essentially to his wish to enhance economic development in Lowell, (See Appendix P). That bodies were scattered as a consequence of this venture is not seen as part of the plan. That many students, administrators, and faculty were harmed

seems to have evolved from likely poor judgment, and self-serving motivations. The telltale trail grew out of an economic development plan, to control of the Commonwealth School of Law Board of Trustees, to the Board of Regents of the Commonwealth of Massachusetts. The welfare of the individual students appeared incidental and did not seem to place high on the roster of priorities, thus the students' rights were neglected and abandoned.

It would appear that Mr. Tsongas has a statutory and fiduciary obligation and responsibility to the students as a member of the Board of Regents and a civil professional responsibility in contract due to gross negligence in which the students were harmed by reliance on his promises, resulting in loss of their property interests.

4. *Are there other responsible persons who may have interfered with contract performance, been contributorily negligent, and caused the denial of due process rights to the detriment of the students and against whom action may be taken?*

Yes, the following played a role for which they may have liability:

Honorable Michael Dukakis—In appointing Paul Tsongas to the Board of Regents, was undoubtedly aware of the Commonwealth School of Law accreditation agenda and Mr. Tsongas' role therein.

Dr. Allen E. Koenig, former president of Emerson College, for gross negligence, breach of contract, and denying due process rights to the students because of his representations that led to the absorption of Commonwealth School of Law, the closing of Emerson Law School, and denial of educational opportunity earlier guaranteed and Juris Doctor degree conferral expected by the students.

Mr. Michael Boland, former president of Commonwealth School of Law, for innocent misrepresentation, nondisclosure, and breach of contract for abandoning his contractual responsibility to provide the legal education promised.

Ms. Margaret Talkington, former president of Commonwealth School of Law, for innocent misrepresentation, nondisclosure, and breach of contract for abandoning her contractual responsibility to provide the legal education promised.

Mr. Donald Berman, Acting Dean, Emerson Law School and member of the Board of Trustees of Commonwealth School of Law, for negligent misrepresentation, conflict of interest, concealment, breach of contract, contract performance interference and denial of due process rights to the students because of the events and his positions previously stated.

Ms. Judy Jackson, Commonwealth School of Law Dean and Associate Dean of Emerson Law School, for misrepresentation, conflict of interest, concealment, contract performance interference and denial of due process rights to the students because of opportunism and likely self-serving motivations.

Ms. Regina Faticanti, student representative to the Board of Trustees, Commonwealth School of Law, and agent for Emerson Law School, for negligent misrepresentation, conflict of interest, concealment, and contract performance interference. Ms. Faticanti, because of perceived self-interest and personal ambitions, is seen as not having fulfilled her responsibilities in adequately representing the students.

Mr. Roland Hughes, president of the Student Bar Association of Commonwealth School of Law for innocent misrepresentation, concealment and contract performance interference for failing to properly apprise the students of important information and events affecting Commonwealth School of Law and abandoning responsibility as an elected student representative.

Mr. Stephen Moses, president of the Senior Graduating Class of Commonwealth School of Law for innocent misrepresentation, concealment and contract performance interference for failing to properly apprise the students of important events and information affecting their status and abandoning responsibility as an elected student representative.

Applicable Statutes

U.S. Const. amend. 1
U.S. Const. amend. 14 Section 1
42 U.S.C. Section 1983 (1976)

Annotated Laws of Massachusetts

Chapter 15A, ''Board of Regents of Higher Education.''
Section 1. Board of Regents; Purpose and Responsibility.
Section 3. Institutions under Board of Regents.
Section 4. Officers and Employees.
Section 5. Powers and Duties.
Section 9. Boards of Trustees of Individual Institutions.
Section 10. Powers and Duties of Boards of Trustees.
Chapter 93A, ''Consumer Law.''
Chapter 151A, ''Fair Educational Practices.''
Section 3. Petition Alleging Unfair Practice.

Discussion

Students at institutions of higher education were not afforded meaningful legal protection until *Frank* v. *Marquette University, 245 N.W. 125, (1932),* (one of the first cases to hold that a private university could not act arbitrarily or unreasonably with regard to its students). Two leading cases removing immunity and allowing students to take action against schools are *Dixon* v. *Alabama, 294 F.2d 150, (1961) Healy* v. *James, 408 U.S. 169, (1972).* In the latter *Healy* case, the Supreme Court, in a commentary by Justice Powell proffered ''At the outset we note that state colleges and universities are not enclaves immune from the sweep of the First Amendment.'' Justice Douglas, in support of the same opinion, advocated the students' need for first amendment protection. Both decisions, *Dixon* and *Healy,* indicate that school authorities no longer have unilateral authority to take arbitrary actions against students, especially when these actions violate the constitutional or legal rights of the students. In *Baldwin* v. *Zoradi, 123 Cal. App.3d 175, (1981),* a California court removed the perceived legal assumption that colleges and universities exercises power over student's rights.

1. *Mandatory legal precedents have been established recognizing that students are protected by contract theory as consumers of educational services.*

Courts have held that because of their expenditure of time and money, students are entitled to the same protection afforded in other consumer situations, such as consumers of commercial products. See Cahn, ''Law in the Consumer Perspective,'' *122 U.L. Rev. 1 (1963),* and Chapter 93A, *Massachusetts General Laws Annotated.* Students expect to be treated reasonably: when these expectations are not met, they seek protection from the judicial and legislative systems. See ''Consumer Protection and Higher Education—Student Suits Against Schools,'' *37 Ohio St. L.J. 608, (1976).* Students bringing actions are seen as relying upon contract theory, which the courts seem to favor when finding for students. This contract theory suggests an express or implied contract exists between the students and the school. In *Anderson* v. *Regents of Univ. of Cal., 22 Cal. App. 3d 1, (1972),* the court ruled that by the act of matriculation and payment of fees, a contract between the student and the state is created. While *Anderson* may have limited the ruling for state schools, *Zumbrin* v. *Univ. of So. Cal., 25 Cal. App. 3d 1, (1972),* held that a private university was contractually liable to students. Oral representations of school agents become terms of the contract and were held binding on the school in *Healy and Blank* v. *Board of Higher Education, 273 N.Y.S.2d 796, (1966)* and see generally Calamari & Perillo, ''Law of Contracts,'' 16–1 to –6, at 581–88 showing specific enforcement of the contract will be permitted where a student can show that damages resulting from the breach are inadequate to compensate for the loss and what was bargained for was unique. [Where this is shown] courts have required that degrees be awarded to students.

In *Zumbrun, supra,* and *Lowenthal* v. *Vanderbilt Univ., 7 J. Coll. & U.L. 191, (1981),* the obligations of a higher educational institution is seen as contractual to provide the curriculum promised and that the essence of the implied contract is good faith and reasonableness, see also *Olsson* v. *Board of Higher Education, 402 N.E.2d 1150, (1980).*

Students, in some cases and in order to prevent a school from withholding degrees, have used the estoppel theory, see *Olsson,*

Healy, and *Blank, supra.* The basis for applying the estoppel theory is that the promise [contract] is a representation from the school that, if the student follows a prescribed course of conduct, he will be given a degree evidencing his academic accomplishments. If the student receives such representation from a qualified school official, the student will rely upon it. Lastly, a student's reliance upon such representation from a school, is clear by his expenditure of money for fees, the pursuit of a prescribed curriculum, the foregoing of other opportunities, and the commitment to complete that school's program. See Calamari & Perillo, Section 6–1, at 202.

Financial exigency of a school is not a wholly viable defense of impossibility to perform as may likely be evoked. In *Peretti* v. *Montana, 464 F.Supp. 786, (1979),* the court held that financial exigency alleged was not sufficient to show impossibility of performance and increased costs of performance are not sufficient to excuse performance.

Where unsconscionability may surface, particularly seen in education cases, a contract of adhesion exists where there is gross overall one-sidedness of gross one-sidedness of a term disclaiming a warranty, limiting damages or granting procedural advantages. If the clause places a great hardship or risk upon the party in the weaker bargaining position, it must be shown the provision was explained to the weaker party and came to his knowledge. A real and voluntary ''meeting of the minds,'' not merely an objective meeting, must be proved. See Calamari, Section 9–40, at 325 and *Weaver* v. *American Oil Co., 276 N.E.2d 144, (1971).*

In *Peretti, supra.,* the court prohibited a public school from terminating a program due to insufficient funding from the state, ruling that the program was unique and to terminate would interfere with the completion of an ongoing . . . program. In *Eden* v. *Board of Trustees, 374 N.Y.S.2d 686, (1975),* SUNY terminated a program because of financial problems. The court held that the state could not show sufficient immediate monetary savings to justify abrogating its existing contracts with potential students. A private college was denied the right to terminate a program in *Galton v. College of Pharmaceutical Science, 322 N.Y.S.2d 909, (1972),* where the court held that students in the program had a contractual right to continue their studies until graduation.

Any defenses if impossibility to perform would likely turn on the educational institution. Many court decisions hold that a party may not, by this own conduct, create the event causing impossibility or impracticability of performance. Rather, the promisor must make all reasonable efforts to avoid the ''impossibility.'' See Johnson, ''The Problems of Contraction: Legal Considerations in University Retrenchment,'' *10 J.L. & Educ. 269, (1980).* In *Behrend v. State, 379 N.E.2d 617, (1977),* the court put schools on notice by its decision requiring performance that, where it is difficult if not impossible for students to transfer to another college or university with credit for work completed elsewhere, the court would view close scrutiny the obligation of schools to provide students with an opportunity to complete their education, and to provide the education at the level which was reasonably expected.

2. *Negligence and misrepresentation are two tort actions which students may use against higher educational institutions to seek recovery.*

The tort doctrine of negligence has been used by students to hold a school, through its agents, negligent for failing to act reasonably in accord with its duty do adequately provide services associated with such institution. See *Zumbrun* and *Behrend, supra.* W. Prosser, in ''Handbook of the Law of Torts,'' Section 92, at 613–22, notes that the duties imposed in tort are those imposed by the law, based primarily on social policy, and not necessary upon the will or intention of the parties; they are owed to all those within the range of harm. The damages in tort require that the damages be proximately caused by the defendant's act and damages are available. Prosser, Section 31, at 145, also indicates that a school has a duty to protect its students from unreasonable risks.

Massachusetts Educational Statutes require private schools to meet certain minimum requirements to operate. Consumer protection in higher education services is covered by Massachusetts Consumer Statutes for the purpose of avoiding abusive practices.

3. *Violation of students' civil rights and property interest may be the bases for actions used against a public or private educational institution.*

Rights guaranteed by the first and fourteenth amendments to the U.S. Constitution which are denied by institutions of higher education may be challenged at law where civil liberties regarding free speech and procedural due process are concerned. See Olswang, Cole & Wilson, ''Program Elimination, Financial Emergency and Student Rights,'' *9 J. Coll. & U.L. 170, (1982).*

In *Peretti, supra.,* the court found that an implied contract existed within the fourteenth amendment's protection if there was a violation of a right protected by the Constitution. The court held that where an administrative body's act making the exercise of a legal right impossible, a federal question existed. Olswang notes that property interest cannot be denied without due process.

Again, in *Peretti, supra.,* and *Hall v. University of Minnesota, 530 F. Supp. 104, (1982),* the courts held that students must be provided with process commensurate with the rights affected. Students have a private interest at stake in their continuing education. The education is necessary for careers they plan to pursue upon graduation. The student is deprived of that interest * * * if programs are terminated, * * * Robert R. DeKoven, ''Challenging Educational Fee Increases, Program Termination and Deterioration, and Misrepresentation of Program Quality: The Legal Rights and Remedies of Students,'' *19 Cal. Western L. Rev.,* 467–506, *(Summer, 1983).*

4. *Boards of trustees of Institutions of higher education within the Commonwealth of Massachusetts are delegated fiduciary responsibility by the Massachusetts Board of Regents and, by virtue of their charter, have power to delegate to the chief executive officer of the institution.*

The courts in *Behrend* and *Peretti* supra., on termination cases, etc., found that state educational requirements to qualify the student to take a state examination established a duty on the part of the schools to provide that level of education. As here, the students in cases examined showed that the schools acted unreasonably, and, as a result of misconduct, caused undue risk of harm to the student and the injury was proximately caused by the acts of the schools. Thus, with the powers of authority vested in schools by a state indult, so also the responsibility issues to those officials to protect the rights of students.

Institutional responsibility for educational policy is statutorily derived from the authority given the Massachusetts Board of Regents under the provisions of Sections 1 & 5, Chapter 15A, ''Board of Regents of Higher Education,'' *Annotated Laws of Massachusetts.* The power to delegate policy and fiduciary responsibility to Boards of Trustees of individual institutions is mandated by Section 9, of Chapter 15A, and Section 10 promulgates the powers and duties of individual Board of Trustees. Section 1 reads in part:

* * * to advocate a comprehensive system of * * * education of high quality, flexibility, responsiveness, and accountability. * * * To achieve these goals it shall be the responsibility of the board of regents to preserve and promote * * * the highest level of academic quality to community services activity.

5. *The Board of Regents of the Commonwealth of Massachusetts exercises regulatory powers over colleges and universities within Massachusetts.*

Section 3, Chapter 15A, ''Board of Regents of Higher Education,'' *Annotated Laws of Massachusetts,* specifically states, ''The board of regents of higher education shall be the governing authority of the system.''

Court decisions supporting this governing power may be found in *Hamilton v. Regents of the University of Cal., 293 U.S. 245, (1934), Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967),* and *Blank, Galton,* and *Zumbrun* supra., which establish standing, authority to regulate state educational statutes, and provides a source of remedy for students seeking relief from state (private and public) institutions of higher education.

6. *The Board of Regents of the Commonwealth of Massachusetts has the authority and duty to grant degrees and transfer students to other institutions where a controversy exists.*

Among the ''Powers and Duties'' of the Board of Regents of the Commonwealth of Massachusetts, (Section 5, Chapter 15A, ''Board of Regents of Higher Education,'' *Annotated Laws of Massachusetts*), are:

5.(a). to confer upon the boards of trustees the power to award certain degrees to persons who have satisfactorily completed degree requirements.

5.(b). in addition to the degrees authorized to be awarded under clause (a), the board of regents may approve the awarding of certain other degrees and may define and authorize

new functions or new programs; or consolidate, discontinue or transfer existing functions, educational activities and programs; and may, after public hearing and submission of a written report to the clerks of the house of representatives and the senate, by a two-thirds vote of the full membership of the board, consolidate, discontinue, or transfer divisions, schools, stations, colleges, branches or institutions as it deems advisable.

5.(t). develop and implement a transfer compact for the purpose of facilitating and fostering the transfer of students without the loss of academic credit or standing from one * * * institution to another.

5.(u). shall establish an affirmative action policy and implement a program necessary to assure conformance with such policy throughout the system.

Remedies

First Option for Remediation

1. A Commonwealth of Massachusetts Legislative Act designed to: (Following St. George's Medical School (Grenada) model).

a. Award Juris Doctor degrees to the eligible Commonwealth School of Law seniors who completed the eighty-four (84) credit hour requirements for graduation and certify the class to take the Massachusetts Bar examination.

b. Arrange to place all other students in a Commonwealth of Massachusetts accredited law school, such as Southern New England School of Law, allowing credits earned to be protected, transferred, and remain intact.

2. Legislative action authorizing the judiciary to allow bona fide graduates of Commonwealth School of Law and/or Southern New England School of Law to apply for admission to the Massachusetts Bar.

Second Option for Remediation

1. Enroll all Commonwealth School of Law students in a Commonwealth of Massachusetts accredited law school, such as Southern New England School of Law:

a. Require those Commonwealth School of Law students who completed in excess of eighty-four (84) credits to complete no more than six (6) additional credits at a cost not to exceed $3,000 and be awarded the Juris Doctor degree at the end of the study semester.

b. Enroll all other Commonwealth School of Law students in the same institution without loss of credits earned.

2. Legislative action authorizing the judiciary to allow bona fide graduates of Commonwealth School of Law and/or Southern New England School of Law to apply for admission to the Massachusetts Bar.

Cora Anderson
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P.O. Box 15, Great Falls VA 22066

July 10, 1995.

Hon. Joel Klein, Esq.,
Deputy Assistant Attorney General, Antitrust Division, U.S. Department of Justice, Washington, D.C.

Dear Mr. Klein: This letter is prompted by the article, ''ABA Settles Antitrust Case Over Certifying Law Schools,'' THE WASHINGTON POST (June 28, 1995), page A2.

I wish to commend you and the Department for your action in this matter. As a former law professor (Georgetown, Indiana; see enclosed resume) who, during the period 1974–1984, was actively engaged in an attempt to start a new law school, I was very familiar with the American Bar Association's ''standards'' of accreditation and the persons they used to enforce them.

Based on personal experience, as well as conversations with other legal educators who dealt with the ABA during those years, I can confidently state that the Justice Department's position is entirely correct. In my opinion, many of the ''standards'' were irrelevant to quality legal education; they were in some cases vague; and often they were applied arbitrarily.

Had resources been available, others would have brought the antitrust suit before Dean Lawrence Velvel finally did. What concerns me, however, is the quote from George Bushnell not admitting even a molehill of fault when the record, if properly built, should be a mountain of evidence that Dean Velvel is entirely correct. My hunch is that ABA being dragged ''kicking and screaming'' into admitting the abuse, will resist real change.

I could provide some additional insight, if you wish it, into the mentality of the ABA accreditation people during the period mentioned. If you would like to have a short meeting, just give me a call.

Very truly yours,

William A. Stanmeyer

Curriculum Vitae: WILLIAM A. STANMEYER, ESQ.

Education:
- A.B., 1956, *magna cum laude;* M.A., Philosophy, 1962; Graduate Study, Northwestern University, 1962; J.D., DePaul University College of Law, 1966.

Legal Activities and Associations:
- Admitted, Illinois Bar, 1966; Virginia Bar, 1980
- Private Practice of Law, Illinois, 1966–68
- Associate Professor of Law, Georgetown University Law Center, 1968–72
- Arbitrator, American Arbitration Association, 1972–1995
- Associate Professor of Law [tenured], Indiana University School of Law, 1974–80
- President, Lincoln Center for Legal Studies, 1980–85
- Private Practice of Law, Virginia, 1985 to present, Wills, Trusts, Family Partnerships

Civic and Other Professional Activities:
- American Bar Association: Member, Special Committee on Youth Education for Citizenship, 1970–73; Consultant, Criminal Law Section, 1970–72
- Public Lectures: at major universities, including Harvard, Univ. of Cincinnati, Notre Dame
- Virginia Bar Association: Member since 1980
- Consultant, fields of Business Development, Financial Analysis, Income Diversification

Administrative, Fund-Raising Experience:
- Managed numerous Institutes and educational projects raised over $1,000,000 for various education programs

Publications:
- Two Books
- Over twenty scholarly articles, in the Law Reviews of such law schools as: George Washington, Indiana University, and Hastings College of Law
- Numerous serious ''op ed'' pieces, in such newspapers as: the Miami Herald, the Chicago Tribune

Family and Personal:
- Married to the former Judith Ann Heitzmann of Chicago
- Five children, ages 15 to 26
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August 26.

Mr. Klein: Congratulations on the ABA Consent Degree! It has been long overdue. Two points, however, need to be made: (1)—The reporting requirement for Jim White to Bob Stein is ineffective * * * simply because Stein & White are *close* friends and there will, thus, be little real supervision of White * * * he will do what he wants to. (2). You should take a special look at White's relationship with Indiana University. Here is a real conflict of interest * * * he is listed as a Professor of Law—supposedly with half of his salary coming from the Law School * * * but he has not taught in over 20 years and, his whole salary, came from the Law School budget until the then-Dean, William Harvey, put his foot down and stopped this. It is speculated that the Law school now pays for White's University salary totally. Doesn't is seem odd that an educational unit that profits from the accrediting agency is running the show? Why not let the ABA, itself, pay for all of White's salary?? Jerry Bepko, the IU-Indianapolis Chancellor, has had a sweet-heart arrangement with White for years! Please investigate these two points and maybe amend the Consent Degree * * *

Thanks

4 Concerned Lawyers

Frederick L. Judd, Attorney at Law, (714) 852–1000 X257, (714) 261–5481 (fax)

2181 Dupont Drive, Irvine, CA 92715

September 5, 1995.

Mr. John Greaney,
Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street N.W., Room 9903, Washington, DC 20001

Response to proposed Final Judgment in United States of America v. American Bar Association

Dear Mr. Greaney: The purpose of this letter is to provide the Department of Justice with written comments with respect to the proposed final judgment in the USA v. American Bar Association, Civil Action No. 95–1211 (CR).

While the final judgment appears to deal with some issues, I strongly believe that the Final Judgment does not adequately resolve certain other practices that result in very anticompetitive and discriminatory consequences. I do not know if these issues have been reviewed by the Department, but the final judgment should take them into account.

I refer primarily to the accreditation standards of the ABA which appear to require that law schools set schedules in such a way as to minimize the amount of time that all students can work while attending law school, and even more, nearly make impossible outside work during a student's first year. I do not understand any rational basis for this practice, and believe its primary effect is to minimize the entrance into the profession of those who would have to or choose to ''work their way through'' their legal education.

While testimonial evidence is not necessarily as relevant as would be statistical verification of my claims, I will tell you that in 1982, BYU Law School refused to allow me to work into a schedule that would allow me, a CPA, a reasonable (i.e. three hour or greater) block of time during every school day in which I could complete outside work for clients. I remember discussing the situation with the Assistant Dean, who admitted that such a schedule could have been completed, but that the American Bar Association would consider it a negative factor in BYU's accreditation process if they were to accommodate my schedule.

I understood the reason for the scheduling difficulty was an ABA proclamation that first-year students needed to concentrate on studies, and not on outside work, and that scheduling classes at 8:00 am, 11:00 am, 2:00 pm and a study group at 6:00 pm would cause students to focus on the law, avoiding the certain distractions inherent in earning a living. However, the groups that congregated around study carrels seldom (until ''finals'' weeks) discussed the recent contracts, torts or property law concepts, but instead, their conversations inevitably rotated toward movies, television, sports, BYU policies, and the national championship football team.

The effect of the ABA policy was obvious: I could not learn because carrel conversations were usually not about the law, and I could not earn because I could not find appreciable blocks of time in which to make money. Ironically, my grades probably suffered because I would miss a class when I felt it financially necessary to service a client, or when I would work late at night, which some expert at the ABA would probably admit was not helpful for my class attentiveness during the daytime sessions.

I was able to make it through law school, but I believe the effect of the baseless ABA regulation is to exclude others without the right combination of sufficient means, earning capacity or desire to get through law school, and I am sure that the practice arbitrarily reduces entrance into the profession, of students generally (anticompetitive) and especially economically disadvantaged classes (discriminatory).

I believe the number of hours of outside work had little to do with my ability to study or learn. Law schools should be able to determine compliance with assignments and deadlines, and to appropriately measure class learning if they administer fair and comprehensive examinations. In my case, I worked more than the allowed number of hours, but still graduated in the top 10% of my class, while presumably those who knew the names and achievements of the football players did not. I did not lose the opportunity for the quality education BYU Law School offered.

The Department of Justice's lawsuit discusses the effects of the ''capture'' of the accreditation process by the accredited. In my situation, I thought it very unfair that by following the ABA accreditation standards, BYU actually reduced my ability to pay my own way through law school, and I was required to borrow, and the primary source of those funds was the BYU Student Loan Program. This appears to me to be a highly anticompetitive process, and those who are not selected by that process (although admittedly I was) find themselves at another distinct disadvantage where the opportunity for unfair discrimination can arise, especially where a law school may have additional criteria for the availability of those loans (i.e. compliance with church regulations or other goals).

I hope that the Justice Department will not simply stop its review of the accreditation policies of the ABA with the final judgment, and will not enter into the final judgment prior to examining this practice. The rules relating to barring students from working more than 20 hours a week or scheduling classes to prohibit outside work during the first year and minimized work in years two and three need to be examined and then discarded as what they are: Rationally baseless policies designed to prevent entrance into the profession which operate to discriminate against those who need the protections of antitrust and antidiscrimination laws the most.

I hope this material is helpful. If you wish more information about the matters in this letter, please feel free to call me.

Sincerely,

Frederick Judd.

Coyne and Condurelli, Attorneys at Law,

Professional Center, 198 Massachusetts Avenue, North Andover, Massachusetts 01845 (508) 794–1906

October 2, 1995.

Mr. John F. Greaney, Esq.,
Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street N.W., Room 9903, Washington, DC 20001

Dear Mr. Greaney: I am writing this letter of public comments not on behalf of the Massachusetts School of Law but as an attorney and officer of the court. For some time, I have been very concerned about the American Bar Association and its agents confusing effective advocacy with a reckless disregard for the truth in their efforts to continue to control law school accreditation at all costs.

Various pages from the depositions of the ABA Consultant, James P. White, and ABA Section of Legal Education officer, Claude Sowle, conducted during the preliminary discovery phase of Massachusetts School of Law's antitrust suit are enclosed. As you can see, Mr. Sowle's deposition (page 206, lines 22–25 and page 207, lines 1–2) and Mr. White's deposition (page 58, lines 23–25 and Page 59, lines 1–24) are at odds with paragraphs 15 and 16 of the Government's complaint. They are likewise at odds with the enclosed April, 1995 exchange of correspondence between counsel for the ABA and its Consultant.

In view of statements in the government's complaint, Mr. Sowle's testimony that the salary standard was not applied to MSL in June, 1993 because the ABA's ''actual practice for some time was not to pay attention to the geographical or competitive comparability of salary levels in its evaluation,'' is necessarily contrary to the information that the Justice Department must have in its possession. If Sowle's testimony is contrary to documentary information possessed by the Division, the testimony is plainly false and as officers of the Court must be exposed as such.

Additional pages from these two depositions are enclosed which show that when MSL attempted to impeach this testimony with contrary evidence from various schools, its efforts were blocked by the ABA. It is incumbent on the Government to clarify this matter since counsel for the ABA has yet to bring this false testimony to the Court's attention. Canon 7 of the Canons of Ethics and the relevant Disciplinary rules, specifically DR 7–102(B)(2), and District of Columbia Model Rule 3.3 require the Government's action at this time. I appreciate your efforts to improve American legal education and concomitantly the American justice system.

Sincerely,

Michael L. Coyne

MLC:cm

cc:
D. Bruce Pearson, Esq.

Darryl L. DePriest, General Counsel

Privileged and Confidential

April 27, 1995.

Dean James P. White,
Consultant on Legal Education, American Bar Association, 550 W. North St., Indianapolis, IN 46202

Dear Jim: Reflecting upon our conversation yesterday, I though that it might be useful to you and the Accreditation Committee if I put in writing my recommendations concerning the Committee's meeting this weekend.

As we discussed, there are a number of schools that are scheduled to appear on Friday and Saturday. I understand that some of the schools that are appearing are responding to concerns raised about faculty and staff compensation. In that respect, I propose that the Committee Chair make the

following statement prior to hearing from the law school:

As you may know, Standard 405(a) was amended by the House of Delegates in February. As a result, we will no longer be considering compensation as a part of the accreditation process. Therefore, you need not address that issue as part of your presentation as we will not be making any findings on that issue.

Committee members should not, of course, ask questions concerning compensation during the appearance.

In addition, findings implicating compensation should be deleted from any Action Letters that are forthcoming as a result of the meeting. I also suggest that we continue the practice of having the Action Letters reviewed by counsel prior to their issuance.

Finally, I advise the Committee to be cautious about raising compensation issues in conjunction with Standards 201, 209 or 210, which deal with adequacy of resources. Also, the Committee should examine whether, given the amendment to Standard 405(a), it should discontinue its practice of examining library staff compensation under the library Standards.

I hope this letter is helpful to you and the Accreditation Committee. As I may have mentioned, I am planning to be in Washington, D.C. this weekend attending the Diversity Summit sponsored by the Commission on Minorities. I will change those plans, however, if you feel it would be useful for me to attend all or part of the meeting in Indianapolis.

Very truly yours,

Darryl L. DePriest

DLD:mc

cc:

David T. Pritikin
David R. Stewart
Allison Breslauer
Donna C. Willard-Jones

American Bar Association, Section of Legal Education and Admissions to the Bar, Office of the Consultant on Legal Education to the American Bar Association

Indiana University, 550 West North Street Suite 350, Indianapolis, Indiana 46202–3162, (317) 264–8340, FAX (317) 264–8355, ABA/net:ABA411

Transmitted Via Facsimile and U.S. Mail

April 28, 1995.

Darryl DePriest, *Esq.*,
American Bar Association, 750 North Lake Shore Drive, Chicago, IL 60611

Dear Darryl: I am responding to your letter of April 27, 1995. As you have requested, I have given a copy of your letter to the Chairperson and Vice-Chairperson of the Accreditation Committee. I will also include your letter with materials on this subject to be considered by the Council of the Section at its meeting on June 2–3, 1995.

In your letter you ''suggest that we continue the practice of having the action letters reviewed by counsel prior to their issuance,'' Ms. Schneider and Professor Sowle have asked me to convey to you that the Committee has not observed such a practice in the past. To the extent that you are prepared to recommend such a change of procedure, perhaps you should direct a communication on the subject to the Council for its consideration in June. The Committee has made a determination not to depart from its established procedures prior to receiving advice and direction from the Section Council on this matter.

Sincerely,

James P. White,

Consultant on Legal Education to the American Bar Association.

cc:

David T. Pritikin, Esq.
David R. Stewart, Esq.
Alison Breslauer, Esq.
Donna C. Willard-Jones, Esq.

United States District Court for the Eastern District of Pennsylvania

Massachusetts School of Law at Andover, Inc., Plaintiff, vs. American Bar Association, et al., Defendants. Civil Action No. 93–CV–6206.

Volume I—Deposition of Dean James P. White, September 27, 1994, 9:30 a.m.

Reported by: James M. Trapskin, RPR, CM, Calif. CSR No. 8407.

Joseph Albanese & Associates, Certified Shorthand Reporters, 218 Main Street, Toms River, N.J. 08753, (908) 244–6100.

By Mr. Hart.

Q. I will ask you to turn to Page 43 of White Deposition Exhibit Number 1, the part in there that refers to ''Proposed Amendment of Standard 405 and Interpretations Thereto.''

A. Yes.

Q. And it refers to a proposed revision——

A. Yes.

Q——to 405? Could you tell us, sir, the, the reason for undertaking such a revision?

A. This suggestion came from the Standards Review Committee that, looking at current practices of, and, and from the Accreditation Committee looking at current practices of the Accreditation Committee, the procedure that is followed is whether a law school has conditions adequate to attract and retain a competent faculty.

And the suggestion was that the standard should be amended to conform with current practice.

Q. Is it your testimony that the second sentence of Standard 405(a) has not been literally applied on evaluations of law schools?

Mr. Pritikin. Which sentence are you referring to?

Mr. Hart. The one that says, quote, ''The compensation paid faculty members at a school seeking approval should be comparable with the paid faculty members at similar approved law schools in the same general geographical area.''

By Mr. Hart.

Q. Do you see that, sir?

A. I see that. My view would be why information might be reported by a team. The Accreditation Committee, itself, is concerned, does not consider the, whether the compensation is comparable to that at similar approved schools in the same geographic area.

Q. And that is a, quote, current practice——

A. That is correct.

Q. of the Accreditation Committee?

A. Yes.

Q. How long has that been the practice of the Accreditation Committee?

Mr. Pritikin. Again, we've allowed you some latitude here, but I don't see what relevance this has to this lawsuit, and I'm going to instruct him not to answer.

United States District Court for the Eastern District of Pennsylvania

Massachusetts School of Law at Andover, Inc., Plaintiff, vs. American Bar Association, et al., Defendants. Civil Action No. 93–CV–6206.

Volume II—Deposition of Dean James P. White, September 28, 1994, 9:00 a.m.

Reported By: James M. Trapskin, RPR, CM, Calif. CSR No. 8407.

Joseph Albanese & Associates, Certified Shorthand Reporters, 218 Main Street, Toms River, N.J. 08753, (908) 244–6100.

Mr. Hart. I would ask the reporter to mark as White Deposition Exhibit Number 37, a July 26th, 1984 document from James P. White to Dr. William Birenbaum, president of Antioch University and Dean Issac Hunt of Antioch School of Law.

(Whereupon, White Deposition Exhibit 37 was marked for identification.)

By Mr. Hart.

Q. Are you familiar with that action letter that you sent to Dr. Birenbaum and Dean Hunt?

Mr. Pritikin. I note, Mr. Hart, that this document does not bear production numbers.

Do you know where it came from?

Mr. Hart. I recall we had a conversation along these lines in another deposition, and you wrote me a letter that you didn't have to disclose such things, Mr. Pritikin.

Mr. Pritikin. We produced documents to you that were used in deposition in advance of using them.

Mr. Hart. Yes.

Mr. Pritikin. Has this document previously been produced by the Massachusetts School of Law in this litigation?

Mr. Hart. Well, I, I don't know. You can look it up.

Mr. Pritikin. It is highly improper for you to use documents in a deposition that have not been produced. I object strenuously to that practice.

By Mr. Hart.

Q. Well, can you identify this?

Mr. Pritikin. Do you have other documents that you're going to use this morning that have not been produced in the litigation?

Mr. Hart. I do not know, Mr. Pritikin. I have not sat down and gone through all these exhibits. And as I understand, you know, 40 or 50,000 documents produced, and I have not checked them, no I have not.

Mr. Pritikin. Well, the documents, my understanding is the documents that have been produced by the school have Bates numbers on them.

Mr. Hart. Well, a, a good number of the documents I used today don't have Bates numbers on them.

Let's get on with the deposition, Mr. Pritikin. If you have some quarrel with, to

find with the production of documents by the Massachusetts School of Law, we can take that up at an appropriate time.

Mr. Pritikin. No, I have a problem with your pulling out documents that haven't been produced; I do have a problem with that.

Mr. Hart. All right, well, let's proceed.

Mr. Pritikin. If you want the witness to identify the document, he can do that. But if you're going to ask substantive questions on a document that has not previously been produced——

Mr. Hart. I know of no such rule in litigation.

Mr. Pritikin. What's the pending question?

(Whereupon, the record was read by the court reporter.)

Mr. Pritikin. Can you answer that question?

The Witness. This appears to be an action letter went by me to, in 1984 to the president and dean of Antioch University and its School of Law.

By Mr. Hart.

Q. And it sets forth, does it not, conclusions by the Accreditation Committee with respect to the Antioch School of Law?

Mr. Pritikin. I'm going to instruct the witness not to answer any further questions about the document.

It does not pertain to the Massachusetts School of Law. Apparently it pertains to Antioch University. It says—I don't know where you got the document, it says ''Strictly Confidential'' on it, and the witness is not going to answer questions about this.

Mr. Hart. Let, will you please cite me some provision of the Federal Rules or some order or whatever that forecloses me to ask this witness questions about some document.

Mr. Pritikin. Judge Ditter has already ruled that matters pertaining to other law schools are not relevant to these proceedings. This has nothing to do with this case.

Mr. Hart. Well, this witness has already testified that the act, the actions and practices by the Accreditation Committee with respect to salaries are, are not in accordance with the literal letters of the second sentence of 405(a) of the Standards and they have followed a different practice over the years. And I need, bases that as far as a decision with respect to the Massachusetts School of Law, and think I'm entitled to get into what, in fact, the practice of the American Bar Association's Accreditation Committee has been with respect to faculty salaries.

There's an old legal saying that you can't have your cake and eat it too.

Mr. Pritikin. We disagree. In fact, any salaries are not part of this case. The Antioch University School of Law is not part of the case. This is not going to——

Mr. Hart. We've made allegations in this case about a conspiracy. We've alleged a conspiracy relating to salaries, and I think that I'm entitled to get into that. I don't know of any rule that forecloses me from getting facts from this witness.

And this document is chockablock full of references to the salary levels of the Antioch School of, of Law and how low they are, and is a basis for the decisions that are made with respect to that school.

Mr. Pritikin. The witness——

Mr. Hart. It's totally inconsistent with this witness's testimony and Claude Sowle's testimony with respect to the practice of the Council with respect to faculty salaries.

Mr. Pritikin. Well, my instruction stands. You might as well move on.

By Mr. Hart.

Q. If I had asked 15 other questions with respect to this document, Dean White, would you have refused to answer those?

A. I would.

Q. If I had asked 25 questions with respect to this document, would you have refused to answer those questions?

Mr. Pritikin. Based on the description of relevance that you have given us, the instruction will be the same, and I'll stipulate to that.

The Witness. Yes.

By Mr. Hart.

Q. And if I had 15 other action letters with respect to 15 other schools that contained information with respect to the practice of the Council with respect to, under 405(a) concerning salaries, you would have refused to answer those questions too.

A. Based upon——

Mr. Pritikin. I would give him that instruction, and I assume he would follow it.

The Witness. Based upon relevance to this case, I would not answer the questions.

Mr. Hart. Well, I guess we won't use these, Mike, today.

I have no further questions at this time.

Mr. Pritikin. I, why don't we take a——

Mr. Hart. Could I just say one other thing?

Mr. Pritikin. Sure.

Ms. Paxton. On the record?

Mr. Pritikin. On the record?

Mr. Hart. Yes.

Mr. Pritikin. Sure, absolutely.

Mr. Hart. We are going to pursue, and with bulldog tenacity, our efforts to obtain from the American Bar Association action reports relating to other schools, and we would be hopeful to obtain those. And we would also obtain discovery of documents relating to faculty salaries.

And to the extent that that might be helpful in my examination of this witness or with Mr. Sowle concerning their testimony on what the practice of the Accreditation Committee and the Council was under, in applying 405(a), I surely would want to continue that with Dean White and other witnesses.

Mr. Pritikin. Well, that doesn't surprise me, since you file another motion to reconsider that point every three or four weeks with some regularity.

Mr. Hart. Never give up.

Mr. Pritikin. Our positions have been made clear on that point and it will be for the Court to resolve.

Let's go off the record.

Mr. Cullen. Off the video record at 11:49:23.

(Whereupon, the noon recess was taken.)

Afternoon Session, 1:00 p.m.

Mr. Cullen. Back on the video record at 13:22:45.

Mr. Hart. I'd like to try to respond to an inquiry that Mr. Pritikin went to, asked with respect to White Deposition Exhibit Number 37 which I tried to use to question Dean White with before the break, break for lunch. And I was unable to ascertain whether or not we had produced that document in discovery because the people who would handle that were not available.

I also was unable to check on whether or not it was responsive, the document was responsive to any Discovery Requests. However, I'd be very surprised if it was because it relates to, ''A,'' another law school, and ''B,'' to salaries and I didn't think the ABA was interested in such documents.

And furthermore, I would guess the Judge's Order with respect to discovery relating to other law schools and also salaries suggests that that was not the proper subject of discovery. However, in view of the witness's testimony about the practice under 405(a) and Mr. Sowel's testimony in the same regard, I do think, it is relevant for cross-examination of those purposes. That's all I can say about the document at this time, Mr. Pritikin.

United States District Court for the Eastern District of Pennsylvania

Massachusetts School of Law at Andover, Inc., Plaintiff, vs. American Bar Association, et al., Defendants. Civil Action No. 93–CV–6202.

Deposition Under Oral Examination of Claude R. Sowle, Volume II

Transcript of the deposition of Claude R. Sowle, called for Oral Examination in the above-captioned matter, said deposition being taken pursuant to the Federal Rules of Civil Procedure, by and before Suzanne Boulos, a Certified Shorthand Reporter and Notary Public, at the offices of Spencer & Klein, 801 Brickell Avenue, Suite 1901, Miami, Florida, on Wednesday, September 15, 1994, commencing at 10:00 o'clock a.m.

Joseph Albanese & Associates, Certified Shorthand Reporters, 218 Main Street, Toms River, New Jersey 08753, Telephone (908) 244–6100.

Mr. Stewart. Object to form.

A. Did I personally?

Q. That's the question, yes.

A. That thought never entered my mind.

Q. Prior to this time did the American Bar Association seek legal advice on whether Standard 405A might present problems under the antitrust laws?

A. I don't know the answer to that.

Q. Prior to this time had the American Bar Association sought legal advice as to whether the gathering and distribution of salary levels among law schools might present problems under the antitrust laws?

A. If that occurred, I'm not aware of it.

Q. Referring to some of the testimony you gave yesterday, Professor Sowle, you testified as I recall that in preparing the action letter on the Massachusetts School of Law application for accreditation you did not apply the letter of 405A with respect to the requirement that, quote, the compensation paid faculty members at a school seeking approval should be comparable with that paid faculty members at similar approved schools in the same general geographical area, end quote. The reason you gave for not so applying the letter 405A was that the American Bar Association's actual practice for sometime was not to pay attention to the geographical or competitive comparability of salary levels in its evaluations; is that correct?

A. That's correct.

Mr. Stewart. Object as to form. Object. Asked and answered.

By Mr. Hart.

Q. In the numerous evaluations in which you have been involved, was it the practice not to pay attention to the geographical or competitive comparability of the salary levels in the law schools being evaluated?

Mr. Stewart. Object as to form.

By Mr. Hart.

Q. You may answer.

A. You are speaking now of my role as a site evaluator, not as a member of the Accreditation Committee?

Q. Of both.

A. I'll bifurcate my answer. With respect to site evaluations in which I have participated, my general recollection is and it's certainly a correct recollection in recent years. My recollection going back 10 years is not as good. But certainly my recollection is that I would pay attention as a site evaluator to the peer schools selected by the school being evaluated in terms of comparing or looking, at least, salaries, etc., and often would include in the report relevant data in that respect. Similarly I would as a member of the Accreditation Committee or as a monitor pay attention to the data provided in the site evaluation report regarding how the school took up as against those schools that it considers its peers in various areas, library expenditure, salary, etc. and I think much of that would appear in the transcript from yesterday.

Q. And when you, acting as a site evaluator, put together the information with respect to competitive or geographical comparable school salary levels, you did that, did you not, because you thought that was relevant and required by 405A?

Mr. Stewart. Object as to form.

A. Did I hear the word geographical in your question?

Q. Yes, you did.

A. Could I hear the question again, then, please.

Q. Surely.

(Whereupon, the following question is read back by the reporter):

''Question. And when you, acting as a site evaluator, put together the information with respect to competitive or geographical comparable school salary levels, you did that, did you not, because you thought that was relevant and required by 405A?''

Mr. Stewart. Objection as to form. This does not go to the issue of whether 405A served as a basis for the denial of Massachusetts School of Law application for provisional approval, so I'll instruct you not to answer on grounds of relevance.

The Witness. What is my—I need advice.

Mr. Hart. You are not going to get it from me.

The Witness. I understand not answering on the grounds of privilege but I don't understand what my status is with respect to——

Mr. Hart. Would you like to take a brief recess to discuss this with your attorney so you are not influenced by my views?

Let's take a five minute recess.

(Whereupon, there is a brief recess.)

(The deposition resumes and the following question is read back by the reporter:

''Question. And when you, acting as a site evaluator, put together the information with respect to competitive or geographical comparable school salary levels, you did that, did you not, because you thought that was relevant and required by 405A?''

A. With respect to the question just repeated, on the advice of counsel, I respectfully decline to respond on grounds of relevancy.

Q. When you were involved in the evaluation of the Thomas M. Cooley Law School in 1984 did you gather together and set forth a comparative salary data for the faculty at Cooley Law School?

A. When you say I, do you mean I personally?

Q. Or when you were on the team. You were on that team, weren't you?

A. Correct.

Mr. Stewart. I'll repeat my instruction.

A. I'm going to be disobedient for a moment and say I don't have the faintest recollection for the moment what that report contained with respect to salary information comparative or otherwise. That was 10 years ago and 16 sabbatical site evaluations ago and I simply would have to look at the report to be able to answer that.

Q. And you if looked at the report, do you think that would refresh your recollection?

A. I'm sure it would. President Brennan has provided you with a copy of the report.

Q. I have a copy of report on Thomas M. Cooley Law School November 7, 1984 in which you were listed on its face as one of the evaluators and I would ask you, sir, to turn to Page 23.

Mr. Stewart. Are you going to mark this as an exhibit, Ken?

Mr. Hart. I hadn't planned to.

Mr. Stewart. How come? I'm just curious.

Mr. Hart. Mainly I was trying to be merciful, if you will, about reproduction costs and burdening the record unnecessarily. I'm just using this for purpose of refreshing his recollection and see if it can refresh his recollection, which I don't think there's any requirement that I mark it as an exhibit or put it on the flagpole or do anything.

Mr. Stewart. If you are showing it to the witness and questioning him, it's appropriate to mark it as an exhibit but you proceed as you think appropriate.

Mr. Stewart. I will point out that it is marked as Deposition Exhibit Number 12 in the Brennan deposition of July 16, 1994.

By Mr. Hart.

Q. I will ask you, sir , to look at that and see if that refreshes your recollection whether the site report on Cooley Law School in 1984 sets forth comparative salary data?

A. Page 23 of the report does compile comparative information on what I assume are the approved law schools located in the State of Michigan.

Q. With respect to salaries?

A. That's correct.

Q. And as a member of the team at that time you consider that to be a relevant fact on the evaluation of the Cooley Law School?

Mr. Stewart. I object as to relevance and further, as we have with other witnesses, instruct Professor Sowle not to in your answers divulge any of the substantive issue concerning specific schools and the ABA consideration of their accreditation status. Furthermore, this goes beyond the bounds of the principles laid down in the Court's July 20 order and I'll instruct you not to answer to those grounds.

By Mr. Hart.

Q. Sir, are you going to answer the question?

A. On the advice of Counsel, I respectfully decline to answer on grounds of relevance.

Q. I will ask you to turn to Page 39 of the site report on Cooley Law School in 1984 and ask you if it does not refer to the library staff salaries being competitive with the regional norms?

Mr. Stewart. I object as lack of foundation. I'll object as to form and I'll object—I don't see how this leads to the potential discovery of admissible evidence as far as him saying what a document says or doesn't say.

By Mr. Hart.

Q. You may answer.

A. Yes, the report states with salaries of the junior librarian of professional staff range from $18,000 to $29,000. Cooley librarian compensation appears to be competitive with regional and law library norms.

Q. And at the time you as a member of the site inspection team for the American Bar Association understood that to be relevant facts to meeting the American Bar Association Standards?

Mr. Stewart. I object. I instruct you not to answer on the grounds stated earlier.

A. I respectfully decline on advice of Counsel to respond on grounds of relevance.

Q. When you were involved in the inspection team for the American Bar Association on Oral Roberts back in 1986 did you make any findings with respect to competitive or comparable salaries of the faculty at Oral Roberts compared to other law schools in the area?

Mr. Stewart. I'll object as to form and instruct you not to answer on the two grounds previously described relating to relevance, both in terms of outside the bounds the Court's July 20 order and relevance and confidentiality concerns regarding the substantive issues on relating to specific identified schools other than Massachusetts School of Law in their accreditation.

A. On the advice of Counsel, I respectfully decline to answer for the reasons stated just now by Counsel.

Q. Which you incorporate in your refusal?

A. Incorporate by reference.

Q. Same question with respect to Loyola Law School.

Mr. Stewart. Same instruction.

A. Same answer.

Q. Same question with respect to Seton Hall Evaluation 1987, which you were the Chair.

Mr. Stewart. Same instruction.

A. Same response.

Q. Same question with respect to the College of Law at Christian Broadcasting Network School 1987.

Mr. Stewart. Same instruction.

A. And same response.

Q. Same question with respect to the School of Law at the InterAmerican University, San Juan in 1988 in which you were the Chair.

Mr. Stewart. Same instruction.

A. Same response.

Mr. Stewart. We have attained a certain level of efficiency here.

Q. Same question with respect to Paul M. Hebert Law Center, Louisiana State University 1988 in which you were the Chair.

Mr. Stewart. Same instruction.

A. Same answer.

Q. Same question with respect to the University of Puerto Rico Law School 1988 in which you were the Chair.

Mr. Stewart. Same instruction.

A. Same answer.

Q. Same question with respect to the Boston University School of Law, my alma mater, in which you were the Chair in 1988

Mr. Stewart. With all due respect to your alma mater, same instruction.

A. With great respect, same response.

Q. Same question with respect to the University of Hawaii in 1989.

Mr. Stewart. Same instruction.

A. Same response.

Q. Same question with respect to the University of Virginia Law School in 1989 in which you were the Chair.

Mr. Stewart. Same instruction.

A. And same response.

Q. Same question with respect to Saint John's Law School in 1990 in which you were the Chair.

Mr. Stewart. Same instruction.

A. Same response.

Q. Same question with respect to the Cleveland-Marshall College of Law in 1992.

Mr. Stewart. Same instruction.

A. Same response.

Q. Same question with respect to Southern California Law Center 1993 which you were the Chair.

Mr. Stewart. Same instruction.

A. Same response.

Q. Same question with respect to the School of Law at Regent University formerly the Christian Broadcasting Network University in 1993 in which you were the Chair.

Mr. Stewart. Same instruction.

A. Same response.

Q. Same question with respect to Stanford Law School in 1994 in which you were the Chair.

Mr. Stewart. Same instruction.

A. Same response.

Q. And same question with respect to George Washington Law School 1994 in which you were the Chair.

Mr. Stewart. Same instruction.

A. And same response.

Q. I will direct your attention now to when you were a member of the Accreditation Committee of the American Bar Association section on legal education reviewing the District of Columbia School of Law's evaluation. In that evaluation did you take into account comparable or competitive salary levels of the fact of that school as compared with salary levels at other comparable institutions?

Mr. Stewart. I'll object as to form and I'll instruct the witness not to answer the question on the grounds that it is outside the discovery specifically identified as being appropriate in its July 20th order and furthermore instruct you not to answer on relevance and confidentiality grounds because it goes into the substantive issues that were involved in the accreditation of schools other than Massachusetts School of Law specifically identically identified school?

A. On the advice of Counsel, I respectfully decline to answer the question for the reasons stated by Counsel which I hereby incorporate in this nonresponse.

Q. Same question with respect to the Bridgeport School of Law at Quinnipiac College.

Mr. Stewart. Same instruction.

A. Same response.

Q. Same question with respect to Texas Wesleyan 1994.

Mr. Stewart. Same instruction.

A. And same response.

Mr. Hart. I will ask the reporter to mark as Sowle Deposition Exhibit Number 8 a 9-page document on the stationery of the American Bar Association from James P. White to the Very Reverend Donald J. Harrington, president of St. John's University and acting dean Edward T. Fagan of St. John's University with copies shown to Claude R. Sowle and others marked 8.

(Sowle Deposition Exhibit 8 marked for identification by the reporter.)

Mr. Stewart. Ken, is this a Bate Stamp from this litigation or from some other proceeding?

Mr. Hart. I don't think I have to tell you those things.

Mr. Stewart. Just asking.

Mr. Hart. I asked your good colleague Mr. Pritikin similar information and he told me in effect that he did not have to disclose where he got documents or what marks were on them.

Mr. Stewart. I was asking one of the Bate stamp or whether it's indicate it's been produced in this litigation. I certainly respect your decision not to respond.

By Mr. Hart.

Q. I will ask you, sir, if you can identify that document as a copy of a so-called action letter sent on or about November 5, 1990 to Saint John's Law school as a result of American Bar Association proceedings in which you had been involved earlier as chairman of the site evaluation?

Mr. Stewart. Objection to form.

A. I did chair the Saint John's site evaluation in that capacity. I did receive a copy of the action letter as shown on Page 9 of the letter and nothing would cause me to believe that this is anything other than the official action letter that was sent.

142–24 61st Road, Flushing, NY 13367–1202, (718) 461–1209, July 6, 1995

U.S. Dep't of Justice, Antitrust Division, 555 Fourth Street, N.W., Room 9901, Washington, D.C. 20001, (202) 307–0809, (202) 616–5980 (FAX)

David T. Pritikin, Esq., Sidley & Austin, One First National Plaza, Chicago, IL 60603, (312) 853–7036 (FAX)

Hon. Charles R. Richey, U.S. Dist. Ct. for the District of Columbia, U.S. Court house, 333 Constitution Avenue, N.W., Washington, D.C. 20001

15 USC 16 Comment, U.S. v. ABA, 95 CV 1211 (D.D.C.) (CRR)

The Proposed Final Judgement will allow the state judges/justices, conspirators [1] with the ABA,[2] to continue to violate federal law. The highest court of each state regulates [3] legal education and admission to the bar.[4] New York's Court of Appeals is illustrative.

Hon. Joseph W. Bellacosa [5] and his colleagues discharge their responsibilities imposed by the Legislature pursuant to N.Y. Jud. Law §§ 53, 56, 460; See *Matter of Shiakh* v. *Appellate Div.,* 1976, 39 N.Y.2d 676, 385 N.Y.S.2d 514, 350 N.E.2d 902 (1976); *Matter of Cooper,* 22 N.Y. 67 (1860); Court of Appeals Rules Part 520.

The Dep't of Justice and 95 CV 1211 have not addressed the state prerogative, if any, to violate the antitrust laws. Despite *Hoover* v. *Ronwin,* 466 U.S. 558 (1984) and the antitrust immunity test set forth in *California Retail Liquor Dealers Ass'n* v. *Midcal Aluminum, Inc.,* 445 U.S. 97 (1980), it is unclear whether the NY Court of Appeals has antitrust immunity. The quality of a law school's educational program and the provision of consumer information are not antitrust concerns.

The Court's Rules defined ''Approved Law School'' in Rule 520.3(b):

(b) Approved Law School Defined. An approved law school for purposes of these rules is one:

(1) whose program and course of study meets the requirements of this section, as shown by the law school's bulletin or catalogue, which shall be filed annually with the Court of Appeals; and

(2) which is approved by the American Bar Association; or

(3) which is a member of the American Association of Law Schools [6];

(4) which is registered and approved by the NY State Department of Education.

The Court of Appeals own rules the Court of Appeals sets forth an explicit policy

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[1] *Rohan* v. *ABA,* -F.Supp.-, 93 CV 1338, 1995 WL 347035 (E.D.N.Y.)). Rejects argument of former law school Dean that ABA accreditors are state agents for purpose of stating 42 USC § 1983 cause of action.

[2] ''5. Various others, not named as defendants, have participated as conspirators with the ABA in the violations alleged in this Complaint, and have performed acts and made statements to further the conspiracy.'' Complaint 95 CV 1211 (DDC).

[3] See Proposed Final Judgement at p.6, lines 6–7, & 10 ''(g) require that each site evaluation team include, to the extent reasonably feasible, at least: (2).* * *judge (state or federal, active or retired)* * *''

[4] See paragraph 7, Complaint 95 CV 1211 (DDC).

[5] ''Let me [Joseph W. Bellacosa] express my personal view that the Section's Accreditation decisions and process are and have been supportable, honorable, forthright, and upright.'' *Initial Report of the Chairperson of the ABA Section on Legal Education and Admissions to the Bar* at p. 6, lines 13–15 (Aug. 30, 1994). Page 1 Court of Appeals Stationary is marked ''*Personal and Unofficial.*''

[6] ''. . . [o]f the 1976 ABA-approved J.D. granting law schools. 159 are AALS members.* * *The AALS is recognized as one of the two national accrediting agencies for law by the Council on Postsecondary Accreditation the other is the Section of Legal Education and Admission to the Bar of the American Bar Association.'' at p.1, *1994 Handbook of Ass'n of American Law Schools.*

articulating a clear intent to displace unfettered competition with regulated market activity. The Court, its members and agents (The Board of Law Examiners) are actively involved in the operative anticompetitive decisions in restraint of trade. The history of the City University of New York (CUNY) School of Law at Queens College shows that if CUNY was not accredited by the ABA, despite Rule 520.3(b)(4), it would cease to exist.[7]

The ABA coerces Law School Deans, state actors, into violating state law.

Dean Haywood Burns based his refusal to supply Leeds with the requested documents upon an American Bar Association Report on ''The City University of New York Law School at Queens College'' regarding the February 10–13, 1991 visit made by a Committee of the Section of Legal Education. The foreward [sic] to the report stated:

'Important:' This report was prepared by the members of the visitation team named therein * * * It is intended for the exclusive use and information of those persons authorized by the Council to receive it. Any copying or distribution of a part or whole of this report is subject to this restriction.

What Dean Burns failed to note was that the American Bar Association is a private organization, and he works for a public agency, bound by all states law that affect public agencies in New York State. *Leeds* v. *Burns*, Index No. 1201/92, N.Y. State Sup. Ct. Queens Cty. Posner J., 208 *NYLJ* No. 18, p. 1, (col. 1), cont. p. 27, (col. 5) (Mon. July 27, 1992).

The ABA and AALS subvert state laws (e.g. N.Y. Pub. Off. Law § 84 *et seq.*) giving citizens access to government records.

As you may know, ABA Rule 36 on confidentiality of site visitation reports currently permits broader release of those reports than AALS Executive Committee Regulation 5.6. There are also a number of states which have public records laws that could conceivably be applied to site visitation reports. Carl C. Monk AALS Exec. VP & Exec. Dir., Memorandum 93–9 to Deans of Member and Fee-Paid Schools; Subject: Attached Survey on Confidentiality of Site Visitation Reports; Feb. 9, 1993.

The ABA's accrediting activities have not focussed on assuring the quality of the educational program and providing consumers with information regarding the quality of the educational program.

The ABA did not find jurisdiction pursuant to ABA Rule 34 regarding CUNY Law School's failure to comply with the Family Education Rights and Privacy Act (20 USC § 1232g; ''FERPA''). The federal court (42 USC § 1983 & 20 USC § 1232g) shall hear (94 CV 2367 (EDNY)) and decide.

As we discussed in our phone conversation last week, the federal financial aid program regulations require that an institution publish its academic standards used in determining satisfactory progress towards a degree. Most colleges, including CUNY campuses, meet this requirement by publishing their requirements in the college catalog. Martha Martin Program Compliance Officer to Dave Fields[8] Associate Dean, April 6, 1993. Exhibit One attached hereto and incorporated herein.

Despite numerous ABA Site Visits CUNY Law School's Catalog[9] continuously fails to provide required information to students and prospective students.

CYNY Law School admits students with low ''traditional indicators'' (undergraduate cum GPA & LSAT) based upon impermissible criteria. See *Davis* v. *Halpern*, 768 F. Supp. 968 (EDNY 1991 Glasser J.). CUNY's active recruitment of these students and its failure to discharge its obligations, act in good faith,[10] and help CUNY students pass the NY Bar Examination (ABA S301) constitutes the inculcation of false hopes and economic exploitation (ABA S304). Repeated ABA Site Visits have not influenced CUNY's deceptive practices. Potential remedies are provided for by N.Y. Gen. Bus. Law § 349 and RICO. See *Rosario* v. *Livaditis*, 963 F.2d 1013 (7th Cir., 1992).

Despite ABA S305(c) the law school has not adopted and enforced policies relating to class attendance. Chairman of the Black and Puerto Rican Caucus, NY State Assemblyman Larry B. Seabrook[11] (D-Bronx), concurrently served as an Assemblyman and attended CUNY Law School. The ABA has received a complaint pursuant to ABA Rule 34 and Standard[12] 305 & 305(c).

This Comment has been promulgated without my having had the opportunity to journey to the Washington, DC or otherwise obtain copies of the material[13] available to the public[14] in Washington, DC pursuant to 15 USC § 16(b). I request that the court make said materials available in the EDNY (225 Cadman Plaza East, Brooklyn, NY 11201) and/or SDNY (500 Pearl Street, NY, NY).

The Complaint in 95 CV 1211 (DDC) publicly slaps the ABA on the wrist and does not assert federal power to its full and proper extent. State Judges may agree themselves[15] or through their ''state'' agents (e.g. state board of law examiners) as they have previously agreed through the ABA.[16]

Conclusion

The proposed Final Judgment in 95 CV 1211 (DDC) should be rejected.

Respectfully submitted,

Jackson Leeds,

142–24 61st Road, Flushing, NY 11367–1202, (718) 461–1209.

July 6, 1995, Flushing, Queens NY

Attachments:
(1) Exhibit 1 (1 page)
Memorandum From Martha Martin
Program Compliance Officer
Re: Academic Standards, April 6, 1993.

Exhibit One

The City University of New York, Office of Student Financial Assistance

101 West 31st Street, 7th Floor, New York, N.Y. 10001–3503, (212) 947–6000. Ext.

April 6, 1993.

To: Dave Fields, Associate Dean
From: Martha Martin, Program Compliance Officer
Subject: Academic Standards

As we discussed in our phone conversation last week, the federal financial aid program regulations require that an institution publish it's academic standards used in determining satisfactory progress towards a degree. Most colleges, including CUNY campuses, meet this requirement by publishing their requirements in the college catalog. Enclosed is a copy of the satisfactory progress section from the *Encyclopedia of Student Financial Aid* complied by the National Association of Student Financial Aid Administrators and copies of the following federal regulations:

34 CFR 668.43(c)(2)(i) and (ii) indicate that standards must be included in consumer information available to all enrolled students and to prospective students upon request;

34 CFR 668.14(e) indicates that establishing, publishing and applying academic standards is part of the criteria used by the Department of Education to demonstrate an institution's administrative capability;

34 CFR 668.23(f)(1)(iii) indicates that student recipients' records used to determine satisfactory progress are subject to audit.

In addition, New York State regulations require that students be in good academic standing to receive state funds, including TAP. I am enclosing the applicable sections of policy and procedures published by this office.

If you need any further information, please let me know.

[7] See Paragraph 7, Complaint 95 CV 1211 (DDC).

[8] Fields is also Special Counsel to CUNY Chancellor W. Ann Reynolds and Records Access Officer for the CUNY Law School and the Central Administration located at 535 East 80th Street, NY, NY 10021. Martin refers to him as Associate Dean, but his full title is Associate Dean for Administration and Finance.

[9] The Catalog which contains the application for admission does not refer to the Student Handbook. Applicants requesting information are sent the Catalog and application and not the Student Handbook.

[10] See *Branum* v. *Clark*, 927 F.2d 68 (2d Cir. 1991).

[11] Listed in the ''unofficial list'' May 27, 1993 CUNY Law School Commencement Program.

[12] 305(c) A full-time student, to satisfy residence study requirements, shall devote substantially all working hours to the study of law and shall not engage in remunerative employment for more than 20 hours per week, whether outside or inside the law school. Regular and punctual class attendance is necessary to satisfy residence and class hour requirements. The law school has the burden to show it has adopted and enforces policies relating to class attendance.'' *Standards for Approval of Law Schools and Interpretations*, October 1994.

[13] 15 USC § 16(b) . . . Copies of such proposal and any other materials and documents which the United States considered determinative in formulating such proposal, shall also be made available to the public at the district court and in such other districts as the court may subsequently direct . . .

[14] CUNY Law School students and alumni may be particularly interested in any records pertaining to their school.

[15] See U.S. Const. Art. I, § 10 ''[n]o State shall without the Consent of Congress, . . . enter into any Agreement or Compact with another state . . .''

[16] The ABA Accreditation Committee includes at least one federal judge and one state judge of a state's highest court.

cc: George Chin

Robert A. Reilly

P.O. Box 309, Phoenix, AZ 85003–0309

July 4, 1995.

Mr. Joel Klein,
Deputy Assistant Attorney General, U.S. Department of Justice, Washington, DC.

Re: U.S. Justice Department/American Bar Association

Dear Mr. Klein: I wish to make a few comments on the Justice Department's proposed settlement with the American Bar Association (ABA) regarding the accreditation standards of the nation's law schools.

Although many of the recommendations are excellent and long overdue the tentative agreement, as reported in The Wall Street Journal on June 28, 1995, did not go far enough.

State Supreme Courts and State Legislatures should not be permitted to deny an attorney with good moral character who passed a bar exam in another state from taking its bar exam, a situation that currently exists in 42 or 43 states.

This ABA accrediting rule requirement is Jim Crowism at its worst, a throwback to a time when the ABA was a racist professional organization. A person who passes the bar exam in a state is a licensed attorney and should be allowed the opportunity to take the bar exam in other states unless there is a compelling reason backed by sufficient evidence that the applicant is unfit to practice law. Law schools, whether they are accredited by the ABA or not, have basically the same curriculum. Furthermore, the practice of law is learned on the job, particularly since most collegiate law programs decry the ''trade school'' approach.

Second, the main reason Arizona and other states with a similar rule prohibit non-ABA graduates from taking its bar exam is to limit competition. It's that simple.

In addition, denying bar certified attorneys from taking the bar exam in another state may be an impeachable offense by the public body that enforces the rule.

Public entities such as the various State Supreme Courts and State Legislatures are required to act in the public's interest. By limiting competition, denying qualified individuals from earning a living, by unjustly preventing individuals from practicing their profession in a place they want to live, simply defies the principles of freedom and justice our public officials are bound by office to uphold.

Frankly, the State Supreme Courts and State Legislators do not understand what accreditation is all about and what it is suppose to accomplish. If you don't believe this have some members of your staff check around. I did. The responses were ludicrous. Accreditation is not a Good Housekeeping Seal of Approval. It shouldn't imply non-accredited schools are diploma mills. Accreditation isn't mandatory, it's voluntary, a self-evaluation process that's been distorted by those in authority to suit their own vested interests.

Now is the appropriate time to bring this issue before the American people because the current status have far-reaching ramifications that are too many to include in this letter.

The burden of proof is on the State Supreme Courts and the State Legislatures to justify the current policy. I can furnish plenty of information showing the policy is a sham.

Enclosed are three news articles I've written on this issue. I'm not an attorney; I'm writing a book that includes the law school accrediting issue. I would be delighted to debate this issue in a public forum with anyone with the courage to do so.

Please let me know if you need additional information. I'm looking forward to your response.

Sincerely,

Robert Reilly,

(602) 252–5352.

Exhibit 38, Robert Reilly's letter, included three news articles. They cannot be published in the Federal Register. A copy of these articles can be obtained from our Legal Procedures Office.

Hawaii Institute for Biosocial Research

Private Carrier Address: Century Center, 1750 Kalakaua Avenue, Suite 3303, Honolulu, Hawaii 96826

Address all Mail to: P.O. Box 4124, Honolulu, Hawaii 96812–4124, Tel: (808) 943–7910 or 949–3200 (Messages Only), FAX: (808) 943–6912

July 30, 1995.

Mr. John F. Greaney,
Chief, Computers and Finance Section, U.S. Department of Justice Antitrust Division, 555 4th Street, NW., Room 9903, Washington, DC 20001

Re: United States of America vs. American Bar Association, Cv. No. 95–1211, Request for modification of proposed Final Judgment.

Dear Mr. Greaney: The enclosed letter dated July 30, 1995 amends and replaces my letter of July 18, 1995.

Sincerely yours,

Robert W. Hall,

President and Director.

July 30, 1995.

Mr. John F. Greaney,
Chief, Computers and Finance Section, U.S. Department of Justice Antitrust Division, 555 4th Street, N.W., Room 9903, Washington, DC 20001

Re: United States of America vs. American Bar Association, Cv. No. 95–1211, Request for modification of proposed Final Judgment.

Dear Mr. Greaney: We comment and object to the following omissions and deficiencies in the proposed Final Judgment. The proposed Final Judgment is seriously flawed and will result in injustice to the group that matters the most in any antitrust action, *consumers.* No group needs government anti-trust assistance more than law school applicants who are powerless in the accreditation and application process.

The issue is the American Bar Association's (ABA) involvement in the law school admissions process. The ABA is no disinterested, academic group. The ABA is a guild, a cartel with an economic ax to grind. The fox is in the hen house.

With ABA knowledge, sanction and support, one of the many ''services'' provided by Law Services includes the LSAT. LSAC members and many non-member law schools in the United States require applicants to (1) subscribe to the Law School Data Assembly Service (LSDAS) service and (2) take the LSAT as a part of the application process, self-serving disclaimers to avoid antitrust scrutiny notwithstanding.

The Law School Admission Council (LSAC) is an association of 191 law schools in the United States and Canada founded in 1947 to ''coordinate, facilitate and enhance the admissions process.'' During 1992, the Law School Admission Council administered 150,000 LSAT's, supported 477,000 law school applications, and processed 198,000 transcripts. As owners of the LSAC, the same legal educators that control the accreditation office control the LSAC. All law schools accredited by the ABA are LSAC members. That is a classic definition of a cartel. In most states, the practice of law is controlled by this cartel. An analogy would be a teachers' union controlling accreditation and applicant selection requirements at college level teacher training programs.

Taking the most conservative line and following Judge Bork's anti-trust positions, the goal of antitrust law should focus on the *maximization of consumer welfare.* The proposed Final Judgment fails by that measure or the more liberal measures in effect today. The proposed Final Judgment is deficient for all of the antitrust reasons listed in the initial Complaint.

The ''settlement'' and proposed Final Judgment omits mention of the most egregious American Bar Association (ABA) accreditation requirements from the consumer antitrust point-of-view which are that the fact of the ABA being involved in admissions requirements at all is simply for the purpose of restricting law school output which in turn, limits competition among licensed attorneys. Competition is directly controlled by the ABA accreditation (filtration) process.

The complaint in this action states that it is the view of the United States that during the past 20 years, the law school accreditation process has been captured by legal educators who have a direct interest in the outcome of the process. The government also noted in its Competitive Impact Statement that it has learned more about the ABA's practices and their competitive effects as the investigation proceeded.

In the process of that investigation, the government appears to have missed, not fully understood, or ignored other ABA accreditation standards and interpretations that limit competition and permit competitor law schools to limit rivalry among themselves. The government appears to have spent so much time looking at trees that it did not see the forest. The government first should have questioned the role of the ABA in the accreditation process at all.

The ABA walks, talks and acts like a cartel. The subject of cartels lies at the center of antitrust policy. ABA admissions standards and interpretations constitute one threat of a

boycott after another. (See, United States v. Nationwide Trailer Rental Systems, 156 F.Supp. 800, 805, 807 (D. Kan. 1957].) In Nationwide the Supreme court applied the rule of per se illegality because the Nationwide had the power to order a boycott.

As a group, these ABA anticompetitive issues involve a conspiracy to boycott law schools and consumer applicants a number of different ways. The ABA is also engaged in fixing prices charged law school applicants in a conspiracy with the Law School Admission Council (LSAC), particularly with the LSAT.

Despite the government's statement in Section XI, (c), ''Entry of this Final Judgment is in the public interest'' the proposed Final Judgment is not in the public interest. The combination of ABA accreditation practices in a conspiracy with LSAC is a ''naked,'' anticompetitive restraint. The power exercised by conspirators is enormous, i.e., the power of entry to the law profession. The intent the ABA's accreditation standards and interpretations are anticompetitive to restrict competition for the cartel that is the ABA.

The LSAT is an entry barrier to a law school education and subsequently, the practice of law. The issues raised in the attached white paper support the allegation that LSAT's are a fraud, the con of the century. The purpose of the LSAT is to restrict entry into the law profession, reduce the number of applicants, and by that process, enable the ABA to maintain a law monopoly in the United States. In that process, the ABA is able to support the legal profession's ability to charge high legal fees by restricting competition. More important, the ABA restricts entry to the profession so that in the maximum number of cases possible, ABA members in litigation are unopposed by those who cannot afford the services of an ABA member. The ABA is the most egregious and efficient monopoly in the United States.

ABA accreditation requirements and reviews involve minimum median LSAT scores along with pressure to keep median scores high. This pressure essentially makes the LSAT a gateway requirement to the legal profession in this country. See, ABA Standards for Approval of Law Schools and Interpretations, October, 1994, Interpretation 209, Page 2, 501 and 304, i.e., ''declining median (or average) LSAT scores''. By this Interpretation, the ABA has announced a boycott against law schools that do not require LSAT's. Law schools must also stay above ''declining median LSAT scores.'' This Interpretation is proof of a boycott against applicant *consumers* who have ''declining median LSAT scores.'' Interpretation 501 requires that a law school have an artificial barrier, and threaten to boycott those with ''declining median LSAT scores'' despite the fact that there is no proven or provable correlation between LSAT scores and success in law school.

ABA Standards for Approval of Law Schools and Interpretations, October, 1994, Standard 503 is an attempt to confuse the LSAT issue, by requiring an ''acceptable (apparent aptitude) test.'' The ABA knows that no predictive or aptitude test can ever prove a correlation between LSAT scores and success in law school. Thus the ABA stands on a fraud and says that another fraud *may* be acceptable in order to avoid an ABA boycott or threat of a boycott. That is not likely. The entire issue of predictive or aptitude tests is an artificial, fraudulent barrier to entry to the ABA controlled law profession.

LSAT tests are so devoid of any proven or provable ability to predict first year law school performance that eliminating LSAT requirements entirely would result in a higher correlation with first year law school performance than LSAT scores alone provide. A statistical analysis of flipping a coin will yield a better set of correlation coefficients than LSAT's yield. The above facts are a classic definition of an unlawful, artificial barrier for the purpose of limiting the number consumer applicants who survive while. That in turn keeps law profession fees high. The accompanying white paper expounds on this subject in considerable detail.

The accreditation process reinforces the stranglehold the ABA has over law education in this country regardless of whether an applicant intends to use his/her law education in the licensed practice of law or not. Proof of that allegation lies in ABA Standards for Approval of Law Schools and Interpretations, October, 1994, Standard 301, ''(a) A law school shall maintain an educational program that is designed to qualify its graduates for admission to the bar and to prepare them to participate effectively in the legal profession.'' Thus a person who simply wants a legal education without intent to petition for admission to the bar is either required to participate in an inappropriate ABA admissions program or both the applicant and the law school will be sanctioned with either a boycott or the threat of a boycott.

This letter is not a challenge to any Department of Education regulation. The Department of Education cannot lawfully mandate a fraudulent test and the LSAT is not named in any DOE mandate. The issue of whether a particular aptitude test is ''suitable'' is well within the jurisdiction of this antitrust action where the issue of fraud is raised and as it is accompanied by the wealth of material found in the attached white paper. It is well known that correlation does not prove causation. The fraud inquiry can stop right there or continue if the government wants redundant proof of fraud. It is well within the U.S. Department of Justice's responsibilities to take up the issue of ''suitable'' in relation to the LSAT. The issue is that of a fraudulent LSAT on the antitrust issues of this action and the well-being of consumers. The issue is well within the United States District Court for the District of Columbia's jurisdiction in this action. Fraud is the cornerstone for much that is anticompetitive and subject to antitrust litigation.

The ABA has boycotted and intends to boycott any law school, proprietary or non-profit, that does not have ''small classes for at least some portion of the total instructional program.'' See, ABA Standards for Approval of Law Schools and Interpretations, October, 1994, Standard 303, (ii). That Standard makes the requirement to accredit proprietary schools moot. The most prestigious schools in the country have very large classes for economic reasons. Small classes are uneconomical and are an artificial barrier not eliminated by the proposed Final Judgment. The requirement for small classes is under pain of boycott if the law school does not comply. Only law schools that have substantial amounts of government financial support can meet this anticompetitive requirement. This anticompetitive ABA requirement directly results in law school education price fixing, it is an artificial barrier to competition and both limit entry to the law profession as an illegal boycott.

ABA Standards for Approval of Law Schools and Interpretations, October, 1994, Standard and Interpretation 701 essentially means that the proposed Final Judgment provision concerning proprietary law schools is not a serious remedy. Only government supported or unusually well financed non-profit law schools can start-up with only permanent facilities, and without ''leased or rented facilities.'' The issue is one of business prudence, not law education. This particular Standard and Interpretation is an artificial barrier erected under pain of boycott, or threat of boycott to limit competition. The no lease, no rental standard is anticompetitive particularly in areas where land and buildings are extremely expensive. The requirement is anticompetitive to the extent that the ABA has proven by past deeds that are established in these proceedings, that it does not want for-profit competition. Standard 701 is an anticompetitive artificial barrier to competition.

From the public's point-of-view, a Special Commission consisting of largely the same actors who created the anticompetitive guild described in the government's complaint does not constitute serious relief. The fox remains in charge of the hen house.

The above anticompetitive practices have evolved without any real public participation, scrutiny or oversight. Proposed Interpretations of Standards, Rules, and Policies to the admissions process which are very much a part of the accreditation process have been hidden from the public view and will continue to be hidden from the public if they are published only in the ABA Journal and the Review of Legal Education in the United States. The ''public comment'' requirements of the proposed Final Judgment are for insiders, not consumers. There is no evidence of reasonable notice to consumers in this action. It is this absence of public oversight that has caused the ABA as an anticompetitive cartel, to flourish and prosper.

Law school applicants have no escape from the ABA's monopoly and anticompetitive practices described herein. The above issues are a very important part of the accreditation process. Admissions requirements directly affecting consumers are also a part of the accreditation process. That process has been captured by those with an economic interest in limiting the practice of law in the United States.

It is critical that the government not limit its ABA investigation to the issues listed in the proposed Final Judgment. The fact of this

action is not widely known to the public and that has injured consumers. The proceedings to date are largely insider proceedings where once again, whenever ABA interests are at stake, the public interest i.e., consumers are ignored. The investigation must be opened to public hearings for the reasons given herein.

Sincerely yours,

Rober W. Hall,

President and Director.

RH/bh

Enclosure: The Ethics of Educational and Employment Aptitude Testing

July 18, 1995.

Mr. John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice Antitrust Division, 555 4th Street, N.W., Room 9903, Washington, DC 20001

Re: United States of America vs. American Bar Association, Cv. No. 95–1211, Request for modification of proposed final judgment.

Dear Mr. Greaney: The complaint in this action states that it is the view of the United States that during the past 20 years, the law school accreditation process has been captured by legal educators who have a direct interest in the outcome of the process. The government also noted in its Competitive Impact Statement that it has learned more about the ABA's practices and their competitive effects as the investigation proceeded. Unfortunately, the government's action and order have concentrated on issues far less important to the public than other ABA anticompetitive practices that severely impact the public. The issues listed in the proposed Final Judgment are essentially insider issues.

Far more serious is the ABA's role in anticompetitive admissions processes required by the ABA in the accreditation process. Listed below and attached hereto are major anticompetitive issues left out of the final judgment that will be impacted by the ten year term of the judgment if they are not reviewed, investigated and included now. In the alternative, the following issues must be specifically excluded from the settlement prescribed by the proposed Final Judgment.

The public is concerned about the preclusion and res judicata effect of the proposed Final Judgment, Clayton Act disclaimers not withstanding. For the reasons given, the proposed judgment is deficient and potentially harmful to the public interest. Despite the statement in Section XI, (c), ''Entry of this Final Judgment is in the public interest.'' the proposed Final Judgment is not in the public interest.

Major issues not dealt with include but are not limited to:

1. The Law School Admission Council (LSAC) is an association of 191 law schools in the United States and Canada founded in 1947 to coordinate, facilitate and enhance the admissions process. During 1992, the Law School Admission Council administered 150,000 LSAT's, supported 477,000 law school applications, and processed 198,000 transcripts. As owners of the LSAC, the same legal educators that control the accreditation office control the LSAC.

2. All law schools accredited by the American Bar Association (ABA) are LSAC members.

3. With ABA knowledge, sanction and support, one of the many ''services'' provided by Law Services includes the LSAT.

4. LSAC members and many non-member law schools in the United States require applicants to (1) subscribe to the Law School Data Assembly Service (LSDAS) service and (2) take the LSAT as a part of the application process.

5. The LSAT is an entry barrier to a law school education and in addition, the practice of law.

6. The issues raised in the attached white paper support the allegation that LSAT's are a fraud having no validity at all, and certainly less predictability than the toss of a coin.

7. By ABA knowledge, sanction and requirement, ABA accreditation requirements and reviews involve minimum median LSAT scores along with pressure to keep median scores high. This pressure essentially makes the LSAT a gateway requirement to the legal profession in this country.

8. By ABA knowledge, sanction and requirement, the accreditation process reinforces the stranglehold the ABA has over law education in this country regardless of whether an applicant intends to use his/her law education in the licensed practice of law or not. As but one example, the government appears to be unaware that in Hawaii and other states, an officer and sole owner of a closely held corporation cannot lawfully represent the corporation before *federal* courts including bankruptcy courts regardless of competence since federal courts follow state licensing rules requiring an ABA approved law school education. In many cases, ABA lawyers file actions unopposed as corporate officers who cannot afford attorneys are told to sit down while licensed attorneys proceed. This issue starts with accreditation and admissions requirements required by ABA accreditation.

The above anticompetitive practices have evolved without any real public view, participation, scrutiny or oversight. Proposed Interpretations of Standards, Rules, and Policies to the admissions process which are very much a part of the accreditation process have been hidden from the public and will continue to be hidden from the public if they are published only in the ABA Journal and the Review of Legal Education in the United States. The ''public comment'' requirements of the proposed Final Judgment are for insiders, not the public. It is this absence of public oversight that has caused the ABA anticompetitive guild to flourish.

ABA facilities requirements essentially rule out for-profit law schools in Hawaii since Hawaii is the only state where commercial land is largely leasehold; land and buildings are extremely expensive since government and large estates own most of the land. If current accreditation practices continue to be used and a Hawaii for-profit corporation leases land and buildings, mainland accreditation teams who are unfamiliar with Hawaii's special problems will continue to use that fact to deny accreditation.

From the public's point-of-view, a Special Commission consisting of largely the same actors who created the anticompetitive guild described in the government's complaint does not constitute relief. The situation is one where the fox remains in charge of the chicken house.

Law school applicants have no escape from the ABA's monopoly and anti competitive practices described herein. The above issues are a very important part of the accreditation process. Admissions requirements are also a part of the accreditation process that have been captured by those with a direct interest in the outcome of admissions requirements.

It is critical that the government not limit its ABA investigation to the issues list in the proposed Final Judgment. It should also be understood that the entire action was not one widely known to the public and that has injured the interest the public has in this proceeding. The proceedings to date are largely insider proceedings where once again, whenever ABA interests are at stake, the public interest is ignored.

Sincerely yours,

Robert W. Hall,

President and Director.

RH/bh

Enclosure: The Ethics of Educational and Employment Aptitude Testing

The Ethics of Educational and Employment Aptitude Testing

Robert W. Hall, Hawaii Institute for Biosocial Research, Honolulu, Hawaii, Revised, July 18, 1995

Abstract

The author presents a case against the continued use of graduate or undergraduate educational or employment aptitude or predictive tests. The author argues that educational aptitude or predictive tests have no proven or provable validity, that there is no justification to continue to require educational or employment aptitude or predictive tests from the moral, ethical or legal points of view. The author raises the issues that (1) applicants required to take aptitude or predictive tests are forced to participate in psychological research without their informed consent, (2) applicants must pay for forced participation benefiting private, for-profit corporations, (3) nationwide cheating is distorting normative standards, (4) there is no known statistical method for validating aptitude or predictive tests since in actual use, random statistical selection is routinely ignored, and (5) validity correlations reported by the test makers prove the tests do not do what they purport to do. This paper is a call for multi-discipline reflection with regard to the moral, ethical and legal issues presented.

The Ethics of Educational and Employment Aptitude Testing

Introduction

Secondary, undergraduate, and graduate level educational and employment aptitude or predictive testing has had a profound impact upon the educational, social and political fabric of this country. Entry into key professions such as medicine, law, education

and the sciences is dependent upon high, predictive test scores. Educational and employment aptitude tests are an undisputed, major influence in the selection process of our intellectual elite.

Educational institutions use aptitude or predictive tests in order to predict first year grade performance. Government and private corporations use aptitude tests in order to predict first year job performance. The tests purport to predict the future by their claimed ability to predict future performance.

The purpose of this paper is to discuss the ethical considerations of aptitude testing in light of the many deficiencies of these tests. The most obvious deficiency of predictive or aptitude tests is the fact that no one can predict the future. The aptitude tests discussed in this paper are primarily the product of the Educational Testing Service (ETS) or the Law School Admission Council (LSAC) and their affiliated organizations.

Reliability and Validity

Over the years, warnings have appeared in lay and professional literature that have added to the doubt surrounding the use of aptitude or predictive tests. Educational and employment aptitude tests must have proven statistical reliability and validity in order to enjoy academic and professional ethical support.

Reliability refers to the ability to replicate the results of the test (Kidder, 1981). Commonly used methods for determining reliability are test, re-test methods or analysis of variance methodology. Examples of uneasiness in the literature include Lumsden (1976). Lumsden suggested that the study of reliability is largely irrelevant to predictive test. He argued that reliability theory is based upon assumptions that cannot be proven.

Validity refers generally to the criteria the test measures and how useful that measurement is. In order for a test to have validity, the test must correlate with another variable of interest. This variable is sometimes called a criterion.

There are two commonly used types of validity. One is face validity which is the apparent appropriateness of the test, a judgment call. The other is content validity which refers to how adequately the items in a test sample the area of interest (Guion, 1978; Messich, 1980). Both measures are important in the measurement of aptitude. The difficulty in measuring aptitude becomes clear when one attempts to define aptitude. Any definition of that word is truly in the eye of the beholder.

Of the two measures utilized in measuring validity, the important measure for our purposes is criterion-related validity. Criterion-related validity refers to the practical use of test scores in predicting performance on non-test behaviors of interest.

Criterion-related validity may be either concurrent or predictive validity. Predictive validity is essentially subsequent academic or employment performance. With concurrent validity, both the test scores and the criterion measures are immediately available . With predictive validity, test scores are available before the criterion data are available. Time passes before we know whether the applicant performed as predicted.

Statistics used to validate aptitude tests depend upon random selection. Without random selection, validation statistics are meaningless. Schools that admit or deny admission using test scores including a minimum predictive test score destroy random selection. Applicants who are not admitted as a result of failure to achieve an acceptable or a minimum test score become a control group, or the criterion-control group.

Once the criterion-control group drops out of the statistical equation (when they are not given the opportunity to perform), the statistical basis for validating aptitude tests becomes nothing more than worthless assumptions based upon other worthless assumptions. An attorney would call this hearsay upon hearsay.

Without control group first year grades or first year performance records, there is no way of validating the tests. We must know how all of those taking the test would have performed in order to validate the tests. Once random selection is destroyed, no credible data is available to validate the tests. Each test that eliminates applicants on the basis of minimum test scores adds to the destruction of the statistical data base. As a result, ethical considerations prevent the use of statistical data that depend upon random selection if random selection is destroyed in the process of gathering statistical data. In practice ethical considerations are routinely ignored in the name of expediency in the validation, sale and use of aptitude tests. The problem is one of the test-makers and the agencies requiring applicants to take the test refuse to face. One may either choose statistical validation, or one may choose expediency. The two are mutually exclusive. This example is only one of several serious flaws in the statistical process of validating aptitude tests (Tenopyr. 1977).

The test-makers are aware that it is not wise to use educational tests as the sole selection criterion with regard to any of its tests. The producers of the LSAT for example, routinely warn law schools not to use the LSAT as the sole selection criterion. At the same time, the LSAC knows or should know, that law schools habitually ignore those warnings and are pressured to do so in the accreditation process. In practice, the LSAC leaves the decision of how to use test results up to individual law schools. The failure to control the use of the tests is but one of the ways the tests become statistically worthless.

Despite their disclaimers, the candor of the test makers in presenting a clear, truthful statement concerning their products may be questioned. As an example, the validity statement in the 1984–85 General Information Booklet for the Law School Admission Test is notable for its brevity and general lack of information. Part of the statement reads, ''while correlations between test scores and grades are not perfect, these studies show that LSAT scores help to predict which students will do well in law school.'' Correlation between LSAT scores and first-year law school grades for 139 schools ranged from .06 to .71. The 1992–93 LSAT Information Book reported correlations from .11 to .64 (median is .41) between LSAT scores and first-year law school grades and from .22 to .69 (median is .49) between LSAT scores combined with undergraduate grade-point averages and first-year law school grades.

The concept of validity may be best understood by translating psychometric and statistical jargon into something everyone can understand. Correlations look like percentages. In fact, they are not. In order to obtain percentages, correlations must be squared. A correlation statistic of .06 becomes .0036 or about a third of one percent. A correlation statistic of .71 becomes .5041 or slightly over 50%. Such statistics cannot seriously be described as validations. It is also important to keep in mind that correlation does not prove causality. The assertion that one variable causes another always remains not proven.

Correlations for the GRE exam are routinely published between .20 and .30 or 4% to 9%. The 1992 LSAT correlations translate into from 1 to 41% (median is 17%) between LSAT scores and first-year law school grades and from 5% to 48% (median is 24%) between LSAT scores combined with undergraduate grade-point averages and first-year law school grades. Those validation statistics are terrible regardless of the criteria. A flip of the coin does better. When one realizes that careers are determined on the basis of assumption drawn from these statistics, the situation is even more of a human tragedy.

The 1984–85 LSAT statement could be characterized as one of no validity at all for an entirely different reason. The correlation data presented by the test maker in the 1984–85 LSAT statement describes an old, entirely different test. A new LSAT test was introduced in June, 1982. No correlation or validity data was available at the time of the 1984–85 test. In order to correlate and validate the new test, the test makers used the remarkable expedient of simply reporting correlation and validity data for the old test. The data presented failed to substantiate validity for the old test much less the new test. The ethical implications of that decision are that ethical standards were not observed.

The 1992–93 LSAT ''Information Book'' published by the Law School Admission Council (LSAC) claims (p. 4), ''The LSAT is designed to measure skills that are considered essential for success in law school:'' ''The LSAT provides a standard measure of acquired verbal and reasoning skills that law schools can use in assessing applicants.'' The validity information found on p. 125 does not support either of these statements i.e., medians of 17% to 24% (LSAS, 1992).

The 1984–85 GRE Information Bulletin reported validity correlations of from .13 to .40 (1.7% to 16%) in various categories (p. 27). The test maker did not even bother to publish criterion statistics. Despite that omission, the Educational Testing Service confidently states that the General Test or Subject Tests are appropriate for admitting students for graduate study, and for decisions in awarding fellowship awards.

The test-makers also recommended their tests for predicting success in graduate

school and for guidance in counseling students in their courses in graduate study (p. 28). There is considerable irony in the fact that most accredited graduate schools of psychology depnd upon GRE test scores despite the fact that such scores have no acceptable proven or provable validity.

For a period of time, some test-maker bulletins omitted validity correlation statistics entirely. For reasons best known to the test-makers, validation information was for a time, not published in the test information sent to and read by the student. In order to obtain validation statistics, the bulletins instruct SAT student applicants, for example, to order a second manual called the ATP guide. The reference to this second guide is not prominent in the bulletin.

The 1987–88 ATP Guide admits that the SAT-verbal and mathematical predictive correlation is 27% for 10% of the colleges measured (.52×.52=27%), between 13% and 27% for 40 percent of the colleges (.36 – .52), between 4% and 13% for 40 percent of the colleges (.21 – .36), and below 4% for 10 percent of the colleges. ETS admits, ''The validity of high school record is typically somewhat higher than the validity of the optimally weighted combination of SAT scores.'' ETS claims that the weighted combination of the highs chool record and SAT scores by a correlation addition of less than one half percent (9.07×.07). The ETS fails to state how the data should be weighted. There is no indication in the ATP Guide that any admissions director or admissions committee weights SAT scores or high school grades in the admissions process. (The College Board, 1987).

The 1984–85 Graduate Management Admission Test Bulletin of Information resolved validity disclosure problems by the simple expediency of not publishing validity information to test applicants. GMAT disclaimers are in comparison, much stronger than those provided with the GRE. ETS admits that the test, ''cannot and does not measure all the qualities important for graduate study in management and other pursuits, whether in education, career, or other areas of experience; . . . (2) there are psychometric limitations to the test—for example, only score differences of certain magnitudes are reliable indicators of real differences in performance. Such limits should be taken into consideration as GMAT scores are used.''

Employment test validity information provided by the ETS for tests such as the NTE teacher's test is also less than a resounding vote of confidence. The NTE teacher's test is sold to states and counties without validation. ETS simply tells prospective users to validate the test themselves. Incredibly, state after state has bought the test with that proviso.

The test-makers have not and cannot validate these tests with ethically applied, generally accepted statistical methods. A more serious question involves whether or not the test-makers use vague, ambiguous or highly technical disclosure information. The average applicant taking a predictive test is not skilled in statistics or psychometrics. Why then, do the test-makers persist in using statistical and psychometric language in place of plain English? Why are correlation figures used in place of percentages? The answer may be that the plain English information does not look very good. The data provided by the test-makers constitutes prima facie proof that forcing students or job applicants to take predictive tests is an economic and human waste.

Why don't the test-makers and their affiliates publish percentage statistics? Would you publish percentage statistics if your correlations were this bad?

Practical Considerations

The actual field use of predictive tests is even more interesting than their statistical shortcomings. A large number of prospective law school applicants expressed concern when the 1982 LSAT test was announced, and they rushed to take the old test. The same thing happened in 1991 when the test was changed once again. As a result, applicants for the 1983–84 and 1992–93 school years are believed to be heavily represented by those who took the old test while applicants for the 1984–85 or 1993–94 school years are a mixed group. There is no ethical justification to support the use of two entirely different tests in selecting a particular law school class or any other class.

The Richardson School of Law at the University of Hawaii as but one example, admitted as much in a 1993 report to the Hawaii Legislature footnote (p. 12): ''It is impossible to compare Law School Admission Test (LSAT) scores for all 20 years of the law school because both the test and the scoring system of the LSAT exam have changed during that period. The three different score ranges used since 1973 are not comparable. When the law school first opened in 1973, the range of scoring was 200–800; from the early 1980s until 1991, the test was scored on a 10–48 range. The latest scoring scheme—120–180—was first effective with the 1992 entering class.'' Here we have an accredited, ABA approved law school admitting LSAT scores over the years ''are not comparable'' and yet LSAT are still used to deny admission to applicants. In fact, either the new test score or the previous test scores were accepted for a time during an overlap period by educational institutions whenever new tests were introduced. That created a situation where a particular class would be entered using two different test score ''schemes'' despite the fact that they ''are not comparable.''

Another weakness with the practical use in the field of predictive test scores involves the limited psychometric background of those using the test scores. Most of those who make final selection decisions have no training whatsoever with regard to the limitations of predictive tests. Few decision makers understand the meaning of the psychometric cautions or the disclaimers found in testing literature. The average selection committee member may be reading far more into test scores than they should. To the extent that a situation has been created where users have too much confidence in the tests, the responsibility lies both with the test-maker and the institution requiring the tests. Additional responsibility lies with those in the academic community who know better and keep quiet.

At least one fully accredited, ABA approved law school, has a six person admissions committee two of whom are law students elected by the student body. Both are able to lobby and one has voting power. If any of the student admissions committee members have training in psychologicl testing, it would have to be by pure coincidence. When test makers send out test results, they routinely disclaim any responsibility with regard to the educational qualifications of those using their test results. The Standards for Educational and Psychological Tests and Ethical Principles of Psychologists of the American Psychological Association are simply ignored.

Admissions committee members may also be missing other important cautions found in standard psychometric texts such as Graham and Lilly's Psychological Testing (1984). Graham and Lilly caution (p. 42), ''If not all people can be accepted by an institution, those admitted should be randomly selected in the absence of any validity information. Only if the test scores are not used in the selection process can an accurate determination of the predictive validity of a test be made.'' Once predictive test scores are used in the admissions process, any hope of determining validity based upon generally accepted statistical models is destroyed.

Graham and Lilly also note (p. 40), ''* * * being able to predict who will be successful in a given job, whether as a police officer or airline pilot (or we might add, a physician, psychologist or an attorney), saves the person involved from an embarrassing failure and the institution from possible economic loss.'' The statement fails to deal with the embarrassing failure of not being admitted to graduate school. The statement also fails to deal with the potential economic loss to the applicant and the community despite the equal opportunity laws and constitutional protections of this country.

The uneasiness that continues to surface in the literature with regard to predictive tests (Fitzpatrick, 1983; Guion, 1978; Tenopyr, 1977; Messick, 1980; Federal Trade Commission, 1978; Owen, 1985) comes from the knowledge that criterion information is far from perfect. It is well known that grades in graduate programs are a function of, and are influenced by, many factors other than academic aptitude. In the real world, criterion information represents a measure of convenience. There is no evidence that the criteria measured proves anything (Graham & Lilly, 1984).

The most important criterion from society's point of view is not grade point average, but the far more important criterion of excellence in one's chosen profession. The criterion actually used in this context is a compromise between one that is ideal and one that is readily available.

Substantial legal questions are involved whenever educational and employment tests are used in the admissions or employment process. Not only are careers being decided, the applicant is forced to pay for the privilege of taking a test that cannot be validated using either statistical or ethical principles. Those who make decisions utilizing predictive tests are vulnerable pursuant to federal and state privacy, due process, equal opportunity, and civil rights laws.

Coaching Courses

Statistical assumptions validating predictive tests assume that the person taking the test has no previous experience with the content of the test. That assumption is not true for a group of privileged individuals.

A new dimension of concern surfaced with the publication of the ''Staff Memorandum of the Boston Regional Office of the Federal Trade Commission'' (FTC) with regard to ''The Effects of Coaching on Standardized Admission Examinations'' (1978). The Staff memorandum viewed the coaching of educational aptitude testing in light of equal education opportunity as mandated by federal law, and found educational testing wanting. The FTC memorandum presented evidence that well run coaching organizations can significantly increase test scores. The FTC memorandum found that coaching score increases (p. 1), ''have a practical, educationally meaningful, effect in that coaching can be the determining factor in deciding who is admitted to undergraduate and graduate colleges and universities. The availability of coaching is positively correlated to the ability to pay the tuition at coaching schools, which can be as high as $500 or more. Therefore coachable, standardized admission examinations create financial barriers to educational opportunities in direct conflict with our Congressionally declared national education policy.''

The FTC memorandum involved a 124,022 person LSAT study group of whom 8,660 had a total of 9,029 coaching school enrollments. The data showed that increases of anywhere from 30 to 100 or more test points on a test with a possible 800 points, could be achieved by the better coaching schools. That translates to an increase of from 2 to 6 points on the LSAT test that has a possible maximum of 48 points. The test makers represented that the 48 point test is reliable to within 2 plus or minus test points or roughly 4%. Thus a person with a 27 could raise his/her score to 29 or 33 points with coaching. That difference could easily be the difference between rejection and admission at many law schools.

The FTC memorandum contained (p. 2), ''* * * the existence of only one coaching school (and there is more than one) that can materially increase individuals' scores on standardized admission examinations such as the Scholastic Aptitude Test and the Law School Admission Test reveals the lack of reliability and validity of these examinations. The test makers themselves tell us that standardized admission examinations should be used to help predict the academic performance of an individual in undergraduate or graduate school. Yet, since short-term preparation can increase scores, but has a questionable long-term effect, the true predictive value of the standardized examinations is suspect.''

The most damning statement in the FTC memorandum involved discrimination between applicants. ''The standardized admission examinations are discriminatory in a number of ways. They discriminate against any individual who either: (1) cannot afford the cost of commercial preparation or (2) elects not to attend a commercial preparation course even if he can afford it because of acceptance of the dogma promulgated by the test makers, test administrators, and test users over the past twenty years that coaching is valueless.'' Two additional factors not noted in the report are that some applicants simply do not have an additional 250 hours of time to spend on coaching. Those who are successfully coached raise the national norms used to standardize the tests. Those who are not successfully coached pay not one, but several unfair penalties.

The FTC memorandum reported that educational aptitude examinations appeared to discriminate on the basis of race since certain sub-populations may receive a lesser benefit from coaching than others. The memorandum also noted that, ''The economic and social benefits flowing from admission to undergraduate and graduate colleges and universities (especially the more prestigious) are axiomatic.''

The FTC staff estimated that in 1979 the total cost of educational coaching, much less educational testing, was in excess of $10,000,000. The total cost of coaching for college, graduate school and employment applicants is now far more than $50,000,000 a year. At a time when the political administration in Washington is cutting back college student aid, the economic discrimination inherent in those numbers is weighted more than ever in favor of the wealthy.

The Federal Trade Commission was sorely embarrassed by the Boston staff memorandum. The Commission quickly watered down some of the credibility of the staff memorandum with a second, 1979 report that questioned purported methodological flaws in the data analysis. It should be noted that the Federal Trade Commission has not seen fit to subsequently commission a research study where the data analysis would be more acceptable to the FTC. The second report was not convincing. The original staff report made its point.

Coaching courses influence ''aptitude'' test scores. Each time that happens, national statistics are influenced in favor of those who have access to the better coaching courses. Thus the disparity between those with the $500–$600 tuition fee and access to the better coaching courses, and those who do not have access affects those who are not coached at least two ways. First, those who are not coached do not get the inside information necessary to increase their scores. Second, national predictive test statistics become a fraud.

Incredibly some school systems and universities are attempting to resolve the problem by offering their own coaching courses (Lynch, 1985). Owen (1985) compares various coaching courses and concludes that some courses are close to being worthless. The law School Admissions Services (Law Services or LSAS) has its own ''Official LSAT Prep Test'' as well as a series of ''Official'' preparation materials (LSAS, 1992).

There are some very good coaching courses, however, and those who have the key or the ''Trick'' to ETS examinations have an enormous advantage. In the real world, the Princeton Review may have the most salable service. The New York Times reported (Associated Press, 1987) a settlement of a lawsuit between the Educational Testing Service and the Princeton Review Inc. John Katzman, the founder of the Princeton Review was reported as having admitted ''distributing test questions from the company's (ETS) tests to students taking his (Katzman's) course giving them an unfair edge in the tests.'' (Insertions added for clarity.) Katzman was reported in an interview as having boasted that the lawsuit, ''guadrupled'' his business at $595 per student. Since its founding in 1981, the Princeton Review alone had grown to become a multi-million dollar business annually. The ethics of this situation is now to the point where ''coaching courses'' that give an unfair advantage to a privileged group taking ETS tests is a national disgrace. The word cheating has been used and will continue to be used to describe this situation.

Opting out:

The New York Times (Fiske, 1984) reported that Bates College in Maine, Bowdin College in Maine, and Sarah Lawrence in Yonkers discontinued their policy of requiring SAT scores. The University of Florida now makes achievement tests optional for those who do not do well on the SAT. The article reported that Harvard has considered achievement scores as an alternative to the SAT. The Harvard Business School dropped the GMAT test as an admissions requirement shortly thereafter (Day, 1985).

The Dean of Admissions at Bowdin was quoted as having ''serious'' ethical questions'' about the SAT. He noted concern about the growth of commercial ''coaching'' courses that help students prepare for the standardized tests. ''There has been an explosion of coaching schools,'' he said, ''but enrollment (in coaching schools) is almost stratified along financial lines. We have some real problems using something that can be so biased by economic resources. It's just not fair to minority, blue-collar and rural students'' (Fiske, 1984).

The New York Times reported (Lederman, 1985) on the findings of James Kulik and his associates at the University of Michigan's Center for Research on Learning and Teaching in an attempt to find an unbiased summary of the research literature on the subject to coaching. Kulik disagreed with previous findings of the Educational Testing Service (ETS.) that the average gain by coaching was small. Kulik found that ETS ''did not make clear that some individuals may make gains (through coaching) that cannot be ignored.'' Mr. Kulik said equality must be reached in one of two ways. ''Either no one gets any preparation which is more or less how it used to be; or everyone should have enough familiarity with the test. The former cannot happen now, and that latter raises the question: who's going to pay for it?''

The Law School Admission Council, the developer of the LSAT test, has contradicted long-standing ETS coaching disclaimers by proposing to enter the coaching business (Adams, 1988). The president of LSAC, Craig W. Christensen, was quoted in the National

Law Journal as admitting, ''* * * it's hard to say with a straight face that coaching does a student no good.'' The LSAC's own Pre-law Handbook statement admits, ''very few people can achieve their full potential by not preparing at all.''

Science (Holden, 1985) reported that the prestigious Johns Hopkins University School of Medicine has dropped the Medical College Admissions Test (MCAT) as an admissions requirement. Johns Hopkins dean Richard S. Ross stated that they were dropping the MCAT since the process has been ''distorting the premed curriculum grossly.'' The Science article reported that ''many see the MCAT as contributing to the dehumanizing aspects of medical school by favoring the more narrowly focused, competitive-minded students.'' Norman D. Anderson of Johns Hopkins was reported as stating ''there are no data indicating that MCAT scores correlate with either clinical performance in medical school or later success in medical careers.'' Another article appearing in the New York Times (''Top Medical,'' 1985) quoted Dr. Ross as stating ''We want people who are not monochromatic'' and stated that the tests ''perverted the undergraduate experience. It tends to displace all thinking about a general education. A student may think about taking a course in astronomy or European history, but then thinks about that test. The whole thrust of the undergraduate experience becomes a multiple choice standardized test.''

The admissions director of Harvard was quoted in the New York Times (S.A.T. coaching, 1988), ''Spending time on coaching takes time away from working on getting good high school grades, on extracurricular activities or community service, all of which are important when admissions officers are choosing a class.''

Other ethical questions:

Each predictive test has one section that is ''experimental''. That section is interposed in order to develop questions for future tests. Applicants are not informed which section is the experimental section. Applicants cannot skip the experimental section. Applicants have not volunteered to participate in a predictive test research project. Test-makers do not have the informed consent of those taking the test regarding psychological experimentation. The test-makers experiment with human subjects in what amounts to psychological research without full disclosure or informed consent. Applicants are not volunteers as test subjects in what amounts to psychological research without full disclosure or informed consent. Applicants are not volunteers as test subjects in order to support test-maker income producing activities. Yet, test-maker position is clear. There are no deviations. They have a monopoly. It is amazing how universities across the country blithely teach that such experiments are professionally unethical while at the same time, cooperating with test-makers. The hypocrisy of the situation is obvious.

As Owen (1985) reports, the experimental sections of ETS tests are the sections most likely to have ''miskeyed, flawed, badly written, and ambiguous items'' (p. 135) that are usually much more difficult than standard questions. A student coming across one of those sections without realizing it can become completely demoralized. The student could easily suffer a loss of confidence that would affect test performance. Experimental sections are moved around from test to test and according to Owen, have been placed as early as section 3 on the SAT. The final assault on the dignity of the hapless student is that he/she has to pay for the privilege of being humiliated while the subject of a hidden experiment.

The Ethics Code of the American Psychological Association (APA) states ''Ethical practice requires the investigator to respect the individual's freedom to decline to participate in or withdraw from research. The obligation to protect this freedom requires special vigilance when the investigator is in a position of power over the participant, as for example, when the participant is a student, client, employee, or otherwise is in a dual relationship with the investigator'' (''APA ethics'', 1979). Despite that well defined ethical standard, psychology professionals throughout this country require the GRE and related ETS examinations complete with the coerced research sections. It is clear that the disparity between preached and practiced ethics must be addressed.

ETS has had other problems with its tests. The release of the results for the 1996 National Assessment of Educational Progress reading test developed by the ETS were postponed until major problems in the exam are corrected. The first results of the $4 million a year contract were so unbelievable that Chester E. Finn, Jr., the Education Department's assistant secretary for educational research was quoted as saying, ''I'm pretty disgusted by the whole situation.'' (Reading test, 1988)

What to do?

Another, better approach to evaluating people may be the one suggested by the recent research of Dr. Siegfried Streufert of Pennsylvania State University College of Medicine (Goleman, 1984). Dr. Streufert indicates that thinking style is a better indicator of achievement than intelligence tests. Similar criticism has been made by David McClelland, a psychologist at Harvard. Dr. McClelland argued in the American Psychologist that it makes more sense to test for competence than intelligence. Dr. McClelland argued ''there are almost no occupations or life situations that require a person to do word analogies or choose the most correct of four alternative meanings of a word.'' While some commentators caution not to throw the baby out with the bath water, the approach urged by Dr. Ernest L. Boyer, president of the Carnegie Foundation for the Advancement of Teaching may be the most sensible (Hechinger, 1985). ''Let's decide what should be the goals of education before we think of tests.''

The issue of predictive and aptitude testing involves ethical and moral considerations, not to mention legal considerations. Anyone who has read H.C. Anderson's ''Emperor's Fine Clothes'' knows why a more conservative approach must be taken. The use of predictive or aptitude tests in the educational and employment settings cannot be defended on ethical, moral or legal grounds. They are a fraud (i.e., misrepresentation) foisted upon a hapless public by those who know the truth about their products.

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338 Joy Lane, West Chester, Pa. 19380
July 15, 1995.

Joel Klein, *Esquire,*
Deputy Assistant Attorney General, Department of Justice, Washington, D.C. 20000

Re: Recent settlement with ABA

Dear Mr. Klein: Wish to congratulate you on successful resolution of the ABA's anti-trust and corrupt influences in the accreditation process of the law schools which had the direct effect of Board of Law Examiners not admitting to the Bar lawyers who were otherwise qualified but had attended non-accredited law schools.

The purpose of this letter is to request that the Department of Justice should also investigate similar corrupt influences of ABA and the National Conference of Bar Examiners in fixing the number of lawyers who will be admitted to the Bar through the unethical and corrupt manipulation of Bar Exam results.

In my case, the Pa. Board of Law Examiners impounded my results because I was attempting to change career from teaching to law practice and because of my age, ethnic identity and national origin.

You would be surprised to find how many violations of human rights occur within the boundary of the United States under the guise and pretext of one unjustifiable regulation or the other.

See if you or your other colleagues can do something on this matter.

Yours truly,

Amrit Lal, Ph.D.

Massachusetts School of Law at Andover

Woodland Park, 500 Federal Street, Andover, MA 01810, 508/681–0800, FAX: 508/681–6330

September 28, 1995

Mr. John F. Greaney,
Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust division, 555 4th Street NW., Room 9903, Washington, D.C. 20001

Dear Mr. Greaney: Enclosed are MSL's Tunney Act comments on the Consent Decree filed in the Division's case against the ABA.

Sincerely,

Lawrence R. Velvel,

Dean.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. American Bar Association, Defendants. Docket No. CA95–1211.

Comments of the Massachusetts School of the Law on the Consent Decree and the Competitive Impact Statement

Massachusetts School of Law at Andover, Inc. 500 Federal Street, Andover, MA 01810, (508) 681–0800

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In the United States District Court for the District of Columbia

United States of America Plaintiff, v. American Bar Association, Defendants. Civil Action No. 95–1211 (CR).

Comments of the Massachusetts School of Law on the Consent Decree and Competitive Impact Statement

1. Introduction

The Massachusetts School of Law (''MSL'') hereby submits its Comments on the Consent Decree filed June 27, 1995 and the Competitive Impact Statement (''CIS'') dated July14, 1995.

As the Antitrust Division is aware, MSL—a gravely injured victim of the anticompetitive conduct challenged by the Department of Justice (''DOJ'') in this case—has been in the forefront of the battle against that illegal conduct. MSL alone challenged the conduct before the Department of Education (''DOE'') in 1992 and 1994. MSL challenged the conduct before the American Bar Association's (''ABA's'') Board of Governors and House of Delegates in 1993 and 1994. The School filed an antitrust case against the conduct in November, 1993. It subsequently brought the conduct to the attention of the Antitrust Division, and provided the Division with documents and depositions in the School's possession. MSL's history of being injured by the anticompetitive conduct at issue here, of studying that conduct, and of combating it, gives the School extensive insight into the anticompetitive actions challenged by the DOJ.

MSL's consent views are stated in these Comments. To some extent, the views reiterate those in MSL's prior *Memorandum* in support of its motion to intervene. However, these Comments also deal with numerous topics not covered in that *Memorandum*, and contain additional information on

several topics which were covered in it.[1]

We also wish to point out, as indicated in the prior Memorandum, that we believe the Complaint and Decree are a step toward eliminating serious anticompetitive practices that have injured hundreds of schools and hundreds of thousands of students. With changes to cure weaknesses that might otherwise undermine the effectiveness of the Decree, it could become not a mere step toward eliminating injurious anticompetitive practices, but almost certainly a highly effective step toward doing so. The needed changes, moreover, while curative, are relatively small in the total scheme of things. Yet, unless the changes are made, the Decree could fail to remedy the anticompetitive practices charged in the Complaint. We therefore urge the Government to make the necessary changes, so that the Complaint and Consent Decree will not risk ineffectiveness, but will instead fulfill their capability of being a major accomplishment which rectifies long-standing secretive practices that wreaked extensive anticompetitive and, indeed, antisocial injury.

2. The Consent Decree Does Not Contain Provisions Needed To Insure Against Continued or Renewed Capture of the Regulatory Process by Directly Interested Persons Who Hold Economically Self Interested, Anticompetitive Views

The Complaint and the Competitive Impact Statement accurately say that the ABA's ''accreditation process has been captured by legal educators who have a direct interest in the outcome of the process.'' (CIS, p. 10; Complaint, pp. 12–13; *see also* CIS, p. 1.) Thus ''the ABA at times acted as a guild that protected the interests of professional law school personnel.'' (CIS, p. 2.) So strong was the evidence of guild capture that the Division eventually concluded ''that mere amendment of the ABA's Standards and practices would not provide adequate or permanent relief and that reform of the entire accreditation process was needed. * * * [T]he larger and more fundamental problem of regulatory capture also had to be addressed.'' (CIS, p. 16.)

One of the most important steps taken in the Consent Decree to address the problem of regulatory capture is to limit the percentage of law school deans or faculty who can comprise the membership of key committees. (CIS, pp. 11–12.) Their membership on the Accreditation Committee, the Council and the Standards Review Committee cannot be greater than 50 percent (Consent Decree, pp. 5–6; CIS, pp. 11–12); their membership on the Nominating Committee (which nominates Section officers) cannot be greater than 40 percent. (Consent Decree, p. 6, CIS, p. 11.) (These four committees are hereinafter referred to collectively as ''committees.'')

In addition, for five years appointments to the Council, the Accreditation Committee and the Standards Review Committee—but *not* the Nominating Committee—will be subject to approval by the Board of Governors.

Limiting the membership of academics on the foregoing committees to ''only'' 50 percent or ''only'' 40 percent is not likely, however, to cure the problem of capture of the process. Not only will the ostensible limitations make little difference to the existing percentage memberships on the Council and the Accreditation Committee,[2] but, far more importantly, the capture of the process has not been primarily a question of numbers or percentages. It has been, instead, a matter of who has been interested in and willing to devote the most time to the work of the Section—to the work of establishing and implementing Section policies. As the DOJ recognized, accreditation is of direct concern to the professional well-being of the existing academic participants—it has deeply affected their academic salaries and working conditions and, because a leading position as an accreditor regularly enables them to obtain (lucrative) deanships, it has even been the determinant of their professional positions. Because of its effect on their academic salaries and working conditions, it has been of preeminent interest to academics who hold the anticompetitive view that the accreditation process should be used to force increases in salaries, enhanced fringe benefits, decreases in hours of teaching, and increases in perquisites. Members of the aforementioned committees who are judges or practicing lawyers, on the other hand, are usually far too busy on the bench or in practice to give accreditation the intense attention given it by the academics. And even when they do give it comparable attention, it almost invariably is the case that they are in agreement with the academics who captured and control accreditation, often because the lawyers and judges are themselves former academics (e.g., the most recent past Chairman of the Council, Joseph Bellacosa), or because, as events and testimony make plain, they defer to the views of the academics and support the academics' agenda.

As stated buy a leading academic at Northwestern University Law School who from time to time has been active in the Section:

> * * * the most powerful force in the Section is made up of law school deans, who by and large defend the regulatory status quo. It could hardly be otherwise. The other predominant occupational groups represented in the Section—practitioners, judges and bar admissions officials—more often than not defer to the deans on most questions involving legal education. Such deference is natural both because the deans necessarily have superior knowledge of the internal workings of legal education and because they are willing to spend the substantial time necessary to maintain direction of the Section. To the practitioners, judges and bar admissions officials, service in the Section is a voluntary diversion from their real work; to the deans, it is part of their real work of effectively governing legal education.[3]

The academics' capture and use of the accreditation process has also been augmented by additional factors. One is that, as said in the CIS, most of the accreditation process as it applies to particular schools ''was carried out by the Accreditation Committee and the Consultant's office. * * *'' (CIS, p. 10.) The Consultant ''direct[s]'' ''[t]he day-to-day operation of the ABA's accreditation process.'' (CIS, p. 4.) However, as the Division recognized, ''the individuals who served on the Accreditation Committee and in the Consultant's office had been in these positions for many years.''(CIS. p. 10.) indeed, the Consultant, James White,

[1] Among the topics covered here but not in the Memorandum are the composition of site inspection teams, the practice of writing one-sided and even untrue site reports in order to force compliance with anticompetitive rules, appeals from the Accreditation Committee to the Council of the Section of Legal Education, term limits on membership on committees, the identity of an antitrust compliance officer, validation of ABA accreditation requirements in accordance with Department of Education rules, requiring first year courses to be taught by full-time faculty as defined by the ABA, barring full-time students from working more than 20 hours per week, and requiring expensive library facilities and very large and expensive hard cover collections of books.

[2] At a meeting of the American Association of Law Libraries, accreditation leader Roger Jacobs, a member of the Council, recently indicated correctly that the percentage limitations on the Accreditation Committee and Council will have little effect because the limitations ''only requires the shift in one member or so in each of those bodies.'' (Exhibit 1.)

[3] John S. Elson, *The Regulation Of Legal Education; The Potential For Implementing The MacCrate Report's Recommendations For Curricular Reform*, 1 Clinical L. Rev. 363, 372–3 (1994) (footnotes omitted).

has held the office for nearly 22 years—from January 1, 1974 until today.

Furthermore, the Section as a whole, though containing approximately 6650 members, has long been under the control of about one percent of that total, or about 50 to 60 persons, who are the insider group that establishes and implements the Section's policies, and who are supported and assisted by another 30 to 35 persons who provide vigorous written and oral approbation for anticompetitive policies and additional manpower to carry out those policies.[4]

None of these factors is affected by the percentage limitations on membership of committees. Nor is there any bar to continued domination of the Section by precisely the same individuals who captured it in the past. Therefore, because these persons continue to have a direct interest in accreditation, it is reasonable to expect that they will continue to be accreditation leaders in the future—as they are today, three months after entry of the Decree. But these persons have highly anticompetitive views, resisted the entry of the Consent Decree, continue to resist the existence of a Decree which they regard as the product of a Department of Justice that is ''out of control'' and an ABA leadership that ''sold out,''[5] and have already been taking concrete actions which directly flout specific provisions of the Decree.[6]

Notwithstanding that membership on crucial committees is limited to ''only'' 50 percent or ''only'' 40 percent academics, continued domination of the accreditation process by these same capturing individuals must be expected to result in compliance with the Decree that is at best grudging and in the maximum amount of anticompetitive conduct that the members of the group feel they can ''get away with''—for example, as has occurred, in conduct which flouts the Decree if this can be gotten away with and, as evidence and testimony show to have occurred in fact, in anticompetitive conduct that can be hidden by not stating the *real* reasons for action in documents and formal meetings, so that there can be no readily available evidence of anticompetitive purpose such as price fixing.[7]

Furthermore, requiring Board of Governors' approval for appointments to the Accreditation Committee, the Council and the Standards Review Committee may have little or no effect on any of this. There is no evidence of any effect to date, three months after the Decree was filed on June 27, 1995, and there are several reasons for skepticism that there will be significant future effect. For example, the Consent Decree contains no provision requiring the Nominating Committee—whose membership was recently raised to 80 percent academics, *in violation of the Decree*, by adding leading insider Steven Smith—to seek out nominees known to hold procompetitive views instead of nominating persons who hold the capturing insiders' anticompetitive views. Nor is there any provision requiring the Board of Governors itself to insist that there be nominees who hold procompetitive views instead of the prevailing anticompetitive views. Nor is there assurance, particularly given the annual turnover in ABA leadership, that the Board will long have any stomach for opposing the wishes of the powerful, anticompetitively-oriented Section of Legal Education. The high level politics of the ABA have made it a goal of Board members to make no enemies lest this stand in the way of advancement. The Board has therefore acceded to anticompetitive Section wishes in the past despite heavily documented warnings of serious antitrust violations, and already has failed to prevent violations of the Consent Decree even though it is being relied on to do so.

What curative steps, then, can be taken to ensure that the Consent Decree effectively guards against continued capture of the accreditation process by precisely the same persons and continued anticompetitive conduct camouflaged by hiding underlying anticompetitive reasons? First, the Decree should bar members of the insider group, who are the persons responsible for the anticompetitive problems which arose—and also should bar their supporters—from any continued participation on behalf of the ABA in the accreditation process, just as securities law violators are often barred by injunctions from continuing to be active in the brokerage business.

Second, just as federal injunctions often bar defendants from engaging in future violations of laws they have already violated, in order to preclude future anticompetitive use of the process by captors, the Consent Decree should not only bar the actions which it already does enjoin, but should also include a provision specifically banning the ABA from violating the Sherman Act through use of its other

[4] The members of the insider group include (in alphabetical order): Jacquelyn Allee, Philip Anderson, Nina Appel, Joseph Bellacosa, Donald Dunn, Fred Franklin, Jose Garcia-Pedrosa, Laura Gasaway, Kathy Grove, Harry Groves, Jane Hammond, Joseph Harbaugh Frederick Hart, Rudulph Hasl, Thomas Jackson, Roger Jacobs, John Kramer, Wayne McCormack, Erica Moeser, Carl Monk, Lizabeth Mody, Richard Nahstoll, Gary Palm, William Powers, Henry Ramsey, Jr., Frank Read, Norman Redlich, Millard Ruud, John Ryan, Gordon Schaber, Pauline Schneider, Cathy Schrage, Marilyn Shannon, Philip Shelton, Steven Smith, Claude Sowle, Robert Stein, Rennard Strickland, Roy Stuckey, Leigh Taylor, Robert Walsh, Frank Walwer, Peter Winograd, James White, Sharp Whitmore, Marilyn Yarborough, and Diane Yu.

The persons who have supported and assisted the insider group include (in alphabetical order): Steven Bahls, James Castleberry, Charles Daye, Roger Dennis, John FitzRandolph, Arthur Frakt, Steven Frankino, Martin Frey, Nelson Happy, Richard Huber, Isaac Hunt, Vincent Immel, Barbara Lewis, Jeffrey Lewis, Dennis Lynch, Peter McGovern, John O'Brien, Michael Olivas, Kenneth Randall, Barney Reams, Gail Richmond, Victor Rosenblum, Laura Rothstein, Anthony Santoro, Richard Schmalbeck, Randall Schmidt, John Sebert, Rodney Smith, Dennis Stone, Bradford Toben, Linda Whisman, and Leah Workman.

[5] The verbal opposition to the Decree is illustrated by statements made by a leading insider, Joseph Bellacosa (Exhibit 2), and by the knowledgeable statement of Dean Ronald Cass of Boston University Law School that ''People who are long-time section activists regard what's going on now as crazy and can't understand how this came to pass.'' ''They think the Department of Justice people are out of control and that the ABA sold out by settling.'' Ken Myers, *ABA Accreditation Panel Urges Changes, But Critics Want More*, National Law Journal, August 21, 1995, p. A16. (Bellacosa's statements, Exhibit 2, illustrate Cass' points.)

[6] Actions that contradict the Decree include the following. The ABA agreed the Decree was binding as of the day it was filed, June 27, 1995. The Decree provides (and the CIS confirms) that the Nominating Committee's membership cannot be comprised of more than 40 percent academics. It also provides that no data is to be collected on salaries. Nonetheless, (1) in August, 1995, it was announced by the capturing insiders that a fourth academic was being added to the five person Nominating Committee, so that its membership was raised from 60 percent academics to 80 percent academics, instead of declining to the 40 percent allowed by the Decree. The academic being added to the Nominating Committee is preeminent captor Steven Smith, who, though apparently well-aware of antitrust problems with the ABA's practices (Exhibit 3), continued to be a leader in training site inspectors to engage in what he admitted was thought by many to be ''a guild effort to up salaries'' and in training them to disguise the true purpose of this guild effort by claiming it was necessary for quality. (Exhibit 4.) And (2) notwithstanding the Decree's ban against collection of salary information, in August 1995 the Consultant's office circulated a new questionnaire to law schools seeking salary data. (Exhibit 5.) The data are sought in a form that allows calculations of average salaries and, possibly, identification of individual salaries in certain instances. (The questionnaire was circulated approximately one month after accreditation captor Roger Jacobs, who is a law library director, circulated a letter on the Internet saying that several law library directors were wondering whether the Association of American Law Schools (''AALS'') would be willing to collect and distribute salary information now that the ABA is barred from doing so, and had received a reply from a law librarian saying this would not be wise. (Exhibit 6.))

[7] Efforts to ''get away'' with anticompetitive action are exemplified when anticompetitive conduct is hidden by not stating in writing or at formal meetings the *real* reasons for action, so that there can be no readily available evidence of anticompetitive purpose such as price fixing. (This was done in connection with MSL.) Inspectors have also disguised price-fixing motivation by claiming that higher salaries were necessary for quality. See note 6, *supra*.

accreditation criteria to achieve anticompetitive purposes (which the Complaint and CIS specifically say was done at times by the captors).[8]

Third, the Decree should require the Board of Governors, on which the Division is depending, to itself seek out, and to insist that the Nominating Committee likewise seek out, nominees for the Accreditation Committee, Council and Standards Review Committee who are known to have procompetitive views and to oppose the anticompetitive conduct which prevailed for two decades. There are numerous individuals who, notwithstanding academic affiliations, are already known to fill this bill and who have shown great knowledge of and/or interest in accreditation matters.[9]

3. The Consent Decree Will Not Eliminate the Secrecy Which Has Led to Violations of Law, Unwritten Rules, and Capture of the Process

A second problem with the remedial provisions of the Decree arises because it does not curb the secrecy which infested the accreditation process and allowed illegality to flourish.

A. The CIS correctly says that application of the accreditation process to individual schools ''was kept from public view and the supervision of the ABA's Board of Governors and House of Delegates.'' (CIS, p. 10.) The application of the process was in fact kept totally secret. Self studies, site inspection reports, schools' responses to those reports, transcripts of hearings before the Accreditation Committee and Council, action letters, schools' responses to action letters, and correspondence between schools and accreditors were all treated as highly confidential. Time and again—in articles, in briefs and in oral statements—the accreditors said such secrecy was essential because without it schools allegedly would be unwilling to share the truth with accreditors, and the accreditation process assertedly would collapse.[10] On the basis of these assertions, complete secrecy was demanded and enforced, even though there are other accrediting bodies that make similar documents and assessments public and have thrived rather than collapsed.[11]

A less charitable way of looking at the accreditors' demands for secrecy is that total confidentiality was needed not to preclude collapse of the process, but because (1)without total secrecy schools would not provide the extraordinary criticism of their own competence and programs which the accreditors needed to force universities to give the law schools more money for ever higher salaries, more full-time teachers, larger buildings, ever expanding libraries and other matters comprising the guild interests, and (ii) without secrecy the actions of the accreditors would have come to light. In the latter regard, the total secrecy of the accreditation process with respect to individual schools is what enabled the accreditors to fix prices and commit the other violations of the Sherman Act detailed in the Complaint, to develop and apply secret rules that were written nowhere, to treat schools inconsistently and arbitrarily, and to use the same people over and over again to enforce the anticompetitive policies.

It is literally impossible to overestimate the extent to which violations, secret policies and arbitrary action flourished because of the secrecy. As is often the case with regard to written standards of conduct, the ABA's written criteria most often are generalized vessels whose content is supplied by the enforcement policies followed by enforcement officials.[12] What was done in practice was therefore often more important than generalized written standards. The DOJ itself has recognized this de facto by saying time and again in the complaint and CIS that certain policies were followed *in practice,* including policies regarding compensated leaves, physical facilities, extending salary criteria from faculty alone to deans and librarians as well, the definition of an hour, and failure ever to recommend accreditation of a proprietary school. (See Complaint, pp. 6, 8, 9; CIS, pp. 5, 6, 8.) MSL itself, moreover, was subjected to a host of unpublished secret rules, which it has learned are common, to arbitrary and illegal procedures, and to inconsistent actions.

Thus, among the commonly followed but unpublished rules to which MSL was subjected are ones requiring that: a school's salaries must be in the top half of schools with which it is compared; no transcription is permitted of fact-finding inspection meetings even though the accreditors perform a quasi-judicial function; site team reports are done jointly by representatives of the ABA and the Association of American Law Schools (''AALS''); and AALS representative writes the portion of a site report dealing with a school's faculty; a university cannot take more than 20 percent of the tuitions generated by its law school and, if a law school is not part of a university, it must spend all its revenues rather than use a part of them to create an endowment; law schools must meet a librarian/student ratio; law students (unlike medical students) cannot be given credit for clinical experience obtained in cases from which a supervising professor obtains fees; the faculty must control a school; not matter how much work she does for a school—even if she works 60 hours per week for it—a professor cannot be treated as a full-time professor if more than 20 percent of her time is spent doing compensated work for clients, but a professor will be counted as a full-time faculty member although she spends extensive time every week working on a probono basis; leaves of absence have to be granted with pay; the Law School Admissions Test (''LSAT'') is the only permissible entrance test; a school often must require full-time students to sign affidavits saying they are not working more than 20 hours per week; a school will ipso facto be said to be of poor quality if it makes extensive use of adjuncts instead of employing a

[8] We note in this regard that the Consent Decree already requires a number of Section officials to certify annually that they are abiding by the terms of the Decree and know of no unreported violations of it, and requires the Executive Director of the ABA (leading insider Robert Stein), the Consultant and the Consultant's staff to certify annually their understanding that failure to comply with the Decree can result in conviction for contempt of court. (Consent Decree, p. 10.) Clearly it would not be unfair to require the ABA itself to agree that it is abiding by the Decree by not committing acts that the Government had already determined to be anticompetitive but withheld challenging pending the Special Commission's Report.

[9] They include, among others, Dean Colin Diver of the University of Pennsylvania Law School, Dean Ronald Cass of Boston University Law School, Dean Howard Glickstein of Touro College Law Center, Dean Patrick Hetrick of Campbell University Law School, President Thomas Brennan of Cooley Law School, Dean Howard Eisenberg of Marquette University Law School (formerly Dean of the University of Arkansas Law School at Little Rock), Dean Robert Reinstein of the Temple University Law School, Dean Anthony Pagano of the Golden Gate University Law School, Dean Henry Manne of the George Mason University Law School, Dean Richard Matasar of the IIT-Kent Law School, Thomas Leahy, who is a recent President of the Illinois Bar Association, Chancellor R. Gerald Turner of the University of Mississippi, Dean Timothy Heinsz of the University of Missouri Law School, Provost Mary Sue Coleman of the University of New Mexico, Dean David Shipley of the University of Kentucky Law School, President Steven Sample of the University of Southern California, Chancellor William H. Danforth of Washington University of St. Louis, Dean Majorie Girth of Georgia State University College of Law, President William Greiner of the State University of New York at Buffalo, President Thomas Salmon of the University of Vermont, and Dean Harvey Perlman of the University of Nebraska Law School.

[10] See, e.g., the materials in Exhibit 7.

[11] See, e.g., the materials in Exhibit 8.

[12] This is another reason why the procompetitive or anticompetitive views of accreditation personnel are so crucial.

large full-time faculty; and a school's physical facilities will be called inadequate if they are not new or recently refurbished and do not cost literally tens of millions of dollars.

The arbitrary procedures and inconsistent actions to which MSL was subjected included: the site inspection team was stacked with the insiders to insure the adverse site report desired by the accreditors; site inspectors were prejudiced against MSL before they even inspected it; they intentionally wrote a biased and false report; rules were applied against MSL that were applied to no other schools or that were invented on the spot; MSL was criticized on the basis of comparative statistics that had been withheld from it; the School was criticized for matters on which it had a far better record than other schools that were praised (e.g., bar passage rates); procedural delays were placed in the School's path; site inspectors were chosen who had grave conflicts of interest; some of the same persons sat on both the Accreditation Committee and on the Council which reviewed the Accreditation Committee's decision; intentionally false statements were made to MSL and its students; and certain site inspectors may have been applying more stringent Association of American Law Schools (''AALS'') criteria although MSL was not seeking AALS membership.

From MSL's study of the accreditation process, knowledge the School has obtained in discovery, information it has received from other schools, and even statements in the Complaint and CIS, it is clear that MSL's experience was typical in the sense that secret rules and arbitrary and inconsistent conduct, as well as grave violations of the antitrust laws, have been de rigueur in ABA accreditation. Yet *none* of this could have happened if the accreditation process regarding schools had been open—if the documents kept secret had instead been made public. For, if the relevant documents had been public—just as their analog court and agency briefs, records and opinions are public—then the affected law schools, faculty members, students, scholars and analysts, law enforcement agencies, reporters, potential students and members of the public would all have been able to see that there were violations of law, unwritten rules, and inconsistent treatment of schools. The result would have been that these things would not have occurred or, at minimum, would have been quickly stopped.

B. The short of it is that secrecy was and remains the essential precondition of accreditation misconduct, and openness was and remains the best guarantee against it. Yet, the Consent Decree does not require an end to the secrecy that has prevailed. The closet the Decree comes to providing for openness on any matter other than the identity of site inspectors is to say that the Council must annually send the Board of Governors a report of accreditation activities during the preceding year, including a list of schools on report or under review, with identification of each school's areas of actual or apparent non compliance with the Standards and how long the School has been on report or under review. (Consent Decree, p. 6.) But even this report—which goes *only* to the Board, and not to any other person—can be provided ''on a confidential basis if necessary.'' (Consent Decree, p. 6.) Given the long, strongly held view of the accreditors that confidentially is always necessary, as a practical matter it is certain that these annual reports will be kept confidential, thus maintaining secrecy from everyone but Board members. And, since the reports do not need to discuss the reasons why schools are held not to comply with given Standards, even complete openness of these reports would not enable schools, scholars and analysts, potential students, reporters or others to know such underlying reasons, much less to know of unwritten rules that are used as reasons.[13]

C. Thus, the secrecy which led to illegality will, as a practical matter, be preserved under the Consent Decree. There is, however, a simple step that would cure this and would almost certainly insure, in and of itself, that the process is conducted in a legal and fair way in the future—in a way that does not violate the Sherman Act and does not violate elemental rules of fairness and due process. The Consent Decree should be changed to provide that the documents created during the accreditation process will be available to any person, just like analogous court and agency briefs, records, transcripts and opinions are available to any person. This would make it impossible to have a repetition of the illegality, unwritten rules, inconsistency and arbitrariness that arose. For such conduct would be quickly discovered and attacked by a host of schools, analysts, students, reporters, members of the public, and enforcement officials. Justice Brandeis said that sunlight is the best disinfectant; the principle is applicable to ABA accreditation.

4. The Consent Decree's Novel Provisions for Review of Anticompetitive Practices by a Special Commission Heavily Comprised of Accreditation Insiders May Cause the Decree To Fail To Remedy Anticompetitive Practices Charged in the Complaint

A. The CIS says that the DOJ originally intended to seek to prohibit anticompetitive rules relating to calculation of student/faculty ratios, limitations of teaching hours, leaves of absence, and banning of credit for bar review courses. (CIS, p. 15.) Ultimately, however, the DOJ agreed that, although these practices, plus practices regarding physical facilities and allocation of revenues between law schools and universities, had been used ''inappropriately'' ''at times to achieve anticompetitive, guild objectives'' (CIS, pp. 9, 13), they nonetheless should be reviewed ''in the first instance by the ABA itself'' (CIS, p. 16). The practices, the Government agreed, should thus be submitted to a ''Special Commission.'' (Consent Decree, pp.7–8; CIS, p. 16). That Commission, it is now known, is the so-called Wahl Commission. It is packed with accreditation insiders who had captured the accreditation process and, when the Decree was filed on June 27, 1995, it had been sitting for over a year and was nearing the end of its work, which from inception had been due to be completed by the first week in August, 1995.

Under the Consent Decree, the Special Commission's Report is to be submitted to the Board of Governors ''no later than February 29, 1996'' (CIS, p. 13), and the Board, after reviewing it for an unspecified period (presumably for the purpose of possibly making changes in the Commission's recommendations), will file it with the Government and the Court. (CIS, p. 13.) The Government can then challenge the Report in Court within 90 days if the Special Commission ''fails to consider adequately the antitrust implications of continuing the ABA's past practices * * *'' (CIS, p. 16.)

The government states that this arrangement is ''novel relief.'' (CIS, p.13.) The DOJ's agreement to allow an insider-dominated Special Commission to make the initial decisions on crucial anticompetitive practices could result in failure of the Consent Decree to stop those practices, however.

B. The members of the Special Commission were appointed by two leading members of the group which controls ABA accreditation: Joseph

[13] The provision of the Consent Decree (p. 6) requiring the Accreditation Committee to send reports to the Council suffer from all the same weaknesses plus the weakness that the reports go to the Council alone.

Bellacosa, the immediate past Chairman of the Council, and Robert Stein, who preceded Bellacosa in that position and now is Executive Director of the ABA. There are 15 Commission members, at least eight of whom are part of the heart and soul of, or are closely tied to, the capturing inside group. A ninth member belonged to a closely cooperating group, the Special Accreditation Committee of the Association of American Law Schools, and the Commission has worked closely with two other leaders of the controlling inside group.

Confining ourselves to listing only one or two of the accreditation credentials for each of these persons, the relevant members of the Special Commission are: Commission Chairperson Rosalie Wahl, a former Chair of the Council, which oversees the Accreditation Committee; Henry Ramsey, Jr., a recent former Chair of the Council and Chair of the committee which produced a 1990 report seeking broader funding for insiders; Pauline Schneider, a recent chair of the Accreditation Committee; Diane Yu, recently a member simultaneously of both the Accreditation Committee and the Council; Talbot D'Alemberte, a former Chairman of the Council; Joseph Harbaugh, a Section activist and former head of the Section committee on diversity; Nancy Neuman, a member of the Accreditation Committee and recently the president of the AALS, which cooperates closely with the ABA in accreditation; and Thomas Sullivan, who has been a member of the Accreditation Committee of the cooperating AALS.

In addition, the Special Commission worked closely with the ABA's Consultant, James White, who has headed the controlling group for nearly 22 years. And, of the two ''reporters'' who helped write the Commission's report, one was Frank Read, a long time Section activist and former president of the cooperating Law School Admission Council, who was serving as James White's Deputy Consultant during the period of the Special Commission's work.

Thus, review of anticompetitive accreditation practices has initially been placed largely in the hands of persons who have vigorously implemented and thoroughly approve of those anticompetitive practices, who resisted the Consent Decree and continue to resist it, and who, in the words of Dean Cass, regard the Decree as the product of a Department of Justice that is ''out of control'' and of an ABA leadership that ''sold out by settling.'' [14] (P. 7, and pp. 7–8, N. 5, *supra*.)

C. It would be unrealistic to expect a 15 person Commission with so many members and associated persons who are leaders of the controlling inside group to vigorously recommend changes in accreditation practices, or not to minimize any changes that intense opposition to their practices cause the group to feel compelled to recommend notwithstanding their predilections. Thus, it is not surprising that the Commission's initial Report (Exhibit 9), delivered August 3, 1995, did in fact minimize recommended changes in the subjects of interest to the DOJ. And although their own views were published for 61 single spaced pages, members of the Commission (successfully) requested Commission member Ronald Cass to suppress publication of a ''lengthy separate statement'' of views which differ from ones the majority had put forth.

In a brief, 1¼ page ''Separate Statement'' appended to the Commission Report, Dean Cass said he had prepared a ''lengthy separate statement'' of his views because he disagrees both with the Commission's views on accreditation and with its treatment of specific issues. (Exhibit 9, p. 62). The specific issues include two which the DOJ agreed to have reviewed by the Special Commission, student/faculty ratios and the allocations of funds between law school and university. They also include other specified issues plus unspecified ones as to which Cass says there is ''a basis for skepticism'' about existing accreditation practices or the changes proposed by the Commission. (Exhibit 9, p. 62.) However, ''[a]t the request of a number of Commission members'' Dean Cass withheld his lengthy separate statement from publication ''until the Commission completes its work.'' (Exhibit 9, p. 62.) Until then, his separate statement will be available only members of the Council and the Board of Governors. (Exhibit 9, p. 62.)

Dean Cass' timing of the publication of his views is a reference to the fact that, because the DOJ has agreed to have the Commission review anticompetitive practices listed above, the Commission has said it will meet again in September and issue a supplementary Report sometime in October. It is Dean Cass' hope that the withholding of his lengthy statement of dissenting views will contribute to the Commission changing its mind, and accepting recommendations *that he says it already has rejected,* when it meets again this fall. (Exhibit 9, pp. 62–63.) It is his further hope that, if the Commission does not accept recommendations it has already rejected, the ABA will nonetheless take further steps to remedy the problems. (Exhibit 9, p. 63.)

Thus, it is impossible at this time to know Dean Cass' views regarding weaknesses in the majority's current recommendations. Also, it is possible that neither additional changes recommended in the majority's supplementary Report due in October, nor Dean Cass' views, will be available early enough to be known to the Division or the Court if the latter assesses in October, 1995 whether the Decree's provisions for review of anticompetitive practices by the Special Commission are within the reaches of the public interest. Additionally, it is certain that, if the Court considers the issue this October, neither the Division nor the Court will know what if any corrective action the ABA will take should the Commission's Supplementary Report continue to reject

[14] From the Complaint and the CIS, it is not clear whether and the extent to which the DOJ, when negotiating the Decree, had been informed by the ABA as to the heavily insider nature of the Special Commission , the length of time it had been sitting (over one year), or that its work was due to be completed at the beginning of August, 1995. The Consent Decree contains some language which, because expressed in the future tense (the ''ABA *shall:* establish a Special Commission'') (Consent Decree, P. 7 (emphasis added)), would indicate that the Government did not know, when negotiating the Decree, that the already long-existing Wahl Commission would be the *Special Commission.* On the other hand, the CIS, filed approximately three weeks after the Decree, contains language which, because expressed in the past tense, indicates that the Government had possessed at least some relevant knowledge about the Wahl Commission when negotiations were in progress. (The CIS says, for example, that the DOJ had ''considered'' that the Commission ''had progressed'' in the work doing. (CIS, p. 27).)

The question of the extent of the Government's knowledge when negotiating the Decree is an important one. Prior to agreeing that the insider-packed Wahl Commission, which was due to finish its work shortly, would be the Special Commission, the DOJ had proposed that the Special Commission should be ''separately constituted as an antitrust review committee.'' (CIS, p. 17.) If the DOJ was apprised, when it agreed that the Wahl Commission rather than a separate antitrust committee should be the Special Commission, that the Wahl Commission was an insider-packed group that had been sitting for a long period and was about to finish its work, then one might disagree with the Government's decision that the Wahl group should be the Special Commission, but the decision was nonetheless an informed one. But if the Government had not been told of the heavily insider nature of the Wahl Commission and that the Commission had been sitting for over a year and its work was nearly completed—if the DOJ had not been informed that the Commission was heavily comprised of persons who, the Government correctly charged, had captured the accreditation process and used it for anticompetitive purposes and who were about to submit their report—then it would appear that the ABA leaders with whom the Government was negotiating withheld crucial information even though the Government is heavily depending on them to make the Consent Decree efficacious.

significant changes in anticompetitive practices.

Thus, although both the Senate and House Reports on the Tunney Act, and the Court of Appeals for this Circuit, have made clear that the Court must receive information necessary to determine whether a consent judgment is in the public interest,[15] information of consequence to this question will continue to be unavailable to the Division and the Court well into the future.

Indeed, under the Consent Decree this information could be delayed until mid 1996. The Decree provides that the Special Commission will submit its report to the Board of Governors no later than February 29, 1996 (Consent Decree, p. 8), eight months after the Decree was filed. There is no written time limit on the time during which the Board of Governors can review the recommendations. (Consent Decree, p. 8.) It is realistic to believe the Board might not finish its review until the ABA's August, 1996 convention. The Government then has an additional 90 days to decide whether or not to challenge the recommendations. (Consent Decree, p. 8.) Therefore, it is entirely possible that the recommendations, and whether there will be a government challenge to them, will not be known until 15 months to 1½ years after the Consent Decree was filed. And, if the Government does challenge the recommendations in Court, the final result might not be known for yet another year or two. Thus, in addition to placing in the hands of anticompetitively-oriented insiders the task of recommending changes to practices they desire, the provisions of the Decree relating to the Special Commission are a recipe allowing extensive delay, instead of requiring expedition.

D(i). Although neither the contents of the Supplementary Report nor subsequent corrective actions by the ABA can presently be known, what *can* be known at this time is that the Special Commission's current recommendations, as expected, often exemplify avoidance and minimization of changes in anticompetition practices. A prime example is the student/faculty ratio, as can be illustrated by discussing the origin of the ratio, its anticompetitive effects, its indefensibility, and the minimal or nonexistent nature of the change recommended by the Commission. We discuss these in turn.

D(ii) With the exception of fixing of salaries, which is banned outright by the Consent Decree, the accreditors' methods of calculating and using the student/faculty ratio are the most anticompetitive restrictions enforced by the insider group. They are in origin *solely* the products of that group. They appear nowhere in the accreditation Standards, but rather were created by capturing insiders via an Interpretation in 1978 without action by the House of Delegates. They have been used for their own purposes ever since by the capturing insiders without action by the House of Delegates.

D(iii). The anticompetitive effects of the ratio are drastic. In an anticompetitive blow at the ability of any law school to provide a lower cost education by using fewer full-time professors (whose presence in large numbers is desired by the capturing insiders), and in a simultaneous anticompetitive blow at the ability of a law school to provide practical instruction instead of only the theoretical instruction usually provided by the full-time professors, the ratio discourages the use of adjunct professors to teach courses. That is, it anticompetitively discourages teaching by highly knowledgeable judges and lawyers whose teaching salaries, even when adequate, are less than those of full-timers, and who bring a wealth of practical knowledge and experience to the classroom. It discourages this by providing that no adjunct can be counted *at all*, not even fractionally, when computing the ratio. Thus, schools must hire more full-timers to meet the ratio, instead of using adjuncts to teach courses.

To insure that schools do hire more full-timers, the ratio is enforced with Draconian stringency. Schools have, indeed, been forced by the accreditors to hire enough full-timers to bring their ratios down even far below the written ones stated in the insiders' published Interpretation on the subject.

Additionally, in a further anticompetitive blow against use of individuals with practical experience, unlike the prevailing practice in medical schools where many full-time professors also engage in active practice and regard this as essential to keeping abreast of knowledge needed in the classroom, the ABA accreditors preclude full-time professors from engaging in an active practice and thereby obtaining practical knowledge that should be brought to the classroom. The preclusion is accomplished by refusing to count a full-time professor in the student/faculty ratio if he or she also maintains an active practice. Because schools are stringently required to meet the ratio, and expensive full-time professors will not be counted towards the ratio if they have an active practice, no school can afford to have such professors. Similarly, and with the same effect, a full-time professor, including one who teaches a full load of courses, will not be counted toward the ratio if he or she also does significant administrative work. Thus, no school can afford to have its professors hold administrative positions as well as teach.

D(iv). None of this can successfully be defended on the ground that it is needed for quality. The Consultant has admitted on deposition that the ABA has developed no empirical proof that the ratio leads to quality education. (Exhibit 10.) The DOJ has pointed out in its Complaint and CIS that, although part of the policy supporting the ratio is the desirability of smaller classes and more student/faculty contact (Complaint, p. 8; CIS, p. 7), the ABA ''did not measure actual class size or effectively measure actual student/faculty contact.'' (CIS, p. 7.) It is a well known fact that, notwithstanding the ratio, large classes, not small ones, are the norm in most law schools, particularly in the first year or two of school, and student/faculty contact is at a minimum because the interests of the full-time faculty members lie elsewhere. We question, indeed, whether it is accidental that the Section of Legal Education, though it has maintained an elaborate statistical measurement program that includes extensive figures on fully *85* different subjects, has never sought easily available statistics on actual class sizes, let alone statistics on estimated amounts of student/faculty contact. Such data, it is obvious, would have shown that the insiders' ratio does not result in small classes or student/faculty contact.

It is becoming increasingly understood that, if one truly desires small classes, the way to achieve them is by use of knowledgeable judges and lawyers as adjuncts. This provides a cost-effective method of obtaining large numbers of highly competent professors whose presence enables a school to offer many more, and smaller, classes. It is also becoming increasingly recognized that, because of a difference in attitude, adjunct professors often make themselves more available to students than full timers.

Furthermore, notwithstanding the traditionally prejudiced views that the capturing insiders hold against adjunct professors—who inherently threaten insiders' guild objectives of ever higher

[15] S. Rep. No. 93–298, 93d Cong., 1st Sess. 6–7 (1973); H.R. Rep. No. 1463, 93d Cong., 2d Sess. 8 (1974); *United States* v. *LTV, Corp.*, 746 F.2d 51, 52 n. 2 (D.C. Cir. 1984).

salaries for full-time professors and ever more full-time professors—the results of a recent survey of student bar association personnel,[16] discussed in an article on the use of adjuncts,[17] show that law students regard adjunct professors as equal or preferable to full-time professors. Students are, of course, the consumers who are paying the bills, and consumers, the Supreme Court has said, are the persons to whom the Sherman Act awards choice. *National Society of Professional Engineers* versus *United States,* 435 U.S. 679, 695 (1978).

Student bar association officials at 29 schools responded to a survey questionnaire which inquired about students' evaluations of adjunct teachers versus their evaluations of tenure track professors, i.e., full-time professors. Sixty-one percent of the respondents found adjuncts as qualified as full-time professors, 32 percent found adjuncts *more* qualified, and only 7 percent found them less qualified. Forty-three percent of the respondents found adjuncts to be as available to meet with students as full-timers, 32 percent found them *more* available, and only 25 percent found them less available. Sixty-four percent said an adjunct had been the professor who contributed most to their education; only 36 percent said that it had been a full-time professor. Sixty-eight percent said that if a particular state law course were on a bar exam, they would prefer to take it from an adjunct professor; only 32 percent preferred a full-time professor. Sixty-eight percent said full-time professors should practice law—which is anathema to the full-time faculty who captured ABA accreditation and dominate the Special Commission—and only 32 percent felt to the contrary. Views favorable to adjuncts were also expressed, by overwhelming percentages, with regard to other important matters.[18] All these results obtained though 93 percent said adjuncts taught not just electives, but core or required courses—which, like full-time professors practicing law, is anathema to the full-time faculty who captured ABA accreditation and dominate the Special Commission.

This survey of the opinions of the consumers of legal education directly contradicts the unfounded claims made about adjuncts by the accreditation insiders—claims which the consultant had to admit under oath lack any empirical statistical basis. (Exhibit 10.)

The situation has been aptly explicated in letters written to the Special Commission by knowledgeable deans and lawyers, including the Deans of the Touro, University of Pennsylvania, Campbell University, and Case Western Reserve University Law Schools. Their comments, which are appended at the back of this Memorandum, make clear that the failure to include adjuncts when calculating the student-faculty ratio is for many reasons arbitrary and unjustified. The Dean of the Touro College Law Center aptly summed up the matter by saying, ''I agree with those who find it insulting to the practicing bar to refuse to recognize the contributions that adjuncts can make to a law school's program. Adjuncts are not included in the calculation of the student-faculty ratio. * * * The leading trial lawyer in the state, who taught trial practice as part of the law school's program, would not be included in that law school's student-faculty ratio.'' Appendix, *infra.*

The Dean of the University of Pennsylvania Law School summed up the matter by calling the student/faculty ratio arbitrary and by saying its definition of full-time faculty is ''arbitrary almost to the point of absurdity.'' Appendix, *infra.*

D(v). Yet, notwithstanding the deeply anticompetitive nature of the student/faculty ratio and particularly its anticompetitive effect of greatly reducing the number of adjunct professors,[19] the Special Commission made only minimal recommendations for change.[20] And, though obviously cognizant that intense opposition to current practices regarding the ratio disabled it from declining to recommend any change whatever, the Commission couched its suggestions in language so abstract and general that it is meaningless because it could be met even if there were to be no change whatever in actual results.

Thus, although in one place the Report says the ratio should ''take into account'' the contributions of adjuncts, in its immediately following ''recommendation,'' the Commission does *not* say adjuncts should be counted on some proportional basis or on any basis at all. Rather, it says only that it is ''reasonable to consider the effect of adjuncts on the quality of the academic program in assessing the significance of student/faculty ratios.'' (Exhibit 9, p. 29.) One who is so minded can take these effects into consideration as the insiders claim to have done for years, but can then decide the effects do not warrant any change in the application of the ratio, as the insiders have also done for years. Furthermore, rather than require adjuncts to be counted on some basis, the insider dominated Wahl Commission accepted the insiders' erroneous assertions regarding alleged problems with adjuncts.[21] (Exhibit 9, pp. 27–28.)

E. The foregoing discussion of the student/faculty ratio demonstrates that, by agreeing to have anticompetitive practices reviewed by the Special Commission comprised largely of insiders who enforced, approved of and created those practices, the Government has agreed to a compliance procedure that may cause the Consent Decree not to rectify the anticompetitive practices

[16] Exhibit 11.

[17] The article, entitled ''The Advance of the Adjunct,'' is in Exhibit 12.

[18] Seventy-nine percent said with regard to Criminal Procedure—now widely regarded as a core course and often a required one—that they would prefer to take it from an adjunct; only 21 percent preferred a full-time professor. Eighty-six percent found full-time professors more likely to cancel classes than adjuncts, and only 14 percent found adjuncts more likely to cancel. Ninety-three percent found full-timers more likely to arrive late to classes; only seven percent found adjuncts more likely to be late. Ninety-six percent thought that ABA accreditation guidelines should be the same with regard to use of adjuncts as with regard to full-timers, and only four percent felt to the contrary.

[19] At a recent meeting of the American Association of Law Libraries, Donald Dunn, who is the Library Director of the Western New England College School of Law and has been on many site inspection teams, stated publicly that the ''action letter'' recently received by his law school placed it under a show cause order to decrease the number of its adjunct professors. (Exhibit 13.)

[20] The Government has indicated a need for reconsideration of the exclusion of adjuncts from the student/faculty ratio. There appears to have been a drafting mistake that could nullify this, however. Apparently in an effort to insure that adjunct faculty members who belong to the Accreditation Committee, Council, Standards Review Committee or Nominating Committee are not counted against the percentage limitations on academics who can belong to those committees, the Consent Decree defines ''faculty'' as all persons who teach *except* for adjuncts. (Consent Decree, p. 2 (emphasis added).) This apparent drafting error could be used to assert that the exclusion of adjuncts from ''faculty'' need not be reconsidered and changed in *any* way, when in reality its intended meaning is only that adjuncts should not be considered ''faculty'' when determining whether there is a violation of the percentage limitations applying to the number of faculty on committees. This drafting error should be corrected, perhaps by simply including adjuncts in the Consent Decree's definition of ''faculty,'' but adding that ''adjuncts shall not, however, be considered faculty for purposes of determining the number of faculty members on the Accreditation Committee, Council, Standard Review Committee or Nominating Committee.''

[21] Given the meaningless nature of the Special Commission's recommendations regarding the ratio, and the Commission's reliance on shop-worn cliches, it is not overly surprising that Commission members did not care to see publication of Dean Cass' views on the ratio.

identified in the Complaint. There are, however, at least two curative practices that could solve this problem.

The first is that, in accordance with the DOJ's initial intent, misuse of the practice should simply be enjoined. As discussed above, using a technique common to federal law, such an injunction would prohibit the practices from being used to violate the Sherman Act.

Second, instead of following the presently contemplated schedule under which a Tunney Act hearing is planned for October 23, 1995, in accordance with a revised and expedited schedule discussed below, a postponement of the hearing should be sought until the Special Commission's final report and Dean Cass' lengthy separate statement have been published, the ABA has either made changes in the Report or announced that it will not do so, and the Government has determined whether to challenge any of the Special Commission's recommendations. This would enable first the DOJ and then the Court to know if what if any changes have been recommended and/or made with respect to anticompetitive practices charged in the Complaint, when assessing what action to take. Such knowledge would at minimum be desirable to the DOJ's assessment, and under the Tunney Act is essential to the Court's assessment, of whether the decree is within the reaches of the public interest. *Otherwise the Court will be passing on a decree without knowledge of what, if anything, will be banned in connection with anticompetitive practices identified in the Complaint.*

Furthermore, postponing the Tunney Act hearing until such knowledge is available should be combined with a revised schedule in order to spur quicker action that would avoid the undue passage of time invited by the current provisions of the decree. Instead of the Special Commission not having to submit the Report until February 29, 1996, the Board of Governors then having unlimited time to review the recommendations, and the DOJ then having 90 days to decide on challenges, a firm date such as December 31, 1995, should be set as the time by which the Commission's report must be finished, any changes to it need to have been made by the ABA, and the DOJ need have notified the Court whether it accepts the Report or intends to challenge any of its provisions. The date of December 31, 1995 is, after all, more than six months after the Consent Decree was filed.

5. The ''Novel'' Relief Involving Review by the Special Commission Raises Additional Problems (i) Because it May Bind the Court, Regardless of Relevant Circumstances, to Use a Full Blown Rule of Reason Analysis Rather ''Quick-Look'' Rule of Reason Analysis When Considering a Government Challenge to Recommendations of the Special Commission, and (ii) Because it Circumvents the Tunney Act Rights of Third Parties

In addition to compliance weaknesses stemming from the composition and views of the Special Commission, there also are other reasons why use of this admittedly novel compliance mechanism may cause failure to rectify the anticompetitive practices identified in the Complaint.

A. First, the Government has agreed that, if it challenges any of the proposals in the Special Commission's Report, the challenge will be decided ''by this Court applying a Rule of Reason antitrust analysis.'' (Consent decree, p. 8.) This may be intended to bind the Court in advance to use a *full blown* Rule of Reason analysis. It would be inappropriate to confine the Court in advance to such a full blown Rule of Reason analysis, when it is surely possible and indeed probable that some of the anticompetitive practices on which the Commission is to make recommendations are susceptible to a ''quick-look'' Rule of Reason analysis in which the Court could quickly determine that there is a lack of redeeming procompetitive value.[22]

This is even more the case since, in accordance with its incredible standard practice of saying that there are no determinative documents to be made available to the Court and the public, the DOJ has not provided any information indicating why it believes that the matters which are to be the subject of recommendations by the Special Commission should necessarily be adjudicated under a full blown Rule of Reason analysis rather ''quick-look'' Rule of Reason analysis or other analysis.

The following examples demonstrate why this Court should not be bound in advance to a full blown Rule of Reason analysis:

A(i). The exclusion of adjuncts from the student/faculty ratio has been a method used to increase dramatically the demand for full time professors and, by doing so, to (a) simultaneously make necessary the payment of higher salaries to them while (b) lowering their individual output by spreading the same work among a larger body of full-timers. It has been, in short, a method of concertedly increasing the demand for and the price of full-time labor, whether this is efficient or not.[23] Such concerted action is normally a *per se* violation of the antitrust laws (except when taken by a certified labor union)—it normally is not even given the benefit of ''quick-look'' Rule of Reason treatment. However, the recommendations of the Special Commission may result in little or no change in the rule excluding adjuncts from computations of the student/faculty ratio. If that is the result, it would seem proper to apply, at most, a ''quick-look'' rule of reason analysis.

A(ii). The exclusion of clinicians who are not on tenure track or its equivalent, when computing a school's student/faculty ratio, has been a method of concertedly insuring higher salaries for non-clinical, or ''academic,'' faculty. There is, indeed, evidence showing that opposition to including such clinicians in the ratio arose because they generally were paid less than ''academic'' faculty and thus would bring down the average and median salary levels that all schools were required to meet for academic faculty. (Exhibit 14.) There is not as yet any recommendation from the Special Commission reversing the exclusion of such clinicians, nor has the Government provided any evidence as to why such exclusion has any procompetitive benefits, let alone significant ones. In the circumstances, ''quick-look'' Rule of Reason treatment is the most that is warranted.

A(iii). As appears to be implied by the statement in the CIS that over one-third of all ABA-approved schools are on report for inadequate facilities even though nearly all schools occupy new or substantially renovated facilities (CIS, p. 8), the problem existing with regard to physical facilities has been, in the bluntest terms, that the accreditors have required schools to build the law school equivalent of the Taj Mahal. The accreditors seem never to be satisfied unless a school's facilities are such that they cost from $20 to $60 million. The accreditors operate at such a

[22] It is even possible that in certain instances *per se* analysis should apply. In the *Ivy League Overlap* case, *United States* v. *Brown University, et al.,* 5 F. 3d 658 (3d Cir. 1993), the Third Circuit repeatedly and extensively pointed out that quick-look Rule of Reason treatment, or even *per se* treatment, could be appropriate in an antitrust case involving education if restraints were motivated by self-interested economic factors, involved price-fixing, or lowered output. Such factors are often present here, as discussed below.

[23] Simultaneously, at least at schools with limited resources that cannot afford to adequately pay both a large number of full-timers and a large number of adjuncts, and probably at other schools as well, it reduced the demand for adjuncts, and thereby caused reduction in the compensation paid to them.

micromanagement level in this regard that, as the Dean of the Temple University Law School recently pointed out, they will put a school ''on report'' if it allegedly does not provide adequate office space for every one of dozens of not-for-credit student organizations. (Exhibit 15, Testimony of Robert Reinstein, Dean of Temple University Law School, before the Wahl Commission.)

The Special Commission's present recommendation regarding physical facilities will make little or no change in this situation. For the Commission, while recommending that the current Standards be replaced by a new one, simultaneously recommends that the current Standards be retained as Interpretations, i.e., that they be retained in a different guise. (Exhibit 9, p. 31.) And the Commission's recommendation does not even begin to reach what has been the *real* problem: the way in which the rules, be they Standards or Interpretations, are enforced in practice by the accreditors. It is the method of enforcement which here, and often elsewhere too, has caused inappropriate application of rules to further anticompetitive guild interests.

In these circumstances, it is difficult to comprehend why continuation of a failure to recommend drastic changes in practices that inevitably require unnecessarily huge inputs of resources—that inevitably require $20, $40 or $60 million dollar buildings to satisfy the accreditors when far less expensive facilities would be completely serviceable—should be given anything more than ''quick-look'' Rule of Reason treatment.

A(iv). It is not difficult to cure the problem arising because the Decree may bind the Court to use a full blown Rule of Reason analysis in deciding a governmental challenge to recommendations of the Special Commission. Cure requires only that the provision in question be removed from the Decree. That would leave the Court free to use a full blown or ''quick-look'' Rule of Reason analysis, as appropriate, or even a *per se* analysis if and when appropriate.

B. Second, the Decree unnecessarily and improperly allows only the Government to challenge the Special Commission's recommendations. (CIS, p. 17.) Unlike the Tunney Act, which allows third parties to file documents explaining why they believe the provisions of a decree are too weak to cure the violations identified in the Government's Complaint, there is no provision here for other parties to file comments explaining why they believe Special Commission recommendations which the Government should accept in whole or in major part are insufficient.

In the normal consent decree the relief is stated, and private parties can comment on it under the Tunney Act. Here, realistically speaking, the provisions for review by the Special Commission are not themselves relief, but only a method of obtaining possible future relief. Yet, there is no provision for private parties to comment on that future relief when it becomes known—why may not occur for a considerable period of time, as discussed above. Hence, the Tunney Act's provisions allowing third parties to comment on relief stated in a consent decree have been circumvented. This will be of particular importance if the Special Commission issues minimalist recommendations, as thus far seems likely, the Board of Governors does not strengthen them considerably, and the Government either does not challenge them at all or challenges them only in minor or minimal ways.

To cure this problem, third parties should specifically be given the right to comment on the Commission's recommendations in order to ensure that their Tunney Act right to comment on relief is preserved. Alternatively, as discussed earlier, the Court should postpone its Tunney Act hearing until a specified date (such as December 31, 1995) by which time the Commission's recommendations shall have been submitted, any changes shall have been made by the Board of Governors, and the DOJ shall have decided which recommendations it accepts and which it will challenge.

6. There are Important ''Procedural'' Matters Which Have not Been Addressed Effectively in the Consent Decree or Have not Been Addressed at all

Contributing to the violations of law charged in the Complaint are several ''procedural'' points which, when directly addressed in the Consent Decree, have been addressed in a way that may not remedy the problems, or which have not been addressed at all in the Decree.

A. First is the composition of inspection teams. These have been stacked by the Consultant and his colleagues to insure the anticompetitive results they desire at a school. Thus, even the insider-dominated Special Commission has had to concede that only two percent of the inspectors have participated in 38 percent of the inspections. (Exhibit 9, p. 51.)

MSL's inspection team was illustrative, having been stacked with insiders who previously had anticompetitvely devastated schools, and who would be sure to write a highly adverse report against MSL in order to anticompetitvely stifle its innovations and efforts. The inspectors thus included leading insiders such as Steven Smith, Peter Winograd, Jose Garcia-Pedrosa, and Richard Nahstoll.

The Consent Decree does not effectively remedy the problem. All that it does is require (i) that ''to the extent *reasonably feasible*'' (Consent Decree, p. 6 (emphasis added)), each inspection team shall include one non-law school university administrator and one practicing lawyer, judge or public member, and (ii) that there be publication of the names of those who inspected each school (Consent Decree, pp. 6–7). These remedies could easily prove useless, for several reasons:

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A(i). Given publicly acknowledged difficulties in finding six or seven persons whose schedules simultaneously allow them to inspect during a given week, it often may *not* prove ''reasonably feasible,'' and it usually will be easy for the Consultant to *claim* it is not ''reasonably feasible,'' to find a knowledgeable non-law school administrator and a knowledgeable practicing lawyer, judge or public member to be on an inspection team.

A(ii). The Consultant can continue to appoint anticompetitively oriented insiders to inspection teams for schools for which the insider group desires highly critical reports that preclude or cause threatened withdrawal of accreditation. Publishing the list of inspectors will not cure this. For all that the Consultant will need to do is save anticompetitive insiders for inspections of schools the insiders privately desire to be injured by adverse reports.

A(iii). Even when the Consultant appoints non-law school administrators, practicing lawyers, judges or public members to an inspection team, if the insiders desire to injure a school, the appointees can be persons who will support the goals of the insider group. This was done to MSL.

B. A second problem, not addressed anywhere in the Decree, is that inspection teams regularly write deeply one-sided, even outright false, inspection reports designed to castigate schools and thereby force them to adhere to the insiders' wishes regardless of how anticompetitive those wishes may be. MSL was a victim of this practice [24] and, notwithstanding the

[24] Instead of reporting the favorable views expressed about MSL by Massachusetts judges and

secrecy with which the accreditation process has been cloaked, in conversations, in some site reports it has managed to obtain, and even in other written materials it has learned of other schools that were likewise subjected to the practice. Thus notwithstanding the prevailing secrecy, even a letter to the Wahl Commission reveals an analogous experience at the highly regarded law school of the State University of New York at Buffalo. There the inspection team wrote a negative report notwithstanding expressions of approval and even delight that it made in person. The President of the University thus wrote as follows to the Wahl Commission:

The site evaluation team expressed amazement that a law faculty could develop such a well-coordinated, thoroughgoing revision of its curriculum and build near-unanimous faculty support for the changes. In meetings with the faculty, dean, provost and me, they expressed great enthusiasm for the path our law school had marked out for its future. From all that they said, it was clear that the team took a very positive view of the law school, its faculty, and its programs and new curriculum.

But, the team's positive firsthand response notwithstanding, their report and the Accreditation Committee's response to us was full of quibbles. It bore faint evidence of what the site evaluation team saw and applauded. It bore ample evidence, however, that the elaborate and complex rules of the accreditation system are focused on the trees—some might even say the scrub underbrush—rather than the forest. It is this approach in accreditation report after accreditation report that has ground down innovative, forward-thinking law faculty members and law faculties over the years.

Lest you think this is another president beating his drum, please note that I have been a member of UB's law faculty for 28 years; I taught regularly in our law school until I became provost eleven years ago; and *I have observed this process from up close for a long time. I generally believe that it will take more than tinkering to put right the encrusted system that has grown over the years. After reading the testimony before the National Advisory Committee last December, I was left wondering whether the current system has the capacity to get past tinkering and into significant reform.* (Exhibit 16 (emphasis added).)

C. A third problem is that it is unlikely that any beneficial effect will flow from the Decree's provision that the ABA shall ''permit appeals from Accreditation Committee Action Letters to the Council.'' (Consent Decree, p. 5.) For such appeals have *always* been permitted. They are, indeed, provided for in the existing rules. The difficulty has not lain in the absence of a right of appeal. It has lain, rather, in the fact that the Council has mainly been a rubber stamp for the Accreditation Committee because both have been dominated and populated by the same group of insiders, and it is therefore explained to and widely understood by schools caught in the toils of the process that an appeal to the Council will do them no good. The only thing that would do them any good, they are made to understand, is knuckling under to the Accreditation Committee. (Thus it is that capturing insider Henry Ramsey admitted to the DOE at a hearing that the Council rarely disagrees with Accreditation Committee actions. (Exhibit 17.))

Accordingly, the provision for an appeal to the Council is meaningless as a practical matter.

D. The Decree also does not address, and therefore fails to remedy, another feature of the process that has kept it in the hands of the group of insiders: The same persons sometimes serve simultaneously on two of the four committees mentioned in the Decree (e.g., serve simultaneously on the Council and the Accreditation Committee), and, even when persons don't serve on two of the committees at the same time, membership on the committees is rotated among the same group of persons, so that an insider serves first on the Accreditation Committee and then, having acted in accordance with the group's wishes, moves up to the Council, while at other times being a member of the Standards Review or Nominating Committees.

The Decree cures none of this. It does not prevent simultaneous service on two committees. And its provisions for term limits allow a *minimum* of twelve years membership, through successive nonsimultaneous memberships on the Accreditation Committee and Council; and actually allows *18* years of successive membership on those two committees if a person chairs each of them, as several have done.[25] The ostensible term limits further allow an additional three years on the Standards Review Committee and an unlimited period of membership on the Nominating Committee.

Nor, of course, does the Decree place any limit on the length of time that a person can be Consultant. It this allows one to use the Consultancy for decades as a power base, as James White has done.

Thus, the provisions for term limits, far from limiting the power of the group which has captured the accreditation process, presents opportunities for that group to perpetuate themselves in power.

E. What, then, can be done about these various problems? There is a certain amount of tinkering that can be done to improve the Decree, such as providing that a person's membership on any and all committees shall be limited to a *collective* total of six years, or that service as Consultant is limited to five years. But the two really crucial changes that would virtually insure against further violations and improper conduct are ones discussed above. First, the whole process should be made an open one. If all the pertinent documents, meetings and transcripts are open and subject to scrutiny by interested parties and the public, accreditors will no longer have the ability to get away with violations of law, false statements, phony or incompetent site reports, inconsistent and arbitrary conduct, and so forth. Second, the entire body of persons who captured and misused the process in the past, or assisted those who did, should be excluded from it in the future.

7. The Government's Heavy Reliance on the ABA Leadership Could Result in Failure to Remedy the Violations Charged in the Complaint

It is evident from the Consent Decree and the CIS that the DOJ is relying *very* heavily on the leadership of the ABA to prevent the Decree's effectiveness from being undermined by its weaknesses. Thus the Decree requires that all Interpretation and Rules shall go before

lawyers, the site report on MSL invented false claims that Massachusetts judges were concerned about MSL's student/faculty ratio and about the small percentage of applicants interviewed by the entire Admissions Committee rather than by one admissions officer. The report also omitted to mention, mentioned only cursorily, or gravely distorted MSL's objectives, the persons whom MSL serves and the fact that they have been frozen out of legal education, the methods MSL uses to bring efficiency into law school operations, MSL's efforts to diminish the long standing gulf between the academic and practical sides of law, its innovative courses and methods, its high percentage of truly small classes, important qualifications of MSL's faculty, the quality of instruction, the capabilities of MSL's students, the extensive student/faculty contact at MSL, MSL's view of scholarship, MSL's salary structure, MSL's teaching loads, the School's grading curve, the faculty's role in School governance, the School's views on attendance, MSL's views on the use of adjuncts, the student/faculty ratio, MSL's admissions process, MSL's electives, MSL's instruction in ethics, the School's program of concentrations, its residency practices, its class schedules, its clinical programs, the School's financial aid views and practices, its minority policies, its retention rates, its bar passage record, MSL's administrative structure, its library philosophy, its physical facilities, the School's law review, its placement philosophy, the criticism of legal education discussed in MSL's self study and underlying many of the School's views and practices, and crucial philosophies underlying MSL's finances.

[25] The Decree's provisions allow an individual two three-year terms on each of the committees (for a total of twelve years) plus an additional three years as chair of each committee.

the House of Delegates (Consent Decree, pp. 4–5), requires that for five years elections to the Council, Accreditation Committee and Standards Review Committee (but not the Nominating Committee) shall be subject to Board of Governors approval (Consent Decree, pp. 5–6), requires the Council to send annual reports to the Board of Governors (Consent Decree, p. 6), requires the Board to receive site inspection questionnaires before they are sent to law schools (Consent Decree, pp. 6–7), and indicates that the Board will review the Special Commission's recommendations (Consent Decree, p. 8). And thus it is that the CIS says that one reason the DOJ agreed that the insider-dominated Wahl Commission could be the Special Commission is that the ''ABA leadership was now familiar with and sensitive to antitrust concerns.'' [26] (CIS, p. 17.)

It is therefore clear that reliance on the ABA leadership to rectify anticompetitive actions has supplanted the more usual procedure of barring such actions in a consent decree. This course of conduct, however, is fraught with problems. One major problem is the perception it invites. The other is whether the ABA leadership can or should in fact be depended upon.

With regard to perception, although MSL does not claim to be au courant with all Division practices, it seems unusual for an enforcement agency not to seek to bar practices it finds illegal, and to instead tell the organization that violated the law to cure its derelictions itself. Reminiscent of overly generous treatment of violations that arose from misuse of power by private parties and led to the Tunney Act, this course of conduct leads to the question of why the ABA was given special dispensation. Further fueling this question is the fact that the ABA and government officials work together on many projects, high DOJ officials speak regularly at ABA conventions, the ABA passes on judicial nominees, and there are other ties. As wrong and unfair as the perception of untoward leniency may be, it will be there, particularly in this day and age.

Nor will the perception of special leniency necessarily be dissipated by assertions that questions of educational quality exist. The DOJ found instances when guild objectives rather than educational quality was the catalyst for inappropriate use of requirements regarding ratios, resources, facilities, etc. The question will thus remain of why wasn't anticompetitive conduct barred in at least those circumstances? Why was ''novel'' relief devised in *those* circumstances?

The perception of inappropriate leniency will be heightened because of serious questions over whether the ABA's leadership can or should be depended upon to be a major vehicle for reform. We note that, as a matter of history, in the mid 1970's it was thrice necessary for the DOJ to bring litigation or issue warnings, or for private parties to bring litigation, in order to put an end to antitrust violations committed or encouraged by the ABA. This occurred with regard to lawyers' fees, lawyer advertising, and prepaid legal service plans.[27] Yet the same mid 1970's, precisely when it was caught in three violations, was also the period when the ABA undertook the massive development of a fourth set of violations, in the field of accreditation of law schools. These historical facts do not give any reason to believe that the ABA leadership should be depended upon to be the vehicle of antitrust enforcement.

Further, the more recent record provides ample additional reason to think the leadership should not be depended on in this way, notwithstanding the statement in the CIS that the leadership has undergone some sort of conversion to better appreciation of the needs of antitrust. Prior to this claimed epiphany, the leadership had no interest in rectifying the antitrust violations. Thus, both the Board of Governors and the House of Delegates rejected MSL's efforts to resolve the relevant matters, notwithstanding MSL's extensive written and oral warnings of serious antitrust problems. The Board, indeed, after debate on whether to hear an oral presentation by MSL, decided against even hearing it. Subsequently, as the Section 16(g) Statement would indicate, the DOJ investigation was in progress for nearly 1½ years before ABA officials displayed any interest in resolving the antitrust matter with the Government. (They have never shown the slightest interest in resolving it with MSL.)

Then, after signing the Consent Decree, the ABA leadership has shown no sign indicating it can be relied on to be a primary vehicle of rectification, but has instead shown it should *not* be so relied on. When announcing the Decree, the President of the ABA, with the General Counsel sitting next to him, proclaimed, as said, that ''We do not believe that we have violated the Sherman Act in any particular''; this June 27th statement denying violation was carried in the ABA's national publication, the ABA Journal, as well as in other nationally circulated media.[28] Today, three months after the Decree was filed, the leadership appears to have done little if anything to enforce it, but has instead acted in a manner that is inconsistent with both its letter and spirit, and that augurs further anticompetitive actions. Thus, the leadership has not stopped the insiders from already violating the Consent Decree by demanding salary information from schools and *raising* the number of academics on the Nominating Committee to 80 percent, though the number permitted under the Consent Decree is only 40 percent.[29] The leadership has not taken steps to replace the insiders who have controlled and used the Section to further guild purposes: the same people still populate the pertinent committees, new persons with pro-competitive views have not been added to the committees, James White, the ABA's Legal Consultant still sits, and the new ABA Executive Director was a recent Council Chairman.

Additionally, rather than requiring postponement and change in the Special Commission's Report, the leadership allowed the insider-dominated Commission, on August 3rd, to release an initial report whose recommendations are vastly inadequate to remedy violations. Nor has the leadership taken steps to remedy untrue statements made in antitrust proceedings regarding the alleged nonavailability or irrelevance of documents and regarding an alleged longstanding practice of supposedly not considering salaries when making accreditation decisions. The statements regarding nonavailability of documents contradict the ABA's production to the Government in this antitrust proceeding and the statements regarding salaries contradict the Government's statements in its Complaint and Competitive Impact Statement.

Nor can it be ignored that the ABA is a very political organization in which the Section has long wielded great political power, that ambitious persons rise in the leadership by *not* making enemies of those with power, that there is continuous turnover of the elected

[26] It is a curious contrast that, when he announced the Consent Decree, the ABA's president, with its General Counsel at his side, said ''We do not believe that we have violated the Sherman Act in any particular.'' *See* n. 28, *infra.*

[27] See materials in Exhibit 18.

[28] Henry J. Reske, *ABA Settles Antitrust Suit on Accreditation,* ABA Journal, August 1995, at 24; Shanie Latham, *ABA, Justice Dept. Settle Antitrust Suit,* The National Jurist, August/September, 1995, at 6.

[29] The leadership allowed salary information to be sought via questionnaire even though the Consent Decree provides that the Board of Governors should receive questionnaires before they are sent to law schools. (Consent Decree, pp. 6–7.)

officers of the ABA, that the politically powerful Section continues to violently oppose the Consent Decree, and that, while it is claimed that the leadership has now undergone a metamorphosis regarding its antitrust responsibilities, the leadership, as said, cared nothing about antitrust for a long period of time.

Thus there is ample historical and current reason to fear that the DOJ's reliance on the ABA leadership, rather than on an injunction, as the vehicle for obtaining compliance with the antitrust laws will prove inadequate and may result in a failure to rectify the violations charged in the Complaint. There are two simple steps that can be taken to cure this problem, however. First, anticompetitive practices found to exist by the Government should be enjoined, as discussed above. Second, to test whether the leadership will in fact act in accordance with a new found commitment to antitrust, the Tunney Act hearing should be postponed until December 31, 1995 (as discussed above) to see whether the leadership forwards recommendations adequate to cure the violations and whether it has taken other steps that are required by the Decree or are desirable to cure violations. Such other steps would include, for example, appointing numerous persons known to have procompetitive views to the various committees, and excluding from further Section work the capturing insiders and their supporters, who are responsible for the problems.

8. The Effectiveness of the Decree is Potentially Diminished by Lack of Knowledge Regarding the Identity of an Antitrust Compliance Officer, by a Serious and Inexplicable Limitation on the Compliance Officer's Duties, and by Reliance on Staff of the Department of Education Who Have Been Ineffective in Regard to the ABA

The Consent Decree provides that the ABA shall appoint an Antitrust Compliance Officer who shall supervise a compliance program by, among other things, supervising accreditation activities to insure they are not inconsistent with certain provisions of the Decree. (Consent Decree, pp. 8–10.) The Antitrust Compliance Officer is to be appointed within 30 days of entry of the Decree. The Decree also provides that the ABA shall, by October 31, 1995, hire an independent, non-legal-educator, outside consultant to assist in validating all Standards and Interpretations as required by the Department of Education (''DOE'') and to develop a plan for such validation by December 31, 1995. (Consent Decree, p. 7.)

A. The existence of an Antitrust Compliance Officer could be a matter of the first importance. However, the identity of the Officer is crucial. Antitrust is a field in which there is a wide gulf between the opinions of two vigorously differing sides of the bar. There is the plaintiff's side of the bar, composed of Government enforcers and plaintiffs' treble damages lawyers, who believe in and seek relatively widespread and vigorous application of antitrust. On the other side, there is the defense side of the bar, whose members, by belief and affiliation, generally minimize the circumstances in which antitrust violations should be found to exist. There are relatively few lawyers who straddle the two camps intellectually and by professional affiliations.

If the person appointed to be the Compliance Officer is highly defense oriented by belief and previous professional commitments and work, then the result is likely to be approval of activities which would be found anticompetitive and which would not be approved even by persons who straddle the two camps. What is anticompetitive, and what cannot be justified by claims of being necessary for quality, are, after all, matters which are subject to differences of opinion. Thus, the identity, professional background, and views of the Compliance Officer will almost surely be vital in determining whether the person will be an adequate proponent for the strictures of the Decree. His or her identity will be vital to assessing whether the public interest will be served or thwarted by the provision for a Compliance Officer.

Yet, as said, under the Decree the Compliance Officer will not be selected until *after* the Decree is entered—and thus will not be known to the Court when assessing whether the public interest will be served. The Court will thus be unable to make a fully knowledgeable assessment.

The problem, however, is readily curable. The Decree need only provide that the Compliance Officer must be named a reasonable time *before* the Tunney Act hearing, so that knowledgeable assessments can be made by the DOJ, commentators and the Court as to the likelihood that the named individual will be a vigorous proponent of antitrust. Naming a Compliance Officer before the Tunney Act hearing should not pose any more problem than naming a DOE consultant by October 31, 1995, which the Decree specifically provides shall be done. (Consent Decree, p. 7.)

Additionally, the Decree presently contains a paramount hole in the duties of the Compliance Officer. The Officer is to review ABA actions to be sure they do not violate Sections IV and VI (Consent Decree, pp. 8–9.), which respectively (a) list the activities banned outright by the Decree—including price fixing, denial of entry into graduate programs, denial of transfer credit, and preclusion of profit making status—and (b) supervise various procedural matters such as those involving membership on committees. *But the Compliance Officer has no supervisory responsibilities relating to Section VII of the Decree, and therefore does not supervise the ABA's accreditation activities in the areas where recommendations are to be received from the Special Commission (after review by the ABA leadership), recommendations which are to govern if not challenged by the Government or which are to govern as possibly amended after a DOJ challenge. This is an incomprehensible lacuna in the duties of the Compliance Officer.* The accreditation rules governing the matters to be treated by the Special Commission—e.g., student/faculty ratios, hours of work by professors, physical facilities, and so forth—have encompassed several of the most crucially important, most anticompetitive, actions of the accreditors. Yet, as said, such matters are not to come within the purview of the Antitrust Compliance Officer. How can this possibly be justified? How can it be within the reaches of the public interest? There is, of course, a simple corrective step, which is to change the Decree so that the Compliance Officer also has the duty of reviewing and supervising accreditation activities involving student/faculty ratios, hours of work and other matters that are to be addressed in the first instance by the Special Commission and reviewed by the ABA.

B(i). The reason why the DOJ has required the ABA to ''validate'' the accreditation criteria as required by the DOE is not entirely clear. It *would* be clear if, in accordance with the DOE's abstract written criteria of ''validity,'' DOE approval ensured that ABA accreditation criteria assure educational quality. Unfortunately, however, DOE review of the ABA has been wholly ineffective to date in assuring quality.

(ii). DOE assessment of accrediting agencies such as the ABA is carried out by a small office which has relatively few staff members. For convenience we shall refer to it simply as the Accreditation and State Liaison Division (''ASLD''). The ASLD receives reports from accreditation agencies such as the ABA; ASLD has charge of scores of such agencies who report to it. After

reviewing a report from an accrediting agency, and otherwise communicating with it, ASLD makes a recommendation to the National Advisory Committee on Institutional Quality and Integrity (''NAC'') on what action should be taken regarding the accrediting agency. To consider and recommend such action, the NAC meets two times a year, for about three days at a time. Its recommendation for each agency is forwarded to the Secretary of the Department of Education, whose office sends the accrediting agency a letter that usually adopts the NAC's recommendation.

The NAC is by and large an admirable group. It is comprised of volunteers who generally are accomplished in the field of education or other public fields—numerous university presidents, professors, other knowledgeable academic persons, legislators, and public spirited people serve on the NAC. They appear to give it extensive time and to work hard, and most of them seek to do what is right.[30]

But the NAC operates under serious handicaps. Being comprised of volunteers who have time consuming, energy consuming professional careers elsewhere, but who nonetheless are confronted with the need to read reports and make decisions on scores of matters annually, the time that NAC members can give to any one accreditation agency individually, or even to all collectively, is limited. To a major extent, therefore, the NAC has to rely on the Staff of the ASLD.

The Staff's work with regard to the ABA, however, has been ineffective to date in assuring quality and in precluding self-interested conduct unrelated to quality. Perhaps this is because, as the responsible staff member said at a hearing on December 5, 1994, the staff members, who are not lawyers, feel that they are ''not in a position to say'' whether or how quickly ABA criteria need to be revised. (Exhibit 21.) Perhaps it is because the ASLD is a small office. Perhaps it is simply a reflection of the fact that, as publicly stated by Assistant Secretary David Longanecker at a meeting of the NAC on December 5, 1994, the DOE had not been doing its job well (''there was serious skepticism about the Department of Education's performance and very, very, very serious questions about the performance of the accrediting community * * *'' (Exhibit 22)). Whatever the reasons, there was ineffectiveness with regard to the ABA. Time and space preclude extensive elaboration here of the many facts showing such ineffectiveness, so we are simply attaching as exhibits illustrative materials showing crucial points the staff ignored (Exhibit 23.) *Many of those points are the same ones that the Division has now made in the Complaint and CIS.* Thus, it is perplexing that the Antitrust Division would now rely on the DOE as a vehicle for assuring quality or for precluding self-interested conduct.

9. In Order To Insure That the Purposes of the Tunney Act Are Carried Out and Its Provisions Complied With, the Consent Decree Needs To Provide for the Filing of Determinative Documents and Materials, and Approval of the Decree Must be Conditioned on Making Available The Documents That Injured Private Parties Need to Effectively Pursue Their Claims

A. Under Section 2(b) of the Tunney Act, 15 U.S.C. 16(b), any ''materials and documents which the United States considered determinative in formulating'' the proposed consent decree ''shall also be made available to the public at the district court and in such other districts as the court may subsequently direct.'' Under Sections 2(e) (1) and (2) of the Act, 15 U.S.C. § 16(e) (1) and (2), in considering whether the consent decree is in the public interest, the court may consider the decree's ''competitive impact,'' its ''impact * * * upon the public generally,'' and its ''impact * * * upon * * * individuals alleging specific injury from the violations set forth in the complaint.''

Notwithstanding Section 2(b)'s injunction that determinative materials and documents should be made available, the DOJ, following its nigh uniform practice, has said in the CIS that there are no such materials or documents. (CIS, p. 15.) It has also said that the decree will ''neither impair nor assist'' the bringing of treble damages actions (CIS, p. 14.), which is a way of saying the decree will have no ''impact * * * upon * * * individuals alleging specific injury from the violations set forth in the complaint.'' As discussed in more detail below, these statements raise serious questions regarding the compliance mechanisms of the decree and regarding whether the DOJ is fulfilling the duties placed upon it by the Tunney Act.

B. When the Tunney Act was enacted in the aftermath of a scandal over settlement of a government antitrust case against IT&T, Congress was deeply concerned, as Senator Tunney said, about ''antitrust violators [who] wield great influence and economic power'' and can ''bring significant pressure to bear on government, and even on the courts, in connection with the handling of consent decrees.''[31] An important matter, said Senator Tunney, was ''the excessive secrecy with which many consent decrees have been fashioned.''[32]

Congress desired the consent decree process to remain a viable method of resolving government antitrust litigation, but it also wanted courts to have sufficient information to make a considered judgment on whether the public interest was being served, and it was deeply concerned lest consent decrees injure the interests of private plaintiffs who had been harmed by violations. The need for a balance was stressed in the Senate Report in language later quoted in the House Report. The Reports said that a ''court must have broad discretion to accommodate a balancing of interests. On the one hand, the court must obtain the necessary information to make its determination that the proposed consent decree is in the public interest. On the other hand, it must preserve the consent decree as a viable settlement option.''[33] The Reports then pointed out that, where the interests of private plaintiffs required it, ''*the court can condition approval of the consent decree on the Antitrust Division's making available information and evidence obtained by the government to potential, private*

[30] Unfortunately, one member of the NAC, Robert Potts (who was supported by the General Counsel's office of DOE, amazingly enough), refused to disqualify himself from participating in the NAC's 1994 discussion of the ABA though he was then the President of the National Conference of Bar Examiners (''NCBE'') which works *very* closely with the Section of Legal Education. (Exhibit 19.) The relationship between the NCBE and the Section is exemplified by the fact that the NCBE and the Section jointly publish a ''Comprehensive Guide To Bar Requirements,'' that the joint Guide sets forth the Code of Recommended Standards for Bar Examiners, which says that all bar admission candidates should be required to have attended *an approved ABA School,* and that Potts and Joseph Bellacosa, then Chairman of the Council, jointly signed a Preface to the 1995–96 edition of the joint Guide. Exhibit 20. Not surprisingly, Potts supported the ABA in the NAC's discussion.

[31] 119 Cong. Rec. 24597 (quoting Judge Skelly Wright) (1973).

[32] Consent Decree Bills: Hearings on H.R. 9203, H.R. 9947, and S. 782 Before the Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary, House of Representatives, 93d Cong., 1st Sess. 38 (1973).

[33] The Circuit Court stated in *United States* v. *LTV Corp.*, 746 F.2d 51, 52 n.2 (D.C. Cir. 1984), that ''The APPA was adopted in the wake of concerns that government consent decrees had been entered in secrecy and without adequate attention to the public interest. The twin goals of the Act have been described as ''[f]irst, that the courts would be able to obtain the requisite information enabling them to make an independent determination, and second, that the consent decree process would be preserved as a viable settlement option.''

plaintiffs which will assist in the effective prosecution of their claims.'' [34]

The concern over harm to private plaintiffs was elaborated on the floor by Senator Tunney. He said that, because the Government may be the only party with sufficient resources to effectively counter a wealthy defendant, one consequence of a consent decree is that it leaves few private plaintiffs who have the resources to sustain a case:

> The consent decree [as distinguished from pursuing a case to judgment through trial] has a number of major public consequences, however. First, it means that the substantial resources of the Justice Department will be removed from the effort to establish that the antitrust laws were violated. Because consent decrees by statute carry with them no prima facie effect as an admission of guilt, private parties who may have been damaged by the alleged violations are left to their own resources in their efforts to recover damages. As a practical matter because of the protracted nature of antitrust litigation, and the deep pockets of many corporate defendants, few private plaintiffs are able to sustain a case in the absence of parallel litigation by the Justice Department.[35]

He then extensively pointed out that, because of the effect of consent decrees on private plaintiffs harmed by the violations, it can be appropriate *not* to enter a decree, but to instead require the Government to go to trial so that private plaintiffs will be aided:

> * * * [I]n addition to weighing the merits of the decree from the viewpoint of the relief obtained thereby and its adequacy, the court is directed to give consideration to the relative merits of other alternatives and *specifically to the effect of entry of the decree upon private parties aggrieved by the alleged violations* and upon the enforcement of the antitrust laws generally.
>
> These latter two points merit some additional explanation. First, as is well known by the antitrust bar, in the vast majority of cases, the Government is the only plaintiff with resources adequate to the task of protracted antitrust litigation. Thus, a major effort of defense counsel in any antitrust case is to neutralize the Government as plaintiff and leave prospective private plaintiffs to their own resources. Consent decrees have that effect because by statute they cannot be used as prima facie evidence of a violation in subsequent suits by private plaintiffs.
>
> Thus, removal of the Government as plaintiff through entry of a consent decree has a profound impact upon the ability of private parties to recover for antitrust injuries. Such a result is by no means improper nor perhaps in every case unreasonable. But because of that impact, it is a factor which should enter into the calculus by which the merits of the decree are assessed. *It may well be that the economic cost to the public of a particular antitrust violation merits the application of governmental resources toward gaining a recovery of that cost in damages for those who can establish their injury.*[36]

As Congress provided, an alternative to refusing to enter a consent decree and thereby forcing the government to try a case in order to aid private parties is, in the words of the House and Senate reports, to ''condition approval of the consent decree on the Antitrust Division's making available information and evidence obtained by the government to potential, private plaintiffs which will assist in the effective prosecution of their claims.''

C. To incorporate in the Tunney Act its concerns that the Court receive information needed to determine whether a decree is in the public interest, and whether the interests of injured private parties are preserved, Congress enacted three specific provisions. One is Section 2(e)(1), under which the Court is to consider the competitive impact of the consent decree. The second is Section 2(e)(2), under which the Court considers the impact of the decree on parties harmed by the violations and can condition approval of the decree on the government's making available to private parties the information and evidence it obtained. The third is Section 2(b), under which the Government is to file the documents that were determinative in formulating the consent decree. Section 2(e)(1) and 2(e)(2) are self explanatory. Section 2(b), the determinative documents provision, requires some elaboration.

There is a wide spectrum of documents, evidence, memoranda and other materials that can be determinative in deciding what provisions shall be put into and which kept out of a consent decree. For the specific provisions of the decree—the practices it bans, the ones it does not ban, and its enforcement mechanisms—depend on what the government has learned in the course of its investigation. This was put as follows in Senate hearings on the Tunney Act by Professor Howard Lurie, who testified that the determinative materials provision:

> Covers more than simply those materials and documents which were relevant to the Government's decision to settle the case by consent, but covers in addition those which were relevant to the formulation of the consent judgment. In other words, the bill calls for the disclosure of those materials and documents which were relevant to the relief, and that of necessity includes those materials and documents which go to establish or prove the violation of law.[37]

Precisely because it was aware that the ''determinative documents'' provision encompasses a wide range of documents and evidence, the Antitrust Division vigorously opposed it. Thus, Assistant Attorney General Thomas Kauper wrote Congress a letter of opposition saying that:

> The bill, as reported out, provides that the United States shall file, in addition to that which it already files, ''other materials and documents which the United States considers determinative in formulating the proposed consent judgment.'' This conceivably could require production of virtually every piece of paper generated by the staff of the Antitrust Division, outside reports of complainants and the like, as such documents may be considered in one way or another to have entered into the determination of the government to enter the settlement, and thereby would be ''determinative.'' [38]

Notwithstanding the Division's opposition, Congress enacted the determinative documents provision as originally drafted.

The Division, however, then embarked on a course of nullifying the provision by saying in nearly every case, as it has here, that no documents were determinative. Reduced to its essence, the Division's position almost uniformly has been that, because many documents were determinative, no documents were.

The Division's position has been litigated in only one case—*United States* versus *Central Contracting Co., Inc.*—in which the court rejected the Government's position three separate times, at 527 F. Supp. 1101, 531 F. Supp. 133, and 537 F. Supp. 571 (E.D. Va. 1982). In its first opinion, the court, pointing out that the Tunney Act ''sets out procedural requirements with which the parties are to comply,'' held that:

> Where the parties ignore the procedures, not only is the public hampered in its efforts to provide the Court with information that the Court may find helpful, but also the silent record raises a specter, however incorrect in a given case, of the questionable practices which characterize some of these arrangements that Congress sought to guard against through passage of the Act. See 119 Cong. Rec. 24598 (1973).[39]

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[34] S. Rep. No. 93–298, 93d Cong., 1st Sess. 6–7 (1973); H.R. Rep. No. 1463, 93d Cong., 2d Sess. 8 (1974); *LTV, supra* n. 33.

[35] 119 Cong. Rec. 3449, 3451 (remarks of Sen. John V. Tunney, introducing S. 782, 93d Cong., 1st Sess., February 6, 1973).

[36] 119 Cong. Rec. 3449, 3452 (1973) (emphasis added).

[37] Hearings Before the Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary, House of Representatives, 93d Cong., 1st Sess. 128 (1973).

[38] 119 Cong. Rec. 24601 (1973).

[39] *Central Contracting,* 527 F. Supp. 1101, 1102.

The court then refused to accept the Government's nullification of the determinative documents procedure:

The Court finds plaintiff's statement in Paragraph 7 of its competitive impact statement that it considered ''no materials and documents * * * determinative'' in formulating its proposal for a consent judgment to be almost incredible. Section 2(b) of the Act refers in ''any * * * materials and documents which the United States considered determinative in formulating such proposal.'' 15 U.S.C. 16(b). The Court is skeptical that *no* documents were significant in formulating the proposed consent judgment. If any documents were considered plaintiff should comply with Section 2(b) forthwith.[40]

The Court expressed its views even more vigorously in its second opinion, 531 F. Supp. 133, 134:

But in the instant case, plaintiff appears to interpret ''determinative'' as if it means a single critical or decisive document which evoked a cry of ''Eureka!'' from the Justice Department. The Government seems to contend that if no *one* document were ''determinative'' it may refuse to disclose the several documents which were determinative. Although it is conceivable that in some rare case a single document may hold such vital importance it is hardly conceivable that *no* document is of vital importance. Indeed, in most circumstances a determination will be based upon an aggregate of facts, materials, and documents, no one of which may be of overwhelming importance but when viewed together are determinative as to the way in which the United States elects to proceed in a given situation. The materials and documents that substantially contribute to the determination to proceed by consent decree must be disclosed and a list thereof published pursuant to section 2(c) of the Act. 15 U.S.C. 16 (b) and (c). (Emphasis in original.)

In its third opinion, the Court rejected the Government's position that ''the legislative history of the Act supports a definition of 'determinative' which excludes 'evidentiary materials' obtained by the government.'' 537 F. Supp. at 574. The Court said that ''[i]n most cases * * * a determination to proceed on a given course will be reached upon an aggregate of information'' which today is ''collected and communicated in document form,'' and it is ''the aggregate of these documents and other materials that leads the Justice Department to a conclusion that it should enter into a consent decree.'' *Id.* at 575. Nor, said the Court, did the government argue that ''the decision to proceed with the consent decree was an idea that came out of the blue. *Rather, the idea emerged through consideration of compiled information concerning the alleged offense * * *''* *Id.* at 576 (emphasis added).

The Court once again rejected the Division's continued claim that there are no determinative documents, saying:

* * * by it own statistics, the Department of Justice states that out of the 188 cases that have settled by consent decree since the enactment of the Act, only 16 have involved ''documents [and other materials] which the government considered determinative in formulating the relief,'' Pl.Br. at 6. If this be true, (and given the Justice Department's construction of the Act, the Court does not doubt its truth) then the directive in the Act is either superfluous, or it is being misinterpreted or subverted. The Court presumes that Congress did not intend legislation to be superfluous * * * *Id.* at 575.

* * * * *

Plaintiff suggests that it is not unusual for there to be no determinative documents even in the most complicated of cases. *CF., United States* v. *AT&T*, Civ. No. 74–1698 (D.D.C.) (dismissal of monopolization suit against AT&T in which Justice Department has agreed to abide by provisions of the Act). That view, in the opinion of the Court, is based upon a misinterpretation of the Act. The Act clearly does not require a full airing of Justice Department files *but the Court cannot countenance plaintiff's claim that though Congress enacted sunshine legislation the courts may blandly (and blindly) accept government certification in case after case that no documents or materials, by themselves or in the aggregate, led to a determination by the government that it should enter into a consent decree.* (*Id.* (emphasis added).)

*The Court simply cannot accept an interpretation of legislation that permits the government to assert in 172 out of 188 cases that it considered neither documents nor any other materials determinative in reaching its conclusion to enter into a consent decree. To reiterate, the Act as interpreted by this Court requires the government to disclose ''[t]he materials and documents that substantially contribute to the determination [by the government] to proceed by consent decree. * * *''* *United States v. Central Contracting Co., supra*, at 134 (E.D.Va. 1982). This does not require full disclosure of Justice Department files, or grand jury files, or defendant's files, but it does require a good faith review of all pertinent documents and materials and a disclosure of those which meet the above criterium. (*Id.* at 577 (emphasis added).)

In short, first Congress overrode the Antitrust Division's efforts to defeat the broadly encompassing determinative documents provision, and then the only Court to consider this issue flatly rejected the Division's consistent efforts to subvert Congressional intent, including efforts to subvert it by arguing that determinative documents do not include evidentiary materials. Notwithstanding this, and even though antitrust law is a documents-driven field, the Government, as here, continues to ignore its responsibilities, the will of Congress, and judicial disapprobation by claiming in virtually every case that no documents were determinative.

D. Serious questions regarding the efficacy of the Consent Decree's compliance mechanisms, and the DOJ's fidelity to its statutory duty, arise because here the Government claims, as usual, that there were no determinative documents. Such questions also arise because of a need to protect the interests of injured parties by making available to them documents and information gathered by the Government that will ''assist in the effective prosecution of their claims.''

D(i). *Determinative documents and materials.* As discussed above, there are numerous questions here regarding the efficacy of compliance mechanisms in the Decree. Without submission by the Government of documents and materials showing why the DOJ believed those mechanisms will be successful and therefore decided to include them in the Consent Decree, the Court cannot make—as Congress intended it to make—an *informed* determination that the Decree's remedial provisions are in the public interest. Without submission of the determinative documents and materials, the Court is remitted to simply accepting the Government's unsupported claims that provisions it agreed to are in the public interest—the very kind of uninformed judicial acceptance that Congress sought to avoid by passage of the Tunney Act. This can be demonstrated by the following examples:

(a). Having found that reform of the accreditation process is necessary because it has been captured by self interested persons, the Government formulated a Consent Decree that relies on percentage limitations on the number of faculty on various committees to achieve such reform. The Government determined to so rely even though, under the Decree, the very same persons who captured and used the process are free to comprise up to 50 percent of the membership of pertinent committees, and even though the problem of capture has resulted not from mere numbers, but from these individuals' deep interest in and their consequent willingness (and their time) to do the work of accreditation. What determinative documents and materials persuaded the Government that notwithstanding these facts, (1) accreditation will not continue to be controlled by these individuals, and (ii) they will not be able to continue to maneuver accreditation in their own interest? Is the Government persuaded that these apparent problems are not in

[40] *Id.* at 1104.

fact problems because determinative documents and materials show that the ABA leadership has promised it that the individuals who captured the process will be excluded from the relevant committees or will comprise only a very small proportion of them?

(b) The Government has formulated a Decree that places heavy reliance on the ABA leadership to control the Section and preclude further anticompetitive actions. The DOJ did so even though it knew that the leadership resisted correcting the problems in the past when they were called to its attention in 1993, 1994, and early 1995, that the leadership persuaded it to allow a Special Commission packed with insiders—who believe in the violations—to make recommendations for change, and that the ABA is a highly political organization in which the Section wields much power. The Government continues to rely on the leadership though the latter has thus far taken no steps to clean house in the Section and has allowed the Section to flout the Consent Decree. Why has the Government done this? Are there determinative documents and materials showing that the ABA leadership has made promises of change and that such promises are backed by believable commitments for future action even though events to date do not bear out any such commitments?

(c). At least on its face, the Government's formulation of a Decree that relies on the insider dominated Wahl Commission to be the Special Commission that recommends changes in anticompetitive practices is unwarranted. This is the more true because of the inadequacy of the Commission's initial recommendations and its members' request for the suppression of the views of Dean Cass. What, then, do determinative documents show to be the reasons that led the Government not to adhere to its initial position that a special antitrust review committee should be the Special Commission, and to agree instead that an insider-dominated group responsible for the challenged violations can be the Special Commission? Are there determinative documents showing that the ABA leadership made a commitment to change the recommendations of the Wahl Commission if they were inadequate?

(d). As with almost all conspiracies, secrecy concerning accreditation has been the linchpin of the conspiracy. It is secrecy that allowed anticompetitive actions, secret rules and inconsistent conduct to exist unknown to scholars and analysts, enforcement agencies, reporters, members of the public and others, and which disabled potential students from learning more about schools as a matter of consumer protection. At least on its face, the Consent Decree formulated by the DOJ allows extensive secrecy to continue. Why? What do the determinative documents show as to why this is being allowed? Do they show that, notwithstanding that the Decree does not on its face open up the process to public scrutiny, there are commitments from the ABA leadership to open it to public scrutiny in order to insure against future anticompetitive actions, secret rules and inconsistent conduct?

(e). The Government initially intended to seek a prohibition against anticompetitive ABA rules on student/faculty ratios, limitations of teaching hours, leaves of absence, and banning of credit for bar review courses. It has evidence that such rules, plus rules on physical facilities and allocation of resources, have at times been used to further guild interests. It knew the circumstances in which they had been so used. It knew that it was common for the rules to be used in conjunction with fixing of the price of salaries, which is banned outright, and that actions taken in conjunction with forms of price fixing are normally banned along with the price fixing.

Yet, the DOJ became persuaded that the rules implicate educational concerns and, instead of enjoining them, at least in the circumstances in which they have been used anticompetitively, agreed to formulate a Decree that allows them to be considered by a Special Commission. Why? What do determinative documents and materials show to be the reasons why they were not banned outright in any circumstances whatever, not even when used in conjunction with price fixing or in circumstances known to be intended to advance guild interests?

(f). The DOJ formulated a Decree in which the duties of the Antitrust Compliance Officer do not encompass accreditation rules in areas where the Government has found the accreditors to have anticompetitively pursued guild interests instead of educational quality (areas such as ratios, physical facilities, etc.). Why were such areas excluded from the antitrust compliance program? What do the determinative documents show in this regard?

D(ii) *Interest of injured private parties.* In the last two decades, the ABA has caused injury to and sometimes even the outright destruction of a significant number of law schools, because anticompetitive rules identified in the Complaint were used to deny accreditation to the schools, to withdraw accreditation from them, to make clear to schools that it was useless for them even to seek accreditation, and to raise the costs of beginning new schools. Many of these injured institutions, particularly those injured during the latter half of the period, have potential claims against the ABA, but most of them will never be able to afford to bring the claims, and if they were to bring them, would be unable to afford to pursue them to victory, unless approval of the Decree is conditioned upon the Government making available the claim-proving information and documents it has gathered. For as the ABA has shown in its litigation against MSL, its defense tactics are the very scorched earth tactics that caused Senator Tunney to say when introducing the Tunney Act (i) that ''because of the protracted nature of antitrust litigation, and the deep pockets of many corporate defendants, few private plaintiffs are able to sustain a case in the absence of parallel litigation by the Justice Department,'' (ii) that ''a major effort of defense counsel in any antitrust case is to neutralize the Government as plaintiff and leave prospective private plaintiffs to their own resources,'' and (iii) that the costs to injured parties of violations might justify requiring the Government to go to trial instead of being allowed to settle by consent, and that led Congress to say in its Reports that a court should consider conditioning approval of the Decree upon the Government making relevant documents available to private parties.

The ABA's defense tactics, tactics Congress knew and feared, feature stonewalling against production of documents needed to prove a case: in nearly two years, as the Government knows, the ABA has produced to MSL less than 50,000 of the 544,000 documents which it admits to having produced to the Government and which led the latter to say in its CIS that it could prove the charges in the Complaint—which are mainly identical to MSL's.[41]

That the ABA uses these tactics to defeat the claims of injured private parties is an unhappy demonstration that, contrary to the Government's statement, the Consent Decree will have a deeply adverse impact on private

[41] As said earlier, the ABA has also made untrue representations regarding alleged lack of availability of documents which it has already assembled and produced to the DOJ, and has presented false deposition testimony, concerning price fixing, which contradicts the charges the Government has made and says in the CIS it can prove. We have attached recent briefs filed by MSL discussing the false testimony. (Exhibit 24.)

parties, many of whom will be unable to afford even to bring their claims, let alone pursue them to victory, if the Decree is entered without making documents and information available to the private parties. It is likewise a demonstration that approval of the Decree, in accordance with Congressional intent and statutory language, should be conditioned on the Government making available to private parties the documents and materials it has gathered that will enable them to effectively prosecute their claims. This is required in order to give appropriate consideration to the decree's ''impact * * * upon * * * individuals alleging specific injury from the violations set forth in the complaint.'' 15 U.S.C. 16(e)(2).

10. There are Three Areas, Involving Rules Which Stifle Competition, in Which USL Urges the Division to Reconsider its Decision not to Act

We conclude with a discussion of three matters to which we recommend the Government give further consideration.[42] Because the matters were not charged as violations in the Complaint, in accordance with the Court of Appeals decision in *United States* v. *Microsoft Corp.*, 56 F.3d 1448 (D.C. Cir. 1995), MSL is not urging that the Court should require the Consent Decree to be revised to cover these matters. Rather, MSL is urging only that the Division itself might decide to reconsider them because they involve anticompetitive guild actions used to prevent the establishment of new, and to eliminate existing, law schools that provide a more efficient, lower cost education. Such education makes law school accessible to less economically privileged individuals, e.g., to persons from working class and minority backgrounds. These guild practices also lessen the quality of legal education.

A. *The Requirement That Substantially All First Year Courses Be Taught By Full-Time Faculty Members As Defined By The ABA.* In the CIS, the Government says that it initially proposed injunctive relief barring the ABA's requirement that substantially all first year courses be taught by full-time faculty (CIS, p. 15), but that evidence it gathered persuaded the DOJ to abandon its opposition to the practice. (CIS, p. 16.) Given the current unavailability of determinative documents showing what evidence persuaded the Division to abandon its opposition, MSL cannot know why the DOJ came to feel it permissible to force all 178 accredited law schools, and every law school seeking accreditation, to follow this practice without even a single exception. What we do know, however, is that the practice is anticompetitive, can result in legal education being unaffordable to persons who are less privileged economically, and often lessens, not heightens, the quality of legal education.

The anticompetitive nature of the practice is obvious. There are a number of unaccredited law schools in this country—in California, Tennessee, Alabama, Georgia and Massachusetts—which seek to make legal education available to less privileged individuals, particularly persons from the working class and minority persons such as African-Americans and Hispanic-Americans. Many of these schools use highly knowledgeable judges and lawyers as adjuncts to teach various first year courses. The schools exist in the aforementioned states because the states allow the schools' graduates to take bar examinations. But the growth of the schools is stifled because their students cannot take bar exams elsewhere, and such schools cannot be established elsewhere.[43]

The rule thus anticompetitively stifles the growth and establishment of schools devoted to serving the less-privileged. Furthermore, the rule reflects true—and correctly felt—terror of competition. For at least 90 years the Section of Legal Education has been aware that, because they provide a lower cost method of legal education, the schools in question will ultimately expand to populations additional to the economically less-privileged if the schools are allowed to flourish with the cachet of ABA accreditation. Many people—whether poor, middle class or rich—do not want to pay $20,000 per year in tuition for legal education if good education is available at $5,000 or $10,000 per year. The terror this potential competition presents has become particularly acute today (as it was in the 1920s) because (i) the cost of tuition at ABA schools, driven by the expensive guild mandates of the accreditors, has become so high and (ii) (a) students, like the practicing and judging arms of the legal profession, are increasingly demanding education in practical skills, (b) current ABA schools often are deficient in such education and have locked themselves into high cost structure that leave little or no financial room for adding skills training to the curriculum, (c) students would go to schools that offer such skills if the schools were ABA accredited, and (d) the schools which currently are precluded from obtaining accreditation do, or if established would, offer extensive education in practical skills (as well as the customary theoretical training).[44] There is thus serious concern over the competition such schools would offer if accreditation were not precluded by ABA rules, including the rule requiring substantially all first year courses to be taught by full-time faculty members as defined by the ABA.

B. *The Ban On Full-Time Students Working More Than 20 Hours Per Week.* This rule bars a school from competing by allowing its full time students to work for compensation more than 20 hours per week outside the law school. By preventing schools from thusly competing, the rule destroys the ability of some less-economically privileged persons to obtain a legal education and works an enormous hardship on other such persons.

[42] There are additional deeply anticompetitive practices which MSL believes are violations of the antitrust laws, but they are not discussed here.

[43] The populations whom those schools seek to serve in the five aforementioned states, and who would be served by similar schools elsewhere, often are in straitened economic circumstances. Yet they too wish to rise on the socio-economic scale, and it has been the promise of America that they should have a chance to rise as high as their capabilities and willingness to work can take them. Nonetheless, the unchallengeable historic record show that, since its founding in 1878, the ABA has regularly taken actions to bar this rise, and that actions which prevent it have for more than 30 years been a staple of the activity of the Section of Legal Education. Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s, passim* (1983); Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America, passim* (1976). Such actions by the ABA and the Section of Legal Education have always been defended by the mantra of quality. But though wrapped in the flag of quality, the actions have always knowingly harmed and continue to knowingly harm the poor, immigrants, minorities and the working class.

[44] It is especially crucial that adjunct professors teach the all-important practical skill of writing in the first year of law school. Failure to train students to write well is one of the gravest deficiencies of legal education. It can be cured only by giving extensive, intensively supervised writing courses to students in small groups having approximately ten or less students and taught by competent, perhaps even professional, writers. This is the way that writing is taught competently in the few areas of education where it *is* taught competently. The only financially feasible method of doing this for most law schools is to hire a large corps of capable adjuncts who are professional writers or, in some cases, are lawyers who write well. Every other method the law schools have tried has been a jury rigged, Rube Goldberg failure. Using third year students to supervise writing classes has been a failure. Using instructors who are recent law school graduates with no practical experience has been a failure. Having a full-time professor supervise scores of students has been a failure because the amount of work needed is too great to effectively supervise scores of people. But under the ABA's rule regarding first-year courses, the only method that will work cannot be used, since the use of a large body of professional writers or competent lawyers as adjunct writing teachers would almost surely cause a violation of the guild rule regarding first year classes.

Since only slightly more than one-third of the ABA law schools offer part-time study,[45] there are many geographical areas of the country where no part-time legal education is available. In those areas persons whose financial situation compel them to hold full-time jobs are precluded from attending law school or can attend only under extreme hardship. The rule barring schools from competing by allowing students to work more than 20 hours per week thereby makes it especially difficult or even impossible for such individuals, however competent, to attend law school as a means of exercising their right to choose a career and of improving their socio-economic position. In other geographic areas the same results obtain because, though part-time education is available, it is only available in sufficient quantity at ABA schools to accommodate a fraction of the competent but less-privileged applicants who must hold full-time jobs.[46] The anticompetitive rule perpetuates these antisocial results regardless of whether the excluded or injured individuals are capable of taking a full schedule of law school courses while working more than 20 hours per week, as many are.

There is no defensible justification for this rule. To begin with, when the Standards were adopted in 1973, the House of Delegates expressly made clear its intention, which was part of the legislative history, that the rule would not apply to persons who worked in a law firm—that was regarded (rightly) as in itself being legal training. (Exhibit 27.) It is the capturing insider group which has extended the rule to work done for a law firm. It has done so in defiance of the express intent of the House of Delegates.

Furthermore, it is widely known that the rule is regularly violated instead of being enforced in the name of purported quality of education. It is common in large cities for full-time students to work more than 20 hours per week for compensation, especially at law firms. The ABA accreditors know this is occurring, and in effect wink at it.[47] They wink at it even while ostensibly enforcing it by forcing schools to require full-time students to sign affidavits saying they are *not* working more than 20 hours per week.

Moreover, the accreditors discriminatorily purport to bar more than 20 hours of work per week *only* when it is done for compensation (by students who need the money). The accreditors do not bar a full-time student from working 25, 30 or even 40 hours per week at a public interest organization that does *not* pay the student. Nor do the accreditors ban a woman (or a man) from working in the home 30 or 40 hours per week or more, as many female students do, nor bar a wealthy full-time student—and there are such—from spending 30 or 40 hours per week tracking investments. As said, the only thing banned by the anticompetitive, antisocial rule is work exceeding 20 hours per week by those who need to and do obtain compensation—by those who need the money.

C. *The Requirement of Enormously Expensive But Needless Hard Copy Books In A Law School Library.* It is widely regarded that librarians have been among the groups which most effectively captured the ABA accreditation process and used it to advance their own, often anticompetitive guild interests, including higher salaries for librarians, ever greater prestige obtained through greater independence within the law schools and university library systems, obtaining of near-tenure for library directors, ever fancier and more elaborate physical facilities for libraries (facilities that now can cost ten million dollars or more), and very large, ever expanding hard cover collections of books that cost several millions of dollars.

Because of their enormous costs, the requirements of ever more elaborate physical facilities for libraries and ever larger hard cover book collections are instrumental in anticompetitively preventing the establishment and growth of lower cost, efficient schools that seek to serve the economically less privileged.'

In recent years, the advance of computerized, electronic research capabilities, and CD Rom collections, have made cost of the expensive hard cover books totally unnecessary and correlatively had made it unnecessary to have huge library facilities to store and service enormous hard cover collections. We are, indeed, hurtling towards the age of what the Dean of the University of Pennsylvania Law School has called the ''virtual library.'' (Exhibit 28.) The vast bulk of materials needed by most law school libraries is now instantly available on computers, and students and faculty members can access these materials not just in law school libraries or law school offices, but at home, or anywhere, by means of modems.[48]

Yet the ABA accreditors, though *slowly* changing their rules, still require a law school to have millions of dollars worth of hard cover books to obtain accreditation and still require elaborate physical facilities. These requirements are simply another of the devices which, because of the costs they impose, are used to anticompetitively exclude schools that desire to make education available at lower cost to less affluent persons.

Conclusion

As said at the inception of these Comments, MSL believes the Consent Decree is a step towards eliminating long-standing anticompetitive practices. But the Decree contains weaknesses that could undermine its effectiveness in combatting these practices. MSL therefore urges the Division to cure those weaknesses so that the Decree, rather than possibly being undermined, will in fact prove to be the major procompetitive step it is capable of being.

Respectfully submitted,

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PROPOSED MODIFICATION TO PROPOSED FINAL JUDGMENT, p. 5, Part VI (B)

(Note: deletions are bracketed; insertions are italicized.)

to the same public comment and review process and approval procedures that apply to proposed Standards;

(B) permit appeals from Accreditation Committee Action Letters to the Council;

(C) revise the Council's membership as follows:

(1) for a period of five years, all elections shall be [subject to] *reported to the* Board [approval];

(2) members shall serve staggered three-year terms, with a two-term limit; however, officers may serve as officers for an additional term beyond the six-year limit; and

(3) no more than 50% of the members shall be law school deans or faculty;

(D) revise the Accreditation Committee's membership as follows:

[45] Only 15 percent of first year seats in law school are devoted to part-time students. (Exhibit 25.)

[46] Leading insider Leigh Taylor has said that ''Evening students are older (4 to 5 years older at [his law school]), *tend to come from a lower economic situation, and tend to be married and have children. Typically there are more minority students in the evening.*'' (Exhibit 26 (emphasis added).)

[47] American Bar Association Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap,* 268 (July 1992).

[48] The materials are also available within minutes or hours via fax machines, and overnight via Federal Express and other forms of overnight mail.

(1) for a period of five years, all appointments shall be [subject] *reported to the* Board [approval];

(2) all members shall serve staggered three-year terms, with a two-term limit; and

(3) no more than 50% of the members shall be law school deans or faculty;

(E) revise the Standards Review Committee's membership as follows:

(1) for a period of five years, all appointments shall be [subject to] *reported to the* Board [approval];

U.S. Department of Education

Staff Analysis of the Interim Report Submitted by the Council of the Section of Legal Education and Admission to the Bar of the American Bar Association

December 5–6, 1994.

Background

The Council of the section of Legal Education and Admission to the Bar of the American Bar Association (ABA) appeared on the first list of nationally recognized accrediting agencies published by the Commissioner of Education in 1952. The Council has received periodic renewal of recognition since that time.

The Council's most recent review by the National Advisory Committee was in May 1992. At that time, there was considerable third-party opposition to the Council, most of which centered on its accreditation standards. As a result, Advisory Committee members questioned Council representatives at length about their process for reviewing and revising the standards. Upon completion of that discussion, the Advisory Committee recommended that, while renewing the Council's recognition for a period of five years, the Secretary should also require the Council to submit an interim report by July 1, 1993 on its effort to strengthen compliance with § 602.16(i)—maintenance of a systematic program of review designed to assess the validity and reliability of the Council's criteria, procedures and standards. On August 18, 1992, the Secretary renewed the Council's recognition for a period of five years and requested the interim report on § 602.16(i).

In January 1994, the Massachusetts School of Law (MSL), one of the third parties that testified in opposition to the Council at the May 1992 meeting of the National Advisory Committee, filed a formal complaint against the Council and requested that the Secretary terminate the Council's recognition on the grounds that it failed to follow appropriate and required standards, procedures, and regulations. MSL cited a number of reasons for its request, many of which were related to the issue of whether the Council's criteria, procedures, and standards were valid and reliable. Consequently, in this analysis, Department staff examines both the Council's interim report and MSL's complaint. The analysis also takes into account both the Council's response to MSL's compliant and subsequent responses by MSL and the Council.

It should be noted that, as is customary when the Department receives a compliant against an accrediting agency, staff provided the Council with an opportunity to respond to MSL's complaint. MSL subsequently requested and, because of the seriousness of its charges against the Council, was granted an opportunity to rebut the Council's response. MSL's rebuttal was not received by the Department, however, until August 1994. Department staff's investigation of MSL's complaint was completed in as timely as manner as possible, given the delay in the submission of MSL's rebuttal and the extent of the documentation submitted by both parties.

Summary of Findings

While the Council has technically complied with the requirement to provide the Secretary with a progress report on its efforts to assess the validity and reliability of its standards by describing its process for reviewing its 100- and 200-series standards, it has not provided any results of its work to date. The Council needs to do so.

Staff Analysis

602.16(i) It maintains a systematic program of review designed to assess the validity and reliability of its criteria, procedures, and standards relating to its accrediting and preaccrediting activity and their relevance to the educational and training needs of affected students.

Problem: At the time of the Council's last review, there was considerable third-party opposition to the Council, most of which centered on the validity and reliability of its standards. Noting that the Council had reported that work was continuing on the assessment of the validity and reliability of its standards as a result of a conference held on the subject in 1989, the Advisory Committee requested an interim report on the Council's continuing progress assessing validity and reliability.

Agency Response: The Council maintains a Standards Review Committee, each of whose meetings includes a review of the validity and reliability of certain standards among the ones currently used to accredit programs. At its November 1992 meeting, the Committee agreed to concentrate on the 100- and 200-series of its standards. At its meeting in January 1993, the Committee focused on the 100-series standards, discussing various comments received from the membership on the standards and agreeing to proposed some changes to the membership. At its May 1993 meeting, the Committee continued its review of the 100-series and began work on the 200-series. At the conclusion of the meeting, the Committee decided that, rather than propose changes in either series' standards to the Council's different constituencies, it would continue its standards review for the next 2–3 years and then propose all the changes at once. Its rationale for this course of action was the effect that more than one of the modified standards would have on some of the Council's other standards.

Staff Determination: By describing the process it is engaged in to review the validity and reliability of its standards, the Council has technically complied with the requirement that it submit an interim report addressing its continuing progress assessing validity and reliability. However, the Council has failed to provide any concrete results of its efforts, presumably because it plans to extend its current review effort over the next 2–3 years.

The Department's new regulations require not just a demonstration that the Council has in place a systematic program for the review of the validity and reliability of its standards but a demonstration that each of its standards provides a valid measure of the educational quality it is intended to measure and a consistent basis for determining the educational quality of different law schools. It is the Council's compliance with this new requirement that is challenged by MSL in its complaint against the agency.

Like all agencies, the Council must take action to bring itself into compliance with this new requirement. Department staff recognizes that this will take some time. However, Department staff also recognizes that in the interim some institutions may be denied accreditation, placed on probation, and/or forced to take corrective action to come into compliance with standards that may in fact prove not to be valid and reliable measures of educational quality. For this reason, Department staff believes it is critical that the Council keep the Department thoroughly informed of its progress in assessing the validity and reliability of its standards and the *results* of that assessment. Specifically, the Council should provide the Department with an interim report in each of the next two years, and that report should include complete reports of each meeting of its Standards Review Committee, including any proposed changes in Council standards that are under consideration, and reports of any other meetings, forums, or other opportunities for discussion of its standards that took place that year. Department staff has been informed by MSL that at least one such opportunity—a meeting of a group of law school deans—is scheduled to take place in January or February of 1995.

At this point, Department staff believes that any termination of the Council's recognition on the grounds that its standards are neither valid nor reliable measures of quality, as has been requested by MSL, is premature and without merit. All currently recognized accrediting agencies need to come into compliance with the requirement in the new regulations that each of their standards must provide a valid measure of the educational quality it is intended to measure and a consistent basis for determining educational quality. To single the Council out for noncompliance at this time when other agencies are likewise in noncompliance would be unfair to the Council.

While MSL may not like the Council's current standards and may question their validity and reliability, it has not provided convincing evidence to contradict the Council's assertion that its current standards have in fact been adopted by its members in the manner that has been agreed to by the members for the establishment of accreditation standards. Thus, even though they may be found at some future date not be fully valid or reliable indicators of educational quality, at the present time the Council's standards represent the current best thinking of those in the profession.

MSL has indicated that there is some opposition to the current standards from within the organization but has provided no evidence of large numbers of members opposing ABA standards at its meetings and being constantly frustrated in their efforts to change the standards by undemocratic procedures on the part of the Council. If there is in fact opposition to the Council's standards, it is Department staff's opinion that the Council appears to have in place the mechanisms that will allow those who seek change to be heard. The scheduled meeting of the law school deans early in 1995 is evidence that those in opposition to the standards have the ability to work from within and propose changes that they believe will strengthen the accreditation process.

Department staff further believes that the Council's standards have been subject to regular, systematic review by the profession and have been changed whenever the profession deemed necessary. It also appears to Department staff that any changes to the standards have been decided upon only after proper consultation with the membership and other relevant constituencies. Thus, from the Department's perspective, the Council has acted in accordance with the criteria for recognition as far as the review and subsequent revision of its standards is concerned. MSL points out that, as an unaccredited law school, it is not part of the membership, and therefore, does not have adequate opportunity for input into any changes to the standards. Department staff's response to this concern is that the Council is not obliged by the requirements for Secretarial recognition to consult with non-members like MSL.

One other aspect of MSL's complaint against the Council is particularly relevant to the validity and reliability issue. MSL charges that the Council has throttled diversity among law schools by refusing to follow a written provision contained in its own standards that is intended to promote such diversity. As evidence to support its charge, MSL states that its requests for several variances have been repeatedly denied by the Council. Department staff believes that in general MSL's requests for variance were not accompanied by a compelling rationale for the request and that there is no evidence to suggest that, if they were accompanied by such rational, they would not have been given fair consideration by the Council.

Other aspects of MSL's complaint against the Council have no direct bearing on the validity and reliability issue. Department staff has investigated them and found some of them to be without merit. For example, MSL charges that the Council regularly violates the requirements of due process but does not provide convincing evidence to support its charge.

Still other aspects of MSL's complaint relate to new requirements imposed on accrediting agencies as a result of the Higher Education Amendments of 1992 and the Department's regulations implementing those amendments. For example, MSL charges that the Council does not provide public notice of when a law school will be considered for accreditation and does not provide an opportunity for public comment on the school's qualifications for accreditation. All agencies must come into compliance with this requirement and the other new requirements, but it takes time for them to develop and implement the requisite standards, policies, and procedures. Department staff believes that there is no evidence to suggest that the Council will not do so in a timely and appropriate manner.

It should be pointed out that MSL presented many aspects of its current complaint to a member of the National Advisory Committee when it reviewed the Council in 1992, yet the Advisory Committee was satisfied with the Council's overall performance at the time and recommended renewal of recognition for the maximum period of five years. Thus, it does not appear to Department staff that MSL has presented compelling new evidence to warrant a full review of the agency before its originally scheduled renewal date.

Note. One aspect of MSL's complaint against the Council that is totally outside of the Department's purview is the charge that the Council has violated federal anti-trust laws for the economic benefit of law professors, law deans, and law librarians but on the detriment of students. That matter is currently before the Justice Department.

[FR Doc. 95–28678 Filed 12–11–95; 8:45 am]

BILLING CODE 4410–01–M

federal register

Tuesday
December 12, 1995

Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Knowledge Dissemination and Utilization Program; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of Final Funding Priority for Fiscal Years 1996–1997 for the Knowledge Dissemination and Utilization Program.

SUMMARY: The Secretary announces a final funding priority for the Knowledge Dissemination and Utilization (D&U) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1996–1997. The Secretary takes this action to ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities and their families.

EFFECTIVE DATE: This priority takes effect on January 11, 1996.

FOR FURTHER INFORMATION CONTACT: David Esquith, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3424, Washington, D.C. 20202–2601. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8133.

SUPPLEMENTARY INFORMATION: This notice contains a final priority to establish ten regional Disability and Business Technical Assistance Centers.

Authority for the D&U program of NIDRR is contained in sections 202 and 204(a) and 204(b)(6) of the Rehabilitation Act of l973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private agencies and organizations, including institutions of higher education and Indian tribes or tribal organizations.

This final priority supports the National Education Goal calling for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 355.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

On July 24, 1995, the Secretary published a notice of a proposed priority in the Federal Register (59 FR 46300). The Department of Education received thirty-five letters commenting on the proposed priority. Modifications were made to the priority as a result of those comments. The comments, and the Secretary's responses, are discussed in an appendix to this notice.

Note: This notice of final priority does *not* solicit applications. A notice inviting applications under this competition will be published in the Federal Register concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this program only applications that meet this absolute priority:

Priority: Regional Disability and Business Technical Assistance Centers

Background: Public Law 101–336, the Americans with Disabilities Act (ADA), enacted on July 26, 1990, prohibits discrimination against individuals with disabilities in employment, public accommodations, transportation, State and local government, and telecommunications. Because of NIDRR's experience and support of information dissemination and technical assistance, and its support of research and demonstration efforts to promote employment and independence for individuals with disabilities, Congress directed NIDRR to use FY 1991 funds to establish a technical assistance program to further the successful implementation of the ADA. In October of 1991, NIDRR awarded grants to establish ten regional Disability and Business Technical Assistance Centers (DBTACs), previously referred to as Regional Disability and Business Accommodation Centers), for five years. There is one DBTAC in each of the ten Department of Education regions. The final funding priority for the original DBTACs is contained in the Federal Register of August 13, 1991, Vol.5, No.156, page 40168.

Covered entities and individuals with responsibilities and rights under the ADA continue to need technical assistance on the ADA. The ADA is a complex and relatively new civil rights statute. Many covered entities may be unaware of the basic requirements of the law or unfamiliar with legal precedents or policy guidance being issued by Federal agencies. According to a recent General Accounting Office (GAO) Report, ''[GAO] observed steady improvement in both accessibility and awareness during the initial 15 months that the ADA was in effect. However, enough areas of concern remain to suggest a need for continuing educational outreach and technical assistance to business and government agencies...'' (U.S. General Accounting Office, *Americans with Disabilities Act: Effects of the Law on Access to Goods and Services* (GAO/PEMD–94–14; June 21, 1994).

The DBTACs provide a wide range of technical assistance services such as referrals, consultation, and facility surveys. The DBTACs provide training to individuals and entities with responsibilities and rights under the ADA and disseminate information on the ADA through such methods as distributing materials that have been created or reviewed and approved by Federal agencies, issuing newsletters and information briefs, and participating in discussion groups on the INTERNET. In addition, the DBTACs carry out public awareness activities on the ADA and the services provided by the DBTACs and other NIDRR ADA grantees through a variety of means including, but not limited to, the use of public service announcements, radio and television appearances, presentations at conferences, and the publication of newspaper and magazine articles.

In order to tailor their efforts to State and local needs and maximize their resources, DBTACs increase the capacity of State and local organizations to provide technical assistance, disseminate information, provide training, and promote awareness of the ADA. The DBTACs have established at least one affiliate in every State. The State affiliates carry out their activities in collaboration with coalitions of organizations interested in promoting the implementation of the ADA. In addition, the DBTACs provide support to and collaborate with Centers for Independent Living (CILs) in each region to increase the capacity of CILs to promote the successful implementation of the ADA through the provision of technical assistance and training.

In FY 1994 the DBTACs fielded over 75,700 ADA-related telephone inquiries, made 13,764 referrals, distributed almost 700,000 publications, engaged in over 4,600 different types of public awareness and outreach activities such as public speeches, TV and radio appearances, newspaper interviews, and public workshops, and trained approximately 54,000 individuals with responsibilities and rights under the ADA.

The DBTACs rely to the maximum extent possible on existing Federally-approved materials, and, through a systematic process of quality control, ensure the legal sufficiency and accuracy of the information disseminated by the Centers and their affiliates. All of the materials that the DBTACs distribute are available in

alternate formats and DBTAC services and activities are accessible to all individuals with disabilities. The DBTACs share a national toll-free 800 telephone number that automatically connects the caller with the DBTAC serving the caller's area code. The DBTACs participate in a discussion group on an electronic bulletin board operated by Project Enable at the University of West Virginia to share information and discuss answers to technical questions. The DBTACs meet semi-annually to coordinate their activities and receive briefings from Federal agencies with responsibilities under the ADA.

Priority: The Secretary will establish a Regional Disability and Business Technical Assistance Center in each Department of Education region to facilitate implementation of the ADA by: (1) Providing technical assistance, disseminating information, and providing training to individuals or entities with responsibilities and rights under the Act on the requirements of the ADA and developments in ADA case law, policy and implementation; (2) increasing the capacity of organizations, including Centers for Independent Living, at the State and local level to provide technical assistance, disseminate information, provide training, and promote awareness of the ADA; and (3) promoting awareness of the ADA and the availability of services provided by the DBTACs, and other NIDRR ADA grantees, and other Federal information sources on the ADA.

In carrying out the objectives of the priority each DBTAC shall:

- Involve individuals with disabilities, parents or other family members of individuals with disabilities, in all phases of the design and operation of the DBTAC to the maximum extent possible;
- Cooperate and coordinate its activities with other NIDRR ADA technical assistance projects as well as Federal agencies including, but not limited to, the Department of Justice, the Equal Employment Opportunity Commission, the Department of Transportation, the Federal Communications Commission, the Access Board, the Department of Education's Office for Civil Rights, the Rehabilitation Services Administration, the President's Committee on Employment of Persons with Disabilities, and the National Council on Disability;
- Provide performance accountability data on a monthly and annual basis as requested by NIDRR; and
- Distribute services and resources equitably—taking into account population and size—among each State in its region.

Applicable Program Regulations: 34 CFR Parts 350 and 355.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133D, Knowledge Dissemination and Utilization Program)

Dated: December 6, 1995.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Analysis of Comments and Changes

By the deadline date, the Department received thirty-five comments in response to the proposed priority. Eleven additional comments were received after the deadline date and were not considered in this response. All thirty-five letters supported the priority. This Appendix contains an analysis of the comments and the changes in the priority since the publication of the notice of proposed priority. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

Priority: Regional Disability and Business Technical Assistance Centers

Comment: One commenter noted that while the priority indicates that the DBTACs trained approximately 54,000 individuals in FY 1994, training is not included among the list of services provided by the DBTACs in the Background section.

Discussion: The Secretary agrees that training should be included in the Background section of the priority in the list of services provided by the DBTACs.

Changes: The Background section has been revised to indicate that the DBTACs provide training to individuals and entities with responsibilities and rights under the ADA.

Comment: Two commenters pointed out that the current DBTACs meet semi-annually and submit data for an annual report that NIDRR issues on its ADA technical assistance program. The commenters recommended including these activities in the priority for planning purposes.

Discussion: NIDRR plans to continue with semi-annual meetings and to issue an annual report on the ADA technical assistance program. The Secretary agrees to include the semi-annual meetings and the submission of annual performance data in the priority.

Changes: The Background section has been revised to indicate that the DBTACs meet semi-annually to coordinate their activities and receive briefings from Federal agencies with responsibilities under the ADA. In addition, the priority has been revised to require that the DBTACs submit annual performance data.

Comment: One commenter suggested emphasizing minority outreach activities. A second commenter recommended requiring the DBTACs to address the needs of cultural and linguistic minorities.

Discussion: The Secretary believes that is important for the DBTACs to address the needs of underserved populations. The Secretary points out that under 34 CFR part 350.21, an applicant for assistance under the Knowledge Dissemination and Utilization program must demonstrate how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds. This requirement applies to cultural and linguistic minorities.

Changes: None.

Comment: One commenter suggested requiring applicants to specify how their grant funds will be distributed to each State in the region in order to address the equitable distribution of the DBTAC's resources.

Discussion: The Secretary agrees with the commenter's purpose. However, the Secretary believes that the commenter's suggestion may be an administrative burden that relies too heavily on allocation of funds to determine equitable distribution of services. The Secretary believes that the requirement to distribute resources and financial support equitably among the States in the region should be based on factors such as population and geographic size and extended to all of a DBTAC's activities. The Secretary believes that each applicant should be provided with the discretion to propose how it will meet this requirement.

Changes: The priority has been revised to require each DBTAC to distribute services and resources equitably—taking into account population and size—among each State in its region.

Comment: One commenter recommended increasing the emphasis on interaction between the DBTACs and Federal agencies responsible for the enforcement of the ADA. A second commenter recommended requiring the DBTACs to coordinate services and resources with the National Council on Disability.

Discussion: The Secretary agrees that communication between the DBTACs and Federal agencies with administrative responsibilities under the ADA is imperative. The Secretary points out that the priority requires the DBTACs to cooperate and coordinate their activities with Federal agencies including, but not limited to, the Department of Justice, the Equal Employment Opportunity Commission, the Department of Transportation, and the Federal Communications Commission, the Access Board, the Department of Education's Office for Civil Rights, the Rehabilitation Services Administration, and the President's Committee on Employment of Persons with Disabilities. The Secretary agrees that the National Council on Disability should be added to this list of Federal agencies, but does not believe any further requirements are necessary.

Changes: The National Council on Disability has been added to the list of Federal agencies for coordination purposes.

Comment: One commenter recommended emphasizing collaboration between the DBTACs and the business community, labor associations, and State and local governments, including State associations of mayors and counties. Another commenter recommended that the priority include

States' Protection and Advocacy Systems as potential collaborators for the DBTACs.

Discussion: The Secretary believes that the types of collaborative relationships suggested by both commenters could be valuable and expects the DBTACs to work with all types of entities with rights and responsibilities under the ADA. However, the Secretary prefers to provide applicants with the discretion to propose those collaborative relationships that the applicant believes would be appropriate for the States in their region.

Changes: None.

Comment: One commenter recommended focusing the efforts of the DBTAC's capacity-building activities on the business community.

Discussion: The capacity-building requirement in the priority refers to ''organizations at the State and local level.'' The Secretary expects the DBTACs to undertake capacity-building with a variety of organizations, including business organizations. The Secretary declines to direct the DBTACs to focus its capacity-building activities on only one community.

Changes: None.

Comment: One commenter recommended changing the name of the DBTACs because it is ''awkward and not easy to use.'' Discussion: The Secretary declines to change the name of the DBTAC in order to take advantage of the name recognition that the DBTACs have developed.

Changes: None.

Comment: One commenter recommended revising the priority to indicate that the DBTACs provide referrals to individuals and entities with responsibilities and rights under the ADA.

Discussion: The Secretary points out that, in the Background section, referrals are included among examples of the technical assistance services that the DBTACs provide, along with consultation and facility surveys. The Secretary expects the DBTACs to provide a wide range of technical assistance services including those in the Background section as well as any others that an applicant may propose.

Changes: None.

Comment: One commenter pointed out that, while the Background section refers to the capacity-building support that the DBTACs provide to Centers for Independent Living (CILs), this support is not specified in the priority. A second commenter recommended requiring the DBTACs to interact with State's Independent Living Councils ''and/or any other associations that the CILs may have formed.''

Discussion: The Secretary agrees that the priority should specify that CILs are to be included in the DBTACs capacity-building activities. However, the Secretary declines to provide further specification regarding the DBTACs' relationships with various associations of CILs.

Changes: Centers for Independent Living have been included in the requirement addressing capacity-building.

Comment: One commenter recommended requiring the DBTACs to build local capacity to implement mediation services to resolve ADA complaints.

Discussion: The priority authorizes the DBTACs to increase the capacity of organizations at the State and local level to provide technical assistance, disseminate information, provide training, and promote awareness of the ADA. The Secretary believes that an applicant could propose to build local capacity to implement mediation services to resolve ADA complaints under the priority. However, the Secretary cautions that conflict resolution through mediation is a specialized field that requires a great deal of expertise. Properly developing local capacity to implement mediation services to resolve ADA complaints would require a significant financial commitment. The Secretary declines to impose this requirement.

Changes: None.

Comment: One commenter suggested that it would be more efficient to produce a national DBTAC newsletter rather than authorizing the DBTACs to produce regional newsletters.

Discussion: NIDRR's ADA Coordination contractor will provide all of the DBTACs with core information about developments in case law and policy to ensure that the production of newsletters will be carried out as economically as possible. This will enable each DBTAC to continue to address issues and events that are unique to its region through the issuance of regional newsletters.

Changes: None.

[FR Doc. 95–30128 Filed 12–11–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.133D]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications Under the Knowledge Dissemination and Utilization Program for Fiscal Year (FY) 1996

Purpose of Program: The Knowledge Dissemination and Utilization Program is designed to support activities that will ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and from other sources is fully utilized to improve the lives of individuals with disabilities and their families. The final priority for this award, entitled ''Regional Disability and Business Technical Assistance Centers,'' is published in this issue of the Federal Register. Potential applicants should consult the statement of the final priority published in this issue to ascertain the substantive requirements for their application.

This notice supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

Applications Available: December 12, 1995.

Application Deadline: February 12, 1996.

Estimated Range of Awards:

Region I: $500,000–525,000
Region II: $550,000–600,000
Region III: $550,000–600,000
Region IV: $650,000–700,000
Region V: $650,000–700,000
Region VI: $550,000–600,000
Region VII: $500,000–525,000
Region VIII: $500,000–525,000
Region IX: $600,000–650,000
Region X: $500,000–525,000

Estimated Number of Awards: 10 (1 per Department of Education Region).

Note: The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR Parts 350 (amended April 5, 1995 (60 FR 17426)), and 355 (amended September 22, 1993 (58 FR 49419)); and the notice of final priority published elsewhere in this issue of the Federal Register.

For Further Information Contact: In order to obtain an application package, contact William H. Whalen, U.S. Department of Education, 600 Independence Avenue SW., Switzer Building, Room 3411, Washington, DC 20202. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 29 U.S.C. 761a and 762.

Dated: December 6, 1995.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–30129 Filed 12–11–95; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
December 12, 1995

Part V

Department of Education

34 CFR Part 75

Direct Grant Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 75

RIN 1880–AA69

Direct Grant Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Education Department General Administrative Regulations (EDGAR) that govern discretionary grant programs. These amendments reduce the need for specific regulations governing individual programs. The amendments authorize the Secretary to establish selection criteria for a discretionary grant program based on statutory provisions that apply to a program and on existing selection criteria in EDGAR. The amendments also clarify the Secretary's authority to establish annual funding priorities for grant competitions.

EFFECTIVE DATE: These regulations take effect January 11, 1996. These regulations will affect only those competitions announced in the Federal Register after this effective date.

FOR FURTHER INFORMATION CONTACT: Ms. Jacinta Ma, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–2241. Telephone: (202) 401–8300. 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 5 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These amendments allow the Secretary to establish selection criteria based on certain statutory provisions, clarify the Secretary's authority to establish one or more annual priorities, and allow the Secretary to establish the maximum score for each selection criterion on a competition-by-competition basis. The amendments also conform existing regulations in §§ 75.1 and 75.200 to reflect the additional method for establishing selection criteria.

On September 1, 1995, the Secretary published a notice of proposed rulemaking (NPRM) for these amendments in the Federal Register (60 FR 46004).

Except for minor technical and editorial revisions, there are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM two parties submitted comments on the proposed regulations. An analysis of the comments follows.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comment: One commenter suggested that the Secretary add a selection criterion that would give additional consideration to small entities, such as small vocational rehabilitation agencies, because these entities have fewer resources than large entities for developing grant proposals, and thus are at a disadvantage in competing for awards.

Discussion: These amendments to EDGAR are not intended to change the substance of the EDGAR selection criteria. These amendments allow the Secretary to establish selection criteria based on statutory provisions and allow the Secretary to establish the maximum value of each criterion on a competition-by-competition basis. The Secretary expects to amend the EDGAR selection criteria in the future and will consider this comment in developing the new selection criteria.

Changes: None.

Comment: One commenter expressed opposition to the provision that would allow the Secretary to establish without public comment annual funding priorities that are specified in a program statute or selected from allowable activities specified in a program statute. The commenter believed that it would be important for the public to be able to comment on the establishment of annual priorities to alert the Secretary to important issues within States that might require changing a proposed priority.

Discussion: The Secretary believes that creating the option for the Department to establish certain annual funding priorities without public comment will allow the Department to award grants more quickly and at a time more convenient and useful to potential grantees. The Secretary believes that public comment on these types of priorities would be minimal. For those priorities specified in the authorizing statute, public comment would be limited to the way the Department implements the statutory priority, e.g., what weight to give to the priority or how to choose among priorities. Statutory priorities, moreover, are established through the legislative process, which provides for participation and comment from the public. In establishing priorities, the Department will continue to be guided by information generated during the legislative process, the Department's experience in administering its programs, and feedback from customers, grantees and others. The Secretary has balanced the benefits to all grant recipients of a speedier and more efficient grant making process against the loss of the public's opportunity to provide formal comment in these limited circumstances and has determined that the benefits outweigh the disadvantages.

Changes: None.

Paperwork Reduction Act of 1995

These amendments have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Intergovernmental Review

Some of the programs that would be affected by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not 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 75

Administrative practice and procedure, Continuation funding, Education, Grant programs—education, Grants administration, Incorporation by reference, Performance reports, Reporting and recordkeeping requirements, Unobligated funds.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: December 5, 1995.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 75 of Title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

2. Section 75.1 is amended by revising the Note to read as follows:

§ 75.1 Programs to which part 75 applies.

* * * * *

Note: See part 76 for the general regulations that apply to programs that allocate funds among eligible States. For a description of the two kinds of direct grant programs see § 75.200. Paragraph (b) of that section describes discretionary grant programs. Paragraph (c) of that section describes formula grant programs. Also see §§ 75.201, 75.209, and 75.210 for the selection criteria for discretionary grant programs that do not have implementing regulations or whose implementing regulations do not include selection criteria.

§ 75.101 [Amended]

3. Section 75.101 is amended by removing paragraph (c).

4. Section 75.105 is amended by removing the word ''or'' following paragraph (b)(2)(ii), replacing the period at the end of paragraph (b)(2)(iii) with a semicolon, adding new paragraphs (b)(2)(iv) and (b)(2)(v), and revising the first sentence in paragraph (c)(2)(i) to read as follows:

§ 75.105 Annual priorities.

* * * * *

(b) * * *

(2) * * *

(iv) The program statute requires or authorizes the Secretary to establish specified priorities; or

(v) The annual priorities are chosen from allowable activities specified in the program statute.

(c) * * *

(2) * * *

(i) The Secretary may award some or all bonus points to an application depending on the extent to which the application meets the priority. * * *

5. Section 75.200 is amended by revising paragraph (b)(3) to read as follows:

§ 75.200 How applications for new grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.

* * * * *

(b) * * *

(3) If a discretionary grant program does not have implementing regulations or has implementing regulations that do not include selection criteria, the Secretary uses one of the following to evaluate applications for new grants under the program:

(i) Selection criteria established under § 75.209.

(ii) Selection criteria in § 75.210.

(iii) A combination of selection criteria established under § 75.209 and selection criteria in § 75.210.

* * * * *

6. Section 75.201 is revised to read as follows:

§ 75.201 How to use the selection criteria.

(a) If points are assigned to the selection criteria, the Secretary informs applicants of—

(1) The total possible score for all of the criteria for a program; and

(2) The maximum possible score for each criterion.

(b) If no points are assigned to the selection criteria, the Secretary evaluates each criterion equally.

(Authority: 20 U.S.C. 1221e–3 and 3474)

7. A new § 75.209 is added to read as follows:

§ 75.209 Selection criteria based on statutory provisions.

(a) If a discretionary grant program does not have implementing regulations or has implementing regulations that do not include selection criteria, the Secretary may evaluate applications by—

(1) Establishing selection criteria based on statutory provisions that apply to the authorized program, which may include, but are not limited to—

(i) Specific statutory selection criteria;

(ii) Allowable activities;

(iii) Application content requirements; or

(iv) Other pre-award and post-award conditions; and

(2) Assigning the maximum possible score for each of the criteria established under paragraph (a)(1) of this section.

(b) The Secretary evaluates an application by determining how well the project proposed by the applicant meets each statutory provision selected under paragraph (a)(1) of this section.

Example: If a program statute requires that each application address how the applicant will serve the needs of limited English proficient children, under § 75.209 the Secretary could establish a criterion and evaluate applications based on how well the applicant's proposed project meets that statutory provision. The Secretary might decide to award up to 10 points for this criterion. Applicants who have the best proposals to serve the needs of limited English proficient children would score highest under the criterion in this example.

(Authority: 20 U.S.C. 1221e–3 and 3474)

8. Section 75.210 is amended by revising the heading, removing paragraphs (a) and (c), removing the point designations following the italicized headings in paragraphs (b) (1), (2), (3), (4), (5), (6), and (7), adding undesignated introductory text, removing ''*The criteria*—'' in paragraph (b), and redesignating paragraphs (b)(1), (b)(1) (i) and (ii), (b)(2), (b)(2)(i)–(iv), (b)(3), (b)(3)(i)–(vi), (b)(4), (b)(4)(i)(A)–(D), (b)(4)(ii) (A) and (B), (b)(5), (b)(5) (i) and (ii), (b)(6), (b)(6) (i) and (ii), and (b)(7) as paragraphs (a), (a) (1) and (2), (b), (b)(1)–(4), (c), (c)(1)–(6), (d), (d)(1)(i)–(iv), (d)(2) (i) and (ii), (e), (e) (1) and (2), (f), (f) (1) and (2), and (g), respectively, to read as follows:

§ 75.210 General selection criteria.

The Secretary may use one or more of the following selection criteria, together with one or more criteria established under § 75.209, if any, to evaluate applications for new grants under a discretionary grant program:

(a) *Meeting the purposes of the authorizing statute.* * * *

(b) *Extent of need for the project.* * * *

(c) *Plan of operation.* * * *

(d) *Quality of key personnel.* * * *

(e) *Budget and cost effectiveness.* * * *

(f) *Evaluation plan.* * * *

(g) *Adequacy of resources.* * * *

(Authority: 20 U.S.C. 1221e–3 and 3474)

[FR Doc. 95–30127 Filed 12–11–95; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
December 12, 1995

Part VI

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 6 and 26

Federal Acquisition Regulation: Disaster Relief Fund; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6 and 26

[FAR Case 93–303]

RIN 9000–AG77

Federal Acquisition Regulation; Disaster Relief Act

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to address competition requirements for acquisitions of major disaster or emergency assistance activities. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before February 12, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Comments should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAR case 93–303 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 93–303.

SUPPLEMENTARY INFORMATION:

A. Background

Section 5150 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*) establishes a preference for local sources in the award of Federal contracts for major disaster or emergency assistance activities. This proposed rule amends FAR parts 6 and 26 to reflect the requirements of Section 5150.

B. Regulatory Flexibility Act

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because the rule only applies to acquisitions conducted during the term of a Presidential declaration of major disaster or emergency. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR case 93–303 in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 6 and 26

Government procurement.

Dated: December 7, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR Parts 6 and 26 be amended as set forth below:

PART 6—COMPETITION REQUIREMENTS

1. The authority citation for 48 CFR Parts 6 and 26 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 6.302–5 is amended by removing ''or'' from the end of paragraph (b)(3); removing the period from the end of paragraph (b)(4) and inserting ''; or''; and adding paragraph (b)(5) to read as follows:

6.302–5 Authorized or required by statute.

* * * * *

(b) * * *

(5) The Robert T. Stafford Disaster Relief and Emergency Assistance Act—42 U.S.C. 5150 (see subpart 26.2).

* * * * *

PART 26—OTHER SOCIOECONOMIC PROGRAMS

3. Subpart 26.2 is added to read as follows:

Subpart 26.2—Disaster or Emergency Assistance Activities

26.200 Scope of subpart.

This subpart implements 42 U.S.C. 5150, which provides a preference for local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities (see 6.302–5).

26.201 Policy.

(a) When contracting for major disaster or emergency assistance activities under this subpart, such as debris clearance, distribution of supplies, or reconstruction, preference shall be given, to the extent feasible and practicable, to those organizations, firms, or individuals residing or doing business primarily in the area affected by such major disaster or emergency.

(b) The authority to provide preference under this subpart applies only to those acquisitions, including those which do not exceed the simplified acquisition threshold, conducted during the term of a major disaster or emergency declaration made by the President of the United States under authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*).

[FR Doc. 95–30247 Filed 12–11–95; 8:45 am]

BILLING CODE 6820–EP–M

federal register

Tuesday
December 12, 1995

Part VII

Department of Energy

Record of Decision; Tritium Supply and Recycling Programmatic Environmental Impact Statement; Notice

DEPARTMENT OF ENERGY

Record of Decision: Tritium Supply and Recycling Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Record of Decision: Selection of Tritium Supply Technology and Siting of Tritium Supply and Recycling Facilities.

SUMMARY: The Department of Energy (DOE) is issuing this Record of Decision regarding DOE's proposal for Tritium Supply and Recycling Facilities. The Department is making three simultaneous decisions. First, the Department will pursue a dual track on the two most promising tritium supply alternatives: to initiate purchase of an existing commercial reactor (operating or partially complete) or irradiation services with an option to purchase the reactor for conversion to a defense facility; and to design, build, and test critical components of an accelerator system for tritium production. Within a three-year period, the Department would select one of the tracks to serve as the primary source of tritium. The other alternative, if feasible, would be developed as a back-up tritium source. Second, the Savannah River Site is selected as the location for an accelerator, should one be built. Third, the tritium recycling facilities at the Savannah River Site will be upgraded and consolidated to support both of the dual track options. If the commercial reactor alternative is selected as the primary source, a tritium extraction facility will also be constructed at the Savannah River Site. The environmental analysis to support this decision was issued by the Department in the Final Programmatic Environmental Impact Statement for Tritium Supply and Recycling (PEIS) DOE/EIS–0161 (October 1995). The PEIS identified the dual-track strategy described above as the preferred technology alternative. The Savannah River Site was identified as the preferred site for an accelerator, and the site for the upgrade and consolidation of existing recycling facilities. The Department has decided to implement the preferred alternatives.

FOR FURTHER INFORMATION CONTACT: Further information on the Final Programmatic Environmental Impact Statement can be obtained by calling 800–776–2765, or writing to: Stephen M. Sohinki, Director, Office of Reconfiguration, DP–25, U.S. Department of Energy, P.O. Box 3417, Alexandria, VA 22302.

Information on the Department of Energy National Environmental Policy Act process can be obtained by contacting: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Ave. SW., Washington DC 20585, Telephone: (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The Department of Energy has prepared this Record of Decision pursuant to the Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA) (40 CFR Parts 1500–1508) and the Department of Energy regulations implementing the National Environmental Policy Act (10 CFR Part 1021). This Record of Decision is based on the Final Programmatic Environmental Impact Statement for Tritium Supply and Recycling (DOE/EIS–0161, October 1995) and the Technical Reference Report for Tritium Supply and Recycling (DOE/DP–0134, October 1995). The Technical Reference Report summarizes schedule, production assurance and cost data and presents the results of the uncertainty analysis. Several comments and a report from Congress were received after the documents listed above were published. This additional information was taken into consideration in preparing this Record of Decision.

In January 1991, the Department announced it would prepare a Programmatic Environmental Impact Statement (PEIS) examining alternatives for the reconfiguration of the Department's nuclear weapons complex. The framework for the Reconfiguration PEIS was described in the Nuclear Weapons Complex Reconfiguration Study (DOE/DP–0083), issued in January 1991. A Notice of Intent to prepare the PEIS was published in the Federal Register on February 11, 1991 (56 FR 5590). The purpose of the PEIS was to establish the locations for future weapons complex missions. The missions to be analyzed included plutonium and uranium component fabrication and processing, weapons assembly and disassembly, high explosive production, tritium recycling, and nonnuclear component fabrication.

At the time the Reconfiguration PEIS was begun, technology and siting alternatives for a new tritium supply facility were being examined in a separate New Production Reactor Capacity Environmental Impact Statement. On September 27, 1991, President Bush announced an initiative to reduce the Nation's nuclear weapons stockpile. In response to this initiative, the need for new facilities was delayed and the Department announced, on November 1, 1991, that it would delay decisions on the new production reactor technology and siting and include the environmental analysis for a new tritium production source in the Reconfiguration PEIS. The Department's intent to incorporate the New Production Reactor capacity analysis into the Reconfiguration PEIS was published in the Federal Register on November 29, 1991 (56 FR 60985).

In June 1992, the United States and Russia announced an arms reduction agreement which was signed in January 1993 as the START II Protocol. This agreement caused the most significant reductions to date in planned future weapons stockpiles of both nations. It also provided the Department with the opportunity to consider a much smaller weapons complex than previously envisioned. Therefore, the Department determined that it was necessary to reevaluate the Reconfiguration Program to insure that alternatives which reflected requirements of a greatly downsized nuclear weapons stockpile would be assessed in the PEIS. On July 23, 1993, a revised Notice of Intent was published in the Federal Register (58 FR 39528) which described a smaller, more integrated nuclear weapons complex. Additionally, long-term storage alternatives for plutonium and uranium were added to the analysis. As a result of this reevaluation and public comment, the Department published a notice in the October 28, 1994, Federal Register (59 FR 54175), that would separate the Reconfiguration PEIS into two separate analyses: the Tritium Supply and Recycling PEIS and Stockpile Stewardship and Management PEIS.

On March 1, 1995 the Department issued a Draft Programmatic Environmental Impact Statement for Tritium Supply and Recycling (DOE/EIS–0161) which presented an analysis of the environmental impacts of the proposed action and alternatives. In the Draft PEIS, the Department indicated that the use of a commercial reactor was not a reasonable long-term tritium supply alternative due to concerns about the use of civilian reactors for military purposes. However, the Draft PEIS evaluated the impacts associated with the use of a commercial reactor to make tritium, whether such a reactor were used as a contingency source of tritium in the event of a national emergency, or the Department chose to purchase an existing reactor and convert it to a defense facility for long-term tritium supply. Comments received during the agency and public review of the Draft PEIS asserted that the use of

an existing commercial reactor had the potential to be the lowest cost option and indicated confusion as to whether purchase of a commercial reactor or irradiation services from a privately owned reactor were treated as reasonable alternatives capable of meeting long-term tritium requirements. These comments and concerns prompted the Department to issue a Federal Register announcement on August 25, 1995 (60 FR 44327) in which the Department reopened the comment period for 21 days regarding its intention to treat both the purchase of irradiation services and the purchase of an existing or partially completed reactor as reasonable alternatives for long-term tritium supply. The Department summarized all comments received from both comment periods, prepared responses to the summaries, made revisions to the PEIS based on the comments, and identified its preferred alternative. The Notice of Availability of the Final Programmatic Environmental Impact Statement was published in the Federal Register on October 27, 1995 (60 FR 55021).

Comments have been received since the Notice of Availability was published asserting that there are errors in the analysis of cost, schedule and production assurance, especially regarding a new large Advanced Light Water Reactor. Comments were also received regarding the multipurpose reactor concept, and the use of the Fast Flux Test Facility at the Department's Hanford site to produce tritium. These comments are addressed in a subsequent section of this Record of Decision.

Alternatives Considered

Proposed Action: The Department of Energy proposes to provide tritium supply and recycling facilities for the Nation's Nuclear Weapons Complex. Tritium, a radioactive isotope of hydrogen, is produced in nature, but in very small amounts. Therefore, since it is an essential component of every warhead in the current and projected U.S. nuclear weapons stockpile, the amounts required must be man-made. Tritium decays at a rate of approximately 5.5 percent per year and must be replaced periodically as long as the Nation relies on a nuclear deterrent. Currently, the Department does not have the capability to produce the required amounts of tritium. The Department needs a capability that can produce tritium to meet the requirements set forth in the 1994 Nuclear Weapons Stockpile Plan, the latest official guidance. These requirements have been defined as a steady-state mode of 3/16 of the goal amount previously established for a nuclear reactor under the Department's New Production Reactors (NPR) program. The tritium supply source should also be capable of producing 3/8 of NPR goal amount if necessary either to eliminate inventory shortfalls or to support a larger stockpile size. The Department is currently meeting tritium requirements for the stockpile by utilizing tritium recycled from dismantled weapons. Ratification of the START II Protocol would mean that new tritium would be required by approximately 2011. The ability to meet an earlier date, if stockpile requirements should change, was also analyzed.

New tritium would be supplied, in either a reactor or accelerator, by irradiating target materials with neutrons and subsequently extracting the tritium in pure form for its use in nuclear weapons. The tritium recycling process consists of recovering residual tritium from weapons components, purifying it, and refilling weapons components with pure tritium. The Department's tritium recycle facilities are located at the Savannah River Site (SRS) near Aiken, SC.

Four technology alternatives were evaluated for a new supply facility—a heavy water reactor, an advanced light water reactor—both large (1,300 MWe) and small (600 MWe); a modular high temperature gas-cooled reactor; and a linear accelerator. Emerging design options for the heavy water reactor and the modular high temperature gas-cooled reactor were also reviewed. The advanced light water reactor and modular high temperature gas-cooled reactor alternatives were also evaluated as to the potential use of fuel fabricated from plutonium excess to weapons program requirements while simultaneously producing tritium and electricity (the so-called ''multipurpose reactor''). Five sites were evaluated for a new facility—the Idaho National Engineering Laboratory (INEL), near Idaho Falls, ID; the Nevada Test Site (NTS), near Las Vegas, NV; the Oak Ridge Reservation (ORR), Oak Ridge, TN; the Pantex Plant (Pantex), Amarillo, TX; and SRS. The Department also evaluated the use of existing commercial light water reactors, either through purchase of an existing or partially completed reactor that would be converted for the production of tritium or through purchase of irradiation services from a privately owned reactor. The purchase of an existing or partially completed reactor would allow the Department, should it choose to do so, to implement the multipurpose reactor concept. Such use is evaluated in the Final PEIS and the Technical Reference Report. Additionally, in accordance with CEQ regulations, the no action alternative (not providing a new supply of tritium) was evaluated.

Tritium recycling alternatives evaluated included no action (utilizing existing facilities at the Savannah River Site with no upgrades or consolidation), consolidation and upgrading of the existing facilities, or construction of new recycling facilities to be collocated with a new tritium supply facility if the Savannah River Site were not chosen as the site for a new tritium supply facility. The consolidation and upgrading of the Savannah River Site recycling facilities would support either a new tritium supply facility (if constructed at the Savannah River Site) or the use of an existing commercial reactor (if a commercial reactor were ultimately selected as a long-term tritium supply source or became necessary as a contingency source of tritium). In addition, a new tritium extraction facility would be constructed at the Savannah River Site.

Tritium Supply Technology Alternatives

This section describes each of the alternatives. The size of the facilities, land area requirements, and construction and operation workforces are presented.

1. *No Action:* No Action is presented for comparison with the action alternatives. Under No Action, the Department would not establish a new tritium supply capability, the current inventory of tritium would decay, and the Department would eventually not meet stockpile requirements for tritium.

Construct and Operate New Facilities

2. *Accelerator Production of Tritium (APT):* An APT would accelerate a proton beam in a long tunnel toward one of two target/blanket assemblies located in separate target stations. Such an accelerator would be approximately 4,000 feet in length and would be housed in a concrete tunnel buried 40 to 50 feet underground. It would require approximately 550 MWe of electricity during peak production periods (to meet the 3/8 requirement) and 355 MWe to produce the steady-state requirement (to meet the 3/16 requirement) of tritium. In addition to the accelerator, the facility would include a klystron manufacturing and remanufacturing building as well as waste treatment, maintenance, operation, and administrative buildings, and a security infrastructure. Two target types are being analyzed, a helium-3 target which uses helium-3 gas to make tritium or a spallation-induced lithium

conversion (SILC) target which uses lithium-6 to make tritium. The facilities required for the helium-3 target include target fabrication and target processing (including extraction) buildings. Facilities for the SILC target include target fabrication, target processing, and tritium extraction buildings. The APT complex would cover approximately 173 acres. Construction would take approximately 5 years and require approximately 2,760 workers during the peak construction year. Operation of the APT would require approximately 624 workers.

3. *Advanced Light Water Reactor (ALWR):* The ALWR would be a high temperature, high pressure reactor whose primary purpose would be to produce tritium, but which would also generate substantial amounts of electricity. There are two options for the ALWR technology: A large ALWR (1,300 MWe) and a small ALWR (600 MWe). Both options use light (regular) water as the reactor coolant and moderator, and include a power conversion facility as an integral part of the design. The design of the ALWR complex would include an interim spent fuel storage building, a waste treatment facility, a tritium target processing facility, warehouses, and security infrastructure. Fuel rods would be purchased from commercial suppliers.

Large ALWR: The large ALWR complex would require approximately 350 acres. Construction would take approximately 6 years and approximately 3,500 workers during the peak construction year. Operation would require approximately 830 workers.

Small ALWR: The small ALWR complex would also require approximately 350 acres. Construction would take approximately 5 years and require approximately 2,200 workers during the peak construction year. Operation would require approximately 500 workers.

4. *Heavy Water Reactor (HWR):* The HWR would be a low pressure, low temperature reactor whose sole purpose would be to produce tritium. The HWR uses heavy water (i.e. deuterium oxide) as the reactor coolant and moderator. Because of the low temperature of the exit coolant, a power conversion system designed to produce electrical power as an option would not be feasible. The conceptual design of the HWR complex includes a fuel and target fabrication facility, a tritium target processing building, an interim spent fuel storage building, a general services building, and security infrastructure. The HWR complex would cover approximately 260 acres. Construction would take somewhat less than 8 years and require approximately 2,320 workers during the peak construction year. Operation would require approximately 930 workers.

Small Advanced HWR: The small advanced HWR is an emerging design variation of the HWR. The design output of the small advanced HWR would be 470 MWt compared to 990 MWt for the HWR. It would have the same configuration of support buildings although they would be somewhat smaller. The design could be developed to produce tritium to meet steady-state tritium requirements, or modified to meet peak capacity requirements. The total area required for the complex would be 150 to 170 acres. Construction would take approximately 5 years and require approximately 1,800 workers during the peak year of construction. An operational workforce has not been estimated.

5. *Modular High Temperature Gas-Cooled Reactor (MHTGR):* The MHTGR would be a high temperature, moderate pressure reactor whose primary purpose would be to produce tritium, but which would also generate substantial amounts of electricity. The MHTGR would use helium gas as a core coolant and graphite as a moderator. A steam cycle MHTGR would use a heat converter to transfer the heat from the helium coolant to feedwater producing super-heated steam which is then used to drive a turbine in the production of electricity.

The steam cycle MHTGR requires three 350 MWt reactors to produce the maximum (3/8) requirement of tritium. Because of the high temperature of the exit coolant, a power conversion facility designed to produce electricity is an integral part of the design. The design of the MHTGR complex, in addition to the three reactors, includes a fuel and target fabrication facility, a tritium target processing facility, helium storage buildings, waste treatment facilities, interim spent fuel storage facility, general services building, security infrastructure, and power conversion facility. The MHTGR complex would cover approximately 360 acres. Construction of the MHTGR would take about 9 years and require approximately 2,210 workers during the peak construction period. Operation would require approximately 910 workers.

Direct Cycle MHTGR: A direct cycle MHTGR is an emerging design variation of the steam cycle MHTGR. In this design the primary helium coolant drives a turbine generator through a gas-compression/gas-expansion, heating/cooling cycle. Two 600 MWt direct cycle reactors would be needed to produce the maximum (3/8) requirement of tritium. The support facilities, resource requirements, and environmental impacts of the direct cycle MHTGR are similar to the steam cycle MHTGR. A two reactor direct cycle MHTGR would require fewer operating personnel than the three module steam cycle MHTGR.

Use Existing Reactors

6. *Existing Commercial Reactors:* The purchase by the Department of an existing operating reactor, the purchase of a partially completed reactor, or the purchase of irradiation services from a commercial power reactor(s)(with an option to purchase the reactor) are the three options evaluated which utilize existing facilities. Commercial light water reactors use both pressurized water and boiling water technologies. The Department has conducted significant development work on tritium targets for pressurized water reactors. Significant additional development work would likely be required to develop a target for a boiling water reactor. The Department plans to proceed with development of the target for the pressurized water reactor, but has not ruled out the use of boiling water reactors if industry demonstrates an advantage to the Department in developing such a target.

Commercial pressurized water reactors are high-temperature, high pressure reactors that use ordinary light water as the coolant and moderator and are capable of generating large amounts of electricity through a steam turbine generator. A typical commercial light water reactor facility includes the reactor building, turbine generator building, auxiliary buildings, interim spent fuel storage facilities, cooling towers, a switchyard for the transmission of electricity, maintenance buildings, administrative buildings, and security facilities.

Purchase of an Operating Commercial Light Water Reactor or Purchase of Irradiation Services: Approximately 72 to 127 workers (depending upon the number of reactors utilized) would be added to the work force because of the tritium activities. New fencing and security buildings may be required to support additional security requirements. Road access restrictions or construction of new roads may also be required.

Purchase of a Partially Constructed Commercial Light Water Reactor: The number of construction workers and the length of the construction period would vary depending on the percentage of completion of the plant. Data were available for a two-unit reactor plant

with one unit 45 percent complete and the second unit 85 percent complete. The schedule data estimated completing the 45 percent complete unit in 5 years or both units simultaneously in 7 years. Since the Department is only interested in one unit, the 5 year estimate was selected. It is possible that the 85 percent unit could be completed in a shorter time. For the 45 percent complete unit, peak year workers were estimated to be approximately 2,065. The 85 percent complete unit would require a peak work force of approximately 1,525. Operations would require approximately 830 workers.

Other Missions Beyond Tritium Production

Multi-Purpose Reactor Concept: The ALWR, MHTGR, and the purchase options of the commercial reactor alternative would also be capable of utilizing fuel fabricated from excess plutonium to make tritium and generate electricity. To ''burn'' plutonium in an ALWR or a commercial light water reactor, a plutonium Pit Disassembly, Conversion, and Fuel Fabrication Facility would be needed to fabricate the plutonium and uranium (mixed oxide) fuel rods. For the MHTGR, only a plutonium Pit Disassembly and Conversion Facility would be needed, because the MHTGR design already includes a fuel fabrication facility. The MHTGR, if used to ''burn'' plutonium, would utilize fuel fabricated solely from plutonium without blending it with uranium. However, because tritium production declines significantly in a plutonium-fueled MHTGR, twice as many reactors would be necessary in order to produce the steady-state (3/16) tritium requirements. The need to include a plutonium Pit Disassembly, Conversion, and Fuel Fabrication facility for the ALWR and commercial reactor options, and the need for plutonium Pit Disassembly and Conversion Facility and more reactors for the MHTGR, would be major contributors to potential direct environmental impacts.

If an ALWR or commercial light water reactor were used as multi-purpose facilities, the new plutonium Pit Disassembly, Conversion, and Fuel Fabrication Facility would cover up to 129 acres and require a peak construction work force of approximately 745 during the 6-year construction period. Operation would require approximately 650 workers. If an MHTGR were used as a multi-purpose reactor, the new plutonium Pit Disassembly and Conversion Facility would cover up to 30 acres and require a peak construction work force of approximately 125 during the 6-year construction period. Operation would require approximately 520 workers.

Recycling Facilities

The tritium recycling facility processes and recycles tritium for use in nuclear weapons. This includes emptying reservoirs returned from weapons in the stockpile, recovering and purifying the tritium, reclaiming reusable reservoirs, providing new gas mixtures, and refilling reservoirs. The facility also tests reservoirs and provides appropriate waste management activities.

1. *No Action:* The Department currently operates tritium recycling facilities at the Savannah River Site. These facilities would continue to operate without modifications or consolidation to meet environmental, health, and safety requirements, or to maximize efficiencies. Environmental impacts would not change from those experienced today.

2. *Construct New Facilities:* If the tritium supply and recycling facilities were to be located at any site other than the Savannah River Site, new recycling facilities could be collocated with the supply facilities. The tritium recycling activities would be housed in two buildings for operations and several support facilities. All tritium handling activities would be completed in the tritium processing building, which would be designed to contain tritium releases should they occur. An auxiliary building would house non-tritium activities and extremely small amounts of working tritium. The recycling facilities would cover approximately 196 acres. Construction would take approximately 4 years and require approximately 335 workers during the peak year of construction. Operation of the recycling facilities would require approximately 910 workers.

3. *Upgrade Existing Facilities at Savannah River Site:* There are two options for the upgrade of recycling facilities at the Savannah River Site. The first, the unconsolidated upgrade, would result in the continued use of all existing facilities and thus no consolidation of tritium handling activities. Five buildings would be upgraded in order to meet environmental, health, and safety requirements. No additional land area would be required. Construction of the upgrades would take approximately 3 years and require approximately 26 workers during the peak construction year. Operations would require approximately 970 workers.

The second option, the consolidated upgrade, would result in closing one building and transferring its functions to two existing buildings. Four buildings would be upgraded to meet environmental, health, and safety requirements and one to accept the transferred activities. The land area required for the facilities would not change. Construction would take approximately 3 years and require approximately 36 workers during the peak construction year. Operations would require approximately 910 workers.

Siting of New Tritium Supply Facilities

New tritium supply facilities, if constructed, would be located at one of five sites currently owned by the Department. These five sites are:

1. *Idaho National Engineering Laboratory:* The INEL is situated on approximately 570,000 acres, approximately 50 miles west of Idaho Falls and presently employs approximately 10,100 workers. The site has been used to test, build, and operate nuclear facilities. Research and development activities include reactor performance studies, materials testing, environmental monitoring, waste processing, breeder reactor development, and naval reactor operator training. Currently, there are four operational reactors. In addition to nuclear research, INEL supports processing and/or storage of high-level, low-level, and transuranic radioactive wastes.

2. *Nevada Test Site:* The NTS is situated on approximately 854,000 acres, 65 miles northwest of Las Vegas. Approximately 6,850 workers are presently employed at the site. The site is a remote secure facility for conducting underground testing of nuclear weapons and evaluating the effects of nuclear detonations on military communications, electronics, satellites, sensors, and other materials. NTS is also the location of a low level radioactive waste management facility.

3. *Oak Ridge Reservation:* The ORR is located on approximately 35,000 acres, 20 miles west of Knoxville, TN. Approximately 15,000 workers are presently employed at the site. It includes three major facilities: the Oak Ridge National Laboratory; Y–12 Plant, and the K–25 site. The Oak Ridge National Laboratory conducts basic and applied scientific research and technology development. The K–25 site is the location of the former Oak Ridge Gaseous Diffusion Plant. It currently serves as an operations center for environmental restoration and waste management programs. Y–12 is the primary location for nuclear weapons activities at Oak Ridge. These include

the dismantling of nuclear weapons components, maintaining uranium and lithium component fabrication capabilities, and storing special nuclear materials.

4. *Pantex Plant:* The Pantex Plant is located on 10,000 acres, 17 miles northeast of Amarillo, TX. Approximately 3,400 workers are presently employed at the site. Activities at Pantex include fabrication of chemical explosives, nuclear weapons assembly and disassembly, testing, repair and disposal of nonnuclear components, and development activities in support of the national laboratories. Pantex also is the interim storage site for sealed plutonium components from dismantled weapons.

5. *Savannah River Site:* The SRS is situated on approximately 198,000 acres, 12 miles south of Aiken, SC. Approximately 20,300 workers are presently employed at the site. Currently, tritium recycling operations to support nuclear weapons activities are conducted at the SRS. Other activities include interim storage of plutonium, waste management, and environmental monitoring and restoration. Past activities at SRS have included nuclear fuel and tritium target fabrication, operation of reactors for nuclear material production, chemical separation for recovery of plutonium and plutonium isotopes, tritium extraction, and uranium fuel reprocessing. The facilities that supported these past activities are currently supporting waste management and environmental cleanup activities and will ultimately be decommissioned and decontaminated.

Commercial Reactor Site: The commercial light water analysis does not evaluate a specific site. Currently, commercial light water reactors are operating on 59 sites in 32 states. Approximately one-half of these sites contain two or three nuclear units. The sites range in size from 84 to 30,000 acres. The largest use of the sites is for cooling systems, including reservoirs and artificial lakes, and safety buffer areas. Analysis of specific candidate reactors would be conducted in a separate NEPA document.

Preferred Alternative

Based on the analysis presented in the PEIS and Technical Reference Report, the Department announced a preferred alternative in the FINAL PEIS. The preferred alternative is a acquisition strategy that assures tritium production for the nuclear weapons stockpile rapidly, cost effectively, and safely. The preferred strategy is to begin work on the most promising production alternatives of purchasing an existing commercial light water reactor or irradiation services with an option to purchase the reactor for conversion to a defense facility, and to design, build, and test critical components of an accelerator system for tritium production.

The Savannah River Site was designated as the preferred site for an accelerator, should one be built. The preferred alternative for tritium recycling and extraction activities was to remain at the Savannah River Site with appropriate consolidation and upgrading of current facilities, and construction of a new extraction facility.

Tritium Supply Evaluation

This section describes the results of the Department's evaluation of each of the alternatives. It summarizes their environmental impacts, costs, and schedule and production assurance risks. The evaluation of schedule, production assurance and costs were completed by developing base estimates and then conducting a formal assessment by experts to determine the risk. The risk is presented as the probability of achieving a specific objective. Base cases were developed for six schedule components, production capacity and availability, and five cost components. The estimates were normalized to insure consistency across all tritium supply alternatives. Technical experts (different groups for schedule, production assurance, and cost) were asked to provide judgments of the probability of success of the base estimates for each of the schedule components, capacity and availability, and each of the cost components. In addition, potential technical, regulatory, or institutional problems were identified for each tritium supply alternative and their probability for causing schedule delay, production assurance uncertainty or cost uncertainty were assessed. The impacts of the problems on schedule, capacity and availability, and cost were assessed. This information was combined through multiple simulations to develop probabilities of meeting various schedule, production assurance and cost objectives. The environmental impacts reported in the PEIS were evaluated for discriminators among tritium supply technologies and among sites.

The schedule, production assurance, and waste factors which discriminate among tritium supply technology alternatives are summarized in Table 1. These are: (1) The capability of meeting a schedule supporting a START II Protocol stockpile size; (2) the likelihood of producing the amount of tritium necessary to meet maximum (3/8) tritium requirements; (3) amount of additional spent fuel generated; and (4) amount of additional solid low level radioactive waste generated. Costs are presented in Table 2. They are divided into: (a) Total life cycle cost with revenue; (b) total life cycle cost without revenue; (c) total project cost; (d) operations and maintenance cost; and (e) revenue.

Additional environmental discriminators are the need for or generation of electricity, and cancer risk from a severe accident. The APT and HWR are users of electricity while the ALWR(s), MHTGR(s), and purchase of a partially completed or existing commercial reactor will result in the generation of additional electricity. The range between the potential amount of electricity used (550 MWe for the APT) and the potential amount of electricity generated (1,300 MWe for the large ALWR) is 1,850 MWe. The amount of electricity used was evaluated for each candidate site against the capability of the power pool to supply electricity. No significant impacts on the pool or the ability to supply the required amounts were identified. A separate evaluation of the option of the construction and operation of a dedicated 550 MWe coal or gas-fired electrical generating plant was completed for the APT. The potential impacts of a gas-fired electrical generating plant were incorporated into the environmental analysis for each of the sites. The cancer risks attributable to a severe accident are, in absolute terms, very low for each alternative. However, in comparative terms, the APT clearly has a significantly lower cancer risk than any of the new facility reactor alternatives. Therefore, cancer risk is considered a discriminator between the APT and new reactor alternatives for the purposes of this decision. The results of the evaluations are described below.

TABLE 1.—SCHEDULE, PRODUCTION ASSURANCE, AND WASTE DISCRIMINATORS

Alternatives	Probability of delivering first gas in 2011 [a]	Probability of producing START I amounts in any one year	Additional spent fuel generated per year (yd ^{3}/yr)	Additional solid low level waste generated (yd ^{3}/yr)
No Action	0	0	0	0
APT	0.76	0.77	0	57 [e]
Large ALWR	0.78	0.96	55	710
Small ALWR	0.78	0.89	36	660
HWR	0.40	0.93	7	5,200
Small Advanced HWR	<0.40 [b]	0.79	<7 [f]	<5,200 [f]
Steam Cycle MHTGR	0.22	0.86	80	1,300
Direct Cycle MHTGR	<0.14 [c]	0.49	82	~1,300 [g]
Purchase Existing CLWR	>0.99 [d]	>0.96	40	160
Purchase Partially Complete CLWR	>0.99 [d]	>0.96	Similar to Large ALWR	Similar to Large ALWR
Purchase Irradiation Services	>0.99 [d]	>0.96	0 to 40 depending on number of reactors used.	160

[a] Includes technical, regulatory, and institutional delays.
[b] Due to emerging state of technology longer delays than HWR assumed.
[c] Probability without any delays is 0.14. Delay would reduce this probability.
[d] Assumes institutional questions are resolved.
[e] For Helium-3 target; 544 yd^3/yr for SILC target.
[f] No analysis completed, however, expected to be the same or less than the HWR.
[g] No analysis completed, however, expected to be approximately the same as the steam cycle MHTGR.

1. Ability to meet required schedules. To meet projected stockpile requirements for tritium, new tritium gas is required by 2011. This date is based on a stockpile consistent with the START II Protocol. Maintaining a stockpile consistent with the START I Treaty would require new tritium gas by 2005. The schedule analyses assumed a requirement to deliver tritium in 2011. A sensitivity analysis assessed the ability of the alternatives to deliver new tritium gas in 2005.

TABLE 2.—COST EVALUATION DATA AT SAVANNAH RIVER SITE

[In Billions of 1995 Dollars]

Alternatives	Total life cycle cost w/o revenue [a]			Total life cycle cost w/o revenue [a]			Total project cost [a]			Operations and maintenance [b] costs [a]		
	Low	Mean	High	Low	Mean	High	Low	Mean	High	Low	Mean	High
No Action	0	0	0	0	0	0	0	0	0	0	0	0
APT	3.6	5.1	7.8	3.6	5.1	7.8	2.0	3.0	5.5	1.4	2.1	2.9
Large ALWR	1.3	3.7	7.6	4.8	6.5	10.2	2.4	4.0	7.2	1.9	2.5	3.3
Small ALWR	1.5	2.7	4.5	3.2	4.2	5.8	1.6	2.3	3.9	1.4	1.8	2.5
HWR	4.3	5.8	8.1	4.3	5.8	8.1	2.6	3.8	6.4	1.4	2.0	2.9
Small Advanced HWR	2.9	4.2	5.7	2.9	4.2	5.7	1.8	2.7	4.1	0.9	1.5	2.1
Steam Cycle MHTGR	4.1	6.3	9.9	5.0	7.1	10.7	3.0	4.5	7.8	1.8	2.6	3.7
Direct Cycle MHTGR	3.0	5.0	8.3	4.2	6.0	9.5	2.5	4.1	7.4	1.4	1.9	2.6
Purchase existing CLWR	0.8	1.4	3.8	2.8	4.1	5.2	1.0	1.7	2.8	1.7	2.4	3.2
Purchase partially complete CLWR	0.1	2.0	4.4	2.9	4.4	6.6	1.1	1.9	3.4	1.7	2.5	3.8
Purchase Irradiation Services	0.8	1.2	1.7	0.8	1.2	1.7	0.3	0.5	0.7	0.5	0.7	1.1

[a] The costs are for steady-state production, discounted at 4.9% per year at SRS for new facilities. The low estimate corresponds to the 5th percentile of the cost probability distribution. The high estimate corresponds to the 95th percentile of the cost probability distribution.

[b] Operations and maintenance costs include decontamination and decommissioning costs.

The potential for technical or regulatory delays in the baseline schedule was also considered in assessing schedule uncertainties for each of the technologies. Technical delays relate to issues such as the maturity of the facility design, operational experience associated with the technology and maturity of the target design. Regulatory delays relate to the potential that independent reviews by organizations external to the Department could take longer than anticipated, either due to administrative licensing proceedings or to resolution of technical issues that delays design acceptance by the reviewing organization. By the end of 1995, a Task Force on External Regulation established by the Department is scheduled to present its recommendations whether the Department's nuclear facilities should be externally regulated, and if so, by what entity. While a number of different outcomes are possible as a result of the Task Force efforts, the Nation's commercial nuclear reactors are now regulated by the Nuclear Regulatory Commission (NRC). Therefore, in considering scenarios that involved regulatory delay, the Department used the NRC regulatory process and structure as the basis for this consideration, and assumed that an NRC license would be obtained for construction and operation of the reactor technologies.

Since the NRC has the greatest amount of experience with regulation of light water reactors, the potential regulatory delays associated with the light water options, either the new ALWR designs or the existing commercial reactor options, were assumed to be the shortest among the reactor technologies. Potential regulatory delays associated with the MHTGR and the HWR would be greater than for the light water candidates because changes to the NRC's regulatory structure would be required to license these technologies. While there will be technical and potential regulatory reviews associated with the APT design, the safety issues associated with this technology are not nearly as complex as those associated with any of the reactor technologies. Therefore, the potential for regulatory delays was assessed to be minimal. The purchase of an existing or partially complete commercial reactor would also require the transfer of a license to the Department, which would require a change to the Atomic Energy Act and corresponding changes to the NRC regulations.

While issues related to the new facility technologies are primarily technical and regulatory, existing commercial reactors are subject to an additional set of institutional issues that must be resolved before this option could be implemented to meet long-term tritium requirements. These center around concerns about the use of civilian commercial reactors for purposes which support military requirements. Such issues have been raised in the past predominantly in conjunction with the use of civilian reactors to produce special nuclear materials (highly enriched uranium and plutonium) which would, in turn, be used to make nuclear weapons. Any concerns will have to be addressed and resolved over the course of the next several years if the commercial reactor alternative options are to be utilized as the primary long-term source of tritium.

The no action alternative would not be able to produce new tritium. Therefore, it could not meet the schedule requirements.

Of the action alternatives, the commercial reactor options have the highest probability of meeting the 2011 start date, if there are no technical or institutional delays. However, as noted above, there are institutional issues related to their implementation. If these issues cannot be resolved, the commercial reactor alternative would remain only as a contingency source of tritium in the event of an emergency.

Even when delays or major issues are taken into account, the ALWRs, among the new facility alternatives, have a high probability of meeting the required 2011 start date. The base case construction schedule of the small ALWR is one year shorter than that of the large ALWR. However, the small ALWR has a higher risk of technical delays due to the uncertainties surrounding its passive safety system and potential regulatory delays, due to the fact that it has not yet received NRC design certification. The APT has only a slightly smaller probability of meeting the 2011 date compared to the ALWRs, and it is expected to have very few technical or regulatory delay problems. The HWR and the MHTGR would have difficulty in meeting the 2011 date.

The sensitivity analysis on producing tritium as early as 2005 assumed that the base schedules could be compressed by 2 years, and that no technical or regulatory delays would occur. It showed that the commercial options have a high probability (0.80 to 0.99) of meeting the 2005 date. The APT and the small ALWR have a small (0.20) probability of producing tritium by 2005 if no delays are experienced. None of the other alternatives could produce tritium by 2005.

The assessment also showed that the schedule for completing all activities to develop a multipurpose reactor would be similar or identical to that of the MHTGR, ALWRs, and purchase of a commercial reactor options if they are used for tritium production alone, as long as the tritium mission is given priority over the plutonium burning and electricity production missions.

In summary, the no action alternative is not able to meet tritium schedule requirements. The HWR and MHTGR have the potential for major technical or institutional delays; thus, there is a low probability of their making tritium by the 2011 start date. The ALWRs and the APT have a very high probability of delivering tritium by 2011. The commercial options have the highest potential for delivering tritium by 2011, if the institutional issues associated with the defense use of such facilities can be resolved. Only the commercial options have a high probability of delivering tritium by 2005, if that becomes a requirement.

2. Ability to produce the required amounts of tritium. Production assurance refers to the ability of the tritium supply alternatives to meet the annual production requirements for maintaining the tritium inventory. The steady-state (3/16) and maximum (3/8) production rates were used in the production assurance analysis.

The second column of Table 1 summarizes the results of the production assurance analysis in terms of the probability that a tritium supply option can meet the maximum rate in any given year. Since the facility is designed to operate for 40 years, a technology that produced at more than the maximum rate in any given year would produce excess tritium. If such a year is followed by a year that the technology produced at less than the maximum rate, the combination of years would still produce roughly the desired overall quantity of tritium over the 40-year lifetime of the facility. Thus, a production rate with a 0.50 probability of a rate meeting or exceeding the maximum rate in any given year provides a reasonable degree of production assurance. A 0.75 probability of meeting or exceeding the maximum rate every year is a high degree of production assurance, since it means that roughly during 30 years of the 40 years of production the maximum rate will be exceeded.

For all tritium supply alternatives, with the exception of the direct cycle MHTGR, there is a high probability of producing the required amounts of tritium (0.77 or higher). The direct cycle

MHTGR has a moderate probability of production assurance (0.49).

The production assurance of a multipurpose reactor would not change from that of the MHTGR, ALWR, and commercial reactor purchase options, as long as tritium production is the primary mission of the facility. National security requirements mandate that tritium supply remain the primary mission of a multipurpose reactor.

In summary, the no action alternative has no chance of meeting the tritium production requirements. With the exception of the direct cycle MHTGR, all other alternatives have very high probabilities of meeting the steady-state and maximum production requirements.

3. Environmental Impacts. The Final PEIS presents numerous environmental impacts for a variety of resource areas for each of the new tritium supply facility alternatives at each of the five sites, and generic impacts for the commercial reactor options. The analysis was completed for meeting the maximum (3/8) goal requirement of tritium. Many of these impacts are very small. For example, the air quality impacts of all technological alternatives at all sites are very low. Most other impacts show little or no differentiation among alternatives. The evaluation of the tritium supply alternatives focuses, therefore, on the three environmental impacts that differentiate among the tritium supply alternatives: spent fuel generation, low level radioactive waste generation and risks from severe accidents. For all three of these area of environmental impact, the no action alternative would not change the status quo, i.e., no tritium would be produced. Therefore, it has the lowest environmental impact. This section presents the evaluation of tritium supply technology alternatives which are not site dependent. The following section presents the evaluation of the sites.

3.1 Spent fuel. Spent fuel is measured by the cubic yards of radioactive spent fuel rods produced during reactor operations in one year. The third column of Table 1 shows the annual amounts of spent fuel generated by the reactor supply alternatives. The new reactors generate spent fuel amounts ranging from 7 cubic yards to 80 cubic yards. The options to purchase an operating reactor or to purchase irradiation services would create up to 40 cubic yards of additional spent fuel (if only one reactor were utilized) due to shorter refueling cycles. If there were no change to the refueling cycles, no additional spent fuel would be generated. The option to purchase an incomplete reactor would create amounts of spent fuel comparable to those of the large ALWR. The APT does not generate any spent fuel. No additional spent fuel would be produced by virtue of the use of fuel fabricated from excess plutonium for the ALWR, MHTGR, or purchase commercial reactors options.

3.2 Low level radioactive waste. The fourth column of Table 1 shows the annual amounts of low level radioactive waste produced by the supply alternatives. For the new facility alternatives the HWR creates by far the most low level radioactive waste (5,200 cubic yards), followed by the other new rectors. The APT generates the least amount of low level radioactive waste (57 cubic yards) when using the helium-3 target, and 544 cubic yards when using the SILC target. The options to purchase an operating commercial reactor or to purchase irradiation services would create 160 cubic yards of additional low level radioactive waste due to the use of additional fuel rods and to handling additional radioactive materials. The option of purchasing an incomplete reactor would produce amounts of low level radioactive wastes that are similar to those of the large ALWR. A multipurpose reactor would generate about the same amount of low level radioactive waste as the reactor when used for tritium production alone. However, the plutonium Pit Disassembly and Conversion and Mixed-Oxide Fuel Fabrication Facility for the ALWR and commercial reactor options would generate approximately 540 cubic yards of low level radioactive waste annually. The plutonium Pit Disassembly and Conversion Facility for the MHTGR would generate approximately 10 cubic yards of low level radioactive waste per year.

3.3 Severe accidents. Risk is the probability of an accident occurring times the consequences of the accident if it occurred. Cancer risk to a population within a 50-mile radius of a facility is influenced by the size of the population within the radius. However, technologies can be compared if the same 50 mile radius is used for the analysis. For the purposes of comparison the SRS is used. The annual cancer risk from a severe accident to the population within 50 miles of the facility for the new reactor technologies is very low, ranging from 5.1×10^{-5} to 2.6×10^{-7} at the SRS. The APT would have the lowest annual cancer risk (2.8×10^{-11}) for all the new facility alternatives. The options to purchase an operating reactor or to purchase irradiation services would pose no significant additional severe accident risks because of adding tritium production. The option to purchase an incomplete commercial reactor would have severe accident risks that are comparable to that of a large ALWR.

The use of plutonium as mixed oxide fuel in an ALWR or the purchase of commercial reactor options would not significantly affect the consequences of radioactivity releases from severe accidents though there would be some small changes in the source term release spectrum and frequency. The MHTGR would have twice as many reactors when operated in the multipurpose mode, and therefore, while extremely small, the accident risk for the MHTGR would double if used in this mode compared to the risk if used for tritium production alone.

An accident at a plutonium Pit Disassembly and Conversion and Mixed-Oxide Fuel Fabrication Facility for the ALWR and purchase of commercial reactor options would result in a small additional cancer risk from a severe accident if located at the SRS. A severe accident at the plutonium Pit Disassembly and Conversion facility for the MHTGR would also result in a small additional cancer risk.

In summary, the no action alternative has no additional environmental impacts. The APT and the commercial options to purchase an operating reactor or to purchase irradiation services, if the fuel cycle is not changed, generate no additional spent fuel, and have the lowest amounts of additional low level radioactive waste and cancer risks from a severe accident. The new reactor alternatives and the completion of a partially complete commercial reactor produce spent fuel and low level radioactive waste, and they present a very small additional cancer risk from a severe accident.

4. Affordability (Cost). For each action alternative, a range of costs, and the probability distributions over the range, were developed for Total Life Cycle Cost (TLCC), Total Project Cost (TPC), and Operation and Maintenance (O&M). The O&M costs included decontamination and decommissioning. No costs were developed for the no action alternative. For the action alternatives, results were calculated for both undiscounted and discounted cost. The discount rate used was 4.9% per year in accordance with Office of Management and Budget guidance. The ALWR, MHTGR, and purchase commercial reactor options can produce revenues through electricity generation. The TLCC was calculated with and without revenues for these alternatives. Costs were estimated both for steady-state and maximum production rates.

The results of the cost ranges for steady-state production using discounted 1995 dollars are shown in Table 2. For each alternative a low, mean and high cost estimate is presented for TLCC with revenue, TLCC without revenue, TPC and O&M. The low estimate is the 5th percentile of the cost probability distribution, i.e., there is a 5% chance that the true cost will fall below the low estimate. The mean estimate is the average of the cost probability distribution. The high estimate is the 95th percentile of the cost probability distribution, i.e., there is a 95% chance that the true cost will fall below it.

The TLCC with revenue represents the estimated cumulative discounted net cost to the government or the taxpayers for each of the alternatives, since revenues from electricity sales would come to the government, not the Department. The Department must budget for all costs; therefore, the TLCC without revenue shows the estimated cumulative discounted cost to the Department. TPC represents the discounted capital cost estimates to develop, construct and make operational each alternative. The O&M costs are the discounted costs after the facility would become operational.

For TLCC with revenues (first column of Table 2), the option to purchase irradiation services has the lowest mean estimated cost (1.2 billion dollars) with uncertainty adding approximately 500 million dollars (95th percentile above the mean). The option to purchase an existing reactor has a mean cost of 1.4 billion dollars (17 percent higher than purchasing irradiation services) with uncertainty adding approximately 2.4 billion dollars. The option to purchase a partially complete commercial reactor has a mean cost of 2.0 billion dollars (67 percent higher than purchasing irradiation services) with uncertainty adding 2.4 billion dollars. The new reactor technology alternatives have mean costs that range from 2.7 billion dollars for the small ALWR (125 percent higher than purchasing irradiation services) to 6.3 billion dollars for the steam cycle MHTGR (425 percent higher than purchasing irradiation services). All new reactor alternatives have significant cost uncertainties, which add from 1.5 billion dollars (small advanced HWR) to 3.9 billion dollars (large ALWR). The APT has a mean cost of 5.1 billion dollars (325 percent higher than purchasing irradiation services) with uncertainty adding approximately 2.7 billion dollars. The large uncertainties create a substantial overlap in the cost distributions of the alternatives, except for the purchase of irradiation services.

For TLCC without revenues (second column of Table 2), the option to purchase irradiation services has the lowest mean estimated cost (1.2 billion dollars) with uncertainty adding approximately 500 million dollars (95th percentile above the mean). The option to purchase an existing reactor has a mean cost of 4.1 billion dollars (242 percent higher than purchasing irradiation services) with uncertainty adding approximately 1.1 billion dollars. The option to purchase a partially complete commercial reactor has a mean cost of 4.4 billion dollars (267 percent higher than purchasing irradiation services) with uncertainty adding approximately 2.2 billion dollars. The new reactor technology alternatives have mean costs that range from 4.2 billion dollars for the small ALWR and small advanced HWR (250 percent higher than purchasing irradiation services) to 7.1 billion dollars for the steam cycle MHTGR (492 percent higher than purchasing irradiation services). All new reactor alternatives have significant cost uncertainties, which add from 1.5 billion dollars (small advanced HWR) to 3.7 billion dollars (large ALWR). The APT has a mean cost of 5.1 billion dollars (325 percent higher than purchasing irradiation services) with uncertainty adding approximately 2.7 billion dollars. The large uncertainties create a substantial overlap in the cost distributions of the alternatives, except for the purchase of irradiation services.

For TPC (third column of Table 2), the option to purchase irradiation services has the lowest mean estimated TPC (0.5 billion dollars) with uncertainty adding approximately 200 million dollars (95th percentile above the mean). The option to purchase an existing reactor has a mean TPC of 1.7 billion dollars (240 percent higher than purchasing irradiation services) with uncertainty adding approximately 1.1 billion dollars. The option to purchase a partially complete commercial reactor has a mean TPC of 1.9 billion dollars (280 percent higher than purchasing irradiation services) with uncertainty adding 1.5 billion dollars. The new reactor technology alternatives have mean TPCs that range from 2.3 billion dollars for the small ALWR (360 percent higher than purchasing irradiation services) to 4.5 billion dollars for the steam cycle MHTGR (800 percent higher than purchasing irradiation services). All new reactor alternatives have significant cost uncertainties, that add from 1.4 billion dollars (small advanced HWR) to 3.3 billion dollars (Direct Cycle MHTGR). The APT has a mean TPC of 3.0 billion dollars (500 percent higher than purchasing irradiation services) with uncertainty adding approximately 2.5 billion dollars. The large uncertainties create a substantial overlap in the TPC distributions of the alternatives, except for the purchase of irradiation services.

The O&M costs make up the fourth cost item (fourth column of Table 2). The option to purchase irradiation services has the lowest mean estimated O&M cost (700 million dollars) with uncertainty adding approximately 400 million dollars (95th percentile above the mean). The option to purchase an existing reactor has a mean O&M cost of 2.4 billion dollars (243 percent higher than purchasing irradiation services) with uncertainty adding approximately 800 million dollars. The option to purchase a partially complete commercial reactor has a mean O&M cost of 2.5 billion dollars (257 percent higher than purchasing irradiation services) with uncertainty adding 1.3 billion dollars. The new reactor technology alternatives have mean O&M costs that range from 1.5 billion dollars for the small advanced HWR (114 percent higher than purchasing irradiation services) to 2.6 billion dollars for the steam cycle MHTGR (271 percent higher than purchasing irradiation services). All new reactor alternatives have significant O&M cost uncertainties, that add from 600 million dollars (small Advance HWR) to 1.1 billion dollars (steam cycle MHTGR). The APT has a mean O&M cost of 2.1 billion dollars (200 percent higher than purchasing irradiation services) with uncertainty adding approximately 800 million dollars. The large uncertainties create a substantial overlap in the cost distributions of the alternatives, except for the purchase of irradiation services.

The costs of a multipurpose reactor were analyzed separately from the tritium supply alternatives. The Department's Fissile Materials Disposition Office and an independent contractor prepared separate estimates. Different discount rates were used in the reports, which also only identified the minimum and maximum cost range. The results of the independent analysis, in discounted 1995 dollars are: (1) $4.5 billion to $14 billion for a government-owned large ALWR, $2.9 billion to 8.6 billion for a small ALWR, and $2.7 billion to $9.9 billion for a commercial reactor option; (2) $5.2 billion to $25.4 billion for a privatized large ALWR, $3.1 billion to $14 billion for a small ALWR, and $1.9 billion to $11.3 billion for a commercial reactor option. The result of the Department's analysis, in discounted 1993 dollars, is: (1) For a

government-owned large ALWR costs would range from $1.5 billion to $3.5 billion, and 2) for a privately financed large ALWR costs would range from $0.7 billion to $5.0 billion. These amounts include revenue from electricity sales.

In summary, the purchase of irradiation services is the lowest cost in all categories and has the lowest uncertainty. The other commercial options have the lowest cost estimates for TLCC both with and without revenues, and for TPC but with a higher degree of uncertainty. The APT, small ALWR, and small advanced HWR make up a middle group with approximately similar discounted mean costs for TLCC without revenue, and TPC. The small ALWR and small Advanced HWR have smaller uncertainties than the APT in both these categories. TLCC with revenue shows the small ALWR to have a lower mean cost than the APT or the small advanced HWR and adds the large ALWR to this middle group. The large ALWR is in the higher mean cost group for TLCC without revenue and for TPC, along with the MHTGRs and HWR, which also have higher uncertainties. The O&M analysis shows that the purchase of irradiation services has clearly the lowest mean cost, with all other alternatives grouped together. The uncertainties for all the alternatives generally have a substantial overlap in their cost distributions.

Evaluation of Site Alternatives

The five sites for new tritium supply and recycling facilities were evaluated with respect to environmental impacts and cost. Two criteria emerged as discriminators: (1) Ability to handle low-level radioactive waste; and (2) cost. No siting analysis was needed for the commercial reactor options, since they all currently exist, and any reactor ultimately selected would have to undergo a separate NEPA review.

Numerous environmental impacts were examined in the Final PEIS. The analysis either showed very small or no impacts, or the impacts did not differentiate among sites including cancer risks from a severe accident. Impact differences are primarily due to the differences in the size of the population within 50 miles of the site. Because cancer risk is low for all sites, it is not a discriminator between sites. The cost estimates for site alternatives are published in the Technical Reference Report.

The results of the evaluations are summarized in Table 3 and described below.

TABLE 3.—SITE EVALUATION

Criterion site	Ability to dispose of wastes on site	Cost of adding non-evaporative cooling (reactors only)[a]	Percent adjustment to base cost site (INEL) due to site differences	
			Construction (percent)	Operation & maintenance (percent)
INEL	Yes	$86 to $208	0	0
NTS	Yes	99 to 239	5	15
ORR	Yes	0	5	0
PANTEX	No	98 to 239	−10	15
SRS	Yes	0	0	10

[a] Mean discounted cost in millions of 1995 dollars, using a 4.9% annual discount rate.

1. *Ability to Handle Wastes.* As shown in column 2 of Table 3, with the exception of Pantex, all sites can dispose of low level radioactive waste on site. The wastes from Pantex would be shipped to an approved off site low level radioactive waste disposal facility.

2. *Cost.* The results of the cost comparisons are shown in Table 3. Cost differences among sites are determined by three major factors:

(1) The cost for the non-evaporative cooling system needed at sites which do not have ample water availability (this does not apply to the APT, which is not designed to use non-evaporative cooling),

(2) The percentage differential in construction costs (primarily because of labor rates), and

(3) The percentage differential in operation and maintenance costs (primarily because of labor and electricity rates).

The third column of Table 3 shows the range of additional costs due to the need for non-evaporative dry cooling for reactors at INEL, NTS, and Pantex. The high end of these costs would occur for the large ALWR.

The fourth and fifth columns of Table 3 show the percent increases in cost of construction, and operation and maintenance over the least expensive site (INEL). For construction, Pantex shows a decrease, SRS shows no change, and NTS and ORR show small increases. Operation and maintenance costs are higher at NTS and Pantex than INEL, with SRS higher than INEL but less than NTS and Pantex. ORR shows the same cost to INEL. These differences are fairly small compared to the large uncertainties in the actual costs of the facilities.

Evaluation of Tritium Recycling Alternatives

If a new supply facility is chosen at INEL, NTS, ORR, or Pantex, the alternatives are to build a new recycling facility collocated with the supply facility or to upgrade the SRS facility. Constructing a new tritium recycling facility (1.9 to 2.1 billion dollars) is more expensive (between $500 million and $750 million) than upgrading existing tritium recycling facilities (1.3 billion) at SRS. The operational environmental impacts would be similar.

If a new supply facility is chosen at SRS or if a commercial reactor option is chosen, upgrading the existing tritium recycling facility is the only option considered, since building a new recycling facility at another site is more expensive and has no other advantages.

Cumulative Impacts

Impacts from the siting, construction, and operation of new tritium supply and recycling facilities would be cumulative with impacts from existing and planned facilities and actions at the five candidate sites. The consequences of each new tritium supply alternative and recycling alternatives include the cumulative effect of tritium supply and recycling impacts and impacts from existing, planned, and reasonably foreseeable operations. Other more long-term impacts associated with the Department's proposed Environmental

Management Program and the Storage and Disposition of Weapons-Usable Fissile Materials Program are speculative at this time but could increase or decrease cumulative impacts, depending on the decisions resulting from the PEISs being prepared for these programs and the time frame of site-specific projects. Information on potential waste management activities at the candidate sites was included as appropriate in the assessment of waste management impacts in the Tritium Supply and Recycling PEIS.

The Storage and Disposition PEIS alternative of burning plutonium in a reactor could result in increased cumulative impacts at the candidate sites if this Record of Decision selected a new facility, and the Record of Decision for the Storage and Disposition PEIS selected a separate new reactor. The impacts of combining tritium production and plutonium disposition in a single reactor, the multipurpose reactor, were evaluated in the Tritium Supply and Recycle PEIS. Cumulative impacts from constructing two separate reactors would approximately double those presented for a single reactor in the Tritium Supply and Recycling PEIS. Cumulative impacts from construction of a APT for tritium production and a new reactor for plutonium disposition would be represented by adding together the APT and ALWR or MHTGR impacts evaluated in the Tritium Supply and Recycling PEIS. Cumulative impacts would be minimized if tritium production and plutonium disposition were to take place in a single reactor.

The Environmentally Preferable Alternative

The environmentally preferable alternative is the alternative that would cause the least impact to the physical environment, and best protect worker and public health.

With respect to all three decisions, the no action alternative is the environmentally preferable alternative. Under the no action alternative, tritium requirements to support the nuclear weapons stockpile would continue to be met by recovering residual tritium from weapons components, purifying it, and refilling weapons components. These activities would be performed at the Savannah River Site, the current location of this function. However, under the no action alternative, the Department would not establish a new tritium supply capability and the Department would not meet future stockpile requirements of tritium. This would be contrary to the Department's mission as specified by the Atomic Energy Act of 1954, as amended. Thus, no action is not a reasonable alternative.

Of the alternatives that would satisfy the Department's mission, the potential environmental impacts are generally small and, except for the commercial reactor options to purchase an existing reactor or irradiation services, the impacts are within the same range. The Department considers the commercial reactor options of purchasing an existing reactor or irradiation services to be the environmentally preferred alternative.

Implementation of either of these options would result in certain environmental impacts. The environmental impacts of construction activities would be limited to any support facilities that would be required. Operation of the commercial reactor options would have few potential environmental impacts. No additional spent fuel over and above what the reactor(s) would otherwise generate during their planned lifetime would be generated, assuming that operating scenarios do not change fuel cycles. If fuel cycles were changed, additional spent fuel would be generated.

There are no environmental grounds for discrimination among sites for the tritium supply alternatives. Therefore, the SRS is the environmentally preferred site since impacts from upgrading tritium recycling facilities are less than building new facilities at any of the other sites. Resource areas where no major differences exist, or where potential environmental impacts are small are: land resources, air quality, water resources, geology and soils, biotic resources, socioeconomics, and site infrastructure.

Comments on the PEIS and Related Documents

Several comments were received on the Final PEIS during the 30-day period following the filing of the Final PEIS with the Environmental Protection Agency (EPA). The EPA stated that all of its specific comments on the Draft PEIS had been adequately addressed in the Final PEIS. A vendor for one of the ALWRs commented that on the Final PEIS did not adequately reflect the fact that the electricity-producing reactor options have an environmental benefit. That is, construction of such a reactor would offset the need to build and operate an equivalent capacity of fossil-fueled power plants, whereas the accelerator would have an additional environmental impact from a power plant needed to provide electricity for operating the accelerator.

The Final PEIS assessed the environmental impacts associated with providing power to the APT. Two methods were assessed: (1) Purchasing electricity from regional power pool grids; and (2) building and operating a dedicated power plant. If a new dedicated power supply were constructed, impacts would occur to air resources, land use, soils, biotic resources, and socioeconomics at the construction site. Operation of a dedicated power supply, or increased electrical demand on the power pool would result in increased impacts to air resources, water resources, waste management systems, and local traffic. Impacts to land use, soils, waste management systems, and biotic resources could occur at the plant location and along the transportation system supplying the coal or gas to the power plant. While these environmental impacts were assessed, no decision regarding a preferred source of power is appropriate at this time. If an accelerator were eventually built, the site-specific NEPA review would more fully explore the options of providing power to the accelerator, and the appropriate decision would be made at that time. The environmental impacts that could be avoided through the use of a multipurpose reactor are discussed qualitatively in the Final PEIS for both the ALWR, MHTGR, and commercial reactor alternatives. These impacts are presented as part of the cumulative impacts discussion in the previous section.

Additional comments on the Technical Reference Report and cost analysis were also received from the vendor for one of the ALWRs. The vendor questioned the basis of the cost estimate and the judgments used in developing the uncertainties related to schedule, production assurance, and cost as presented in the Technical Reference Report. The commentor presented a revised set of assumptions resulting in modifications to the cost ranges for the large and small ALWRs, APT and commercial reactor options. The Department does not agree with these assumptions. However, if these assumptions were accepted hypothetically, and applied consistently and appropriately to each of the ALWR, APT, and commercial reactor options, the result would be to increase the cost range of the purchase of irradiation services and lower the cost ranges of all other light water alternatives. Thus, there still would be significant overlap in the cost of these alternatives, and there would be no effect on the decisions presented in this Record of

Decision. The Department selected experts knowledgeable in schedule, cost or production assurance for the assessment panels who did not stand to gain from the results of the assessment. In addition, each panel included experts knowledgeable in the different technologies and the mean results of their combined judgments were used in the uncertainty analysis.

The Department received on October 11, 1995, a Congressional report: ''Getting On With Tritium Production: A Report to Speaker Newt Gingrich''. The primary recommendation of the report is that the Department base its selection of a tritium production source on two objectives: Maximizing the assurance that tritium sources will be available when needed and minimizing costs to the taxpayers. The Department's acquisition strategy described in this Record of Decision implements this recommendation of the Congressional report. Additional recommendations related to insuring that the plutonium disposition mission and the tritium production mission be reviewed for combining efforts to save money, and the new reactor option must be evaluated to the same level of detail as the commercial reactor options. The responsibility for tritium production and fissile material disposition rests with two separate offices in the Department, the preparation of the Tritium Supply and Recycle PEIS and Technical Reference Report was closely coordinated with the Office of Fissile Materials Disposition. Therefore, the option of using a reactor in a multipurpose mode is analyzed in these two documents and the factors relevant to decision making are presented in this Record of Decision. Due to the rapid decay of tritium, and the long lead time required to bring a new tritium source on line, even supplies of tritium from retired weapons are not sufficient to postpone the need for a tritium supply facility to the point where decisions concerning technology and site selection can be deferred. With regard to equal evaluation, the Department believes that the analysis completed to date accomplishes this recommendation. Cost considerations associated with the reactor alternatives point the decision toward existing commercial reactors. Moreover, a new reactor has no major schedule or production advantage over an existing reactor that would justify incurring the additional cost and environmental impacts associated with a new reactor.

A private group has recently suggested that it purchase the Fast Flux Test Facility (FFTF) from the Department and that the Department then contract with the private group to make tritium at that facility. In the PEIS, the use of FFTF was considered and dismissed as a long-term tritium supply option because the amount of tritium that it could produce would only meet a percentage of the steady state tritium requirements, and it was not reasonable to rely on operating the facility far beyond the end of its design life. However, the Department will evaluate the presentation made by the private group to determine whether the operation of the FFTF might be able to play any role in meeting future tritium requirements. If any changes are warranted to this Record of Decision following that review, or further NEPA documentation is required, the Department will take appropriate action.

Decision

The Department is making three simultaneous decisions regarding tritium supply and recycling. First, the Department will pursue a dual track on the two most promising tritium supply alternatives: (1) To initiate the purchase of an existing commercial reactor (operating or partially complete) or irradiation services with an option to purchase the reactor for conversion to a defense facility; and (2) to design, build, and test critical components of an accelerator system for tritium production. Within a three-year period, the Department would select one of the tracks to serve as the primary source of tritium. The other alternative, if feasible, would be developed as a back-up tritium source. Second, the Savannah River Site is selected as the location for an accelerator, should one be built. Third, the tritium recycling facilities at Savannah River Site will be upgraded and consolidated to support both of the dual track options. A tritium extraction facility will be constructed at Savannah River Site. The basis for these decisions is as follows.

Tritium Supply Decision: The options of the commercial reactor alternative are the best in terms of schedule, production assurance and cost. However, there are institutional issues with these options that must be resolved, or else the alternative can only be used as a contingency.

Institutional issues regarding the use of a commercial reactor(s) must be resolved. Since commercial reactors are already constructed and operating, adding the tritium mission to an existing reactor does not significantly increase any existing environmental impact. Using existing commercial reactors offers the least expensive approach. The purchase of irradiation services presents the lowest cost and has the lowest uncertainty. The purchase of an existing or partially completed commercial reactor has the lowest capital and life cycle costs but a greater degree of uncertainty than the purchase of irradiation services.

Among the new facility alternatives, the accelerator has the highest probability to meet earlier production requirements because of less regulatory uncertainty. Among the new facility alternatives, the accelerator also has the least environmental impact because it does not use fissile material, generates no high-level wastes, and while the risk from a severe accident is very small for all of the alternatives, the risk for the accelerator is the smallest. While all of the components of the accelerator have been proven, the entire system needs to be demonstrated to assure the components work together as a complete system. From a cost perspective, the APT is grouped with the small ALWR and small advanced HWR in a middle range of costs if revenue is not taken into consideration. There is significant overlap among the alternatives, however. The two reactor alternatives have a smaller uncertainty than the APT. If revenue is included, the small ALWR has a lower mean cost than the APT and small advanced HWR. Also the large ALWR is added to this middle group. The Department has confidence that as we optimize the accelerator design over the next several years, the resulting costs will fall within the lower end of the cost range presented in the Technical Reference Report.

Based on the these considerations, the Department will implement a dual acquisition strategy that assures tritium production for the nuclear stockpile rapidly, cost-effectively, and safely. This dual-track strategy for meeting tritium supply requirements provides the following advantages:

- Resolves major uncertainties over the next three years, before selection of the primary alternative;
- Selects the new facility that has the lowest estimated environmental impacts, an accelerator, and the environmentally preferred alternative, purchase of a existing commercial reactor or irradiation services;
- Lessens programmatic risk because it: 1) pursues two technically different and independent approaches which provide fall back in the event either approach develops significant problems; 2) provides proven independent capability to increase production; 3) develops and protects contingency capability to support requirements in the event of a national emergency; 4) selects a strategy that has the greatest

flexibility to meet production requirements earlier than 2011, if necessary, and 5) includes the least cost option (irradiation services); and

- Preserves an option for simultaneous reactor ''burning'' of excess weapons plutonium, if the Storage and Disposition of Weapons—Usable Fissile Materials Record of Decision selects reactor burning of that material.

Site Decision: For the commercial options, the potential sites are where existing facilities are located. Selection will be subject to a separate NEPA analysis. For the APT, environmental impacts and costs are not significant discriminators. The Savannah River Site will be the site for the APT, if one is constructed, because it has the only existing tritium recycling capability and infrastructure of the candidate sites.

Tritium Recycling Decision: Upgrading and consolidating the tritium recycling facilities at the Savannah River Site is the least expensive option and avoids additional transportation of tritium between sites if the APT is constructed. Therefore, if the APT is the primary source of tritium, the existing tritium recycling facilities at Savannah River Site will be consolidated and upgraded. If one of the commercial reactor options becomes the primary source of tritium, the existing recycling facilities at Savannah River Site will be consolidated and upgraded, and a new extraction facility will be constructed.

Issued in Washington D.C., December 5, 1995.

Hazel R. O'Leary,

Secretary.

[FR Doc. 95–30238 Filed 12–11–95; 8:45 am]

BILLING CODE 6450–01–P

federal register

Tuesday
December 12, 1995

Part VIII

The President

Executive Order 12982—Ordering the Selected Reserve of the Armed Forces to Active Duty

Federal Register
Vol. 60, No. 238
Tuesday, December 12, 1995

Presidential Documents

Title 3—

The President

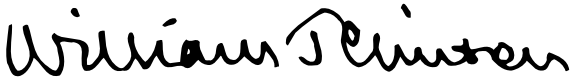
Executive Order 12982 of December 8, 1995

Ordering the Selected Reserve of the Armed Forces to Active Duty

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 12304 of title 10, United States Code, I hereby determine that it is necessary to augment the active armed forces of the United States for the effective conduct of operations in and around former Yugoslavia. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit, of the Selected Reserve.

This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

This order shall be published in the Federal Register and transmitted to the Congress.



THE WHITE HOUSE,
December 8, 1995.

[FR Doc. 95–30451
Filed 12–11–95; 10:46 am]
Billing code 3195–01–P

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REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Milk marketing orders:
- Middle Atlantic; published 12-12-95

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Swine vesicular disease; disease status change--
  - Germany; published 11-27-95

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Synthetic organic chemical manufacturing industry and other processes subject to equipment leaks negotiated regulation; correction; published 12-12-95

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
- New drug applications--
  - Monensin; published 12-12-95

GRAS or prior-sanctioned ingredients:
- Glyceryl palmitostearate; published 12-12-95

HEALTH AND HUMAN SERVICES DEPARTMENT

Inspector General Office, Health and Human Services Department

Medicare and Medicaid programs:
- Fraud and abuse--
  - State utilization and quality control peer review organizations; program sanctions imposition and adjudication; published 12-12-95

TRANSPORTATION DEPARTMENT

Organization, functions, and authority delegations:
- Maritime Administrator; published 12-12-95

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Beech; published 10-24-95¶

Comments Due Next Week

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Potatoes (Irish) grown in--

Maine; comments due by 12-18-95; published 11-16-95

Spearmint oil produced in Far West; comments due by 12-22-95; published 12-5-95

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Malting barley option crop insurance provisions; comments due by 12-21-95; published 12-11-95

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Summer flounder; comments due by 12-21-95; published 11-28-95

ENVIRONMENTAL PROTECTION AGENCY

Air programs; State authority delegations:

Illinois; comments due by 12-22-95; published 11-22-95

Air quality planning purposes; designation of areas:

Pennsylvania; comments due by 12-20-95; published 12-5-95

FEDERAL COMMUNICATIONS COMMISSION

Personal communications services:

Microwave facilities operating in 1850 to 1990 MHz (2 GHz band); relocation costs sharing; comments due by 12-21-95; published 11-1-95

Radio stations; table of assignments:

Illinois; comments due by 12-21-95; published 11-3-95

New Mexico; comments due by 12-21-95; published 11-3-95

New York; comments due by 12-21-95; published 11-3-95

Washington et al.; comments due by 12-22-95; published 11-6-95

Wisconsin; comments due by 12-22-95; published 11-6-95

Wyoming; comments due by 12-21-95; published 11-3-95

FEDERAL HOUSING FINANCE BOARD

Affordable housing program operation:

Application requirements for limited subsidized advances; comments due by 12-18-95; published 11-1-95

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:

Prescription drug production labeling; medication guide requirements; comments due by 12-22-95; published 11-24-95

INTERIOR DEPARTMENT

Land Management Bureau

Rights-of-way; use; tramroads and logging roads; Oregon and California (O&C) and Coos Bay revested lands; comments due by 12-18-95; published 11-16-95

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Environmental statements; availability, etc.:

Fall Creek Falls State Park and Natural Area, TN; comments due by 12-18-95; published 11-3-95

LABOR DEPARTMENT

Mine Safety and Health Administration

Electric motor-driven mine equipment and accessories:

Underground coal mines--

High-voltage longwall equipment safety standards; comments due by 12-18-95; published 11-14-95

LABOR DEPARTMENT

Pension and Welfare Benefits Administration

Employee Retirement Income Security Act:

Employee benefit plans; collective bargaining agreement criteria; comments due by 12-18-95; published 11-22-95

TRANSPORTATION DEPARTMENT

Coast Guard

Regattas and marine parades:

Great Lakes Annual Marine Events; comments due by 12-18-95; published 11-1-95

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 12-19-95; published 11-8-95

Airbus Industrie; comments due by 12-18-95; published 11-3-95

Saab; comments due by 12-19-95; published 11-8-95

Class E airspace; comments due by 12-20-95; published 11-8-95

Class E airspace; comments due by 12-18-95; published 11-8-95

Meetings:

Civil Tiltrotor Development Advisory Committee; comments due by 12-22-95; published 11-16-95