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Federal Register

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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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Methods of Withdrawing Funds From the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing final regulations concerning methods of withdrawing funds from the Thrift Savings Plan (TSP). These regulations reflect changes made to eligibility requirements for the withdrawal of accounts from the Thrift Savings Plan resulting from the enactment of section 9 of the Federal Workforce Restructuring Act of 1994. That law provides that all of the withdrawal methods formerly reserved for persons retiring from Government employment, and all related spousal rights, would become available to all Thrift Savings Plan participants who separates from Government employment, regardless of the person's length of service or retirement eligibility at the time of separation.

EFFECTIVE DATE: These rules are effective March 10, 1995.

FOR FURTHER INFORMATION CONTACT: James B. Petrick, (202) 942–1661.

SUPPLEMENTARY INFORMATION: The TSP was originally established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335. FERSA set forth provisions, found in subchapter III of chapter 84 of title 5, United States Code, for the administration of the TSP. Provisions concerning TSP withdrawals were found primarily in sections 8433 and 8434 of title 5. Provisions concerning spousal rights relating to withdrawals were found primarily in section 8435 of title 5.

As originally enacted, FERSA conditioned eligibility for the various withdrawal methods upon eligibility for basic retirement benefits. Consequently, persons without such eligibility upon separation from Government employment (generally less than 5 years of service) were not permitted to leave their accounts in the TSP and were only permitted to withdraw them by transferring them to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. They could not receive a cash payment of their account. Persons with 5 or more years of service could leave their accounts in the TSP and had more withdrawal options, but cash payment options were only available to them when they reached retirement age. Spousal rights were also conditioned upon the retirement eligibility of the participant at time of separation.

These rules proved confusing to participants and difficult to administer, requiring, for example, various withdrawal forms depending upon the participant's retirement eligibility. As a result of Public Law 103–226, which was enacted on March 30, 1994, all TSP participants who separate from Government employment will now have the same withdrawal options available to them.

Spousal rights rules were also simplified by Public Law 103–226. Under the new rules, spouses of all FERS participants who separate from Government service with an account balance of more than $3,500 have the right to a survivor annuity, unless the spouse waives that right. The required annuity is a joint life annuity with the spouse with 50 percent survivor benefits, level payments, and no cash refund feature. Spouses of Civil Service Retirement System (CSRS) participants are entitled to notice whether or not the participant separated from Federal service with eligibility for basic retirement benefits. Public Law 103–226 eliminated the requirement to notify former spouses of FERS and CSRS participants who separated from Federal service without eligibility for basic retirement benefits that the participant is withdrawing his or her TSP account.

On December 28, 1994, the Board published a proposed rule in the **Federal Register** (59 FR 66796) proposing a new subpart 1650 reflecting the new simplified TSP withdrawal rules. Previously, on September 13, 1994, the Board had published amendments to spousal rights regulations in the **Federal Register** (59 FR 46934) reflecting the changes in spousal rights rules made by the new legislation. Additionally, the September 13, 1994 proposed amendments also amended the rules for obtaining an exception to the spousal waiver and notice requirements to allow participants seeking such an exception to submit copies of documents rather than originals or certified copies and to use statements instead of affidavits and declarations. Further, those amendments provided that a withdrawal form received within one year of an approved exception may be processed without obtaining a new exception.

The Board is now issuing both sets of regulations in this final rule promulgating new Part 1650. The Board did not receive any comments on the proposed rule issued on December 28, 1994. However, the Board did receive one comment on the proposed changes to spousal rights rules published on September 13, 1994. The comment concurred with the proposed revisions to the spousal rights rules, including the elimination of the word ''current'' when referring to the spouse. The comment recommended that the word ''current'' be included in the title to the subpart dealing with spousal rights because subpart A includes a definition of ''current spouse.'' However, in accordance with the changes made by Public Law 103–226, the definitions of both ''former spouse'' and ''current spouse'' have been removed from the definitions section of part 1650 and have been replaced by a definition of ''spouse.'' Thus, it is no longer necessary to include the term ''current spouse'' in the title to the subpart dealing with spousal rights.

The comment also recommended that the title to 5 CFR 1650.17 be revised to replace the word ''notification'' with the word ''notice'' to align with title with other changes made to subpart G. This change has been made in the final rule.

The Board has made a number of other changes to the proposed rule published on September 13, 1994. Based upon the experience gained in rewriting the remainder of part 1650, as issued on

December 28, 1994, the Board has decided to rewrite and reorganize the spousal rights provisions, which the September 13 proposal only amended. This is being done in order to set forth more clearly the simplified spousal rights rules enacted by Public Law 103–226. Therefore, new § 1650.18 deals comprehensively with the rights of spouses of FERS participants, new § 1650.19 deals with the right of the spouses of CSRS participants to notice, and new § 1650.20 deals with spousal rights relating to changes in withdrawal elections. The sections concerning the granting of spousal waivers have been changed only by redesignating some of the paragraphs for the sake of clarity.

The Board has also made one change to the regulations published on December 28, 1994. Previously, the definition of an ''insurable interest'' found at § 1650.10(b)(4)(i), the existence of which would allow the purchase of a joint life annuity for the participant and a person other than his or her spouse, included a common-law spouse. However, the Board has determined that, if a person is a common-law spouse in a jurisdiction that recognizes common-law marriages, that person is treated under the law as being the spouse in all respects. Therefore, in the final regulations the treatment of a common-law spouse has been moved from the definition of ''insurable interest'' to the definition of ''spouse'' found in § 1650.1. This change makes it clear that a common-law spouse will be treated as a legal spouse for all purposes under these regulations.

In reissuing part 1650, the Board also decided to reorganize some of its provisions, to publish some provisions separately, and to eliminate others. Therefore, under this final rule, original subpart G, Spousal Rights, is designated in new part 1650 as subpart D. A new subpart, dealing with minimum distributions and to be designated as subpart E, will be issued separately. The subparts dealing with court-ordered payments from TSP accounts and death benefits are each being issued as separate parts in the Code of Federal Regulations. Experience has shown that each of these areas has complex rules which are different from those used to process withdrawals. Finally, the subpart entitled ''Denial of Benefits,'' which was originally published as subpart K of part 1650, is being eliminated entirely. Experience in paying withdrawal benefits has shown that there is no need for a formal ''claims'' procedure with respect to those benefits. Participants or others who wish to question or challenge certain aspects of a TSP withdrawal are free to do so simply by contacting the TSP Service Office or the Board. Each case must often be addressed or handled on its own merits, although, as permitted in § 1650.6, the account can be ''frozen'' while the matter is under review. The Board currently sees no merit in having particular procedures which participants must follow in order to request such a review. Further, participants and beneficiaries remain free to pursue any claim for benefits in Federal court pursuant to 5 U.S.C. 8477.

Section-by-Section Analysis

Subpart A

Subpart A of part 1650 sets forth the general rules affecting a participant's eligibility to withdraw his or her TSP account.

Section 1650.1 sets forth definitions of terms used in part 1650. The TSP is a defined contribution retirement plan, similar to a private sector 401(k) plan, for persons employed by the Federal Government. It is administered by the Board, an independent Federal agency within the Executive Branch, pursuant to the provisions of FERSA. Thus § 1650.1 provides general definitions for the terms ''Board,'' ''TSP'' and ''Plan.''

Participants in the Plan are generally covered under either the Federal Employees' Retirement System (FERS), established in 1986 along with the TSP, or the Civil Service Retirement System (CSRS), which was the previous retirement system for Federal employees. However, some Federal employees, such as those employed by the State Department, are covered under separate retirement systems, which are modeled after either FERS or CSRS. Therefore, definitions of ''FERS'' and ''CSRS'' are provided which make it clear that these terms also encompass ''equivalent retirement systems'' such as those for State Department employees.

Definitions are also provided for the terms ''account balance,'' ''participant,'' and ''spouse.'' The term ''account balance,'' is defined to mean the nonforfeitable, valued account balance as of the month-end prior to a withdrawal. Pursuant to 5 U.S.C. 8432(g) and part 1603, Vesting, Agency Automatic (1%) Contributions of persons who separate with less than three years (or in some cases two years) of service are forfeited to the TSP prior to withdrawal of an account. Also, as noted in the discussion of § 1650.7, only the most recent valued account balance is eligible to be withdrawn. Therefore, it was deemed preferable to define ''account balance'' to mean the nonforfeitable (also referred to as ''vested''), valued account balance rather than to repeat both modifiers each time the term was used. The term ''participant'' rather than ''employee'' is used to describe persons having a TSP account, since the withdrawal rules primarily affect people who have ceased to be ''employed'' but who are still participating in the Plan.

The term ''spouse'' is defined to include any person to whom the participant is married (as determined under the laws of the appropriate jurisdiction) on the date the participant signs a TSP withdrawal form asking him or her to state marital status. This definition recognizes that the TSP does not have information to determine marital status as of the date of separation or as of the date of payment. Instead, the TSP must rely upon the statement of the participant as to his or her marital status when the participant files TSP withdrawal forms. These statements are accompanied by a warning that a false statement is subject to criminal penalties under 18 U.S.C. 1001. The regulation makes it clear that a separated spouse is treated as a spouse under these rules. The regulation also includes in the definition of ''spouse'' a common-law spouse with whom the person is living in a jurisdiction that recognizes common-law spouses. Again, the participant is responsible for informing the TSP if he or she has common-law spouse under this definition.

Section 1650.2 states the general rule that, as a result of Public Law 103–226, all TSP participants who separate from Government employment have the right to choose any of the TSP withdrawal options. Those withdrawal options are set forth in subpart B. However, the availability of those withdrawal options may be affected by two other sets of rules. First, the spousal rights provisions of FERSA restrict the withdrawal options of married participants covered by the Federal Employees' Retirement System (FERS participants) to the 50 percent joint life annuity with level payments and no cash refund feature unless the spouse waives his or her right to that option. Married participants covered by the Civil Service Retirement System (CSRS participants) are not restricted in their choice of withdrawal options, buy the law requires that their spouses be notified of the withdrawal method the participant chooses. The rules implementing the changes to spousal rights resulting from Public Law 103–226 are found in subpart D.

Second, the rules relating to required minimum distributions, which are found in section 401(a)(9) of the Internal Revenue Code, require tax-qualified

government retirement plans, including the TSP, to begin making distributions to participants by April 1 of the year following the year they become age 70½ or the year they separate from Government employment, whichever is later. These rules also require that, in certain circumstances, minimum distribution amounts be paid directly to the participant rather than transferred to an IRA or other eligible retirement plan or used to purchase an annuity. Consequently, the minimum distribution rules can limit the ability of some participants to have their entire accounts paid according to the withdrawal method they choose under these rules. The Board intends to publish separate rules, adding subpart E to part 1650, describing the effect of minimum distributions on TSP accounts. Reference to the minimum distribution rules is required here because they limit the participant's ability to withdraw the entire account according to his or her choice. Until regulations are issued adding subpart E to part 1650, those rules will simply be referred to as ''minimum distribution requirements.''

Third, the rules concerning matrimonial court orders and child support and alimony orders can affect the ability of the participant to withdraw his or her account, as well as the amount in the account available for withdrawal. Those rules are being published separately in part 1653.

Section 1650.3 describes what constitutes a ''separation from Government employment'' for purposes of determining who is entitled to withdraw his or her TSP account. Section 8433 of title 5 limits the ability to withdraw an account from the TSP to persons who have ''separated from Government employment.'' This limitation is in keeping with the primary purpose of the TSP as a retirement plan under which contributions and earnings are afforded favorable tax treatment because they will be used primarily to fund retirement benefits.

Section 1650.3 makes it clear that the term ''separation from Government employment'' encompasses separation from positions in the Federal Government, the Postal Service, and in organizations that have employees who by statute are eligible to contribute to the TSP. For example, certain employees of employee organizations and employees working for a state or local government on an Intergovernmental Personnel Act (IPA) assignment are eligible to participate in the TSP under the provisions of Public Law 100–238. (See 5 CFR Part 1620). Under these regulations, separation from such positions will be considered a separation from Government employment (unless the participant returns to his or her position with the Federal Government).

Section 1650.3 also makes it clear that the Board interprets the term ''separation'' to mean separation from Government employment (as described above) for at least 31 full calendar days. Because Congress limited access to the often significant amounts of money in TSP accounts to persons who had separated from Government employment, the Board determined that persons transferring between Government jobs (for example) should not be able to gain access to their TSP accounts after a short break in service. Thus the regulation states that a break in service must be at least 31 full calendar days. Similar rules have been adopted by Congress to limit access to refunds under the FERS and CSRS basic annuity programs.

Section 1650.4 sets forth rules for dealing with employees who are rehired by the Government before they withdraw their TSP accounts. Because the Board has decided to define ''separation'' to mean a break in service of 31 or more full calendar days, it is necessary to establish procedures to ensure that participants who are withdrawing have the requisite break in service. Therefore, § 1650.4(a) describes the statements that participants must make concerning their employment status and the length of their expected break in service in order to be able to withdraw their TSP accounts.

This ''self-certifying'' approach was deemed preferable to an approach requiring the agency immediately to report all rehired employees. Because rehired employees are not permitted to resume TSP contributions until the next election period (see 5 U.S.C. 8432(b)), agencies may not need to report transactions to the TSP concerning these employees for up to six months after the date of rehire. Consequently, information concerning the rehired employee would not otherwise be reported to the TSP promptly or within a consistent timeframe after the date of rehire. Also, the Board wanted to avoid imposing upon the employing agencies the administrative burden of reporting every rehire action to the TSP, when only a few of those actions would ever affect TSP withdrawals. Because false information provided by the participant is subject to criminal penalties, self-certification was deemed a reasonable way to ensure that persons who have been rehired (or expect to be rehired) within 31 days are prevented from withdrawing their accounts.

Section 1650.4(b) states the rules for persons who are rehired after 31 full calendar days but still want to withdraw the portion of their accounts attributable to the earlier period of employment. Section 1650.4(b) provides that such a participant can only withdraw the portion of the account balance attributable to the first period of employment. The term ''attributable to the first period of employment'' means amounts contributed to the account during the period of employment to which the separation relates and any earnings on those amounts as of the date of payment. Amounts contributed after the date of rehire and earnings on such amounts are excluded.

Section 1650.4(b) also provides that, if the amount in the account attributable to the first period of employment is more than $3,500, the participant can withdraw that amount only if he or she submits a valid withdrawal request form prior to the date the participant is rehired. As explained above, this requirement is fulfilled by the requirement that the participant state on the form if he or she has been rehired. It was not feasible to require that withdrawal actually occur before the date of rehire, because administrative delays on the part of the employing agency or the Board might make withdrawal impossible before then. However, it seemed inappropriate to give rehired participants the ability to withdraw their funds at any time (perhaps many years) after they were rehired. Thus, the Board has established the rule that the withdrawal request must be submitted before the date of rehire.

If, however, the amount in the participant's account attributable to the first period of employment is $3,500 or less, the participant is eligible to receive an ''automatic cashout'' under the procedures set forth in § 1650.17 without submitting any withdrawal forms. Therefore, the participant cannot be required to submit a withdrawal form prior to rehire in order to receive a withdrawal. For such a participant, § 1650.4(b) allows the scheduled automatic cashout of the amount attributable to the first period of employment to proceed, even if the person has already been rehired (after more than 31 days) and no forms are submitted.

Section 1650.5 states the rule that a participant cannot withdraw his or her TSP account until an outstanding loan has either been paid in full or declared to be a taxable distribution. Under the TSP loan program (see 5 CFR Part 1655),

a participant who separates with an outstanding loan must repay his or her loan in full within 90 days. If the participant does not do so, the outstanding loan balance is declared to be a taxable distribution. The participant can also speed up the declaration of the taxable distribution by signing a statement that he or she does not intend to repay the loan. The withdrawal must be delayed until this process is completed so that, if the participant pays the loan in full, that amount will be available to be included in the withdrawal.

Section 1650.6 recognizes that, in certain circumstances, a withdrawal cannot be paid because a TSP participant's account is ''frozen.'' The most common reason for placing a freeze on an account is that the Board receives a retirement benefits court order or an alimony or child support enforcement order. The Board is required by title 5 to honor the terms of such orders if they meet certain requirements. The requirements for such orders are discussed in part 1653, which was published in proposed form in the **Federal Register** on October 26, 1994 (59 FR 53874). If such orders are found to be qualifying, the account cannot be paid to the participant until the interest of the other party (most frequently a spouse or former spouse) has been determined and paid out. At that point the account can be ''unfrozen'' and the withdrawal can proceed. See 5 CFR 1653.3. This section also recognizes that the Board may need to place a freeze on an account for administrative reasons. For example, an employing agency error may have caused the account to have the wrong address. Until such an error is corrected, the account should not be paid.

Section 1650.7 discusses the timing of TSP withdrawal payments. The TSP is a ''monthly valued'' plan. This means that the earnings (either positive or negative) on a TSP account, and thus the ''value'' of the account, is determined once a month as of the end of the preceding month. For the TSP, this determination occurs at approximately mid-month, although the exact date varies, depending on the availability of the applicable rates of return. A TSP withdrawal cannot occur until the valuation process is completed for a given month; otherwise the amount to be withdrawn cannot be accurately determined. (Since all TSP funds are held in individual accounts, the amount to be withdrawn must be determined precisely; if too much or too little is paid, the difference must be absorbed by all other accounts.) The timing of the withdrawal payments in a monthly valued plan is also important for determining the timing of other actions, such as when a withdrawal election can be changed or canceled (see § 1650.14).

Subpart B of part 1650 describes the basic TSP withdrawal options which, as noted above, are now available to any TSP participant who is eligible to withdraw his or her TSP account balance under the rules stated in subpart A, and subject to the limitations found in the other rules identified in § 1650.2. The conditions for eligibility contained in subpart A are not repeated for each withdrawal method identified in subpart B. Subpart B contains the rules governing the way each withdrawal option can be exercised (for example, the availability of certain annuity options to certain participants), as well as the rules for transferring all or part of certain withdrawal payments to an IRA or other eligible retirement plan, making deferred withdrawal elections, changing withdrawal elections, and imposing limits on the date by which a withdrawal choice must be made.

Section 1650.8 provides that all TSP participants can withdraw their account balances in a single payment. The term ''lump sum'' is not used, since that term has a specific meaning for the tax treatment of the payment, which may or may not be applicable to all payments made under this method. All or part of the single payment received under this method can be transferred to an IRA or other eligible retirement plan in accordance with the rules set forth in § 1650.11.

Section 1650.9 sets forth the types of monthly payment options a participant can choose. Section 8433 of title 5 requires that the Board offer a participant the opportunity to receive his or her account in ''one or more substantially equal payments to be made not less frequently than annually * * *.'' Under this provision, the board has established three options for calculating monthly payments. The options provide only for monthly payments because this was considered to be consistent with the presumed intent of the law to provide participants with the ability to receive a regular stream of retirement income from their TSP accounts.

Under the first option, described in § 1650.9(a)(1), a participant can choose monthly payments in a fixed dollar amount of his or her choice, with a minimum monthly payment amount of $25. The minimum amount avoids the administrative expense of processing small monthly payments. Under this option, which allows the participant to receive a predictable monthly income, payments continue until the entire account is paid out. When the account decreases to a point that the amount remaining is less than two payments, the remaining amount is paid out in a single payment. Therefore, the last payment may be larger than the chosen amount.

The second option, described in § 1650.9(a)(2), allows the participant to choose a fixed number of monthly payments instead of a fixed monthly payment amount. Under this option, payments are initially calculated by dividing the account balance by the number of payments chosen. Initial payments must be at least $25 for the election to be accepted. Payments are then recalculated each year in January by dividing the immediately preceding December 31 account balance by the remaining number of payments. Although each year's monthly payment amount will be different from that of the previous year, because earnings will be reflected in the annual recalculation, the annual recalculation allows the account to be paid out as evenly as possible within the elected number of payments. Each year's monthly payment amount will be increased to $25, if necessary.

The third option, described in § 1650.9(a)(3), allows a participant to have monthly payments calculated based on Internal Revenue Service (IRS) life expectancy multiple Table No. V, found at 26 CFR 1.72–9. Under this method, the monthly payment amount is calculated by dividing the account balance by the multiple from the table corresponding to the participant's age on his or her birthday in the year payments are being made, and then dividing the result by 12. Payments are recalculated in January of each year based upon the December 31 account balance and the multiple corresponding to the participant's age as of his or her birthday in the new payment year. This method allows a participant to spread monthly payments over his or her entire life expectancy. It also allows a participant who separates from Government employment prior to the year in which he or she becomes age 55 to avoid the 10 percent early withdrawal penalty on monthly payments received before the participant becomes age 59½. This result is allowed under the Internal Revenue Code because payments are based on life expectancy. The early withdrawal penalty cannot be avoided by choosing the other two monthly payment methods. However, payments made under a TSP annuity (see § 1650.10) are also exempted because they are based on life expectancy.

Section 1650.9(b) states the rule that a participant cannot change his or her

monthly payment election and choose a different calculation method or amount once payments have begun. This restriction is imposed because the statute requires that the payments be ''substantially equal.'' If a participant were able to change the calculation method or amount at will, the payments would not comply with the ''substantially equal'' requirement. Such a process could also create significant administrative burdens for the Plan.

However, under § 1650.9(c), a participant can decide at any time to receive his or her remaining account balance in a final single payment. This recognizes that participants may have a sudden need to liquidate their account balances, for example in cases where there is a medical emergency. It was determined that the ''substantially equal'' rule was not violated where the account would be entirely liquidated through a final single payment.

Section 1650.9(d) Provides that, once they begin receiving equal payments, participants may invest their TSP account balances in accordance with the rules provided in part 1601, Participant Choices of Investment Funds. Under current regulations, participant accounts must be invested entirely in the Government Securities Investment Fund (G Fund) while participants are receiving monthly payments. It was originally thought that accounts of persons receiving monthly payments should be invested only in the G Fund to ensure a predictable monthly payment stream. However, with the elimination of the restrictions on participants' investment choices which originally existed, demand has grown to eliminate this restriction also. The calculation methods described above automatically account for positive and negative earnings associated with investing in the Common Stock Index Investment Fund (C Fund) or the Fixed Income Investment Fund (F Fund), thus insuring a relatively predictable income stream. The Board intends in the future to allow participants receiving monthly payments to invest in any investment funds offered by the TSP. When this change is implemented, part 1601 will be amended, and the language of § 1650.9(d) will automatically incorporate the new rules.

Section 1650.10 describes the rules relating to TSP annuities, including the various annuity options and features among which a participant can choose. TSP annuities are monthly payments made to the participant during his or her life or to the participant and a designated joint annuitant while either one is alive. The TSP purchases annuities for participants from a private sector annuity provider using the participant's entire account balance (although in some cases minimum distribution amounts must first be paid directly to the participants).

Section 1650.10(a) describes the basic procedures and rules relating to the purchase of a TSP annuity. Annuities are purchased in the mid-month processing cycle and payments commence within approximately thirty days after purchase. Because it is not practicable to purchase annuities using small account balances, the minimum amount that can be used to purchase an annuity is $3,500. All TSP annuities and annuity features have equivalent actuarial values. This means that selection of additional features will result in a reduction in the amount of the monthly annuity payment.

Section 1650.10(b) describes the basic annuity types. Section 8434 of title 5 requires that the Board offer certain types of annuities for the TSP. The basic types of annuities offered by the TSP conform to the statutory requirement. These are a single life annuity for the participant with level payments (§ 1650.10(b)(1)), a joint life annuity for the participant and his or her spouse with level payments (§ 1650.10(b)(2)), a single life annuity or a joint life annuity with the spouse that has annual increasing payments (§ 1650.10(b)(3)), and a joint life annuity with a former spouse or a person having an insurable interest in the participant (§ 1650.10(b)(4)).

Section 1650.10(b)(3) describes how the annual increase for increasing annuities is calculated. The amount of the increase is based upon the change in the Consumer Price Index. The statute prohibits decreases in annual payments; therefore, the annual increases will be zero in years where the relevant change in the index is either negative or zero. Also, because of Internal Revenue Code limits, the annual increase cannot be more than 3 percent.

Section 1650.10(b)(4) describes the rules for the option of a joint life annuity with a person other than the spouse. As required by the statute, this option can only be used to purchase a joint life annuity with a former spouse or with a person having an ''insurable interest'' in the participant. The statute gives the Board discretion to define the term ''insurable interest'' in regulations. The definition of ''insurable interest'' is based upon the idea that the survivor could be expected to obtain continuing financial benefit from the participant's life. Under this definition, close relatives are presumed to have an insurable interest in the participant. However, a method is also prescribed by which the participant can establish by affidavit that another person, not in the presumed group, has an insurable interest in him or her.

Section 1650.10(c) describes the two levels of survivor benefits that are available for joint life annuities, whether with a spouse or with another person. These particular levels were not prescribed by statute, but rather were adopted by the Board based upon annuity options commonly available in the private sector. A participant who chooses a joint life annuity must also choose one of these levels. The 50 percent survivor benefit provides that, whenever one of the joint annuitants dies, the other will receive, during his or her lifetime, 50 percent of the benefit that was paid to the participant when both were alive. The 100 percent survivor benefit provides that the same amount paid to the participant when both the participant and the joint annuitant are alive will continue to be paid to the survivor during the survivor's lifetime. The initial payment amount will be lower if the 100 percent survivor level is chosen than if the 50 percent survivor level is chosen. Under the IRS minimum distribution rules, the 100 percent survivor benefit cannot be chosen for a joint annuity with someone other than the spouse if the joint annuitant is more than 10 years younger than the participant. This rule is designed to prevent the use of retirement annuities to transfer income to a much younger beneficiary (for example, a child or grandchild). However, the regulations provide (in accordance with IRS regulations) that a 100 percent benefit can be chosen for a joint annuity with any former spouse, regardless of age, if a qualifying court order (as described in part 1653) so provides.

Section 1650.10(d) describes two additional features that can be combined with certain annuities. These features are not required by statute. The Board decided to make them available based upon its evaluation of annuity features that participants would be likely to find attractive. If either feature is chosen, the monthly payment amount is reduced.

The first feature, described in § 1650.10(d)(1), is the ''cash refund'' feature. This feature, which can be selected for any type of annuity, provides that, if the participant (or the participant and joint annuitant in the case of a joint annuity) dies before the amount used to purchase the annuity has been paid out, the remainder of the amount used to purchase the annuity will be paid in a lump sum to the beneficiary or beneficiaries named by

the participant. The participant who chooses this feature must, before the annuity can be purchased, complete Form TSP–11–B, Beneficiary Designation for a TSP Annuity, to name the beneficiaries to receive this payment and to state the portion of the payment to be paid to each beneficiary. After the annuity is purchased, the participant may change the beneficiaries. If the annuity is a joint life annuity, the survivor (even if not the participant) may also change the beneficiaries or their shares. Beneficiary changes after the purchase of an annuity are handled between the annuitant and the annuity provider and do not involve the TSP.

The second feature, described in § 1650.10(d)(2), is known as the ''10-year certain'' feature. This feature provides that, if a single life annuity is chosen, payments will be made for at least 10 years. If the participant dies before the 10-year period expires, payments will be made to a designated beneficiary for the remainder of the period. Beneficiaries under this feature are designated on a Form TSP–11–B, in the same way as under the cash refund feature. The 10-year certain feature is only available for single life annuities, because it is expected that, in most cases, payments under joint life annuities would last at least 10 years.

Section 1650.10(e) provides that the Board can establish other types of annuities and other optional annuity features, as it did in the case of the cash refund and 10-year certain features. The statute makes it clear that the Board can decide to offer additional annuity options.

Section 1650.10(f) reflects the requirement found in the statute that any annuity method must be available to separating participants for at least 5 years after the date it is eliminated. This provision appears to have been designed to prevent the Board from eliminating annuity methods precipitously, when a participant may have been planning to choose such a method. Although the 5 year requirement may have little applicability to younger participants, it appears to be designed to preserve options for those participants who are near retirement age and who might be able to change their retirement date if they knew in advance that an annuity method would cease to be offered. Although the statute only speaks in terms of elimination of a ''method of payment,'' the regulation makes it clear that the Board would apply this rule to any annuity type (other than the statutorily prescribed annuity types), any benefit level, or any other annuity feature (such as the cash refund feature) that the Board has previously decided to offer.

Section 1650.11 describes the situations under which a participant can have the TSP transfer all or a portion of a TSP withdrawal payment to an IRA or other eligible retirement plan, as defined in the Internal Revenue Code. Transfer of the entire account balance to an eligible retirement plan was mandated by Congress in FERSA. At the time of issuance of the original interim regulations in 1987, the participant had to choose to transfer either the entire account balance or nothing at all. However, in 1992 Congress enacted Public Law 102–318, which required all tax-qualified retirement plans (including the TSP), effective in 1993, to allow the transfer to an IRA or other eligible retirement plan of all or part of any ''eligible rollover distribution.'' Any part of an eligible rollover distribution that is not directly transferred is subject to mandatory 20 percent income tax withholding. Therefore, beginning in 1993, the Board implemented changes in the TSP transfer option to comply with the requirements of Public Law 102–318. This means that all TSP withdrawals that are identified as ''eligible rollover distributions'' can now be transferred, in whole or in part, to an IRA or other eligible retirement plan. Eligible rollover distributions include all single payments, as well as final single payments that end a series of monthly payments. Thus, a participant who wants his or her entire account balance transferred can elect a single payment (which is an option now available to all) and can have the entire payment transferred.

Because the definition of ''eligible rollover distribution'' in Public Law 102–318 includes monthly payments expected to be made for fewer than 10 years and not based on life expectancy, certain TSP monthly payments also qualify for transfer. Section 1650.11 explains that monthly payments can be transferred if the participant elects fewer than 120 payments (i.e., fewer than 10 years of monthly payments), or the participant elects a monthly payment amount which, when divided into the account balance, yields a number less than 85. This number was chosen based upon an assumed annual earnings rate of 8 percent for the account. This means that a fixed payment amount chosen by the participant that would result in fewer than 85 payments if paid in equal monthly installments from his or her existing account balance could be expected to result in fewer than 120 payments if the account accrued earnings at the rate of 8 percent per year during the payout period. TSP monthly payments calculated based on life expectancy cannot be transferred. This is because the Internal Revenue Code does not allow any payment which is calculated based on life expectancy to be transferred. (This also means that TSP annuity payments and minimum distribution payments cannot be transferred.)

Section 1650.11(d) states the definition of an eligible retirement plan, which is found in section 402(c)(8) of the Internal Revenue Code. An IRA is included in the definition of an eligible retirement plan. The Internal Revenue Code also requires that an IRA or other eligible retirement plan be maintained in the United States, which is defined as the 50 states and the District of Columbia. Plans maintained in foreign countries or in United States possessions, such as Puerto Rico, the Virgin Islands, or Guam, do not qualify.

Section 1650.12(a) contains the basic rule establishing the participant's right to choose that a single payment be made, or that monthly payments or an annuity begin, at a future date of his or her own choosing. This type of election is referred to as a ''deferred withdrawal'' election, and is specifically authorized in 5 U.S.C. 8433(b).

Section 1650.12(b) describes the time limit placed by 5 U.S.C. 8433(b) upon the participant's right to make a deferred withdrawal election. Under that section, a participant must choose a date for his or her withdrawal to begin that is no later than April 1 of the year following the year the participant becomes age 70½. Because the TSP is a monthly valued plan, as explained in § 1650.7, the month chosen for payment under § 1650.12(b) must be no later than March of the relevant year, so that a payment can be made by April 1. Also, because the first annuity payment is made approximately 30 days after the annuity is purchased, an annuity will be purchased in the monthly cycle prior to the month chosen. Therefore, if a participant chooses an annuity to begin in March of the year following the year in which he or she becomes age 70½ (i.e., the latest possible date), the annuity will be purchased in February of that year. Persons who are already past the limit date (e.g., participants who separate when they are age 73) when they make a withdrawal election cannot make a deferred withdrawal election. They must elect an immediate withdrawal.

The rule stated in § 1650.12(b) generally comports with the minimum distribution requirements found in the Internal Revenue Code. The minimum distribution rules generally require

separated participants to begin receiving payments from their accounts by April 1 of the year following the year they become age 70½. The rule set forth in § 1650.12(b) requires a TSP withdrawal method to begin by the same date. Eventually, the Board expects the rule set forth in § 1650.12(b), in conjunction with the rule set forth in § 1650.13 concerning the date by which an election is required, to eliminate the need for most required minimum distribution payments, except for those made in conjunction with another withdrawal election. However, as explained further in the discussion of § 1650.13, because some participants over age 70½ who leave Government employment with less than 10 years of service will still be able to defer making a decision, minimum distribution payments will continue to be made to this group.

Sections 1650.12 (c) and (d) describe the TSP procedures for notifying participants who have made deferred withdrawal elections of what actions they are permitted or required to take prior to implementation of their election.

Section 1650.13 provides rules for implementing the provisions of 5 U.S.C. 8433(h)(2). This section requires a TSP participant to make a withdrawal election by February 1 of the year following the year in which the later of three events occurs—the participant becomes age 65, the participant separates from Government employment, or the participant has 10 years of Plan participation. The statute expresses the latter event as ''the tenth anniversary of the year in which * * * [the participant] became subject to this subchapter.'' The regulation reflects the Board's interpretation of this language to mean the effective date of the first contribution made to the participant's TSP account, but no earlier than April 1, 1987, the date the TSP first began accepting contributions. The effective date of the first contribution is also chosen for administrative purposes, because it is a date that is clearly reflected in TSP records.

For most participants (i.e., those with 10 or more years of Government service who separate or retire before age 65), this provision will operate to require a choice by February 1 of the year following the year in which the participant reaches age 65. The participant is still permitted to make a deferred election at that time, but the date of the deferral is subject to the limits stated in § 1650.12(b), which require that a deferred election must begin by April 1 of the year following the year a participant becomes age 70½. Together, these provisions ensure that a decision about the method of withdrawing the TSP account is made on or about the time a participant might be expected to retire and that payments begin no later than the year following the year in which the participant becomes age 70½. This allows both the TSP and the participant's spouse, who has certain rights with respect to the election, to be aware of the chosen withdrawal method by the normal retirement age. This also prevents the participant from receiving his or her entire account balance through the minimum distribution process without spousal involvement. However, because TSP participation only began in April 1987, the 10th anniversary of the first TSP contributions will not occur until 1997. Therefore, a withdrawal election will not need to be made under this provision until February 1, 1998, at the earliest.

By establishing a date by which the participant must make an election, the Board has also interpreted the statute as providing that a separated TSP participant need not make any withdrawal election prior to that date. Instead, a participant who separates from Government employment can decide to leave his or her account in the Plan and take no action until the required date.

If a withdrawal election is not made by the required date, the statute provides that the ''benefits under this subchapter will be paid as an annuity * * *.'' Because the 10-year anniversary has not yet occurred for any TSP participant, there has as yet been no need to address participants who do not make an election by the required date. Section 1650.13(d) describes procedures which reasonably accommodate the language of the statute requiring that an annuity be purchased for such persons, yet also recognizes that the TSP may not be able to purchase an annuity for a participant who will not provide required information (such as a current address).

Section 1650.13(d) also provides that, for married FERS participants, the annuity that must be purchased is the required joint life annuity with the spouse. Although this is not explicitly stated in 5 U.S.C. 8433(h)(3), 5 U.S.C. 8435 requires a married FERS participant to purchase the required joint life annuity with his or her spouse if the spouse does not waive that right. If the required joint life annuity were not purchased under § 1650.13, a married FERS participant could effectively avoid the requirement to purchase a joint life annuity with the spouse by refusing to make any election at all. For single participants covered by FERS and all participants covered by CSRS, however, a single life annuity will be purchased, since there is no statutory requirement to purchase a joint life annuity with the spouse.

Section 1650.13(d)(3) recognizes that, in certain cases, the participant will not provide the TSP with adequate information to purchase the required annuity (either single life or joint life with spouse). Because the law does not allow accounts in this status to remain open indefinitely, the regulation describes a procedure whereby an account will be forfeited if there is not adequate information to purchase an annuity. However, if any person (such as the spouse or guardian, for example) can provide such information, the account will be restored and the annuity purchased. At the time of forfeiture, the participant generally would lose the right to choose a different method of withdrawal.

Section 1650.14 sets forth rules concerning participants who change or cancel their withdrawal elections. Generally, participants can change their withdrawal elections as long as they have met any applicable spousal rights requirements with respect to the new election. For example, if a spouse of a FERS participant waives his or her right to a survivor benefit when the participant chooses a single life annuity, the participant can later change his or her election to a single payment without obtaining another waiver from that spouse. However, if the participant has a different spouse when a new election is made, a waiver would be required from the new spouse.

The right both to change and cancel a withdrawal election is also affected by the date the payment is scheduled. As explained in § 1650.7, the TSP is a monthly valued plan. As such, payments are scheduled to occur once a month during the mid-month processing cycle. Participants who have their accounts invested only in the G Fund can change or cancel their election as long as the change or cancellation can be processed prior to the mid-month cycle in which the account is scheduled to pay. This is because the underlying value of investments in the G Fund does not fluctuate. However, if a participant has all or a portion of his or her account invested in the C Fund or the F Fund, the underlying value can fluctuate. Therefore, the change or cancellation must be processed no later than the second-to-last business day (the ''cutoff date'') of the month preceding the mid-month cycle in which the account is scheduled to pay, so that the amount to be withdrawn can be insulated from

fluctuations in value after the end of the month. Failure to remove funds scheduled for withdrawal from the C and F Funds on the last day of the month would result in all other accounts having to absorb the fluctuations in the C and F Fund values after the end of the month. However, a person with money in the C or F Funds can change (but not cancel) his or her withdrawal election after the cutoff date if, under the changed election method, there is no change in the amount to be withdrawn from the C and F Funds as originally scheduled.

Section 1650.14(d) provides an example to illustrate the treatment of elections to change withdrawal methods made by participants whose accounts are invested in the C or F Funds.

Subpart C of part 1650 sets forth procedures adopted by the Board for processing TSP withdrawal elections and payments.

Section 1650.15 sets forth the information that must be provided by the employing agency both to the TSP and to the participant at the time of the participant's separation from Government employment.

Section 1650.15(a) requires the agency to inform the TSP recordkeeper of the participant's separation from Government employment. This is done by submitting a code indicating the separation from employment and the date of separation. Until this information is received, the withdrawal cannot be processed. Also, a withdrawal cannot occur until 30 days have elapsed since the date of separation reported by the agency. This interval ensures that normal contributions are received before the date of withdrawal and that the participant has a reasonable period of time after receipt of withdrawal and tax information from the employing agency to make withdrawal and tax withholding decisions. (The 30-day interval described in this section does not operate to enforce the rule stated in § 1650.3 that an employee rehired within 31 days is not permitted to withdraw. As explained earlier, the TSP does not maintain information on the date employees are rehired. Therefore, the 30-day interval could not ensure that employees rehired within that period were not paid. Rather, as provided in § 1650.4, that requirement is enforced by requiring the participant to certify to the length of his or her break in service and his or her employment status.)

Section 1650.15(b) requires the agency to provide certain withdrawal and tax information to the participant at the time he or she separates from employment. The Board relies on the employing agencies to distribute this information to participants. This includes TSP withdrawal materials and forms and the written explanation required by section 402(f) of the Internal Revenue Code. The Code requires plans to furnish this explanation to participants within a reasonable time prior to their withdrawal. In order to facilitate TSP participants' ability to withdraw their accounts in a timely manner, the Board has instructed employing agencies to provide participants with this information when they separate. (The TSP also mails this notice to each participant upon receipt of separation information from his or her agency, unless withdrawal forms have already been received from the participant.)

Section 1650.16 states the basic rule that, in order to withdraw his or her TSP account, a participant must complete the basic TSP withdrawal form (TSP–70) and any other form required by the TSP. As a result of the standardization of TSP withdrawal options accomplished by Public Law 103–226, the Board has been able to devise a withdrawal form that can be used by every participant to make a withdrawal choice under any of the withdrawal methods. Participants with account balances of $3,500 or less are also eligible to receive an ''automatic cashout'' of their accounts which requires no paperwork, as described in § 1650.17.

Section 1650.17 describes the procedures for paying out TSP accounts of $3,500 or less. These procedures differ from those relating to other TSP accounts because of Public Law 101–335. That statute amended title 5 of the United States Code to provide that a separated TSP participant with an account balance of $3,500 or less will automatically be paid the amount in his or her account in a single payment, unless the participant elects another withdrawal method. This payment is referred to as an ''automatic cashout.'' These participants can also choose to leave their accounts in the Plan.

Section 1650.17(c) states that spousal notice and waiver provisions (to be published as subpart D) do not apply to the withdrawal of accounts of $3,500 or less. This also reflects the provisions of Public Law 101–335.

Section 1650.17(d) confirms that the automatic cashout provisions apply only while the account is $3,500 or less. If the account increase to more than $3,500 (due to additional contributions or earnings), these rules cease to apply and the participant must submit withdrawal forms as required in § 1650.16.

Section 1650.17(e) excludes accounts of less than $5.00 from the automatic cashout procedures. Many participants have contacted the TSP asking that they not continue to be sent information about very small account balances. Often these accounts represent amounts deposited into a participant's account after an initial withdrawal, where a former employing agency has discovered that it owned small amounts of lost earnings to a group of employees. (See part 1605 for rules concerning agency paid lost earnings.) The Board has also determined that, for accounts of less than $5.00, it is not prudent to undertake the administrative processing costs associated with an automatic cashout. The Board plans to forfeit these accounts to the Plan automatically under procedures to be developed. The procedures will allow participants to reclaim these amounts, if they wish.

Subpart D contains rules relating to spousal rights that apply when a TSP participant withdraws his or her account.

Section 1650.18 implements the rules regarding the rights of spouses of FERS employees with respect to TSP withdrawals. These rules are found at 5 U.S.C. 8435. As amended by Public Law 103–226, that section requires that spouses of FERS participants with account balances of more than $3,500 waive their right to a joint and survivor annuity before the participant can choose any other form of TSP withdrawal. Section 8435 further requires the Board, if it offers more than one form of a joint life annuity with the spouse, to choose the particular form of annuity which will be purchased if the spouse does not sign a waiver. In accordance with this requirement, which is referred to as the ''signature requirement,'' the Board has chosen the joint life annuity with 50% survivor benefit, level payments, and no cash refund feature. Therefore, § 1650.18(a) prohibits a FERS participant who is married at the time he or she submits a withdrawal request from selecting a withdrawal option other than this form of joint life annuity unless his or her spouse waives this annuity. Section 1650.18(b) states the forms which the spouse must sign to execute a valid waiver. Section 1650.18(c) confirms that these procedures do not apply to FERS participants whose account balances are $3,500 or less.

Section 1650.19(a) implements the requirement found in 5 U.S.C. 8351 (as amended by Public Law 103–226) that CSRS participants with account balances of more than $3,500 cannot withdraw their accounts until their spouses are sent notice of their

withdrawal elections. This is referred to as the ''notice requirement.'' Section 1650.19(b) states that the required notice will be sent to the last know mailing address for the spouse, but that it is the responsibility of the participant to provide that address. Since the TSP does not maintain account information for spouses, and since spouses are usually not employed with the Federal Government, the TSP must rely on the participant to provide this information. The participant who provides false information is subject to criminal prosecution. Section 1650.19(c) confirms that the notice requirement does not apply to CSRS participants whose account balances are $3,500 or less.

Section 1650.20 describes the spousal rights rules that apply when either FERS or CSRS participants change their withdrawal elections. Section 1650.20(a) describes the rules that apply to spouses of FERS participants. The basic rule, as required by 5 U.S.C. 8435, is that spouses of FERS participants must waive their right to the annuity described in § 1650.18 with respect to a changed withdrawal election if the spouse did not waive the annuity right with respect to the original election. Therefore, the regulation states that, unless the same spouse has already signed a waiver of the prescribed form of annuity, the participant cannot change that withdrawal election without obtaining a waiver. If the participant has previously obtained an exception to the same spouse's signature, as described in § 1650.22, the exception is deemed applicable for one year from the date the participant signed the request form. After that date, either a waiver or a new exception must be obtained, because the circumstances surrounding the granting of the earlier exception may have changed.

Section 1650.20(b) states that the spouse of a married CSRS participant must be notified when that participant changes his or her withdrawal election. 5 U.S.C. 8351 requires another notice whenever a change of withdrawal election is made. However, if an exception to the notice requirement for the same spouse has been granted pursuant to § 1650.21, that exception is good for one year, and notice of a changed withdrawal election will not be necessary during that period.

Section 1650.21 provides that the Executive Director may grant an exception to the notice requirement for spouses of CSRS employees (as described in § 1650.19) where the participant establishes to the satisfaction of the Executive Director that the spouse's whereabouts cannot be determined. Section 1650.21 describes the process for establishing that a spouse's whereabouts are unknown. This section has been revised to allow participants who are seeking an exception to the notice requirement based on whereabouts unknown to submit statements in lieu of affidavits or declarations in support of their requests. These statements must be made pursuant to 18 U.S.C. 1001, which provides that:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

To ensure that the persons making statements are aware of the possible penalty, § 1650.21(c) requires inclusion of the following on each statement: I understand that a false statement or willful misrepresentation is punishable under Federal law (18 U.S.C. 1001) by a fine or imprisonment or both. The Board has determined that this statement and the sanctions of 18 U.S.C. 1001 provide adequate protection against false statements, and therefore participants seeking exceptions can be relieved of the burden of providing notarized affidavits.

Section 1650.22 allows the Executive Director to grant an exception to the requirement to obtain the signature of the spouse of a FERS employee if the spouse's whereabouts cannot be determined (based on the same requirements as stated in § 1650.21) or if ''exceptional circumstances warrant the exception.'' Section 1650.22 describes how a participant can establish that ''exceptional circumstances'' exist.

Section 1650.22(b)(2)(iii) has been revised to clarify the wording that must be included in a court order to justify the granting of an exception based on the express language of the order.

To ease the burden on participants further, §§ 1650.21 and 1650.22 are also being revised to delete the requirement that the participant seeking an exception from the spouse notice or signature requirements obtain and provide only documents bearing an original signature or which are embossed or which bear the imprint of a seal. Participants may not submit photocopies of documents.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only the ability of Federal employees to withdraw their TSP accounts and Board procedures relating to those withdrawals.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of 30-Day Delay of Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making these regulations effective in less than 30 days. The new withdrawal rules will be implemented during the March 1995 payment cycle, which will begin on March 10, 1995. Therefore, the new withdrawal rules must be in place by that date.

List of Subjects in 5 CFR Part 1650

Employee benefit plans, Government employees, Retirement, Pensions.

Roger W. Mehle,

Executive Director.

Federal Retirement Thrift Investment Board

For the reasons set out in the preamble, part 1650 of chapter VI of title 5 of the Code of Federal Regulations is revised to read as follows:

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

Subpart A—General

1650.1 Definitions.
1650.2 Eligibility.
1650.3 Separation from Government employment.
1650.4 Rehired employees.
1650.5 Outstanding loans.
1650.6 Frozen accounts.
1650.7 Monthly cycle for withdrawal payments.

Subpart B—Withdrawal Options

1650.8 Single payment.
1650.9 Monthly payments.
1650.10 Annuities.
1650.11 Transfer of withdrawal payments.
1650.12 Deferred withdrawal elections.
1650.13 Required date for making withdrawal election.
1650.14 Changes and cancellation of withdrawal election.

Subpart C—Procedures for Withdrawing TSP Accounts

1650.15 Information to be provided by agency.
1650.16 Accounts of more than $3,500.
1650.17 Accounts of $3,500 or less.

Subpart D—Spousal Rights

1650.18 Spouses of FERS participants.
1650.19 Spouses of CSRS participants.
1650.20 Spousal rights when participant changes withdrawal election.
1650.21 Executive Director's exception to requirement to notify the spouse.
1650.22 Executive Director's exception to the requirement to obtain the spouse's signature.

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8467(b)(5), and 8474(c)(1).

Subpart A—General

§ 1659.1 Definitions.

As used in this part:

Account balance means, unless otherwise specified, the nonforfeitable valued account balance of a TSP participant as of the most recent month end prior to the date a withdrawal occurs.

Board means the Federal Retirement Thrift Investment Board, established pursuant to 5 U.S.C. 8472.

CSRS means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, or any equivalent retirement system.

FERS means the Federal Employees' Retirement System established by 5 U.S.C. chapter 84, or any equivalent retirement system.

Participant means any person with an account in the Thrift Savings Plan.

Spouse means the person to whom a TSP participant is married on the date he or she signs forms requesting spouse information to be submitted to the TSP, including a spouse from whom the participant is legally separated, and including a person with whom a participant is living in a relationship that constitutes a common-law marriage in the jurisdiction in which they live.

Thrift Savings Plan, TSP, or *Plan* means the Federal Retirement Thrift Savings Plan, established under subchapters III and VII of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8431 *et seq.*

Thrift Savings Plan Service Office means the office established by the Board to service separated TSP participants. This office's current address is: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana 70161–1500.

§ 1650.2 Eligibility.

A participant who separates from Government employment, as described in § 1650.3, is eligible to withdraw his or her account by one of the withdrawal methods described in subpart B of this part, subject to the rules relating to spouses' rights (set forth in subpart D of this part), minimum distributions, and domestic relations orders. A participant cannot choose a withdrawal method while he or she is employed by the Government.

§ 1650.3 Separation from Government employment.

For purposes of this part, a separation from Government employment occurs when a participant ceases employment with the Federal Government or the U.S. Postal Service (or with any other employer from a position that is deemed to be Government employment for purposes of participating in the TSP) for at least 31 full calendar days.

§ 1650.4 Rehired employees.

(a) A participant who is reemployed in a position in which he or she can participate in the TSP on or before the 31st full calendar day after the date of separation is not eligible to withdraw his or her TSP account. In order to be eligible to withdraw his or her TSP account, a participant must state on Form TSP–70 (Withdrawal Request) that he or she is separated and expects the separation to last at least 31 full calendar days. If a participant is scheduled for an automatic cashout, as described in § 1650.17, the cashout will be canceled if the participant states to the TSP that he or she has been reemployed or expects to be reemployed within 31 full calendar days.

(b) A participant who is reemployed after 31 full calendar days after his or her date of separation in a position in which the participant is eligible to participate in the TSP may withdraw the portion of his or her account balance attributable to the earlier period of employment. However, if the amount in the account attributable to the first period of employment is greater than $3,500, the participant must submit, prior to the date of his or her reemployment, a properly completed withdrawal form (TSP–70) choosing a withdrawal option that results in an immediate withdrawal. A reemployed participant may not make a deferred withdrawal election, as described in § 1650.12, or an election of monthly payments, as described in § 1650.9. If a reemployed participant is already receiving monthly withdrawal payments, such payments will stop.

§ 1650.5 Outstanding loans.

A participant is not entitled to withdraw his or her account balance until any loan outstanding at the time of separation has either been repaid in full or declared to be a taxable distribution.

§ 1650.6 Frozen accounts.

A participant may not withdraw any portion of his or her account balance if the account is frozen as a result of a retirement benefits court order or a child support or alimony enforcement order or as a result of a freeze placed on the account by the Board for another reason.

§ 1650.7 Monthly cycle for withdrawal payments.

The value of a TSP account is determined at approximately mid-month, as of the end of the preceding month, after earnings are allocated to the account. TSP transactions that require valued account balances, such as withdrawals, can only occur after the value of an account has been determined. Because of this, withdrawal payments are generally made once a month, during what is known as the ''mid-month processing cycle.''

Subpart B—Withdrawal Options

§ 1650.8 Single payment.

A participant can withdraw his or her entire account in a single payment.

§ 1650.9 Monthly payments.

(a) A participant can withdraw his or her account balance in two or more substantially equal monthly payments, to be calculated under one of the following methods:

(1) A fixed monthly payment amount. The amount must be at least $25 per month and must satisfy any minimum distribution requirements. Payments will be made each month until the account is expended. If the last scheduled payment would be less than the chosen amount, it will be combined and paid with the previous payment;

(2) A fixed number of monthly payments. The participant's month-end account balance for the month preceding the month of the first payment will be divided by the number of payments chosen in order to determine the monthly amount. If that amount is less than $25, the election is rejected. The payment must also meet any minimum distribution requirements. In January of each subsequent year, the TSP will divide the December 31 account balance from the prior year by the remaining number of payments in order to determine that year's monthly payments. If the monthly payment amount is less than $25, it will be increased to $25. This process will be repeated each year until the account is expended; or

(3) A monthly payment amount calculated using the factors set forth in Internal Revenue Service expected return multiple table V, 26 CFR 1.72–9. There is no $25 minimum monthly payment under this method. In the year payments begin, the monthly payment

amount is calculated by dividing the month-end account balance for the month preceding the month of the first payment by the factor from table V based upon the participant's age as of his or her birthday in that year. This amount is then divided by 12 to yield the monthly payment amount. In subsequent years, the monthly payment amount is recalculated each January by dividing the December 31 account balance from the previous year by the factor from Table V based upon the participant's age as of his or her birthday in the year payments will be made. That amount is divided by 12 to yield the monthly payment account.

(b) A participant who chooses to receive monthly payments calculated using one of the three methods set forth in paragraph (a) of this section cannot change the method after payments begin. Also, except as provided in paragraph (c) of this section, the participant cannot change the number of payments or the payment amount after payments begin.

(c) A participant receiving monthly payments can choose to receive the remainder of his or her account balance in a final single payment.

(d) A participant receiving monthly payments may invest his or her account balance as provided in 5 CFR part 1601.

§ 1650.10 Annuities.

(a) A participant can withdraw his or her entire account balance in the form of a life annuity. The participant's account balance must be $3,500 or more in order for the TSP to purchase an annuity. If a participant chooses this method, the TSP will be sent forms asking him or her to choose an annuity method, name a beneficiary (if required), and provide any necessary spousal waiver or spousal information. Upon receipt of the required information, the TSP will purchase the annuity from the TSP's annuity vendor using the participant's entire account balance, except for any amount necessary to satisfy minimum distribution requirements. The first annuity payment will be made approximately 30 calendar days after the purchase of the annuity. The annuity will provide a payment for life to the participant and, if applicable, the participant's survivor, in accordance with the type of annuity chosen.

(b) The following types of annuities are available to participants:

(1) A single life annuity with level payments. This annuity is based upon the life expentancy of the participant at the time of purchase and provides monthly payments to the participant as long as the participant lives.

(2) A joint life annuity for the participant and his or her spouse with level payments. This annuity is based upon the combined life expectancies of the participant and the spouse and provides monthly payments to the participant, as long as both the participant and spouse are alive, and monthly payments to the survivor, as long as he or she is alive.

(3) Either a single life or joint life annuity (as described in paragraph (b)(1) or (b)(2) of this section) where the amount of the monthly payment can increase each year on the anniversary date of the first annuity payment. The amount of the increase is based on the average annual change in the Consumer Price Index for Urban Wage Earners and Clerical Workers as measured between the period of July through September in the second calendar year preceding the anniversary date and July through September in the calendar year preceding the anniversary date. For example, if the anniversary date of an increasing annuity occurs in November of 1995, the amount of the increase will be calculated based upon the change in the index between the July–September period in 1993 and the July–September period in 1994. Monthly payments cannot decrease, nor can they increase more than 3 percent each year. If this option is chosen in conjunction with a joint life annuity with the spouse, the annual increase continues to apply to benefits received by the survivor. (4) A joint life annuity, with level payments, for the participant and another person who either is a former spouse or has an insurable interest in the participant. This annuity is based upon the combined life expectancies of the participant and the other person. It provides monthly payments to the participant as long as both the participant and the joint annuitant are alive, and monthly payments to the survivor as long as he or she is alive. Increasing payments cannot be chosen for a joint annuity with a person other than the spouse.

(i) A person has an ''insurable interest'' in a participant if the person is financially dependent on the participant and could reasonably expect to derive financial benefit from the participant's continued life.

(ii) A relative (whether blood or adopted, but not by marriage) who is closer than a first cousin will be presumed to have an insurable interest in the participant.

(iii) A participant can establish that a person not described in paragraph (b)(4)(ii) of this section has an insurable interest in him or her by submitting with the annuity request an affidavit from a person other than the participant or the joint annuitant demonstrating that the designated joint annuitant has an insurable interest (as defined in paragraph (b)(4)(i) of this section) in the participant.

(c) Participants who choose a joint life annuity (with either a spouse or a person with an insurable interest) must choose either a 50 percent or a 100 percent survivor benefit. A 50 percent survivor benefit provides a monthly payment to the survivor which is 50 percent of the payment made when both the participant and the joint annuitant are alive. A 100 percent survivor benefit provides a monthly payment to the survivor which is the same amount as the payment made when both the participant and the survivor are alive. Either the 50 percent or the 100 percent survivor benefit may be combined with any joint life annuity option, except that the 100 percent survivor benefit can be combined with a joint annuity with a person other than the spouse (or a former spouse, if required by a retirement benefits court order) only if the joint annuitant is not more than 10 years younger than the participant.

(d) The following mutually exclusive features can be combined with certain types of annuities, as indicated:

(1) *Cash refund.* This feature provides that, if the participant (and joint annuitant, if applicable) dies before an amount equal to the balance used to purchase the annuity has been paid out, the difference between the balance used to purchase the annuity and the sum of monthly payments already made will be paid to the named beneficiaries. The participant (or the joint annuitant, if the participant is deceased) may name or change the beneficiaries. This feature can be combined with any other annuity option.

(2) *Ten-year certain.* This feature provides that, if the participant dies before annuity payments have been made for 10 years (120 payments), monthly payments will continue to be made to the beneficiaries selected by the participant until 120 payments have been made. This feature can be combined with any single life annuity option, but cannot be selected in conjunction with any joint life annuity option.

(e) The Board can, from time to time, establish other types of annuities, other levels of survivor benefits, and other annuity features.

(f) The Board can, from time to time, eliminate a type of annuity (except for those annuities described in paragraph (b) of this section), a survivor benefit level, or an annuity feature. However, if the Board does so, it must continue to

allow participants to purchase annuities of the eliminated type or containing the eliminated feature for 5 years after the date the decision to eliminate the annuity type or feature is announced in the **Federal Register**.

(g) Once an annuity has been purchased, the type of annuity, any annuity features, and the identity of the joint annuitant cannot be changed, and the annuity cannot be terminated.

§ 1650.11 Transfer of withdrawal payments.

(a) At the participant's request, the TSP will transfer directly to an eligible retirement plan all or part of any withdrawal that is an ''eligible rollover distribution,'' as defined in 26 U.S.C. 402(c)(4). A withdrawal method that is not an eligible rollover distribution cannot be transferred.

(b) The following TSP withdrawal methods are considered eligible rollover distributions:

(1) A single payment, as described in § 1650.8;

(2) Monthly payments, as described in § 1650.9, where payments are expected to last less than 10 years at the time they begin, according to the following rules:

(i) If the participant elects a number of monthly payments, the number of payments must be fewer than 120;

(ii) If the participant elects a monthly payment amount, the amount, when divided into the participant's account balance as of the end of the month prior to the first payment, must yield a number less than 85.

(3) A final single payment, as described in § 1650.9(c).

(c) The following withdrawal methods are not eligible rollover distributions:

(1) Any annuity purchased by the TSP.

(2) Any monthly payment that does not meet the rules set forth in paragraph (b)(2) of this section, including any monthly payment computed based on the Internal Revenue Service expected return multiple table V (see § 1650.9(a)(3)).

(3) Any minimum distribution payment or any portion of another payment which represents a minimum distribution payment.

(d) An eligible retirement plan is a plan defined in 26 U.S.C. 402(c)(8). There are three types of eligible retirement plans: an Individual Retirement Arrangement (IRA) (which can be either an individual retirement account or an individual retirement annuity), a plan qualified under 26 U.S.C. 401(a), and a plan described in 26 U.S.C. 403(a). An IRA or other eligible retirement plan must be maintained in the United States, which means one of the 50 states or the District of Columbia.

§ 1650.12 Deferred withdrawal elections.

(a) Subject to paragraph (b) of this section, a participant who separates from Government employment and elects to withdraw his or her account under one of the methods provided in §§ 1650.8, 1650.9, or 1650.10 may specify a future date (which shall be a month and year) for payment of the withdrawal.

(b) The future date chosen under this section cannot be later than March of the year following the year in which the participant becomes age 70½. If that date has already passed when the participant makes an election, the participant cannot choose a future date.

(c) If the withdrawal method chosen for future payment is a single payment or monthly payments (and the date specified for payment is more than four months in the future on the date the election form is processed), the participant will be notified before the date chosen that such payments are scheduled to begin. If the payments are eligible rollover distributions, the participant may choose to transfer all or part of the payments to an Individual Retirement Arrangement (IRA) or another eligible retirement plan.

(d) If the withdrawal method chosen for future payment is an annuity (and the date specified for payment is more than four months in the future on the date the election form is processed), the participant will be notified before the date chosen. At that time, the participant will be sent information asking him or her to choose an annuity method, name a beneficiary (if the cash refund or 10-year certain feature is chosen), and provide any necessary spousal waiver or spousal information.

§ 1650.13 Required date for making withdrawal election.

(a) A participant who separates from Government employment need not elect one of the withdrawal methods provided in §§ 1650.8, 1650.9, or 1650.10 until February 1 of the year following the latest of these dates:

(1) The date upon which the participant becomes age 65;

(2) The date that is 10 years after the effective date of the first TSP contribution made by or on behalf of the participant (but not earlier than April 1, 1987); or

(3) The date the participant separated from Government employment.

(b) A separated participant may make a withdrawal election before the date described in paragraph (a) of this section, but is not required to do so.

(c) A participant will fulfill the requirements of paragraph (a) of this section by making a deferred withdrawal election (as described in § 1650.12) by the required date, provided that the date described in § 1650.12(b) has not already occurred.

(d) If a participant does not make an election by the date required by this section, the TSP will purchase an annuity for the participant in accordance with the following rules:

(1) If a participant is covered by the Federal Employees' Retirement System (FERS) and is married on the date an election is required by this section, the TSP will purchase a joint life annuity with his or her spouse with a 50 percent survivor benefit, level payments, and no cash refund feature.

(2) If the participant is covered by the Civil Service Retirement System (CSRS) or the participant is not married on the date an election is required by this section, the TSP will purchase a single life annuity with no other features.

(3) If the participant fails to provide the TSP with adequate information to purchase one of the annuities described in either paragraph (d)(1) or (d)(2) of this section, as appropriate, by the date an election is required by this section, and such information cannot be obtained by the TSP from other sources, the participant's account will be forfeited. If the TSP is later provided with the required information, the TSP will purchase an annuity in accordance with this section, using the amount forfeited. No earnings will be credited to this amount after the date of forfeiture.

§ 1650.14 Changes and cancellation of withdrawal election.

(a) *Basic rule.* Subject to paragraphs (b) and (c) of this section and the rules relating to spouses' rights, a participant who has separated from Government employment can change his or her withdrawal election to any other withdrawal election or can cancel his or her withdrawal election if the change or cancellation can be processed before the withdrawal election is scheduled for disbursement.

(b) *Cutoff dates.* For participants who have any part of their accounts invested in the Common Stock Index Investment Fund (C Fund) or the Fixed Income Index Investment Fund (F Fund), a withdrawal payment that has been approved is scheduled on the second-to-last business day of the month preceding the month the withdrawal payment is to be made. For participants whose accounts are invested entirely in the Government Securities Investment Fund (G Fund), a withdrawal payment that has been approved is scheduled by

the close of business on the day before the mid-month processing cycle in which payments are made.

(c) *Special Rule for C and F Fund Participants.* Participants who have any part of their accounts invested in the C or F Funds may also change to another withdrawal method if the requested change can be processed before the close of business on the day before the mid-month processing cycle in which payment will be made, and provided that under the new withdrawal method the amounts they have invested in the C or F Funds will still be withdrawn as originally scheduled from those Funds during the mid-month processing cycle.

(d) *Example for participants whose accounts are invested in the C or F Funds.* This example illustrates the operation of the rules set forth in paragraphs (b) and (c) of this section for participants who have a portion of their accounts invested in the C or F Funds.

Example 1. Assume that such a participant wishes to withdraw the account by purchasing a single life annuity at the earliest possible date. The participant is married and has obtained the necessary waiver from her spouse for the purchase. All necessary forms have been submitted by the middle of April; thus, on the second-to-last business day in April, the annuity will be scheduled to be purchased in the May mid-month processing cycle. However, in late April, the participant decides that she would rather receive the account in a single payment. The participant must submit a new Form TSP–70 electing the new withdrawal method. (She does not need a new spousal waiver, since her spouse already waived his right to a survivor benefit.) In this case, the participant will be able to change to a single payment if her properly completed Form TSP–70 is received and processed by the TSP recordkeeper by the close of business on the day before the May mid-month processing cycle. If that occurs, she will receive the single payment in May, instead of having the annuity purchased then.

If, on the other hand, the participant wished to cancel her annuity purchase and leave her money in the Plan (or to change to a deferred withdrawal option), the TSP recordkeeper would have to be able to process her cancellation or change no later than the second-to-last business day in April. If that did not occur, the annuity purchase would proceed in May.

Subpart C—Procedures for Withdrawing TSP Accounts

§ 1650.15 Information to be provided by agency.

(a) *Information to be provided to the TSP.* When a TSP participant separates from Government employment, his or her employing agency must report the separation (including the date of separation) to the TSP recordkeeper. Until the TSP recordkeeper receives this information from the employing agency, it cannot process a withdrawal for the participant. A withdrawal cannot occur until at least 30 full calendar days have elapsed after the date of separation.

(b) *Information to be provided to the participant.* When a TSP participant separates from Government employment, his or her employing agency must furnish the participant with the most recent copies of the TSP withdrawal booklet, withdrawal forms, and tax notice. The employing agency is also responsible for counseling participants concerning TSP withdrawals.

§ 1650.16 Accounts of more than $3,500.

A participant whose account balance is more than $3,500 must submit a properly completed withdrawal election on Form TSP–70, Withdrawal Request, and any other form required by the TSP, in order to elect a withdrawal of his or her account balance.

§ 1650.17 Accounts of $3,500 or less.

(a) Unless he or she has already submitted a complete withdrawal election and can be scheduled for payment, a participant whose account balance is $3,500 or less as of the month end following receipt of separation information from the employing agency will be sent a notice informing him or her that the account balance will be paid directly to the participant automatically in the third mid-month cycle following the date of the notice if the account balance is still $3,500 or less on the date of payment. The notice will inform the participant that he or she can:

(1) Choose to transfer all or part of this payment to an Individual Retirement Arrangement (IRA) or other eligible retirement plan;

(2) Choose another withdrawal method (as described in subpart B of this part);

(3) Choose to have the payment made directly to him or her as soon as possible; or

(4) Choose to leave his or her money in the Plan.

(b) If the participant does not take one of the actions described in paragraph (b) of this section, payment will be made as scheduled.

(c) No spousal rights attach to any withdrawals made to a participant whose account balance is $3,500 or less.

(d) If a participant's account balance is $3,500 or less after separation but later increases to more than $3,500, this section will cease to apply to that participant.

(e) This section does not apply to accounts containing a balance of less than $5.00.

Subpart D—Spousal Rights

§ 1650.18 Spouses of FERS participants.

(a) A married participant covered by FERS whose account balance exceeds $3,500 must choose to withdraw his or her TSP account by having the TSP purchase a joint and survivor annuity with the spouse. The annuity chosen must have level payments, a 50% survivor benefit, and no cash refund. A married FERS participant may only choose another withdrawal election, a different type of annuity, or different annuity features if the spouse waives his or her right to the required annuity.

(b) A spouse can waive his or her right to the annuity required in paragraph (a) of this section only by signing Form TSP–70, Withdrawal Election, or Form TSP 11–C, Spouse Information and Waiver, in the appropriate place. Once a form containing a waiver is filed with the TSP Service Office, the spouse's waiver is irrevocable.

(c) A married participant covered by FERS whose account balance is $3,500 or less is not required to choose the annuity identified in paragraph (a) of this section and does not need to obtain a waiver from his or her spouse to make any withdrawal election.

§ 1650.19 Spouses of CSRS participants.

(a) The spouse of a married participant covered by CSRS whose account balance exceeds $3500 must be sent notice of the participant's withdrawal of his or her account balance prior to the participant's withdrawal.

(b) The TSP Service Office will send the notice required in paragraph (a) of this section by first class mail to the last address of the spouse on file. The participant is responsible for providing the TSP Service Office with the spouse's correct address.

(c) The spouse of a married participant covered by CSRS whose account balance is $3500 or less is not entitled to the notice prescribed in paragraph (a) of this section.

§ 1650.20 Spousal rights when participant changes withdrawal election.

(a) A married participant covered by FERS who has made a withdrawal election and who wants to change to another withdrawal election other than the annuity required in section 1650.17(a) must obtain a waiver from the spouse to which he or she is married on the date the new withdrawal form is signed, unless:

(1) That spouse previously signed a waiver of the required annuity in connection with another withdrawal election made by the participant; or

(2) The participant was granted an exception, under the procedures set forth in § 1650.22, to the requirement to obtain that spouse's signature for a withdrawal election made by the participant within one year of the date the form requesting the change is processed by the TSP.

(b) The spouse of a married participant covered by CSRS who has made a withdrawal election and who wants to change to another withdrawal election must be notified again prior to the withdrawal, unless the participant was granted an exception, under the procedures set forth in § 1650.21, to the spouse notice requirement within one year of the date the form requesting the change is processed by the TSP.

§ 1650.21 Executive Director's exception to requirement to notify the spouse.

(a) Wherever in the regulations in this subpart it is required that the Executive Director give notice of an action to the spouse of a participant, an exception to this requirement may be granted in cases in which the participant establishes to the satisfaction of the Executive Director that the spouse's whereabouts cannot be determined. A request for an exception based on whereabouts unknown must be submitted to the Executive Director on Form TSP–16, Exception to Spousal Requirements, accompanied by one of the following:

(1) A judicial determination (court order) which states that the spouse's whereabouts cannot be determined;

(2) A police or Governmental agency determination that is signed by the appropriate department or division head which states that the spouse's whereabouts cannot be determined; or

(3) Statements by the participant and two other persons.

(i) Each statement must be signed and dated and must state the following:

I understand that a false statement or willful misrepresentation is punishable under Federal Law (18 U.S.C. 1001) by a fine or imprisonment or both.

(ii) The participant's statement must give the full name of his or her spouse, declare the inability to locate the spouse, and state the efforts made to locate the spouse. Negative statements such as ''I have not seen or heard from him/her'' or ''I have had no contact with him/her'' are not sufficient. Examples of attempting to locate the spouse include checking with relatives and mutual friends or using telephone directories or directory assistance for the city of last known address.

(iii) The statements from two other persons must support the participant's statement that the participant does not know the whereabouts of his or her spouse.

(b) A withdrawal election received within one year of an approved exception may be processed so long as the spouse named on the form is the spouse for whom the exception has been approved.

(c) The requirements for establishing an exception for a withdrawal and the one-year period of validity of an approved exception apply to exceptions for loans under 5 CFR 1655.18.

§ 1650.22 Executive Director's exception to the requirement to obtain the spouse's signature.

(a) In this subpart, if the spouse's signature is required, the Executive Director may grant an exception to this requirement if the participant can show that:

(1) The spouse's whereabouts cannot be determined in accordance with the provisions of § 1650.21; or

(2) Due to exceptional circumstances, requiring the spouse's signature would otherwise be inappropriate.

(i) An exception to the spousal signature requirement may be granted based on exceptional circumstances only when the participant presents a judicial determination (court order) or a governmental agency determination signed by the appropriate department or division head. A court order or a determination must contain a finding or a recitation of such exceptional circumstances regarding the spouse as would warrant an exception to the signature requirement.

(ii) Exceptional circumstances is narrowly construed and includes such circumstances as when a court order:

(A) Indicates that the spouse and the participant have been maintaining separate residences with no financial relationship for three or more years;

(B) Indicates that the spouse abandoned the participant, but for religious or similarly compelling reasons, the parties chose not to divorce; or

(C) Expressly states that the participant may obtain a loan from his or her Thrift Savings Plan account or withdraw his or her Thrift Savings Plan account balance notwithstanding the absence of the spouse's signature.

(b) A withdrawal election received within one year of an approved exception may be processed so long as the spouse named on the form is the spouse for whom the exception has been approved.

(c) The requirements for establishing an exception for a withdrawal and the one-year period of validity of an approved exception apply to exceptions for loans under 5 CFR 1655.18.

[FR Doc. 95–4062 Filed 2–17–95; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR PART 1240

[AMS–FV–93–704CF]

RIN 0581–AB23

Honey Research, Promotion, and Consumer Information Order and Rules and Regulations Issued Thereunder; Termination of Order Provision and Conforming Correction of the Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes an interim final rule which terminated a provision of the Honey Research, Promotion, and Consumer Information Order (Order) and deleted conflicting and confusing language in the Rules and Regulations issued under the Order. This action is being taken to clarify and correct the Order and rules and regulations which were amended in August 1991.

EFFECTIVE DATE: March 23, 1995.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–So., Washington, DC 20090–6456; telephone (202) 720–9915.

SUPPLEMENTARY INFORMATION: These amendments are issued pursuant to the Honey Research, Promotion, and Consumer Information Act, as amended on November 28, 1990 [104 Stat. 3904, 7 U.S.C. 4601 *et seq.*], hereinafter referred to as the Act.

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

This final rule has been reviewed under Executive Order 12778, Civil Justice reform. It is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulation, 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 10 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, any provision of such order, or any

obligation imposed in connection with such order is not in accordance with law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule in the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has a principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided that a compliant is filed within 20 days after the date of entry of the ruling.

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

There are an estimated 145 handlers, 510 producer-packers, 8,300 producers, and 350 importers who are currently subject to the provisions of the Order. The majority of these persons may be classified as small agricultural producers and small agricultural service firms. Small agricultural producers are 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, which include importers, are defined as those having annual receipts of less than $5,000,000.

In accordance with the Paperwork Reduction Act (PRA) of 1980 [44 U.S.C. chapter 35], and OMB regulations [5 CFR Part 1320], the information collection and recordkeeping requirements contained in this action were submitted to the OMB and approved under OMB control numbers 0581–0093 and 0505–0001.

On November 28, 1990, the Act was amended by the Food, Agriculture, Conservation and Trade Act of 1990. One of the amendments to the Act redefined the requirements for honey that is exempted from assessments under the Act.

Prior to the Act's 1990 amendment, a producer or a producer-packer who produced or handled or produced and handled less than 6,000 pounds of honey per year or an importer who imported less than 6,000 pounds of honey per year were exempt from assessment. Such producers, producer-handlers, and importers applied to the Honey Board for a certificate of exemption which would be presented to the handler of the exemptee's honey. Reporting requirements for handlers included listing those producers claiming exemption.

Under the 1990 amendment to the Act, however, producers, producer-packers, and importers who produce or import during any year less than 6,000 pounds of honey are exempt from paying assessments only if that honey is (1) Consumed at home, (2) donated by the producer or importer to a nonprofit, government, or other entity that is determined appropriate by the Secretary, or (3) distributed directly through local retail outlets (e.g., farmers markets and roadside stands).

Since exempted honey may no longer be sold through handlers, handlers are no longer required to provide information to the Board on exempted honey. However, in the amendment to the Order and rules and regulations published as a final rule in the August 7, 1991, **Federal Register** [50 FR 37453], conforming changes to sections 1240.50 and 1240.114 which incorporated these changes to the Act were inadvertently not made. As published, these sections may be confusing and are in conflict with the amended Order and rules and regulations.

Section 13 of the Act provides that whenever the Secretary finds that any provision of any order issued under the Act obstructs or does not tend to effectuate the declared purpose of the Act, the Secretary shall terminate such provisions. Therefore, an interim final rule deleted obsolete and confusing language from paragraph (a) of section 1240.50 of the Order and from paragraph (b) of section 1240.114 of the regulations issued under the Order.

The interim final rule with request for comments was published in the **Federal Register** on May 2, 1994 (59 FR 22492). The interim final rule erroneously stated that comment were due on May 2, 1994. Therefore, the **Federal Register** printed a correction on May 10, 1994 (59 FR 24217) which stated that the comment period ended on June 1, 1994. No comments were received.

Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant material presented with regard to the termination of provisions in the Order and the rules and regulations as hereinafter set forth, it is found that these provisions no longer effectuate the declared policy of the Act. Accordingly, the interim final rule is finalized, without change, as published in the **Federal Register** (59 FR 22492, May 2, 1994).

List of Subjects in 7 CFR Part 1240

Advertising, Agricultural research, Honey, Imports, Reporting and recordkeeping requirements.

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION

Accordingly, the interim final rule amending 7 CFR part 1240, which was published at 59 FR 22492 on May 2, 1994, is adopted as a final rule without change.

Dated: February 13, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 95–4175 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 93–122–2]

Animal Export Inspection Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the ''Inspection and Handling of Livestock for Exportation'' regulations by establishing additional standards for export inspection facilities. This action requires that all export inspection facilities have running water and water drainage systems and a telephone. This action also requires facilities where horses are inspected to have walkways in front of stalls and 12 foot high ceilings in areas where horses are inspected.

We are also requiring that animals intended for export be inspected within 24 hours of embarkation and making a minor language change to the regulations for the sake of clarity.

EFFECTIVE DATE: March 23, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Najam Faizi, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services, Import-Export Animals Staff, 4700 River Road Unit 39, Riverdale, MD 20737–1231. Telephone: (301) 734–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, ''Inspection and Handling of Livestock for Exportation'' (referred to below as the regulations), prescribe conditions for exporting animals from the United

States. The regulations state, among other things, that all animals, except animals being exported to Canada or Mexico, must be exported through designated ports of embarkation.

To receive designation as a port of embarkation, a port must have export inspection facilities available for the inspection, holding, feeding, and watering of animals prior to exportation to ensure that the animals meet certain requirements specified in the regulations. To receive approval as an export inspection facility, the regulations provide that a facility must meet the specified standards in § 91.14(c) concerning materials, size, inspection implements, cleaning and disinfection, feed and water, access, testing and treatment, location, disposal of animal wastes, lighting, and office and rest room facilities.

On June 21, 1994, we published in the **Federal Register** (59 FR 31956–31957, Docket No. 93–122–1) a proposal to amend the regulations to establish additional standards in § 91.14(c) for export inspection facilities. We proposed to require that all export inspection facilities have running water and water drainage systems and a telephone. We also proposed to require that facilities where horses are inspected have walkways in front of stalls and 12 foot high ceilings in areas where horses are inspected. Finally, we proposed to require that animals intended for export be inspected within 24 hours of embarkation.

We solicited comments concerning our proposal for 60 days ending August 22, 1994. We received four comments by that date. They were from animal import/export businesses and from Animal and Plant Health Inspection Service (APHIS) veterinarians.

Three of the commenters generally supported the proposal, but requested that we require that animals intended for export be inspected closer to the time of embarkation than 24 hours. We continue to believe, however, that inspection within 24 hours of embarkation is adequate to prevent unhealthy or infected animals from leaving the United States. Further, this new requirement would not prevent APHIS veterinarians from inspecting animals closer to the time of embarkation, if they preferred.

Also, three commenters objected to the language regarding the new requirement that facilities handling horses have walkways in front of horse stalls. Specifically, commenters objected to language stating that walkways be wide enough that APHIS personnel could ''monitor and inspect animals without having to enter animal stalls.'' One commenter felt that this language implied that APHIS veterinarians carried out animal health inspections without handling animals. Another commenter stated that, although his facility has walkways in front of horse stalls, a person would be unable to see into the stalls from the walkway, as the stalls have solid doors. A third commented that we should specify a minimum width for the walkways.

By proposing the requirement regarding walkways, we had intended only to ensure that APHIS personnel would be able to inspect a dangerous or wild horse without entering that horse's stall and risking injury. We agree that our proposal implied that APHIS personnel could carry out a health inspection without handling the horse concerned. That was not our intention and, accordingly, we are revising the language regarding the walkway requirement, which we feel is still necessary.

This final rule will require that animal inspection facilities have ''walkways in front of horse stalls wide enough to allow APHIS personnel to safely remove horses from the stalls for inspection, if necessary.'' Like the original requirement proposed, this revised requirement will allow APHIS personnel to inspect horses when they are unable to enter safely into horse stalls.

Also as in the proposal, the revised requirement does not specify a minimum width for walkways. We want to permit facilities to use a variety of walkway sizes and configurations, as long as they are wide enough to allow APHIS personnel to safely remove horses from the stalls for inspection.

Finally, one of the commenters objected to several of the proposed requirements as unnecessary for the operation of an animal export facility. His objections and our responses are as follows:

Comment: The 12 foot ceiling height requirement for facilities handling horses is arbitrary. Our ceilings are 10 feet high at some points and we have never encountered any problems.

Response: We had proposed to require that ceilings be 12 feet high anywhere horses are kept. However, since horses in export facilities tend to rear up when they are being handled (especially during inspection), but usually not at other times, we will modify the ceiling height standard and require that ceilings only need to be 12 feet high in areas where horses are inspected. Again, we are making this change because we believe that horses are most likely to rear up while being inspected, and, therefore, this height requirement allows for the safe handling of horses.

Comment: Requiring animal export facilities to have storage areas for equipment accompanying animals is beyond the scope of the regulations, which are intended to facilitate the inspection of animals prior to export and to prevent the export of diseased animals.

Response: We agree that storage areas are not necessary for these purposes and, therefore, we are removing that requirement from this rule.

Comment: The language of the proposed requirement regarding drainage systems is too vague, and compliance, therefore, may be difficult.

Response: The language in this requirement is intentionally general. More specific language could limit facilities to using only certain types of drainage systems. We want to permit the use of a variety of drainage systems, so long as they meet the intent of the requirement, ''to control surface drainage into or from the facility in a manner that prevents any significant risk of livestock diseases being spread into or from the facility.''

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 601 *et seq.*, we have performed a Final Regulatory Flexibility Analysis, set forth below, regarding the economic impact of this rule on small entities.

This rule establishes additional standards for animal export inspection facilities by requiring all facilities to have adequate running water, water drainage systems, and a telephone. This action also requires facilities where horses are kept to have walkways in front of stalls and ceilings 12 feet high in areas where horses are inspected.

Except for a small number of facilities that do not have water drainage systems and one or two facilities that do not have 12 foot high ceilings, to the best of our knowledge, all of the facilities currently approved for export inspection already meet all of the other additional standards proposed here. We are only codifying, therefore, existing industry practices. We anticipate that

this action will have a negative economic impact on the few existing export inspection facilities without drainage systems or 12 foot high ceilings in inspection areas for horses.

Information was not available to us for determining the economic impact of requiring that water drainage systems be installed in facilities not already so equipped. However, we are trying to minimize any economic impact by allowing these facilities 2 years from the effective date of the final version of this rule to install water drainage systems. Allowing these facilities 2 years to install the water drainage systems will ease the economic impact of this new standard, as affected facilities will have additional time to shop for different drainage system options and will be able to spread out the costs of installation. We did not receive any comments objecting to our requiring a water drainage system.

Executive Order 12372

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

Executive Order 12778

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 91 is amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, and 618; 46 U.S.C. 466a and 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.3 [Amended]

2. In § 91.3, paragraph (a), the third sentence is amended by removing the phrase ''sound, healthy,'' and adding the word ''healthy'' in its place.

3. Section 91.14 is amended as follows:

a. Paragraph (c)(2) is amended by adding a new sentence at the end of the paragraph to read as set forth below.

b. Paragraph (c)(4) is amended by adding three new sentences at the end of the paragraph to read as set forth below.

c. Paragraph (c)(5) is amended by adding the word ''running,'' immediately following the phrase ''An ample supply of'' in the first sentence.

d. Paragraph (c)(11) is amended by adding a new sentence at the end of the paragraph to read as set forth below.

e. A new paragraph (c)(12) is added to read as set forth below.

§ 91.14 Ports of embarkation and export inspection facilities.

* * * * *

(c) * * *

(2) * * * Facilities that inspect horses must have ceilings at least 12 feet high in any areas where horses are inspected.

* * * * *

(4) * * * All facilities must have running water available to wash and disinfect the facilities. On and after March 23, 1995, facilities to be approved must have a drainage system; and, on and after March 23, 1997, every facility approved before March 23, 1995 must have a drainage system. The drainage system must control surface drainage into or from the facility in a manner that prevents any significant risk of livestock diseases being spread into or from the facility.

* * * * *

(11) * * * The facility must have a working telephone.

(12) *Walkways.* Facilities where horses are inspected must have walkways in front of horse stalls wide enough to allow APHIS personnel to safely remove horses from the stalls for inspection, if necessary.

§ 91.15 [Amended]

8. In § 91.15, paragraph (a), the phrase ''within 24 hours of embarkation'' is added immediately following the phrase ''shall be inspected''.

Done in Washington, DC, this 14th day of February 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–4177 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 92

[Docket No. 94–097–2]

Horses From Spain; Change in Disease Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of horses to remove Spain from the list of countries in which African horse sickness exists. We have determined that Spain is free of African horse sickness, and that restrictions on the importation of horses from Spain to prevent the spread of African horse sickness into the United States are no longer necessary. This action relieves unnecessary restrictions on the importation of horses from Spain.

EFFECTIVE DATE: March 8, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services, Import/Export Products, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–7834.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) state the provisions for the importation into the United States of specified animals to prevent the introduction of various animal diseases, including African horse sickness (AHS). AHS, a fatal equine viral disease, is not known to exist in the United States. Section 92.308(a)(2) of the regulations lists countries that the Animal and Plant Health Inspection Service (APHIS) considers affected with AHS, and sets forth specific requirements for horses which are imported from those countries. APHIS requires horses intended for importation from any of the countries listed, including horses that have stopped in or transited those countries, to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, NY, for at least 60 days.

On October 31, 1994, we published in the **Federal Register** (59 FR 54398–54399, Docket No. 94–097–1) a proposal to amend the regulations by removing Spain from the list of countries in § 92.308(a)(2), which APHIS considers affected with AHS.

We solicited comments concerning our proposal for 60 days ending December 30, 1994. We did not receive any comments. The facts presented in the proposed rule still provide the basis for this final rule.

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

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule relieves restrictions which require horses imported from Spain to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, NY, for at least 60 days. This rule allows horses from Spain to be shipped to and quarantined at ports designated in § 92.303, and reduces the quarantine period to an average of three days to meet the quarantine and testing requirements specified in § 92.308. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule amends the regulations in part 92 by removing Spain from the list of countries that APHIS considers affected with AHS. This action relieves unnecessary restrictions on the importation of horses from Spain. The primary impact of this rule will be on U.S. importers of horses from Spain, none of whom can be considered a small entity. These importers will no longer be required to quarantine horses from Spain for 60 days at the New York Animal Import Center in Newburgh, NY. The rule will allow horses from Spain to be shipped to and quarantined at ports designated in § 92.303, and will reduce the quarantine and testing period to an average of three days to meet quarantine requirements specified in § 92.308.

The number of horses imported from Spain each year is extremely small. In 1993, the United States imported 20,715 horses, mules, and burros, of which only nine came from Spain. Removing the requirement for a 60-day quarantine at the New York Animal Import Center in Newburgh, NY, for horses from Spain will make the importation of these horses less expensive and logistically easier. We anticipate that the number of horses imported from Spain may slightly increase. However, with the very small number of horses imported from Spain, we anticipate the overall economic impact on businesses and individuals will be minimal.

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

Executive Order 12778

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.308 [Amended]

2. In § 92.308, paragraph (a)(2) is amended by removing ''Spain,''.

Done in Washington, DC, this 14th day of February 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–4176 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–34–P

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 409

Environmental Review Procedures

AGENCY: Export-Import Bank of the United States.

ACTION: Final rule.

SUMMARY: As part of the implementation of 1992 amendments to the Charter of the Export-Import Bank (''Ex-Im Bank''), Ex-Im Bank is removing its existing environmental regulations at 12 CFR part 409.

EFFECTIVE DATE: The removal of 12 CFR part 409 is effective as of February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Popi Artavanis, Export-Import Bank of the United States, Engineering and Environment Division, 811 Vermont Ave. NW., Washington, DC 20571, tel. (202) 565–3570.

SUPPLEMENTARY INFORMATION: Section 106 of the Export Enhancement Act (12 U.S.C. 635i–5) (''Section 106'') provides that Ex-IM Bank shall establish environmental review procedures consistent with the Bank's overall mandate to maintain U.S. export competitiveness. The procedures to be issued under Section 106 are intended to inform relevant decision-makers of potential beneficial and adverse environmental effects of goods and services for which financing is requested, so that such information will be taken into account in the decision to grant or withhold financing. Section 106 also grants the Ex-Im Bank Board of Directors explicit authority to withhold financing in a particular transaction solely for environmental reasons.

Ex-Im Bank is removing the regulations at title 12, chapter IV, of the Code of Federal Regulations, part 409 (promulgated under E.O. 12114), which were issued in 1979. In place of these regulations, the Ex-Im Bank Board of Directors has approved a set of Environmental Procedures and Guidelines after informal consultations with exporters, environmental groups, and other government agencies. The new procedures and guidelines will be effective on a one-year trial basis until

February 1, 1996. These procedures and guidelines, designed to comply with the 1992 amendments to Ex-Im Bank's charter, are not subject to notice and comment requirements or to publication in the **Federal Register** pursuant to 5 U.S.C. (a)(2), 553(b)(A), and 553(d)(2). Copies may be obtained by written request from Ex-Im Bank's Engineering and Environment Division, 811 Vermont Avenue NW., Washington, DC 20571.

List of Subjects in 12 CFR Part 409

Environmental impact statements, Foreign Relations.

Accordingly, under the authority of section 106 of the Export Enhancement Act (12 U.S.C. 635i–5) 12 CFR part 409 is removed.

Dated: February 7, 1995.

Carol F. Lee,

General Counsel, Export-Import Bank of the United States.

[FR Doc. 95–3449 Filed 2–17–95; 8:45 am]

BILLING CODE 6690–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–27–AD; Amendment 39–9134; AD 95–02–15]

Airworthiness Directives; Boeing Model 747–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747–100 series airplanes, that currently requires repetitive inspections to detect cracking of the wing front spar web above engine numbers 2 and 3, and repair, if necessary. This amendment requires repetitive inspections to detect cracks in the web and cracked or broken fasteners in an area beyond that specified in the existing AD. This amendment also provides an optional terminating action for the repetitive inspections. This amendment is prompted by reports of broken fasteners and cracking of the web common to the upper and lower chords in an area outside the inspection zone specified in the existing AD. The actions specified by this AD are intended to prevent fuel leakage onto an engine and a resultant fire due to cracking or broken fasteners in the wing front spar.

DATES: Effective March 23, 1995.

The incorporation by reference of Boeing Service Bulletin 747–57A2266, dated June 6, 1991, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 4, 1992 (57 FR 10415, March 26, 1992).

The incorporation by reference of certain other publications, as listed in the regulations, is approved by the Director of the Federal Register as of March 23, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 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 Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 92–07–11, amendment 39–8207 (57 FR 10415, March 26, 1992), which is applicable to certain Boeing Model 747–100 series airplanes, was published in the **Federal Register** on August 23, 1994 (59 FR 43304). The action proposed to require repetitive detailed visual and ultrasonic inspections to detect cracks in an area beyond that specified in the existing AD; repetitive ultrasonic inspections of the fasteners in the web-to-chords, web-to-stiffeners, and web-to-rib posts to detect cracked or broken fasteners between front spar stations (FSS) 570 and 684; and oversizing the fastener holes, performing an eddy current inspection to detect cracking of the fastener holes, and replacing cracked fasteners with oversized fasteners, if necessary.

Discussion of Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Two commenters request that the initial inspection threshold specified in paragraph (b) of the proposal be extended from 1,000 to 2,000 flight cycles (after the immediately preceding inspection) to be consistent with the recommendations of Boeing Alert Service Bulletin 747–57A2266, Revision 3, dated March 31, 1994, which is referenced in the proposal as the appropriate source of service information. The FAA concurs. The FAA finds that such an extension of the inspection threshold will not adversely affect safety. Therefore, the final rule has been revised accordingly. In addition, the FAA has revised the ''grace period'' of 6 months (after the effective date of the AD), as specified in proposed paragraph (b), to 9 months in order to correspond with the recommendations of the service bulletin.

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the FAA delay issuance of this AD until the next revision of Boeing Service Bulletin 747–57A2266 is issued. (Revision 3 of that service bulletin is referenced in the proposal as the appropriate source of service information.) The commenter notes that, in accomplishing the proposed inspection/modification, many of the fastener holes required oversizing beyond the criteria described in the referenced version of service bulletin. The commenter also states that it has found several cracked rivets that had not been identified using the ultrasonic inspection technique recommended in that service bulletin. The commenter indicates that Boeing has advised that it is considering issuance of a revision to the service bulletin to address this concern.

The FAA does not concur with the commenter's request to delay issuance of the final rule. Since the issuance of the proposal, Boeing has issued Revision 4 of Boeing Service Bulletin 747–57A2266, dated November 3, 1994. This revision is essentially the same as the previous version, but specifies the locations of certain fasteners that must be inspected using ultrasonic techniques. The locations of these fasteners are in the web-to-chords, and in the top two and bottom two rows in the web-to-stiffeners and web-to-rib posts of the wing front spar. Paragraphs (b)(3) and (c)(3) of the final rule have been revised to specify this.

Revision 4 of the service bulletin also updates certain information concerning parts and materials, adds a reference to an ultrasonic testing procedure in the Nondestructive Test Manual, provides an additional inspection method for detecting cracks inside the fuel tank, and includes an additional method of removing fasteners for inspection. The final rule has been revised to cite the latest revision of the service bulletin as

an additional source of service information.

In addition, paragraphs (b)(1) and (c)(1) of the final rule have been clarified to indicate that the detailed visual inspections of the wing front spar chords, stiffeners, and rib posts between the fastener heads are to be accomplished between FSS 570 to FSS 684, as specified in Revisions 3 and 4 of the service bulletin.

The FAA points out that Revision 4 of the service bulletin does not recommend increasing the oversize limits of the fastener holes, as mentioned by the commenter. Boeing has advised the FAA that a review of this issue is currently under way. Although this review is not yet completed, preliminary results indicate that only certain holes may be oversized beyond the limits specified in Revision 4 of the service bulletin.

In addition, Boeing indicates that it has examined the cracked rivets discussed by the commenter. Four of the six rivets submitted to Boeing were not cracked. The other two rivets had small cracks that were not detectable by the proposed ultrasonic inspection method. Boeing indicates that the currently recommended ultrasonic inspection method is not sensitive enough to detect small cracks in the rivets; however, it is effective in detecting cracks that penetrate/propagate more than halfway through the rivet, which does provide a safety benefit. Boeing is currently working to refine the ultrasonic inspection method to improve the detectability of small rivet cracks.

In light of the above, the FAA finds that to delay issuance of this final rule would be inappropriate, since an unsafe condition exists and the actions required by this AD must be accomplished to ensure continued safety. Repair of fastener holes with cracks that cannot be removed by oversizing the fastener holes must be accomplished in accordance with a method approved by the FAA, as specified in paragraph (d) of the final rule. The FAA may consider additional rulemaking once the review discussed previously is completed.

Discussion of Other Changes Made to the Final Rule

The applicability statement contained in the proposal referenced airplanes listed in Revision 3 of the service bulletin. Since Revision 4 of the service bulletin contains the same effectivity listing as that specified in Revision 3, the FAA has revised the applicability statement of the final rule to specify that this AD applies to airplanes listed in Revision 4 of the service bulletin.

Paragraph (b)(1) of the final rule has been revised to clarify the FAA's intent that the purpose of the detailed visual inspection is to detect cracking.

As a result of recent communications with the ATA, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

Additionally, the FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

In addition, Boeing has included in Revision 4 of the service bulletin prices for kits necessary to accomplish the optional terminating action. Accordingly, the economic impact information, below, has been revised to reflect these costs, should an operator elect to accomplish the optional terminating action.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Impact

There are approximately 190 Model 747–100 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 95 airplanes of U.S. registry will be affected by this AD.

The inspections that are required previously by AD 92–07–11, and retained in this AD, take approximately 16 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of that inspection requirement on U.S. operators is estimated to be $91,200, or $960 per airplane, per inspection cycle.

The FAA estimates that it will take approximately 54 work hours per airplane to accomplish the required inspections of the expanded area specified in this AD, and that the average labor rate is $60 per work hour. Based on these figures, the future total cost impact of the inspection requirement of the expanded area on U.S. operators is estimated to be $307,800, or $3,240 per airplane.

Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $399,000, or $4,200 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action (fastener replacement between FSS 570 and FSS 684) that is provided by this AD action, it will take approximately 306 work hours to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts will be approximately $15,478. Based on these figures, the total cost impact of the optional terminating action will be $33,838 per airplane.

Regulatory Impact

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 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 removing amendment 39–8207 (57 FR 10415, March 26, 1992), and by adding a new airworthiness directive (AD), amendment 39–9134, to read as follows:

95–02–15 Boeing: Amendment 39–9134. Docket 94–NM–27–AD. Supersedes AD 92–07–11, Amendment 39–8207.

Applicability: Model 747–100 series airplanes; as listed in Boeing Service Bulletin 747–57A2266, Revision 4, dated November 3, 1994; 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) 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 fuel leakage onto an engine and a resultant fire, accomplish the following:

Restatement of Actions Required by AD 92–07–11, Amendment 39–8207:

(a) For airplanes listed in Boeing Service Bulletin 747–57A2266, dated June 6, 1991, on which the optional terminating action (fastener replacement) specified in the original issue, dated June 6, 1991; Revision 1, dated May 21, 1992; or Revision 2, dated June 10, 1993; of the service bulletin has not been accomplished: Perform a visual inspection and an ultrasonic inspection to detect cracks of the wing front spar web between front spar station (FSS) 636 and FSS 675 in accordance with Boeing Service Bulletin 747–57A2266, dated June 6, 1991; Revision 1, dated May 21, 1992; Revision 2, dated June 10, 1993; or Revision 3, dated March 31, 1994; or Revision 4, dated November 3, 1994; at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable. Repeat these inspections thereafter at intervals not to exceed 2,000 flight cycles until the inspections required by paragraph (b) of this AD are accomplished.

(1) For airplanes that have accumulated more than 20,000 total flight cycles as of May 4, 1992 (the effective date of AD 92–07–11, amendment 39–8207): Inspect within 6 months after May 4, 1992.

(2) For airplanes that have accumulated between 15,000 and 20,000 total flight cycles as of May 4, 1992: Inspect within 15 months after May 4, 1992.

(3) For airplanes that have accumulated less than 15,000 total flight cycles as of May 4, 1992: Inspect within 15 months after accumulating 15,000 total flight cycles.

New Actions Required by This AD

(b) For airplanes on which the terminating action (fastener replacement) specified in Boeing Service Bulletin 747–57A2266, dated June 6, 1991; Revision 1, dated May 21, 1992; or Revision 2, dated June 10, 1993; has not been accomplished: Prior to the accumulation of 13,000 total flight cycles, or within 9 months after the effective date of this AD, or within 2,000 flight cycles after the immediately preceding inspection accomplished in accordance with paragraph (a) of this AD, whichever occurs later, accomplish the inspections specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD in accordance with Boeing Service Bulletin 747–57A2266, Revision 3, dated March 31, 1994; or Revision 4, dated November 3, 1994. Repeat these inspections thereafter at intervals not to exceed 2,000 flight cycles. Accomplishment of these inspections terminates the inspections required by paragraph (a) of this AD. After the effective date of this AD, the inspections required by this paragraph shall be accomplished only in accordance with Revision 3 or 4 of the service bulletin.

(1) Perform a detailed visual inspection to detect cracking of the wing front spar chords, stiffeners, and rib posts between the fastener heads between FSS 570 and FSS 684; and

(2) Perform an ultrasonic inspection of the web under the upper and lower chord footprints to detect cracking of the wing front spar web between FSS 570 and FSS 684; and

(3) Perform an ultrasonic inspection of the fasteners in the web-to-chords, and of the fasteners in the top two and bottom two rows in the web-to-stiffeners and web-to-rib posts of the wing front spar to detect cracked or broken fasteners between FSS 570 and FSS 684.

(c) For airplanes on which the terminating action (fastener replacement) specified in Boeing Service Bulletin 747–57A2266, dated June 6, 1991; Revision 1, dated May 21, 1992; or Revision 2, dated June 10, 1993; has been accomplished: Within 18 months after accomplishing the terminating action specified in the original issue, Revision 1, or Revision 2 of the service bulletin, or within 9 months after the effective date of this AD, whichever occurs later, accomplish the inspections specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD in accordance with Boeing Service Bulletin 747–57A2266, Revision 3, dated March 31, 1994; or Revision 4, dated November 3, 1994. Repeat these inspections thereafter at intervals not to exceed 2,000 flight cycles. After the effective date of this AD, the inspections required by this paragraph shall be accomplished only in accordance with Revision 3 or 4 of the service bulletin.

(1) Perform a detailed visual inspection of the wing front spar chords, stiffeners, and rib posts between the fastener heads between FSS 570 and FSS 684; and

(2) Perform an ultrasonic inspection of the web under the upper and lower chord footprints to detect cracking of the wing front spar web between FSS 570 and FSS 636 and between FSS 675 and FSS 684; and

(3) Perform an ultrasonic inspection of the fasteners in the web-to-chords, and of the fasteners in the top two rows and bottom two rows in the web-to-stiffeners and web-to-rib posts of the wing front spar to detect cracked or broken fasteners between FSS 570 and FSS 636 and between FSS 675 and 684.

(d) If any crack in the web or any cracked or broken fastener is found during any inspection required by this AD, prior to further flight, oversize the fastener hole, perform an eddy current inspection to detect cracks in the fastener hole, and replace the fastener with an oversized fastener, in accordance with Boeing Service Bulletin 747–57A2266, Revision 3, dated March 31, 1994; or Revision 4, dated November 3, 1994. Thereafter, continue to inspect the remaining fasteners in accordance with paragraph (b) or (c) of this AD, as applicable, until the terminating action specified in paragraph (e) of this AD is accomplished. If any crack is found that cannot be removed by oversizing the fastener hole, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(e) Replacement of the fasteners in the web-to-chords and of the fasteners in the web-to-stiffeners and web-to-rib posts, as specified in Boeing Service Bulletin 747–57A2266, Revision 3, dated March 31, 1994; or Revision 4, dated November 3, 1994; with oversized fasteners on each wing spar in accordance with the service bulletin constitutes terminating action for the repetitive inspections required by paragraph (b) and (c) of this AD.

(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, Seattle ACO. 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.

(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.

(h) Certain inspections shall be done in accordance with Boeing Service Bulletin 747–57A2266, dated June 6, 1991, as indicated. The incorporation by reference of this document was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of May 4, 1992 (57 FR 10415, March 26, 1992). Other inspections and replacement actions, as indicated, shall be done in accordance with Boeing Service Bulletin 747–57A2266, Revision 1, dated May 21, 1992; Boeing Service Bulletin 747–57A2266, Revision 2, dated June 10, 1993; Boeing Service Bulletin 747–57A2266, Revision 3, dated March 31, 1994; and Boeing Service Bulletin 747–57A2266, Revision 4, dated November 3, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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.

(i) This amendment becomes effective on March 23, 1995.

Issued in Renton, Washington, on January 24, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–2173 Filed 2–17–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–01–AD; Amendment 39–9152; AD 95–02–51]

Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T95–02–51 that was sent previously to all known U.S. owners and operators of Aerospatiale Model ATR–42 and ATR–72 series airplanes by individual telegrams. Unless modifications are accomplished or alternative procedures and training are adopted, this AD prohibits operation of the airplane in certain icing conditions, and requires restrictions on the use of the autopilot in certain conditions. This AD also provides for an optional terminating action, which, if accomplished, would terminate the requirements of this AD. This amendment is prompted by an FAA determination that, during flight in freezing rain or freezing drizzle with the flaps set at the 15-degree position, a ridge of ice can form on the wing. This ridge can interrupt the airflow over the ailerons when the flaps are retracted to the zero-degree position, and can cause an aileron deflection and resultant unusual control forces. The actions specified by this AD are intended to prevent a roll upset from which the flight crew may be unable to recover.

DATES: Effective March 8, 1995, to all persons except those persons to whom it was made immediately effective by telegraphic AD T95–02–51, issued January 11, 1995, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 8, 1995.

Comments for inclusion in the Rules Docket must be received on or before April 24, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–01–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. 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: Sam Grober or Gary Lium, Aerospace Engineers, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187 or (206) 227–1112; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: On December 9, 1994, the FAA issued telegraphic airworthiness directive (AD) T94–25–51, to address an unsafe condition related to potential hazards associated with operation of Aerospatiale Model ATR–42 and ATR–72 series airplanes in icing conditions. That AD requires an operational limitation that prohibits operation of the airplane when icing conditions [as defined in the Airplane Flight Manual (AFM)] are forecast or reported. It also requires restrictions on the use of the autopilot in inadvertent icing encounters, when the airplane is operated in moderate or greater turbulence, or whenever any unusual lateral trim situation is observed.

That AD action was prompted by data obtained following an accident involving a Model ATR–72 series airplane that occurred when the airplane was enroute from Indianapolis to Chicago. The accident occurred during the initial descent for approach to Chicago. The airplane had been in a holding pattern for more than 30 minutes with flaps at the 15-degree position, and there were icing conditions and turbulence reported in the area.

Although the official cause of the accident has not been determined, preliminary information from the accident investigation indicates that, immediately after the autopilot disconnected, at an indicated airspeed of approximately 185 knots, the ailerons abruptly deflected in the right-wing-down direction, and the airplane entered an abrupt roll to the right, which was not corrected before the airplane impacted the ground.

Prior to the issuance of AD T94–25–51, ATR conducted certain wind tunnel and ground tests in Toulouse, France. Following these tests, ATR contracted with the United States Air Force to conduct a series of flight tests at Edwards Air Force Base, California. The test program was developed in conjunction with the National Transportation Safety Board (NTSB), National Aeronautics and Space Administration (NASA), United States Air Force, representatives from the FAA, and the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France.

During these tests, a Model ATR–72 series airplane flew in close formation behind an ''icing tanker,'' which is a specially modified aerial refueling airplane designed to create icing conditions by spraying supercooled water droplets on a test airplane during flight. Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) defines droplet diameters, liquid water content, temperature, and horizontal extent parameters for testing leading to approval of flight in icing conditions. Water droplet diameters specified in part 25 of the Federal Aviation Regulations (FAR) for certification of transport category airplanes, and larger droplets well outside the diameters specified in part

25 of the FAR (commonly referred to as ''freezing rain or freezing drizzle''), were sprayed onto the outer wing leading edges and other airplane surfaces to determine ice accretion characteristics of the various diameter droplets. Droplet diameters larger than those specified in part 25 of the FAR were tested because there is meteorological evidence that the accident airplane encountered such large droplets (freezing rain or freezing drizzle) prior to the accident.

Results of data from the numerous flight tests conducted have revealed the following significant findings:

1. Ice accretion characteristics of the normal diameter droplets, as specified in the FAR, were entirely satisfactory. This confirms that Model ATR–42 and ATR–72 series airplanes comply fully with performance requirements relating to the icing envelope specified in part 25 of the FAR for certification of these airplanes.

2. Additional testing was conducted with large water droplets (outside certification standards), and it was found to be possible for ice to accrete aft of the wing boot surface during a 17-minute exposure to the tanker spray when the aircraft operated in a flaps 15-degree configuration. Flight tests conducted in this configuration indicated that a spanwise ridge could disrupt the flow over the aileron when the flaps are retracted to the zero-degree position. This interruption caused an uncommanded aileron deflection and resultant unusual control forces. However, during the tests conducted, the forces required to control the aircraft were within limits specified by the FAR.

3. Exposure to freezing rain or freezing drizzle on the forward side windows of the cockpit produced ice on all or a substantial part of the forward side windows. This ice accretion on the forward side windows does not appear when the airplane is flying in the icing conditions defined in part 25 of the FAR. This characteristic ice accretion begins to form within 30 seconds of the beginning of the encounter with freezing rain or freezing drizzle. Additionally, test data indicate that the crew can observe the accumulation of ice on the forward side windows at least several minutes before a significant amount of ice accumulates on the wings.

While the cause of the accident is still under investigation, the FAA has determined that if a Model ATR–42 or ATR–72 series airplane is in flight with the flaps set at the 15-degree position during freezing rain or freezing drizzle, an unusual ridge of ice on the wing (aft of the ice protection boots) can occur. This ridge can interrupt the airflow over the ailerons when the flaps are retracted to the zero-degree position. This interruption can cause an aileron deflection and resultant unusual control forces. In actual operations, these unusual forces may result in a roll upset from which the flight crew may be unable to recover.

In an effort to break the chain of events that may lead to an aircraft roll upset, the manufacturer has developed a set of procedures to be followed if the airplane should encounter freezing rain or freezing drizzle conditions. These procedures are based on results of the tests conducted at Edwards Air Force Base. They prohibit dispatch into or operation in known or forecast freezing rain or freezing drizzle, provide the flight crew with a means to identify inadvertent encounters with freezing rain and freezing drizzle conditions, and provide procedures to take appropriate corrective action. Accomplishment of these procedures will ensure safe operation of the airplane while operating in all icing conditions, including inadvertent encounters with freezing rain or freezing drizzle.

The procedures developed by the manufacturer have been incorporated into several documents, including the following:

1. ATR–42 AFM Temporary Revision 18, dated January 10, 1995 (for Model ATR–42 series airplanes); and ATR–72 AFM Temporary Revision 14, dated January 10, 1995 (for Model ATR–72 series airplanes);

2. ATR Icing Conditions Procedures Brochure, Version 1.0;

3. ATR Technical Background Paper, Version 1.0, dated January 6, 1995; and

4. Flight Crew Operation Manual, Revision 20, dated January 11, 1995 (for Model ATR–42 series airplanes); and Flight Crew Operation Manual, Revision 12, dated January 11, 1995 (for Model ATR–72 series airplanes).

Additionally, certain modifications have been proposed by the manufacturer. The FAA finds that such modification is preferable, as a long term solution, to requiring special procedures and special training, which can be used for the short term. This is consistent with the FAA's general policy that long term continued operational safety will be better assured by design changes that will preclude the problem, rather than by long term operational limitations. Such operational limitations may not have the desired long term effect. This, coupled with a better understanding of the human factors associated with such limitations, has led the FAA to consider placing less emphasis on those limitations and more emphasis on design improvements. The optional modification specified in this AD is in consonance with these considerations.

ATR has issued Service Bulletin ATR72–27–1039, dated January 12, 1995, which describes procedures for installation of ATR Modification Number 04213 on Model ATR–72 series airplanes. The modification permits movement of the flaps above limit speed in an emergency to give crews more operational discretion. Accomplishment of the modification eliminates the multi-function computer inhibition against flap extension.

These documents form a basis for providing added information to expand the operation of Model ATR–42 and ATR–72 series airplanes beyond that defined in AD T94–25–51.

The FAA finds that these interim procedures may be permitted until June 1, 1995, at which time an FAA-approved modification must be installed. If such a modification is not installed by June 1, 1995, dispatch into or operation in known or forecast icing, freezing rain, or freezing drizzle conditions is prohibited.

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 the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued Telegraphic AD T95–02–51 to minimize the potential hazards associated with operating in icing conditions, as defined in the AFM. This AD supersedes AD T94–25–51. Unless modifications are accomplished or alternative procedures and training are adopted, this AD continues to require an operational limitation that prohibits operation of the airplane when icing conditions (as defined in the AFM) are forecast or reported; and restrictions on the use of the autopilot in inadvertent icing encounters, when the airplane is operated in moderate or greater turbulence, or whenever any unusual lateral trim situation is observed.

This AD permits, as an interim measure prior to installation of an FAA-approved modification, operation of the airplane into icing conditions, provided

that certain actions have been accomplished. Those actions include the following:

1. The FAA-approved AFM must be revised to incorporate the ATR–42 and ATR–72 AFM revisions described previously.

2. All Model ATR–42 and ATR–72 flight crew members must attend an FAA-approved training course prior to flight in known or forecast icing conditions. This training course will provide instruction in the recognition of characteristic ice accretion on the cockpit forward side windows. This course also will define the procedures designed to escape freezing rain and freezing drizzle conditions, and to minimize the hazard posed by flight in freezing rain or freezing drizzle.

3. Operators must establish an FAA-approved system to provide forecasts and reports of freezing rain and freezing drizzle at enroute altitudes along the route of flight and at all airports considered in the flight planning process.

4. Operators of Model ATR–72 series airplanes must install ATR Modification Number 04213 to eliminate the multi-function computer inhibition against flap extension.

This AD also provides for an optional terminating action, which, if accomplished, would terminate the requirements of this AD. The optional terminating action involves installing a modification that precludes the formation of hazardous ice accumulation during flight in freezing rain or freezing drizzle conditions. The modification must be approved by the FAA. Upon accomplishment of the optional terminating action, ATR Modification Number 04213 must be removed from Model ATR–72 series airplanes.

As described previously, the existing AD imposes severe restrictions on many airplanes operated in air transportation, causing significant cost to the operators, widespread disruption of passenger travel, and an undermining of public confidence in the safety of the airplane. Based on the results of recent flight tests, if certain procedures and training are accomplished, these restrictions are unnecessary to ensure an acceptable level of public safety. Therefore, the FAA has determined that it would be contrary to the public interest to continue these restrictions during the period of time that would be necessary to issue a notice to solicit public comment on this action and to issue a final rule; such notice is therefore also impracticable. This action is considered to be interim action; once the described modification has been developed, the FAA may consider further rulemaking to mandate that modification.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on January 11, 1995, to all known U.S. owners and operators of Aerospatiale Model ATR–42 and ATR–72 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

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–01–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 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:

95–02–51 Aerospatiale: Amendment 39–9152. Docket 95–NM–01–AD. Supersedes telegraphic AD T94–25–51, issued December 9, 1994.

Applicability: All Model ATR–42 and ATR–72 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To minimize the potential hazards associated with operating in icing conditions, as defined in the Airplane Flight Manual (AFM), accomplish the following:

(a) Except as provided in paragraphs (b) and (c) of this AD, within 24 hours after

receipt of telegraphic AD T94–25–51: Incorporate the following into the Limitations Section of the FAA-approved AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''(1) Operation of the airplane into forecast or reported icing conditions, as such conditions are defined in the AFM, is prohibited.

''(2) Use of the autopilot is prohibited during inadvertent flight in icing conditions, as defined in the AFM, or when the airplane is operated in moderate or greater turbulence.

''(3) If any unusual lateral trim situations are observed, such as excessive trim displacement; illumination of the message 'RETRIM ROLL R WING DN' or 'RETRIM ROLL L WING DN' on the advisory display unit (ADU); illumination of the message 'AILERON MISTRIM' on the ADU; or abnormal flight characteristics of the airplane: Disconnect the autopilot and manually fly the airplane prior to adjusting the lateral trim. The autopilot may be re-engaged following manual adjustment of the lateral trim.''

(b) Between the effective date of this AD and June 1, 1995, the limitations contained in paragraph (a) of this AD may be removed from the AFM upon accomplishment of the actions specified in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD, as applicable. Dispatch into or operation in known or forecast icing conditions, as defined in the AFM, may occur if the actions specified in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD have been accomplished previously. Except as provided by paragraph (c) of this AD, the limitation required by paragraph (a) of this AD must be reinserted in the AFM no later than June 1, 1995.

(1) ATR–42 AFM Temporary Revision 18, dated January 10, 1995; or ATR–72 AFM Temporary Revision 14, dated January 10, 1995; as applicable; shall be incorporated into the Limitations Section of the FAA-approved AFM.

(2) ATR–42 and ATR–72 flight crew members shall receive FAA-approved training, which consists of the following items.

(i) ATR Icing Procedures Brochure, Version 1.0.

Note 1: The ATR Icing Procedure Brochure specified in this paragraph also has been published as ''Version 2.0.'' That version is acceptable for compliance with this paragraph.

(ii) ATR Technical Background Paper, Version 1.0, dated January 6, 1995.

(iii) ATR–42 AFM Temporary Revision 18, dated January 10, 1995; or ATR–72 AFM Temporary Revision 14, dated January 10, 1995; as applicable.

(iv) Flight Crew Operation Manual, Revision 20, dated January 11, 1995 (for Model ATR–42 series airplanes); or Flight Crew Operation Manual, Revision 13, dated January 11, 1995 (for Model ATR–72 series airplanes); as applicable.

(3) Operators of Model ATR–42 and ATR–72 series airplanes shall establish an FAA-approved system to provide forecasts and reports of freezing rain and freezing drizzle at enroute altitudes along the route of flight and at all airports considered in the flight planning process. Training concerning the use of these icing forecasts and reports shall be accomplished in accordance with Flight Standards Information Bulletin ''ATR–42 and ATR–72 Airworthiness Directive T95–02–51 Compliance Procedures,'' dated January 11, 1995.

(4) For Model ATR–72 series airplanes only: Install ATR Modification Number 04213 in accordance with ATR Service Bulletin ATR72–27–1039, dated January 12, 1995.

(c) Installation of a modification that precludes the formation of hazardous ice accumulation during flight in freezing rain or freezing drizzle conditions constitutes terminating action for the requirements of this AD. This modification must be approved by the Manager, FAA, Transport Airplane Directorate, Standardization Branch, ANM–113. Following installation of such modification, the modification required by paragraph (b)(4) of this AD shall be removed from Model ATR–72 series airplanes.

(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. Operators shall submit their requests through an appropriate FAA Principal Operations 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) Certain actions, when accomplished in accordance with paragraph (b) of this AD, shall be done in accordance with ATR–42 AFM Temporary Revision 18, dated January 10, 1995; ATR–72 AFM Temporary Revision 14, dated January 10, 1995; ATR Icing Procedures Brochure, Version 1.0; ATR Technical Background Paper, Version 1.0, dated January 6, 1995; ATR–42 Flight Crew Operation Manual, Revision 20, dated January 11, 1995; and ATR–72 Flight Crew Operation Manual, Revision 13, dated January 11, 1995; as applicable. Training concerning the use of certain icing forecasts and reports [as specified in paragraph (b)(3) of this AD] shall be accomplished in accordance with Flight Standards Information Bulletin, ''ATR–42 and ATR–72 Airworthiness Directive T95–02–51 Compliance Procedures,'' dated January 11, 1995. Installation of ATR Modification Number 04213 [as specified in paragraph (b)(4) of this AD] shall be accomplished in accordance with ATR Service Bulletin ATR72–27–1039, dated January 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 Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. 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 March 8, 1995, to all persons except those persons to whom it was made immediately effective by telegraphic AD T95–02–51, issued January 11, 1995, which contained the requirements of this amendment.

Issued in Renton, Washington, on February 13, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4001 Filed 2–17–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–11–AD; Amendment 39–9153; AD 95–04–01]

Airworthiness Directives; Boeing Models 727, 737, and 747 Series Airplanes; McDonnell Douglas Models DC–8 and DC–9 Series Airplanes, Model MD–88 Airplanes, and Models MD–11 and MD–90–30 Series Airplanes; Lockheed Models L–1011–385–1, –385–1–14, –385–1–15, and –385–3 Series Airplanes; and Fokker Models F28 Mark 1000, 2000, 3000, 4000, and 0100 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 certain transport category airplanes equipped with Honeywell Standard Windshear Detection and Recovery Guidance System (WSS). This action requires a revision to the FAA-approved Airplane Flight Manual (AFM) to alert the flight crew of the potential for significant delays in the WSS detecting windshear when the flaps of the airplane are in transition. This amendment is prompted by a report of an accident during which an airplane encountered severe windshear during a missed approached. The actions specified in this AD are intended to ensure that the flight crew is aware that there may be significant delays in the WSS detecting windshear when the flaps of the airplane are in transition.

DATES: Effective March 8, 1995.

Comments for inclusion in the Rules Docket must be received on or before April 24, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–11–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, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–133L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5345; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: Recently, the FAA has received a report of an accident during which the flight crew executed a missed approach following an instrument landing system (ILS) approach. A McDonnell Douglas Model DC–9–31 series airplane equipped with Honeywell Standard Windshear Detection System (WSS) was involved in this accident. Investigation into the cause of this accident revealed that the airplane encountered severe windshear during the missed approach. The FAA has determined that a design feature in the windshear computer delayed detection of windshear when the airplane's flaps were in transition. This condition, if not corrected, could result in the flight crew being unaware of the potential for significant delays in the WSS detecting windshear when the flaps of the airplane are in transition.

The Honeywell WSS is also installed on certain Boeing Models 727, 737, and 747 series airplanes; McDonnell Douglas Models DC–8 and DC–9–10, –21, –41, –51, and –80 series airplanes, Model MD–88 airplanes, and Models MD–11 and MD–90–30 series airplanes; Lockheed Models L–1011–385 series airplanes; and Fokker Models F28 Mark 1000, 2000, 3000, 4000, and 0100 series airplanes. In light of this, the FAA has determined that these airplanes are also subject to this same unsafe condition.

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 ensure that the flight crew is aware that there may be significant delays in the WSS detecting windshear when the flaps of the airplane are in transition. This AD requires a revision to the FAA-approved Airplane Flight Manual (AFM) to alert the flight crew of the potential for significant delays in the WSS detecting windshear when the flaps of the airplane are in transition.

This is considered to be interim action. Once a modification is developed, approved, and available, the FAA may consider additional 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–11–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. 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:

95–04–01 Boeing, McDonnell Douglas, Lockheed, and Fokker: Amendment 39–9153. Docket 95–NM–11–AD.

Applicability: The following models and series of airplanes, certificated in any category, equipped with Honeywell Standard Windshear Detection and Recovery Guidance System (WSS):

Boeing Model 727–100 and –200 series airplanes;

Boeing Model 737–100, –200, and –300 series airplanes;

Boeing Model 747–100, –200, and –300 series airplanes;

McDonnell Douglas Model DC–8–50, –60, and –70 series airplanes;

McDonnell Douglas Model DC–9–10, –21, –30, –41, –51, and –80 series airplanes;

McDonnell Douglas Model MD–88 airplanes;
McDonnell Douglas Model MD–11 and MD–90–30 series airplanes;
Lockheed Model L–1011–385–1, –385–1–14, –385–1–15, and –385–3 series airplanes; and
Fokker Model F28 Mark 1000, 2000, 3000, 4000, and 0100 series airplanes;

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is aware of significant delays in the Windshear Detection and Recovery Guidance System (WSS) detecting windshear when the flaps of the airplane are in transition, accomplish the following:

(a) Within 14 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

''During sustained banks of greater than 15 degrees or during flap configuration changes, the Honeywell Windshear Detection and Recovery Guidance System (WSS) is desensitized and alerts resulting from encountering windshear conditions will be delayed.''

(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, Los Angles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

(d) This amendment becomes effective on March 8, 1995.

Issued in Renton, Washington, on February 14, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4123 Filed 2–17–95; 8:45 am]

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14 CFR Part 39

[Docket No. 94–CE–12–AD; Amendment 39–9155; AD 95–04–03]

Airworthiness Directives; Beech Aircraft Corporation 33, 35, and 36 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 92–08–07, which currently requires inspecting (one-time) the wing front spar carry-through frame structure for cracks on certain Beech 33, 35, and 36 series airplanes, and repairing or reinforcing any cracked wing front spar carry-through frame structure. This action would make this one-time inspection repetitive. This action was prompted by numerous (43) reports received by the Federal Aviation Administration (FAA) of cracks found on the wing front spar carry-through frame structure of the affected airplanes. These cracks were found during the inspection required by AD 92–08–07. The actions specified by the proposed AD are intended to prevent spar carry-through frame structure failure caused by cracking, which, if not detected and corrected, could result in severe structural damage to the wing.

DATES: Effective April 7, 1995.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of March 18, 1992.

ADDRESSES: Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Beech 33, 35, and 36 series airplanes was published in the **Federal Register** on November 2, 1994 (59 FR 54847). The action proposed to supersede AD 92–08–07 with a new AD that would require repetitively inspecting the wing front spar carry-through frame structure for cracks, and repairing or reinforcing any cracked wing carry-through frame structure. The proposed action would be accomplished in accordance with Beech Service Bulletin No. 2360, dated November 1990. The only difference between the proposal and AD 92–08–07 is that the initial inspection required by the existing AD would become repetitive.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received from four different commenters.

One commenter points out that the actual AD portion of the proposal specifies no directions for what to do if there are no cracks found, whereas the preamble specifies repetitive inspections, and the AD portion specifies these repetitive inspections after cracks are repaired. The commenter feels that this may have been an oversight on the FAA's part. The FAA concurs. The intent of the proposal was to make the inspection repetitive regardless of whether cracks are found. A paragraph has been added to the AD to ensure that the inspection is repetitive if no cracks are found.

This commenter also states that those owners/operators that have already inspected the airplane as required by AD 92–08–07 (superseded by this action) should not have to inspect again until the next annual inspection. The FAA concurs that a grace period should be given for those airplane owners/operators that have already inspected as required by AD 92–08–07. In addition, AD 92–08–07 superseded AD 91–14–13, which required repetitive inspections. The Compliance section of the AD has been revised to give credit to those airplane operators that have already inspected the wing front spar carry-through frame structure as required by one of the above-referenced AD's.

Two commenters state that AD action requiring a repetitive inspection of the wing front spar carry-through frame structure is unjustified because there are only reports of cracks in this structure on 43 out of over 10,000 affected airplanes. The FAA does not concur that AD action is unjustified. AD's are not issued based on the percentage of the airplanes that have reported problems, but are issued when an unsafe condition exists in a product, and when that condition is likely to exist or develop in other products of the same type design. The FAA reviewed all information relating to the wing front spar carry-through frame structure crack reports on the affected airplanes and determined that AD action was justified and the proposed actions, when accomplished correctly, would eliminate the unsafe condition and prevent it from re-occurring. The AD is unchanged as a result of these comments.

Three of the four commenters state that inspecting the wing front spar carry-through frame structure is part of the affected airplanes' annual inspection program, and thus no AD action is

justified. The FAA concurs that a visual inspection of this structure is part of the annual inspection program. However, the airplanes referenced in the 43 cracked wing front spar carry-through frame structure reports utilize this annual inspection program. The FAA examined the information regarding these crack reports in determining that a dye penetrant inspection should be accomplished through AD action, as well as the visual inspection already required during the annual inspection. The proposal is unchanged as a result of these comments.

One commenter feels that the FAA has underestimated the financial impact the proposal would have upon U.S. operators of the affected airplanes. The commenter states that each inspection would cost each operator around $300–$400 per inspection. The FAA does not concur that it underestimated the cost impact. The FAA estimates that it will take approximately 8 workhours per airplane to accomplish the inspection, and that the average labor rate is $60 an hour. Based upon these figures, the inspection will cost $480 per airplane. Also, the FAA acknowledges the repetitive inspection cost, but has no way of determining the number of repetitive inspections an owner/operator may incur. The AD is unchanged as a result of this comment.

After careful review, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the addition of the paragraph specifying when to accomplish the repetitive inspection if no cracks were found, the revision to the Compliance section of the AD, and minor editorial corrections. The FAA has determined that the addition, revision, and minor corrections will not change the meaning of the AD or add any additional burden upon the public than was already proposed.

The FAA estimates that 11,000 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,280,000. This figure does not take into account the cost of repetitive inspections. The only difference between the cost analysis for this action and AD 92–08–07 (which would be superseded by this required action) is the cost of these repetitive inspections. The FAA has no way of determining the number of repetitive inspections an owner/operator may incur.

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 copy of the final 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, 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 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 removing AD 92–08–07, Amendment 39–8218 (57 FR 13004, April 15, 1992), and by adding a new airworthiness directive to read as follows:

95–04–03 Beech Aircraft Corporation: Amendment 39–9155; Docket No. 94–CE–12–AD. Supersedes AD 92–08–07, Amendment 39–8218.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial numbers
35–33, 35–A33, 35–B33, 35–C33, E33, F33, and G33.	CD–1 through CD–1304.
35–C33A, E33A, and F33A	CE–1 through CE–1192.
E33C and F33C	CJ–1 through CJ–179.
H35, J35, K35, M35 N35, P35, S35, V35, V35A, and V35B.	D–4866 through D–10403.
36 and A36	E–1 through E–2397.
A36TC and B36TC	EA–1 through EA–471.

Compliance: Required initially with whichever of the following is applicable, and thereafter as indicated:

- Upon the accumulation of 1,500 hours time-in-service (TIS) or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished;
- Within 500 hours TIS after the inspection required by superseded AD 92–08–07, Amendment 39–8218, or within the next 100 hours TIS after the effective date of this AD, whichever occurs later; or
- Within 500 hours TIS after the last inspection required by AD 91–14–13, Amendment 39–7054 (superseded by AD 92–08–07), or within the next 100 hours TIS, whichevoccurs later.

To prevent spar carry-through frame structure failure, which, if not detected and corrected, could result in severe structural damage to the wing, accomplish the following:

(a) Inspect the wing front spar carry-through frame (web) structure for cracks in accordance with the instructions in Beech Service Bulletin (SB) No. 2360, dated November 1990. Repair or reinforce any cracked wing front spar carry-through frame structure and reinspect as specified in the paragraphs that follow.

(b) If no cracks are found, reinspect as specified in paragraph (a) of this AD at intervals not to exceed 500 hours TIS as long as no cracks are found. When cracks are found, repair or reinforce the wing front spar carry-through frame structure and reinspect as specified in this AD.

(c) If cracks are found in the bend radius and not in the web face in the areas of the huckbolt fasteners during the inspection specified in paragraph (a) of this AD, accomplish the following at the time specified in accordance with the instructions in Beech SB No. 2360:

(1) For cracks up to 2.25 inches, accomplish one of the following, as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure bend radius is found, prior to further flight, stop drill each crack at the crack ends. Within the next 200 hours TIS and thereafter at intervals not to exceed 200 hours TIS, reinspect each crack for progression and repair accordingly. Upon the installation of the applicable P/N 36–4004 Kit, extend the repetitive inspection time to 500 hours TIS, and repair or reinforce any

cracked wing front spar carry-through frame structure as specified in this AD.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure bend radius, prior to further flight, install the applicable Beech P/N 36–4004 Kit, reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(2) For cracks between 2.25 and 4.0 inches, accomplish one of the following, as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure bend radius is found, prior to further flight, stop drill each crack at the crack ends, and within the next 100 hours TIS, install the applicable Beech P/N 36–4004 Kit. Reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure bend radius, prior to further flight, install the applicable P/N 36–4004 Kit, and reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(3) For cracks exceeding 4.0 inches, prior to further flight, install the applicable Beech P/N 36–4004 Kit, reinspect at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(d) If cracks are found in the web face in the area of the huckbolt fasteners but not in the bend radius during the inspections specified in paragraph (a) of this AD, accomplish the following at the time specified in accordance with the instructions in Beech SB No. 2360, but do not stop drill the cracks because it is possible to damage the structure behind the web face:

(1) For cracks less than 1.0 inch in length, accomplish one of the following, as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure web face is found, within the next 200 hours TIS and thereafter at intervals not to exceed 200 hours TIS, reinspect each crack for progression and repair accordingly. Upon the installation of the applicable P/N 36–4004 Kit, extend the repetitive inspection time to 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure web face, prior to further flight, install the applicable Beech P/N 36–4004 Kit, reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(2) For cracks more than 1.0 inch in length, accomplish one of the following, as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure web area is found, within the next 25 hours TIS, install the applicable Beech P/N 36–4004 Kit. Reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure bend radius, prior to further flight, install the applicable Beech P/N 36–4004 Kit, reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(3) If a crack passes through two fasteners but is less than 0.5 inches beyond either fastener, accomplish one of the following, as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure web area is found, within the next 25 hours TIS, install the applicable Beech P/N 36–4004 Kit, reinspect at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure bend radius, prior to further flight, install the applicable Beech P/N 36–4004 Kit, reinspect at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(4) If a crack passes through two fasteners but is more than 0.5 inches beyond either fastener, prior to further flight, install the applicable Beech P/N 36–4004 Kit. Reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(e) If cracks are found in both the web face in the area of the huckbolt fasteners and the bend radius during the inspections required in paragraph (a) of this AD, accomplish the following in accordance with the instructions in Beech SB No. 2360:

(1) If only one crack is found on either side of the airplane, prior to further flight, repair each crack in accordance with the criteria and instructions in paragraphs (c)(1) through (c)(3) or (d)(1) through (d)(4) of this AD, as applicable. Reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(2) If more than one crack is found on either side of the airplane, accomplish one of the following as applicable:

(i) For any crack that is 1.0 inch or more in length, prior to further flight, install the applicable Beech P/N 36–4004 Kit. Reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(ii) For any crack under 1.0 inch in length, within the next 200 hours TIS and thereafter at intervals not to exceed 200 hours TIS, reinspect each crack for progression and repair accordingly. Upon the installation of the applicable P/N 36–4004 Kit, extend the repetitive inspection time to 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(f) If a fuselage skin crack is found around the opening of the lower forward carry-through fitting, prior to further flight, obtain repair instructions from the manufacturer through the Wichita Aircraft Certification Office (ACO) at the address specified in paragraph (h) of this AD, and incorporate these instructions. Reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(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.

(h) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(i) The inspections required by this AD shall be done in accordance with No. 2360, dated November 1990. This incorporation by reference was previously 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 the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment (39–9155) supersedes AD 92–08–07, Amendment 39–8218.

(k) This amendment (39–9155) becomes effective on April 7, 1995.

Issued in Kansas City, Missouri, on February 14, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4133 Filed 2–17–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

RIN 1218–AB25

Occupational Exposure to Asbestos

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule; extension of start-up dates for compliance.

SUMMARY: OSHA is extending the start-up dates for some provisions of the asbestos standards until July 10, 1995 to give the public more time to understand the provisions and implement compliance.

DATES: These amendments take effect on February 21, 1995. For Part 1910–General Industry, for § 1910.1001, the start-up dates for compliance for paragraph (g)—methods of compliance, paragraph (h)—respiratory protection, paragraph (j)—hygiene facilities, paragraph (k)—communication of hazards, paragraph (l)—housekeeping, paragraph (m)—medical surveillance and paragraph (o)—competent persons are extended to July 10, 1995. For Part 1915—Shipyards, for § 1915.1001, the start-up dates for compliance for paragraph (d)(2)—initial monitoring, paragraph (e)—regulated area, paragraph (f)(i)—methods of compliance, paragraph (f)(2) compliance program, paragraph (g)—respiratory protection, paragraph (i)—hygiene facilities, paragraph (j)(7) employee information and training, and paragraph (l)—medical surveillance are extended to July 10, 1995. For Part 1926—Construction, for § 1926.1101, the start-up dates for compliance for paragraph (g)—methods of compliance, paragraph (h)—respiratory protection, paragraph (j)—hygiene facilities, paragraph (k)—communication of hazards, paragraph (l)—housekeeping, paragraph (m)—medical surveillance and paragraph (o)—competent person are extended to July 10, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Liblong, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: OSHA issued improved asbestos standards for general industry, construction and shipyards on August 10, 1994 at 59 FR 40964 to better protect workers from lung cancer, asbestosis and other diseases caused by asbestos exposure. The new standards took effect on October 11, 1994 and that date was the start-up date for some provisions such as the new lower exposure limit of .1 f/cc. However, various other provisions such as the new medical surveillance, respiratory protection and training provisions and the engineering control requirements had start-up dates from between January 9, 1995 and April 10, 1995.

Various members of the public have in meetings requested that OSHA grant more time for the public to study and comply with some provisions. In addition OSHA intends to publish in the hear future a correction and clarification notice and various compliance and training materials to assist in the understanding of the new standard. The American Petroleum Institute by letter dated February 3, 1995 also requested a delay in the start-up of some provisions.

After considering all these reasons together, OSHA has concluded that it is appropriate to give the public additional time to study and implement some of the provisions of the new asbestos standards which may require more time to implement. Other provisions such as the new exposure limit had a start-up date of October 11, 1995 and OSHA is not extending the start-up date of those provisions. In the interim, the provisions of the preexisting asbestos standards remain in effect for those provisions of the new standards whose start-up dates have been extended.

The provisions extended are listed above in the **DATES** section of this preamble. OSHA has concluded that July 10, 1995 is a reasonable time for employers to fully study and come into compliance with the provisions for which the start-up dates have been extended.

For simplicity and to reduce possible confusion OSHA is setting a single start-up date for those provisions and eliminating the language that required compliance as soon as possible not latter than the start-up date specified. However, some provisions such as exposure monitoring where exposures are over the new limit may need to be completed prior to the implementation of engineering controls. All the provisions whose start-up dates have been extended will be enforced on July 10, 1995.

OSHA is publishing this as an amendment to the new standards so that the new start-up dates will be codified in the Code of Federal Regulations. OSHA finds that there is good cause to issue this extension without notice and public procedure because such is impractical, unnecessary or contrary to the public interest. It is necessary to issue the extension to permit employers sufficient time to come into full compliance and notice and comment would delay the issuance of the extension until past the new start-up dates. For the same reasons OSHA finds good cause for the extension of the start-up date to take immediate effect.

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

Accordingly, pursuant to sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1979 (29 U.S.C. 653, 655, 657); Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act, 40 U.S.C. 333); Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); 5. U.S.C. Sec. 553; and 29 CFR Part 1911; 29 CFR Parts 1910, 1915 and 1926 are amended as set forth below.

List of Subjects

29 CFR Part 1910

Asbestos, Occupational safety and health.

29 CFR Part 1915

Asbestos, Longshore and harbor workers, Occupational safety and health, Vessels.

29 CFR Part 1926

Asbestos, Construction industry, Occupational safety and health.

Signed at Washington, DC this 14th day of February, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

OSHA hereby amends 29 CFR Parts 1910, 1915 and 1926 as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation of subpart Z of 29 CFR part 1910 is revised to read as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Order 12–71 (36 FR 8754), 9–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, except those substances which have exposure limits listed in Tables Z–1, Z–2 and Z–3 of 29 CAR 1910.1000. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z–1, Z–2 and Z–3 also issued under 5 U.S.C. 553. Section 1910.1000, Table Z–1, Z–1 and Z–3 not

issued under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, and cotton dust listings.

Section 1910.1001 also issued under section 107 of Contract Work Hours and Safety and Standards Act, 40 U.S.C. 333 and 5 U.S.C. 553.

Section 1910.1002 not issued under 29 U.S.C. or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Section 1910.1003 through 1910.1018 also issued under 29 CFR 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1030 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Section 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

Section 1910.1450 is also issued under sec. 6(b), 8(c) and 8(g)(2), Pub. L. 91–596, 84 Stat. 1593, 1599, 1600; U.S.C. 655, 657.

2. Section 1910.1001 is amended by revising paragraph (o) to read as follows:

§ 1910.1001 Asbestos.

* * * * *

(o) *Dates*—(1) *Effetive date.* This standard shall become effective October 11, 1994.

(2) The provisions of 29 CFR 1910.1001 remain in effect until the start-up dates of the equivalent provisions of this standard.

(3) Start-up dates. All obligations of this standard commence on the effective date except as follows:

(i) *Exposure monitoring.* Initial monitoring required by paragraph (d)(2) of this section shall be completed by July 10, 1995.

(ii) *Regulated areas.* Regulated areas required to be established by paragraph (e) of this section as a result of initial monitoring shall be set up by July 10, 1995.

(iii) *Respiratory protection.* Respiratory protection required by paragraph (g) of this section shall be provided by July 10, 1995.

(iv) *Hygiene and lunchroom facilities.* Construction plans for change rooms, showers, lavatories, and lunchroom facilities shall be completed by July 10, 1995.

(v) *Employee information and training.* Employee information and training shall be provided by July 10, 1995.

(vi) *Medical surveillance.* Medical surveillance not previously required by paragraph (l) of this section shall be provided by July 10, 1995.

(vii) *Compliance program.* Written compliance programs required by paragraph (f)(2) of this section shall be completed and available for inspection and copying by July 10, 1995.

(viii) *Methods of compliance.* The engineering and work practice controls as required by paragraph (f) shall be implemented by July 10, 1995.

* * * * *

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

3. The authority citation of 29 CFR part 1915 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); sec. 4 of the Administrative Procedure Act (5 U.S.C. 553); Secretary of Labor's Order No. 12–71 (36 FR 6754), 8–76 (41 FR 35736) or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

2. Section 1915.1001 is amended by revising paragraph (q) to read as follows:

§ 1915.1001 Asbestos.

* * * * *

(q) *Dates.* (1) This standard shall become effective October 11, 1994.

(2) The provisions of 29 CFR 1926.58 and 29 CFR 1910.1001 remain in effect until the start-up dates of the equivalent provisions of this standard.

(3) Start-up dates. All obligations of this standard commence on the effective date except as follows:

(i) Methods of compliance. The engineering and work practice controls required by paragraph (g) of this section shall be implemented by July 10, 1995.

(ii) Respiratory protection. Respiratory protection required by paragraph (h) of this section shall be provided by July 10, 1995.

(iii) Hygiene facilities and practices for employees. Hygiene facilities and practices required by paragraph (j) of this section shall be provided by July 10, 1995.

(iv) Communication of hazards. Identification, notification, labeling and sign posting, and training required by paragraph (k) of this section shall be provided by July 10, 1995.

(v) Housekeeping. Housekeeping practices and controls required by paragraph (l) of this section shall be provided by July 10, 1995.

(vi) Medical surveillance required by paragraph (m) of this section shall be provided by July 10, 1995.

(vii) The designation and training of competent persons required by paragraph (o) of this section shall be completed by July 10, 1995.

* * * * *

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

5. The authority citation of subpart Z of 29 CFR part 1926 is revised to read as follows:

Authority: Sections 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable; and 29 CFR part 1911.

Section 1926.1101 also issued under 5 U.S.C. 553.

Section 1926.1102 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Section 1926.1103 through 1926. 1118 also issued under 29 U.S.C. 653.

Section 1926.1128 also issued under 29 U.S.C. 653.

Section 1926.1145 and 1926.1147 also issued under 29 U.S.C. 653.

Section 1926.1148 also issued under 29 U.S.C. 653.

6. Section 1926.1101 is amended by revising paragraph (q) to read as follows:

§ 1926.1101 Asbestos.

* * * * *

(q) *Dates.* (1) This standard shall become effective October 11, 1994.

(2) This provision of 29 CFR 1926.58 remain in effect until the start-up dates of the equivalent provisions of this standard.

(3) *Start-up dates.* All obligations of this standard commence on the effective date except as follows:

(i) *Methods of compliance.* The engineering and work practice controls required by paragraph (g) of this section shall be implemented by July 10, 1995.

(ii) *Respiratory protection.* Respiratory protection required by paragraph (h) of this section shall be provided by July 10, 1995.

(iii) *Hygiene facilities and practices for employees.* Hygiene facilities and practices required by paragraph (j) of this section shall be provided by July 10, 1995.

(iv) *Communication of hazards.* Identification, notification, labeling and sign posting, and training required by paragraph (k) of this section shall be provided by July 10, 1995.

(v) *Housekeeping.* Housekeeping practices and controls required by paragraph (l) of this section shall be provided by July 10, 1995.

(vi) Medical surveillance required by paragraph (m) of this section shall be provided by July 10, 1995.

(vii) The designation and training of competent persons required by

paragraph (o) of this section shall be completed by July 10, 1995.

* * * * *

[FR Doc. 95–4083 Filed 2–17–95; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 254

RIN 1010–AB81

Spill-Response Plans for Offshore Facilities Including State Submerged Lands and Pipelines

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Interim final rule; delay of expiration.

SUMMARY: This document delays the expiration of the interim final rule governing spill-response plans for offshore facilities. The Federal Water Pollution Control Act as amended by the Oil Pollution Act of 1990 (OPA) requires that a spill-response plan be submitted for offshore facilities. The MMS published an interim final rule establishing requirements for spill-response plans for offshore facilities including pipelines on February 8, 1993. The rule was scheduled to expire on February 18, 1995, or when superseded by a final rule. The MMS will not have a final rule in place by February 18, 1995, and therefore will extend the termination date of the interim final rule. This rulemaking is being extended until superseded by a final rule.

EFFECTIVE DATE: The interim rule published February 8, 1993 (58 FR 7489) is extended indefinitely; it will not expire until the interim rule is superseded by a final rule.

FOR FURTHER INFORMATION CONTACT: Lawrence H. Ake, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: On February 8, 1993, MMS published an interim final rule titled ''Spill-Response Plans for Offshore Facilities Including State Submerged Lands and Pipelines'' (58 FR 7489). The interim final rule was given an effective date of February 18, 1993, and was to expire on February 18, 1995, or when superseded by a final rule. At the time of publication of the interim final rule, it was anticipated that a final rule would be in place before February 18, 1995. A final rule on this subject will not be published before the published expiration date, yet there is still a need for a rule that conveys MMS requirements for spill-response plans for offshore facilities. The interim final rule provides necessary guidance to operators for preparing and submitting spill-response plans that are required by OPA. The MMS has determined that an immediate effective date is necessary to provide continuity in the administration, review, and approval of spill-response plans.

Author

This document was prepared by Lawrence H. Ake, Engineering and Technology Division, MMS.

Rulemaking Analyses

E.O. 12866

Non significant.

Regulatory Flexibility Act

No significant impact.

Paperwork Reduction Act

OMB clearance number 1010–0057.

Takings Implication Assessment

No interference with constitutionally protected property rights.

E.O. 12778

Meets applicable standards.

National Environmental Policy Act

The Department of the Interior has determined that this action does not constitute a major federal action affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 254

Continental shelf, Environmental protection, Oil and gas development and production, Oil and gas exploration, Pipelines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: February 14, 1995.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 95–4110 Filed 2–17–95; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH29

Reductions and Discontinuances (Federal Employees' Compensation)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) adjudication regulations concerning reduction or discontinuance of VA benefits when a payee is also entitled to benefits under the Federal Employees' Compensation Act (FECA) for the same injury or death for which VA payment is being made. The intended effect of this amendment is to bring VA regulations into conformance with the statutory prohibition against concurrent receipt of VA benefits and FECA benefits for the same injury or death.

EFFECTIVE DATE: This amendment is effective February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Lorna Weston, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 8116(a) prohibits a federal employee who is receiving benefits for a work-related injury or death under FECA from receiving benefits from VA for the same injury or death.

Currently the adjudication regulations at 38 CFR 3.500(e) specify that the effective date for reduction of VA benefits based on an election of FECA benefits will be the end of the month following the month in which notice is received from the Department of Labor's Office of Workers' Compensation Programs that a VA payee has elected FECA benefits. The regulations do not prohibit concurrent payment of VA and FECA benefits. Thus, in those cases where FECA payment is authorized prior to a proper election and discontinuance of VA benefits, a potential for duplicate payment exists.

VA is amending 38 CFR 3.500(e) to provide that the effective date for reduction or discontinuance of VA benefits in cases where FECA benefits are elected for an injury or death which is the basis of VA payment will be the day preceding the date on which the FECA award became effective.

The final rule is made effective upon publication, since it makes changes merely to reflect statutory requirements.

The Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will directly affect VA beneficiaries, but will not directly affect small business. Therefore, pursuant to 5 U.S.C. 605(b), this final regulation is exempt from the

initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalogue of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: February 10, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.500, paragraph (e) is amended by removing the first sentence and adding in its place ''The day preceding the date the award of benefits under the Federal Employees' Compensation Act became effective.''; and by adding an authority citation to read as follows:

§ 3.500 General.

* * * * *

(e) * * *

(Authority: 5 U.S.C. 8116)

* * * * *

[FR Doc. 95–4165 Filed 2–17–95; 8:45 am]

BILLING CODE 8320–01–P

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38 CFR Part 3

RIN 2900–AH07

Claims Based on Exposure to Ionizing Radiation (Radiogenic Diseases)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning claims based on exposure to ionizing radiation. This amendment is necessary to implement a decision by the United States Court of Appeals for the Federal Circuit and recent legislation providing that VA's regulatory list of radiogenic diseases is no longer an exclusive list of conditions which may be considered service-connected solely on the basis of exposure to ionizing radiation. The effect of this amendment is to provide claimants who base their claims on conditions not on that regulatory list an opportunity to establish service connection by demonstrating that their conditions are radiogenic diseases.

EFFECTIVE DATE: This amendment is effective September 1, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420; telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: The Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98–542) required VA to develop regulations establishing standards and criteria for adjudicating veterans' claims for service-connected compensation for diseases arising from exposure to ionizing radiation during service. The law also required that the Secretary, after receiving the advice of the Veterans Advisory Committee on Environmental Hazards, determine which conditions could be considered service-connected on the basis of exposure to ionizing radiation and include those conditions in VA's regulations.

In September 1985 VA published 38 CFR 3.311b, since redesignated as 3.311, to implement the radiation provisions of Pub. L. 98–542. As threshold requirements for entitlement to compensation under this regulation, a veteran must have been exposed to ionizing radiation during atmospheric testing of nuclear weapons, the occupation of Hiroshima and Nagasaki during World War II, or through other activities as claimed, and must have subsequently developed a radiogenic disease within a specified time period. Conditions not specifically listed in the regulation at 3.311(b)(2) as radiogenic diseases were excluded from consideration (See § 3.311(h)). Since 1985, VA has added a number of conditions to the list of radiogenic diseases.

On September 1, 1994, the United States Court of Appeals for the Federal Circuit reversed the decision of the United States Court of Veterans Appeals in *Combee* v. *Brown,* No. 93–7107. The Federal Circuit held that Public Law 98–542 did not authorize VA to establish an exclusive list of radiogenic conditions for which a claimant might establish entitlement to direct service connection under § 3.311. On November 2, 1994, Public Law 103–446, the ''Veterans' Benefits Improvements Act of 1994, was signed into law. Section 501(b) of that law amended 38 U.S.C. 1113(b) to clarify that nothing contained in Public Law 98–542 precludes a claimant from attempting to establish direct service connection for a disability or disease based upon exposure to ionizing radiation in service.

The amendment provides that if a claimant cites or submits competent scientific or medical evidence that the claimed condition is a radiogenic disease, the claim will be considered under the provisions of § 3.311. That provision is consistent with a decision by the U.S. Court of Veterans Appeals that, where a determinative issue involves medical causation, competent medical evidence to the effect that the claim is plausible or possible is required to establish that the claim is well grounded. (See *Grottveit* v. *Brown* 5 Vet. App. 91 (1993)) The amendment also deletes 3.311(h), which set out VA's previous policy that the list of radiogenic diseases is an exclusive list, because that policy has been superseded by the Court of Appeals' decision in *Combee* and section 501(b) of Public Law 103–446.

We are making technical changes throughout § 3.311 to conform with the Court of Appeals' decision and Public Law 103–446, including a revision in § 3.311(b)(2) to define the term ''radiogenic disease'' for the purposes of this regulation as a disease which may be induced by ionizing radiation. We are also replacing all references to ''Chief Medical Director'' and ''Chief Benefits Director'' with ''Under Secretary for Health'' and ''Under Secretary for Benefits'' respectively, which are the correct statutory titles.

The amendment is effective September 1, 1994, the date of the decision by the United States Court of Appeals for the Federal Circuit in *Combee* v. *Brown,* which changed VA's legal interpretation of this issue. Making the amendment effective that date rather than the date of publication of the final rule works to the advantage of claimants who may be entitled to the effective date considerations of 38 U.S.C. 5010(g) and 38 CFR 3.3114(a) without working to the detriment of any other claimant.

It has been determined that the final rule, insofar as it relates to radiogenic diseases, constitutes an interpretive rule and restatement of statutory provisions, and, consequently, is exempt from the notice and comment provisions and the 30 day delay provisions of 5 U.S.C. 553.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5

U.S.C. 601 et seq.). Even so, this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This amendment will only directly affect VA beneficiaries and will not directly affect any small entities.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: February 10, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.311 [Amended]

2. In § 3.311 remove the words ''Chief Medical Director'' and ''Chief Benefits Director'', wherever they appear, and add in their places the words ''Under Secretary for Health'' and ''Under Secretary for Benefits'', respectively.

3. In § 3.311(a)(1), remove '', listed in paragraph (b)(2) of this section,''.

4. In § 3.311(b)(1)(ii), remove ''specified in paragraph (b)(2) of this section''.

5. In § 3.311(b)(1)(iii), remove ''(b)(4)'' and add in its place ''(b)(5)''; and remove ''(But see paragraph (h) of this section.)''.

6. In § 3.311(b)(2), the introductory paragraph is revised to read as follows:

§ 3.311 Claims based on exposure to ionizing radiation.

* * * * *

(b) *Initial review of claims.* * * *

(2) For purposes of this section the term ''radiogenic disease'' means a disease that may be induced by ionizing radiation and shall include the following:

* * * * *

7. In § 3.311(b) redesignate paragraph (b)(4) as paragraph (b)(5), and add new paragraph (b)(4) to read as follows:

§ 3.311 Claims based on exposure to ionizing radiation.

* * * * *

(b) *Initial review of claims.* * * *

(4) If a claim is based on a disease other than one of those listed in paragraphs (b)(2) or (b)(3) of this section, VA shall nevertheless consider the claim under the provisions of this section provided that the claimant has cited or submitted competent scientific or medical evidence that the claimed condition is a radiogenic disease.

* * * * *

8. In § 3.311, remove paragraph (h).

[FR Doc. 95–4166 Filed 2–17–95; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–71, RM–8134]

Radio Broadcasting Services; Wickenburg, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies the petition for reconsideration filed by Vulture Peak Restoration Group of our *Report and Order,* 59 FR 27505 (May 27, 1994) substituting Channel 231C3 for Channel 229A at Wickenburg, Arizona and modifying the license for Station KMEO(FM) to specify the higher class channel. The Commission determined that Vulture's arguments concerning interference to Television Channels 8 and 10 were speculative. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 21, 1995.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MM Docket No. 93–71, adopted February 7, 1995 and released February 10, 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 contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–4079 Filed 2–17–95; 8:45 am]

BILLING CODE 6712–01–F

Proposed Rules

Federal Register
Vol. 60, No. 34
Tuesday, February 21, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AA79

Common Crop Insurance Regulations; Sugarcane Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (''FCIC'') hereby proposes specific crop provisions for the insurance of sugarcane to be contained in an endorsement to the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured and to move the current sugarcane endorsement from 7 CFR 401.133 to the Common Crop Insurance Policy (7 CFR Part 457) for ease of use by the public and conformance among policy terms.

DATES: Written comments, data, and opinions on this proposed rule must be submitted no later than March 23, 1995 to be sure of consideration.

ADDRESSES: Written comments, data, and opinion on this proposed rule should be sent to Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, DC 20250. Hand or messenger delivery should be made to 2101 L Street NW., suite 500, Washington, DC. Written comments will be available for public inspection and copying in the Office of the Manager, 2101 L Street, NW., 5th Floor, Washington, DC, during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture (''USDA'') procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is February 1, 2000.

This rule has been determined to be ''not significant'' for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (''OMB'').

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or record keeping requirements included in this proposed rule have been approved by OMB and assigned OMB No. 0563–0016.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among various levels of government.

Under the Regulatory Flexibility Act (5 U.S.C. 605), this regulation will not have a significant impact on a substantial number of small entities. This action reduces the paperwork burden on the insured farmer and the reinsured company. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

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

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

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections (2)(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J or promulgated by the National Appeals Division must be exhausted before judicial action may be brought.

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

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR Part 457), a new section to be known as 7 CFR 457.116, Sugarcane Crop Insurance Provisions. The provisions will be effective for the 1996 and succeeding crop years.

The proposed Sugarcane Crop Insurance Provisions will replace the provisions found at 7 CFR 401.133. Upon publication of 7 CFR 457.116 as a final rule, the provisions for insuring sugarcane contained herein will supersede the current provisions contained in 7 CFR 401.133. By separate rule, FCIC will revise § 401.133 to limit its effect to the crop years prior to 1996.

This rule makes minor editorial and format changes to improve its compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing other changes in the provisions for insuring sugarcane as follows:

1. Subsection 3.(b)—Clarify the one year lag period for reporting production, e.g., 1994 crop year production must be reported to establish the production guarantee for the 1996 crop year.

2. Paragraph 11.(c)(2)—Specify that final sugar extraction records will be used rather than preliminary mill estimates when completing the final claim. This will eliminate potentially incorrect payments created by using preliminary mill estimates.

List of Subjects in 7 CFR Part 457

Crop insurance, sugarcane.

Proposed Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations, (7 CFR Part 457), effective for the 1996 and

succeeding crop years, to read as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR Part 457 is revised to read as follows:

Authority: 7 U.S.C. 1506(l)

2. 7 CFR part 457 is amended by adding § 457.116 to read as follows:

§ 457.116 Sugarcane Crop Insurance Provisions

The Sugarcane Crop Insurance Provisions for the 1996 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Sugarcane Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

(a) *Crop year*—The period from the day of planting for plant cane, or the day following harvest for stubble cane, until the end of the insurance period. The crop year is designated by the calendar year in which harvest normally begins in the county.

(b) *CFSA*—Consolidated Farm Service Agency (previously the Agricultural Stabilization and Conservation Service).

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

(d) *Harvest*—Cutting and removing the mature sugarcane from the field.

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

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

(g) *Local market price*—The price per pound for raw sugar offered by buyers in the area in which you normally market the sugarcane.

(h) *Plant cane*—(See definition of sugarcane).

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

(j) *Stubble cane*—(See definition of sugarcane).

(k) *Sugarcane*—means either:

(1) Plant cane, which grows from seed planted for the crop year; or

(2) *Stubble cane, which grows from the stubble of sugarcane that was harvested the previous crop year.*

(l) Written agreement—Designated terms of this policy may be altered by written agreement. Each agreement must be applied for by the insured in writing no later than the sales closing date and is valid for one year only. If not specifically renewed the following year, continuous insurance will be in accordance with the printed policy. All variable terms including, but not limited to, crop variety, guarantee, premium rate and price election must be contained in the written agreement. Notwithstanding the sales closing date restrictions contained herein, in specific instances a written agreement may be applied for after the sales closing date, and approved if, after physical inspection of the acreage, it is determined that the crop has the expectancy of making at least the guaranteed yield. All applications for written agreements as submitted by the insured must contain all variable terms of the contract between the company and the insured that will be in effect if the written agreement is disapproved.

2. Unit Division

Unless limited by the Special Provisions, a unit as defined in subsection 1.(tt) of the Basic Provisions (§ 457.8), may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists. Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, variety, and planting period other than as described under this section. If you do not comply fully with these provisions, we will combine all optional units which are not in compliance with these provisions into the basic unit from which they were formed. We may combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined, that portion of the premium paid for the purpose of electing optional units will be refunded to you pro rata for the units combined. All optional units must be reflected on the acreage report for each crop year.

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

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

(c) You must have records of measurement of stored or marketed production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit or the production from each unit must be kept separate until after loss adjustment under the policy is completed.

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

(1) *Optional Units by Section, Section Equivalent, or Consolidated Farm Service Agency (''CFSA'') Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified Section. In the absence of Sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to: Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands as the equivalent of Sections for unit purposes. In areas which have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernible, each optional unit must be located in a separate farm identified by a single CFSA Farm Serial Number.

(2) *Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices:* In addition to or instead of establishing optional units by Section, section equivalent or CFSA Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same Section, section equivalent or CFSA Farm Serial Number. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which your guarantee is based and may not continue into non-irrigated acreage in the same rows or planting pattern. You must plant, cultivate, fertilize, or otherwise care for the irrigated acreage in accordance with recognized good irrigated farming practices.

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

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one price election for all the sugarcane in the county insured under this policy.

(b) Instead of reporting your sugarcane production for the previous crop year as required by subsection 3.(c) of the Basic Provisions (§ 457.8), you are required to report production for the second previous crop year, e.g., 1994 crop year production must be reported by the required date for the 1996 crop year.

4. Contract Changes

The contract change date is June 30 preceding the cancellation date (see the provisions of section 4 (Contract Changes) of the Basic Provisions (§ 457.8)).

5. Cancellation and Termination Dates

In accordance with subsection 2.(f) of the Basic Provisions (§ 457.8), the cancellation and termination dates are September 30.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the sugarcane in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That is grown for processing for sugar or for seed; and

(c) That is not interplanted with another crop, unless a written agreement allows otherwise.

7. Insurable Acreage

Paragraph 9.(a)(3) of the Basic Provisions (§ 457.8) is not applicable to the Sugarcane Crop Provisions.

8. Insurance Period

(a) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), insurance attaches:

(1) At the time of planting for plant cane unless we agree in writing to a later date;

(2) On the first day following harvest of the previous crop for stubble cane except as set out in paragraph 8.(a)(3);

(3) On the later of April 15 or 30 days following harvest of the previous crop for stubble cane:

(i) Damaged during the previous crop year in all states; and

(ii) In Louisiana, after the second crop year.

(b) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8) the calendar date for the end of the insurance period is:

(1) January 31 in Louisiana; and

(2) April 30 in all other states.

9. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss which occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

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

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

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) If applicable, failure of the irrigation water supply due to an unavoidable cause of loss occurring within the insurance period.

10. Duties in the Event of Damage or Loss or Cutting the Sugarcane for Seed

(a) In addition to your duties under section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), in the event of damage or loss:

(1) All sugarcane stubble must remain intact for our inspection; and

(2) You must give us notice at least 15 days before you begin cutting any sugarcane for seed. Your notice must include the unit number and the number of acres you intend to harvest as seed. After we receive such notice we will appraise the sugarcane for its sugar potential. If you do not give us notice, the production to count will be the per acre production guarantee for such acreage.

(b) In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), if you initially discover damage to any insured crop within 15 days of, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. The stubble must not be destroyed and the required samples must not be harvested until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

11. Settlement of Claim

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

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

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

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

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

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

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

(4) Multiplying this result by your share.

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

(1) All appraised production as follows:

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

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes;

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

(E) On which the sugarcane stubble is destroyed within 15 days after harvest without our consent;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production;

(iv) The difference between the production guarantee and the appraised production for acreage which has an inadequate stand. An appraisal for an inadequate stand will be made if the product of the number of stalks per acre multiplied by 2 and further multiplied by the percentage of sugar contained in the Special Provisions for this purpose does not equal the per-acre production guarantee; and

(v) Potential production on insured acreage you want to put to another use or you wish to abandon and no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

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

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from insurable acreage. Final records of sugar production will be used to determine the amount of production to count. Preliminary mill estimates will not be used.

(d) Harvested sugarcane may be adjusted for quality if it is damaged by freeze within the insurance period and cannot be processed for sugar by the boiling house operation. The amount of production to count for such sugarcane will be determined by dividing the dollar value of the damaged production by the local market price per pound for raw sugar. The prices used for this adjustment will be determined on the earlier of the date such quality-adjusted production is sold or the date of final inspection for the unit.

Done in Washington, D.C., on February 10, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–4092 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–08–P

Animal and Plant Health Inspection Service

9 CFR Parts 50, 77, and 92

[Docket No. 93–014–3]

Cattle From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule that would have required certain steers and spayed heifers imported into the United States from Mexico to be sent to a quarantined pasture or feedlot for finish feeding, or to a holding facility for quarantine and a 60-day post-entry tuberculin test. The proposed rule would also have denied claims for indemnity for Mexican-origin steers or spayed heifers that were positive to the 60-day post-entry tuberculin test, and would have denied claims for indemnity for cattle that were exposed to such animals. We are taking this action after considering the comments we received following the publication of the proposed rule.

DATES: The proposed rule is withdrawn February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph S. VanTiem, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services,

Cattle Diseases and Surveillance Staff, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–8715.

SUPPLEMENTARY INFORMATION:

Background

On May 9, 1994, we published in the **Federal Register** (59 FR 23810–23817, Docket No. 93–014–1) a proposed rule to amend the regulations in 9 CFR parts 50, 77, and 92 to require certain steers and spayed heifers imported into the United States from Mexico to be sent to a quarantined pasture or feedlot for finish feeding, or to holding facility for quarantine and a 60-day postentry tuberculin test. The proposed rule also contained provisions to deny claims for indemnity for Mexican-origin steers or spayed heifers that tested positive to the 60-day post entry tuberculin test, and to deny claims for indemnity for cattle that were exposed to such animals.

We initially solicited comments on the proposed rule for 60 days ending on July 8, 1994. We received several requests for an extension of the comment period to allow interested parties additional time to prepare comments on the proposal. In response to those requests, we published a notice in the **Federal Register** on July 18, 1994 (59 FR 36374, Docket No. 93–014–2) that reopened and extended the comment period for the proposed rule until September 16, 1994.

By the close of the extended comment period, we had received a total of 165 comments. The comments were submitted by representatives of the Mexican Government, animal rights organizations, private citizens, dairies and dairy associations, U.S. and Mexican tuberculosis eradication committees, cattle industry associations, a bank, cattle companies, feedlot operators, veterinary and animal health associations, State agriculture agencies and livestock boards, cattle importers and exporters, a farm bureau federation, government and private veterinarians, ranchers, and universities. None of the commenters supported the proposed rule as written; some offered general suggestions, while others submitted detailed recommendations for changes.

The majority of the commenters believed that the proposed rule would adversely affect the cattle industry and efforts to control tuberculosis in both the United States and Mexico. Many commenters believed that the proposed rule placed the burden of controlling potentially infected Mexican cattle on individual States and failed to provide any incentive to Mexican cattle producers to develop and implement a comprehensive tuberculosis control and eradication program. Other commenters also cited the potential hardship that the proposed rule would place on U.S. and Mexican cattle producers.

After considering all the comments we received, we have concluded that it is necessary to comprehensively reexamine the issues associated with the importation into the United States of cattle from Mexico. Therefore, we are withdrawing the May 9, 1994, proposed rule referenced above. The concerns and recommendations of all the commenters will be considered during the development of any new proposed regulations regarding the importation of cattle from Mexico.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111–113, 114, 114a, 114a–1, 115–117, 120, 121, 125, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 13th day of February 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–4180 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 71

[Docket No. 93–084–3]

Interstate Movement of Mexican-Origin Cattle; Certification Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule that would have amended the regulations concerning the interstate transportation of animals to require that all Mexican-origin cattle moved in interstate commerce be accompanied by a certificate on which each animal is individually identified. We are taking this action after reevaluating the proposed rule in light of the comments we received following the publication of the proposed rule.

DATES: The proposed rule is withdrawn February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. James P. Davis, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services, Cattle Diseases and Surveillance Staff, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–4923.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 1993, we published in the **Federal Register** (58 FR 59959–59962, Docket No. 93–084–1) a proposal to amend the regulations concerning the interstate transportation of animals in 9 CFR part 71 to require all Mexican-origin cattle moved in interstate commerce to be accompanied by a certificate on which each animal is individually identified. The certificate would have been issued by an Animal and Plant Health Inspection Service (APHIS) representative, State representative, or accredited veterinarian in the State from which the cattle were to be moved. We also proposed to make several nonsubstantive changes to the regulations in part 71 for the sake of clarity and accuracy.

We initially solicited comments concerning our proposal for 30 days ending December 13, 1993. We received several requests for an extension of the comment period to give interested parties additional time to prepare comments on the proposal. In response to those requests, we published in the **Federal Register** on December 22, 1993 (58 FR 67708–67709, Docket No. 93–084–2), a document reopening and extending the comment period until February 14, 1994.

We received a total of 41 comments by the close of the extended comment period. The comments were submitted by State departments of agriculture and animal health agencies, veterinarians, private citizens, cattle industry associations, cattle-oriented businesses, and a member of the U.S. House of Representatives. Eight commenters supported the proposed rule as written, while another five commenters offered some support but suggested changes. The remaining 28 commenters opposed the proposed rule.

Some of the commenters questioned the need for individual identification on a certificate, asserting that State veterinarians could be notified by other means of the arrival of Mexican-origin cattle in their States. Many commenters believed that the proposed rule would place a huge new burden on the cattle industry, bringing excessive paperwork requirements, increased labor costs, and expensive time delays. Many of the commenters also believed that APHIS had seriously underestimated the costs that would be associated with completing, handling, and filing the certificates on which the cattle would be individually identified.

We carefully considered all of the comments we received. In light of the issues raised by many of the commenters, we have concluded that additional research is necessary to determine if the proposed rule would likely impose greater logistical and financial burdens on those entities that

would be affected by its provisions than we had initially anticipated. Therefore, we are withdrawing the November 12, 1993, proposed rule referenced above. The concerns and recommendations of all the commenters will be considered during the development of any new proposed regulations that would affect the interstate movement of Mexican-origin cattle.

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 13th day of February 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–4179 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 94

[Docket No. 94–058–1]

Importation of Wild Turkey Carcasses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning imported animal products to allow wild turkey carcasses from countries where Exotic Newcastle disease is considered to exist to be brought into the United States if the head, feet, and viscera of the wild turkeys have been removed. Currently, wild turkey carcasses must be cooked before they may be imported. However, we have determined that wild turkey carcasses, once the head, feet, and viscera have been removed, may be imported into the United States without risk of introducing disease. This proposed change in the regulations would reduce restraints on hunters who wish to bring wild turkey carcasses into the United States.

DATES: Consideration will be given only to comments received on or before April 24, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–058–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Gray, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services, Import/Export Products, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals, birds, and poultry, and animal, bird, and poultry products to prevent the introduction into the United States of various diseases of livestock and poultry.

Currently, the regulations in § 94.6(c)(3), (c)(4), and (c)(5) require that carcasses, and parts or products of carcasses, of poultry, game birds, or other birds, may be imported from countries where exotic Newcastle disease (VVND) is considered to exist only under certain conditions.

VVND is considered to exist in Mexico. Hunters have requested that they be allowed to return to the United States from Mexico with fresh killed turkey. Currently, the regulations require that turkeys from Mexico and other countries where VVND is considered to exist be cooked, packed in hermetically sealed containers and cooked, or imported under a permit. However, the regulations provide that game birds (defined in § 94.0 as ''Migratory birds, including certain ducks, geese, pigeons, and doves'') may be imported without cooking or permit if they have been eviscerated, and the heads and feet have been removed. When the turkeys are cooked for later consumption, any VVND virus in the meat will be destroyed. Viscera, heads, and feet for these game birds may not be imported into the United States, since VVND may be spread by these parts. The Animal and Plant Health Inspection Service (APHIS) has determined that turkeys may also be imported without presenting any significant disease risk if the head, feet, and viscera of the turkey are removed before the carcass is presented for entry into the United States.

We propose, therefore, to add wild turkeys to the definition of game birds in § 94.0, and to allow wild turkey carcasses with heads, feet, and viscera removed to be imported from countries where VVND is considered to exist without further restriction. We also propose to amend the definition of poultry in § 94.0 to clarify that, when turkey is commercial, domestic, or pen-raised, it would be poultry under the regulations (as opposed to a wild turkey, which would be a game bird).

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule change would affect individual hunters who bring wild turkey carcasses into the United States from countries where VVND exists. This would primarily involve individuals who hunt wild turkeys in Mexico, since we are not aware of any significant interest in bringing wild turkey carcasses into the United States from other countries where VVND exists. Most hunters from the United States who hunt wild turkey in Mexico hunt the Gould turkey (a subspecies not found in the United States) or the Rio Grande turkey. It is estimated that between 50 and 100 wild turkey carcasses are brought into the United States from Mexico annually, by less than 50 U.S. hunters. There are a minimal number of small businesses that assist U.S hunters in booking Mexican guides for these turkey-hunting trips, and booking the trips is only a minor part of their business.

Currently, hunters must cook the wild turkey carcasses before bringing them into the United States from Mexico. This proposed rule would give hunters the option of not cooking the wild turkeys if they remove the head, feet, and viscera. We do not anticipate a significant increase in the number of either U.S. hunters of wild Mexican turkeys, or wild turkey carcasses imported into the United States, as a result of this proposed rule.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, and 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.0 [Amended]

2. In § 94.0, the definition for *Game birds* would be amended by adding ‘‘, and wild turkeys’’ immediately following the word ‘‘pheasants’’.

3. In § 94.0, the definition for *Poultry* would be amended by removing ‘‘turkeys,’’ immediately following ‘‘Chickens,’’ and adding ‘‘turkeys,’’ immediately following ‘‘pen-raised’’.

Done in Washington, DC, this 13th day of February 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–4178 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Issuance of Report on the NRC Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of NRC Regulatory Agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the NRC Regulatory Agenda for the period covering July through December, of 1994. This agenda provides the public with information about NRC’s rulemaking activities. The NRC Regulatory Agenda is a compilation of all rules on which the NRC has recently completed action, or has proposed action, or is considering action, and of all petitions for rulemaking that the NRC has received that are pending disposition. Issuance of this publication is consistent with Section 610 of the Regulatory Flexibility Act.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda (NUREG–0936), Vol. 13, No. 3, is available for inspection, and copying for a fee, at the Nuclear Regulatory Commission’s Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

In addition, the U.S. Government Printing Office (GPO) sells the NRC Regulatory Agenda. To purchase it, a customer may call (202) 512–2249 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 415–7163, toll-free number (800) 368–5642.

Dated at Rockville, Maryland, this 1st day of February 1995.

For the Nuclear Regulation Commission.

Michael T. Lesar,

Acting Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 95–4168 Filed 2–17–95; 8:45 am]

BILLING CODE 7590–01–M

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10 CFR Part 50

RIN 3150–AF00

Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations to provide a performance-based option for leakage rate testing of containments of light-water-cooled nuclear power plants. This option will be available for voluntary adoption by licensees, in lieu of compliance with the current prescriptive requirements contained in the current regulation. This action is aimed at improving the focus of the regulations by eliminating prescriptive requirements that are marginal to safety. The proposed rule would allow test intervals to be based on system and component performance, and provide licensees greater flexibility for cost-effective implementation methods of regulatory safety objectives.

DATES: Submit comments by May 8, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: Parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystems can then be accessed by selecting the ‘‘Rules Menu’’ option from the ‘‘NRC Main Menu.’’ For further information about options available for NRC at FedWorld consult the ‘‘Help/Information Center’’ from the ‘‘NRC Main Menu.’’ Users will find the ‘‘FedWorld Online User’s Guides’’ particularly helpful. Many NRC subsystems and databases also have a ‘‘Help/Information Center’’ option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS: 703–321–8020; Telnet via Internet: fedworld.gov (192.239.93.3); File Transfer Protocol (FTP) via Internet: ftp.fedworld.gov (192.239.92.205); and World Wide Web using: http://

www.fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the toll free number to contact FedWorld, then the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''F—Regulatory, Government Administration and State Systems,'' then selecting ''A—Regulatory Information Mall''. At that point, a menu will be displayed that has an option ''A—U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. You can also go directly to the NRC Online area by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, then you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, then you will have full access to all NRC systems, but you will not have access to the main FedWorld system. For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Examine comments received, the draft environmental assessment and findings of no significant impact, and the draft regulatory analysis at: The NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC; the PDR's mailing address is Mail Stop LL–6, Washington, DC 20555; phone (202) 634–3273; fax (202) 634–3343. Copies of the documents may be obtained from the PDR for a fee. These documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking.

The NRC also requests public comment on Draft NUREG–1493, ''Performance-Based Containment Leak Test Program.'' A free single copy of draft NUREG–1493 may be requested by written request to the U.S. Nuclear Regulatory Commission, ATTN: Distribution Section, Room P1–37, Washington, DC 20555; fax (301) 504–2260. Comments on draft NUREG–1493 may be submitted to: Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments on draft NUREG–1493 to 11545 Rockville Pike, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments on draft NUREG–1493 may be submitted electronically as indicated above under the **ADDRESSES** heading.

FOR FURTHER INFORMATION CONTACT: Dr. Moni Dey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6443, e-mail mkd@nrc.gov

SUPPLEMENTARY INFORMATION:

Background

The NRC is proposing to amend 10 CFR part 50, appendix J in an effort to relax and allow alternatives to those requirements that are prescriptive and marginal to safety and yet impose a significant regulatory burden on licensees. NRC reactor licensees are required currently to conduct periodic primary reactor containment leakage testing in accordance with 10 CFR part 50, appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors.'' Appendix J is currently prescriptive in that it specifies leak test frequencies, pretest requirements, test methods, and reporting requirements.

NRC's Marginal to Safety/Regulatory Improvement Program

In 1984, the NRC staff initiated a program to make regulatory requirements more efficient by eliminating those with marginal impact on safety. The NRC's initiative to eliminate requirements marginal to safety recognizes both the dynamic nature of the regulatory process and that the importance and safety contribution of some existing regulatory requirements may not have been accurately predicted when adopted or may have diminished with time. The availability of new technical information and methods justify a review and modification of existing requirements.

The NRC solicited comments from industry on specific regulatory requirements and associated regulatory positions that needed reevaluation. The Atomic Industrial Forum conducted a survey providing most of industry's input, published for the NRC as NUREG/CR–4330 [1], ''Review of Light Water Reactor Regulatory Requirements,'' Vol. 1, April 1986. A list of 45 candidates for potential regulatory modification were identified. The NRC's review of the list selected Appendix J as one of seven areas requiring further analysis (NUREG/CR–4330, Vols. 2 and 3, dated June 1986 and May 1987). The NRC also conducted a survey of its staff concerning their expertise in a particular area, experience in regulation, and knowledge of regulatory requirements. The NRC staff survey identified 54 candidates, a number of which were previously identified in the earlier survey. The NRC's assessment of this list also selected appendix J as a potential candidate for modification.

The NRC published in the **Federal Register**, for comment, a proposed revision to appendix J on October 29, 1986 (51 FR 39538) to update acceptance criteria and test methods based on experience in applying the existing requirements and advances in containment leak testing methods, resolve interpretive questions, and reduce the number of exemption requests. The October 29, 1986, proposed rule is being withdrawn from further consideration and a more comprehensive proposed rule that accounts for the latest technical information and regulatory framework is being proposed.

The NRC's Marginal-to-Safety initiative is part of a broader NRC initiative for regulatory improvement. Through its Program for Regulatory Improvement, the NRC has institutionalized an ongoing effort to eliminate requirements marginal to safety and to reduce regulatory burden. The NRC staff's plan in SECY–94–090, dated March 31, 1994, which satisfies the recent requirement for a periodic review of existing regulations in Executive Order 12866 of September 30, 1993, was approved by the Commission on May 18, 1994. The Regulatory Improvement Program is aimed at the fundamental principle adopted by the Commission that all regulatory burdens must be justified and that its regulatory process must be efficient. In practice, this means the elimination or modification of requirements where burdens are not commensurate with their safety significance. The activities of the Regulatory Improvement Program should result in enhanced regulatory focus in areas that are more safety significant. As a result, an overall net increase in safety is expected from the program.

The Regulatory Improvement Program will include, whenever feasible and appropriate, the consideration of performance-oriented and risk-based approaches. The program will review requirements or license conditions that are identified as a significant burden on

[1] Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013/7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

licensees. If review and analysis find that the requirements are marginal to safety, they would be eliminated or relaxed. By performance-oriented, the NRC means establishing regulatory objectives without prescribing the methods or hardware necessary to accomplish the objective, and allowing licensees the flexibility to propose cost-effective methods for implementation. By risk-based, the NRC means regulatory approaches that use probability risk analysis (PRA) as the systematic framework for developing or modifying requirements.

The present rulemaking is part of this overall effort and initiative for eliminating requirements that are marginal to safety and is guided by the policies, framework and criteria for the program.

The NRC published a notice in the **Federal Register** on February 4, 1992 (57 FR 4166), presenting its conclusion that appendix J was a candidate whose requirements may be relaxed or eliminated based on cost-benefit considerations. On the basis of NRC staff analyses of public comments on the proposal, the Commission approved and announced on November 24, 1992 (57 FR 55156) its plans to initiate rulemaking for developing a performance-oriented and risk-based regulation for containment testing requirements. On January 27, 1993, (58 FR 6196) the NRC staff published a general framework for developing performance-oriented and risk-based regulations and, at a public workshop on April 27 and 28, 1993, invited discussions of specific proposals for modifying containment testing requirements. Industry and public comments on the proposals, and other recommendations and innovative ideas raised at the public workshop, were documented in the proceedings of the workshop (NUREG/CP–0129, September 1993). Specifically, the NRC concluded that the allowable containment leakage rate utilized in containment testing may be increased and other Appendix J requirements need not be as prescriptive as the current requirements. To increase flexibility, the detailed and prescriptive technical requirements contained in appendix J regulations could be improved and replaced with performance-based requirements and supporting regulatory guides. The regulatory guides would allow alternative approaches, although compliance with current existing regulatory requirements would continue to be acceptable. The performance-based requirements would reward superior operating practices.

Performance-Based Regulatory Approach

In institutionalizing the Regulatory Improvement program and adopting a performance-based regulatory approach, the NRC has formulated the following framework for revisions to its regulations:

(1) The new performance-based regulation will be less prescriptive and allow licensees flexibility to adopt cost-effective methods for implementing the safety objectives of the original rule.

(2) The regulatory safety objectives will be derived, to the extent feasible and practical, from risk considerations with appropriate consideration of uncertainties, and will be consistent with the NRC's Safety Goals.

(3) Detailed technical methods for measuring or judging the acceptability of a licensee's performance relative to the regulatory safety objectives will be, to the extent practical, provided in industry standards and guidance documents which are endorsed in NRC regulatory guides.

(4) The new regulation will be optional for current licensees so that licensees can decide to remain in compliance with current regulations.

(5) The regulation will be supported by necessary modifications to, or development of, the full body of regulatory practice including, for example, standard review plans, inspection procedures, guides, and other regulatory documents.

(6) The new regulation will be formulated to provide incentives for innovations leading to improvements in safety through better design, construction, operating, or maintenance practices.

Current Appendix J Requirements

Appendix J to 10 CFR part 50, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors,'' became effective on March 16, 1973. The regulatory safety objective of reactor containment design is stated in 10 CFR part 50, appendix A, ''General Design Criteria for Nuclear Power Plants,'' Criterion No. 16, ''Containment Design.'' GDC Criterion 16 mandates ''an essentially leak-tight barrier against the uncontrolled release of radioactivity to the environment * * *'' for postulated accidents. Appendix J to 10 CFR part 50 implements, in part, General Design Criterion No. 16 and specifies containment leakage testing requirements, including the types of tests required. For each type of test required, Appendix J specifies how the tests should be conducted, the frequency of testing, and reporting requirements. Appendix J requires the following types of containment leak tests:

(1) Measurement of the containment integrated leak-rate (Type A tests, often referred to as ILRTs).

(2) Measurement of the leak-rate across each pressure-containing or leakage-limiting boundary for various primary reactor containment penetrations (Type B tests).

(3) Measurement of the containment isolation valves leak-rates (Type C tests).

Type B and C tests are referred to as local leak-rate tests (LLRTs).

Leak-Tightness Requirements

Compliance with 10 CFR part 50, appendix J, requirements is determined by comparing the measured containment leak-rate with the maximum allowable leak rate. Maximum allowable leak-rates are calculated in accordance with 10 CFR Part 100, ''Reactor Site Criteria,'' and are incorporated into the technical specifications. Typical allowable leak-rates are 0.1 percent of containment volume per day for pressurized water reactors (PWRs) and one volume percent per day for boiling water reactors (BWRs).

Test Frequency Requirements

Schedules for conducting containment leak-rate tests are specified in appendix J for both preoperational and periodic tests. Periodic leak-rate tests schedules are as follows:

Type A Tests. (1) After the preoperational leak-rate test, a set of three Type A tests must be performed at approximately equal intervals during each 10-year service period. The third test of each set must be conducted when the plant is shutdown for the 10-year plant in-service inspection.

(2) The performance of Type A tests must be limited to periods when the plant facility is nonoperational and secured in the shutdown condition under the administrative control and in accordance with the safety procedures defined in the license.

(3) If any periodic Type A test fails to meet the applicable acceptance criteria, the test schedule applicable to subsequent Type A tests will be reviewed and approved by the Commission. If two consecutive periodic Type A tests fail to meet the applicable acceptance criteria, a Type A test must be performed at each plant shutdown for refueling or approximately every 18 months, whichever occurs first, until two consecutive Type A tests meet the acceptance criteria, after which time the regular retest schedule may be resumed.

Type B Tests. (1) Except for airlocks, Type B tests must be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years. If opened following a Type A or B test, containment penetrations subject to Type B testing must be tested prior to returning the reactor to an operating mode requiring containment integrity. For primary reactor containment penetrations employing a continuous leakage monitoring system, Type B tests, except for tests of airlocks, may be performed every other reactor shutdown for refueling but in no case at intervals greater than 3 years.

(2) Airlocks must be tested prior to initial fuel loading and at 6-month intervals thereafter. Airlocks opened during periods when containment integrity is not required by the plant's technical specifications must be tested at the end of such periods. Airlocks opened during periods when containment integrity is required by the plant's technical specifications must be tested within 3 days after being opened. For airlock doors opened more frequently than once every 3 days, the airlock must be tested at least once every 3 days during the period of frequent openings. For airlock doors having testable seals, testing the seals fulfills the 3-day test requirement. Airlock door seal testing must not be substituted for the 6-month test of the entire airlock at not less than P_a, the calculated peak containment pressure related to the design basis accident.

Type C Tests. Type C tests must be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years.

There have been two amendments to this appendix since 1973. The first amendment published September 22, 1980 (45 FR 62789), modified the Type B penetration test requirements to conform to what had become accepted practice through the granting of exemptions. The second amendment published November 15, 1988 (53 FR 45890) incorporated the Mass Point statistical analysis technique as a permissible alternative to the Total Time and Point-to-Point techniques specified in appendix J.

European Experience

A combination of Type A tests and an on-line monitoring (OLM) capability is being actively pursued in Europe, notably in France and Belgium, and is currently being considered in Sweden. OLM is used to identify a ''normal'' containment pressurization pattern and to detect deviations from that pattern. The Belgians conduct a leak test using OLM during reactor operation after each cold shutdown longer than 15 days with the objective of detecting gross leaks. The objective of the Belgian approach to Type A testing is to reduce the frequency and duration of the tests. The Type A test is conducted at a containment pressure (P_t) not less than half of the peak pressure (0.5 P_a). It is performed once every 10 years.

In France, containment leaktightness is being continuously monitored during reactor operation in all of the French PWR plants using the SEXTEN system. It is also being evaluated by the Swedes for their PWR units. Leaks may be detected during the positive or negative pressure periods in the containment by evaluating the air mass balance in the containment. Type A tests are conducted at containment peak pressure (loss-of-coolant accident pressure) before initial plant startup, during the first refueling, and thereafter every 10 years unless a degradation in containment leak-tightness is detected. In that case, tests are conducted more frequently.

Further details of European approaches to containment testing is provided in Draft NUREG–1493.

Advance Notices for Rulemaking and Public Comments

Over time, it has become apparent that variations in plant design and operation frequently make it difficult to meet some of the requirements contained in appendix J because of its prescriptive nature. Economic and occupational exposure costs are directly related to the frequency of containment testing. Containment integrated leak rate tests (Type A) preclude any other reactor maintenance activities and thus are on the critical path for return to service from reactor outages. In addition to the costs of the tests, integrated leak tests impose the added burden of the cost of replacement power. Containment penetration leak tests (Type B and C) can be conducted during reactor shutdowns in parallel with other activities and thus tend to be less costly; however, the large number of penetrations impose a significant burden on the utilities. Additionally, risk assessments performed to date indicate that the allowable leak rate from containments can be increased, and that control of containment leakage at the current low rates is not as risk significant as previously assumed.[2] [3]

Initial NRC Proposal

In August of 1992, the Commission initiated a rulemaking to modify appendix J to make it less prescriptive and more performance-oriented. The Commission also initiated a plan to relax the allowable containment leak-rate utilized to define performance standards for containment tests. In the **Federal Register** published on January 27, 1993 (58 FR 6196), the NRC indicated the following potential modifications to appendix J of 10 CFR part 50 would be considered:

(1) Increase allowable containment leak-rates based on Safety Goals and PRA technology (i.e., define a new performance standard).

(2) Modify appendix J to be a performance-based regulation:

A Limit the revised rule to a new regulatory objective: In order to ensure the availability of the containment during postulated accidents, licensees should either:

(i) Test overall containment leakage at intervals not longer than every 10 years, and test pressure-containing or leakage-limiting boundaries and containment isolation valves on an interval based on the performance history of the equipment; or

(ii) Provide on-line (i.e., continuous) monitoring of containment isolation status.

B Remove prescriptive requirements from appendix J and preserve useful portions as guidance in a NRC regulatory guide.

C Endorse industry standards on:

(i) Guidance for calculating plant-specific allowable leak-rates based on new NRC performance standard;

(ii) Guidance on the conduct of containment tests; and

(iii) Guidance for on-line monitoring of containment isolation status.

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[2] Severe Accident Risks: An assessment for five U.S. Nuclear Power Plants, Final Summary Report.'' NUREG–1150, December 1990. Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013/7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

[3] Performance-Based Containment Leak Test Program,'' Draft NUREG–1493, January 1995. A free single copy of draft-1493 may be requested by those considering public comment by writing to the U. S. Nuclear Regulatory Commission, ATTN: Distribution Section, Room P1–37, Washington, DC 20555. A copy is also available for inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

D Continue to accept compliance with the current detailed requirements in appendix J (i.e., licensees presently in compliance with Appendix J will not need to do anything if they do not wish to change their practice).

A public workshop on the subject was held by the NRC on April 27 and 28, 1993.[4]

Public Comments and Issues

Listed below are the categories of relevant issues identified by the public, the nuclear industry, and the NRC at the public workshop and in response to earlier solicitations for comments on this rulemaking, and a summary of interests expressed. Summaries of individual comments earlier solicitations were published on November 1992 (57 FR 55156). The comments at the public workshop are documented in NUREG/CP–0129, September 1993. The comments are available for inspection in the NRC Public Document Room.

1. Is there a continuing need for this regulation?

Most commenters agree that there is a continuing need for a regulation on containment leak testing. While some commenters believe the regulation should be tightened, most commenters believe appendix J requirements should be relaxed. Industry representatives presented a wealth of data on the cost and benefits of containment leak testing.

2. Should the NRC replace appendix J to 10 CFR part 50, ''Primary Reactor Containment Leak Testing for Water-Cooled Power Reactors,'' with a non-prescriptive, performance-based rule?

One commenter believed that using conservatism that may far exceed performance-based regulations is in the public's interest. Some misallocation of resources does exist that could be corrected, although there may be varying opinions concerning where they are. One commenter believed that, from a public perception viewpoint, there would be dissatisfaction with changing to performance-based regulation. It appears to represent a streamlining or deregulation of standards. Another view held that because there is no consistent regulatory basis, there are inconsistencies in regulation. Performance-based regulations would get rid of these inconsistencies. A move to performance-based regulations would uncover marginal requirements. Performance-based requirements would depend on the functional importance of a component and might include deterministic performance standards for components. A component that did not meet the performance standard would be rejected. Another view was that the industry can use increased knowledge about reactors and regulations within the existing technology to improve the regulations and reduce risk, without relying on risk assessments. This approach might result in earlier benefits. Industry generally encouraged the NRC to proceed with its initiative to decrease the prescriptiveness of its regulations and adopt more performance-based approaches.

3. Should the NRC increase allowable containment leakage rates?

Some commenters believe that the existing appendix J requirements for allowable leakage should not be relaxed and, based on their interpretation of NUREG/CR–5747, ''Estimate of Radionuclide Releases Characteristics into Containment Under Severe Accident Conditions,'' suggests that more stringent leakage limits, not relaxation of these requirements, is appropriate. Because the current leakage rates specified in plant technical specifications are based on relatively conservative assumptions, the majority of commenters believe that a more realistic representation of loss-of-coolant accidents should be used to calculate dose to the public. These commenters believe that more realistic accident scenarios would support a relaxation in the containment leak-rate.

4. Should the NRC decrease Type A, B, and C test frequencies?

While some commenters had opinions on proper test frequencies, and most believed that test frequencies could be relaxed, overall, the technical community believed that examination of the technical data and the objectives of the test should be used to determine the appropriate test frequency. One commenter believed that both increased and decreased frequencies might be appropriate. For example, tests might be increased in frequency for valves that play a risk-significant role, and test interval or allowable leak-rate could be increased for less important components.

5. Can the new rule and its implementation yield an equivalent level of, or only have a marginal impact on, safety?

Most commenters believe that a move to performance-based regulations would uncover marginal requirements. Some believe that by conserving resources in areas where safety is not a significant issue, more resources can be devoted to more risk-significant areas with a net increase in the overall safety margin.

6. Can the regulatory/safety objective (qualitative or quantitative) be established in an objective manner to allow a common understanding between licensees and the NRC on how the performance or results will be measured or judged?

Several commenters believe that the regulatory process should integrate deterministic, risk-based, and performance-based regulation and allow for case-specific evaluation, with a goal of protecting the health and safety of the public and at the same time minimizing the cost to the licensee. Others believe that the opinions of public interest groups should also be sought in deriving safety goals/objectives. Overall, no comments were presented that would suggest that a common understanding could not be achieved on goals and performance measurements.

7. Can the regulation and implementation documents be developed in such a manner that they can be objectively and consistently inspected and enforced against?

Several commenters believe that the regulations should be performance-based and the associated guidance documents should be prescriptive so that only the guidance documents not the regulations will need to be changed as more information is gained on compliance issues. Many commenters believe that PRAs should not be the sole basis for regulatory decisions due to the uncertainty in their results; however, if the results indicate that a particular requirement has a contribution to risk significantly below the Safety Goal thresholds, the PRA information should be considered sufficient to justify elimination of the requirement as marginal to safety.

Proposed Revision

Based on several advance notices for rulemaking and significant public comment and discussion, risks and costs evaluated, and consideration of which modifications are feasible and practical at this time, the NRC proposes two phases for modifications of requirements to containment leakage testing. The first phase, for which modifications are proposed in this notice, will allow leak-rate testing intervals to be based on the performance of the containment system structures and components. The second phase will further examine the needed requirements of the containment function (i.e. structural and leak-tight integrity of containment system structures and components, and prevention of inadvertent bypass), and include consideration of the potential of on-line monitoring of containment

[4] ''Workshop on Program for Elimination of Requirements Marginal to Safety.'' NUREG/CP–0129, September 1994.

integrity to verify certain functions. Solicitation of public comments to guide this future work is included later in this notice.

The rule proposed in this notice would apply to all NRC licensees who operate light water power reactors. The proposed rule would allow licensees the option of continuing to comply with the current appendix J or to adopt the new performance-based standards.

The NRC's analyses are based upon the insight gained through the use of probability risk assessment techniques and the significant data base of practical, hands-on operating experience gained since appendix J was promulgated in 1973. This operating experience provides hard evidence of the activities necessary to conduct appendix J testing, and the costs of those activities both in monetary terms and occupational radiation exposure.

The results of the present effort documented in draft NUREG–1493, which are based on NUREG–1150, confirm previous observations of insensitivity of population risks from severe reactor accidents to containment leak-rates.

The current appendix J requirements have achieved the regulatory criteria of assuring an essentially leak-tight boundary between the power reactor system and the external environment (GDC Criterion 16). Costs associated with complying with current appendix J requirements are estimated to be $165,000 for a complete battery of Type B/C tests and $1,890,000 for Type A tests. Over the average reactor's remaining lifetime of 20 years, the present value of all remaining leak testing at a five percent discount rate is about $7 million per reactor. Estimates of the remaining industry-wide costs of implementing current appendix J requirements range from $720 to $1,080 million, approximately 75 percent of which could be averted with a performance-based rule.

The present study found that by allowing requirements with marginal effect on safety, but which impose a significant cost on licensees, to remain in effect is to essentially misallocate a portion of the NRC's and the industry's resources on activities for which there is no commensurate return in safety. The real cost then may be in a missed opportunity to focus NRC and licensee efforts to areas where the return in terms of added public safety is higher.

Specific alternatives for modifying the current appendix J were identified by the public in response to the NRC's **Federal Register** notice published on January 27, 1993 (58 FR 6196). Those whose characteristics matched the NRC's established criteria for the marginal to safety program were selected for further review.

Modifications of Initial Proposals

Allowable Leakage Rate

The NRC had initially planned to establish, by rulemaking, a risk-based allowable leak-rate commensurate with its significance to total public risk. Specific findings from draft NUREG–1493 on the allowable leakage rate include:

1. Allowable leakage can be increased approximately two orders of magnitude (100–200 fold) with marginal impact on population dose estimates from reactor accidents.
2. Calculated mean population risks are several orders of magnitude below the NRC's Safety Goals for all reactors considered, but the tail of the distribution can approach Safety Goals.
3. Increases in the allowable leak-rate is estimated to have a negligible impact on occupational exposure.

Relaxing the allowable leak-rate is estimated to reduce future industry testing costs by $50 to $110 million, a ten percent decrease in overall leak-rate testing costs.

A risk-based allowable leakage rate would be based on an evaluation, using PRA, of the sensitivity and significance of containment leakage to risk, and determining an appropriate containment leakage limit commensurate with its significance to the risk to the public and plant control room operators. However, this would entail a major change in policy and restructuring of the current licensing basis and a more complete understanding of the uncertainties associated with the threat of severe accidents to the containment, and therefore, the NRC plans to consider a modification of the performance standard (allowable leakage level) in the second phase separate from modifications of testing requirements. This modification will be part of a broader effort to further examine the risk significance of various attributes of containment performance, i.e. structural and leak-tight integrity of containment system structures and components, and inadvertent bypass.

On-Line Monitoring (OLM) Systems

Currently, there is no requirement for OLM systems which monitor the containment to detect unintentional breaches of containment integrity.

Studies discussed in draft NUREG–1493, ''Performance-Based Containment Leak Test Program,'' find that, based on operating experience, OLM would not significantly reduce the risk to the public from nuclear plant operation and, thus, cannot be justified solely on risk-based considerations. Specific findings include:

1. Continuous monitoring methods that exist appear technically capable of detecting leaks in reactor containments within 1 day to several weeks. OLM systems are in use or planned in several European countries.
2. OLM systems are only capable of detecting leaks in systems that are open to the containment atmosphere during normal operation (approximately ten percent of the mechanical penetrations).
3. The technical and administrative objectives of OLM systems and Type A tests are different.
4. OLM cannot be considered as a complete replacement for Type A tests because it cannot challenge the structural and leak-tight integrity of the containment system at elevated pressures.
5. Analysis of the history of operating experience indicates limited need for, and benefit of, OLM in the U.S.

Although OLM cannot be justified solely based on risk considerations, a plant already possessing such a system has greater assurance of achieving certain attributes of containment integrity. Therefore, OLM systems could contribute towards an overall leakage monitoring scheme. Some capability for on-line monitoring already exists as a byproduct of specific containment designs. For example, licensees with inerted BWR containments, or subatmospheric PWR containments, would readily detect gross leakages that develop during normal operation.

Given that the application of on-line monitoring is specific to containment design, and generic application cannot be justified solely on risk considerations, the NRC does not propose a requirement for OLMs. However, licensees which already have such a capability (e.g. inerted BWR containments, and subatmospheric PWR containments) are encouraged to propose plant-specific application of such a capability, including credit for any added assurance for certain attributes of containment integrity provided by such a system compared to other testing methods. The NRC will reconsider the role of OLM in the second phase of modifications in this area along with the allowable leakage rate.

Proposed Modification of Type A, B, C Test Intervals

The NRC proposes at this time, for the first phase of modifications, to define a new risk-based regulation by utilizing the performance history of components

(containment, penetrations, valves) as the means to justify an increase in the testing interval for Type A, B, and C tests. The revised regulation would require tests to be conducted on an interval based on the performance of the containment structure, penetration or valves without specifying the interval in the regulation. Currently, three Type A tests are conducted in every 10 year period. Type B (except airlocks, which are tested more frequently) and C tests are conducted on a frequency not to exceed 2 years.

The NRC proposes to base the frequency of Type A tests (ILRTs) on the historical performance of the overall containment system. Specific findings documented in draft NUREG–1493 that justify the proposal include:

1. The fraction of leakages detected only by ILRTs is small, on the order of a few percent.

2. Reducing the frequency of ILRT testing from three per 10 years to one per 10 years leads to a marginal increase in risk.

3. ILRTs also test the strength of the containment structure. No alternative to ILRTs have been identified to provide assurance that the containment structure will meet allowable leakage rates during design-basis accidents.

4. At a frequency of one test per 10 years, industry-wide occupational exposure would be reduced by 0.087 person-sievert (8.7 person-rem) per year.

Based on specific, detailed analyses of data from the North Anna and Grand Gulf plants and data from twenty-two nuclear plants (see draft NUREG–1493), performance-based alternatives to current LLRT methods are feasible with marginal impact on risk. Specific findings that justify the proposal include:

1. Type B and C tests detect a very large fraction, over 97 percent of containment leakages.

2. Of the 97%, virtually all leakages are identified by LLRTs of containment isolation valves (Type C tests).

3. Based on the detailed evaluation of the experience of a single 2-unit station, no correlation of failures with type of valve or plant service could be found.

4. For the 20 years of remaining operations, changing the Type B/C test frequency alone is estimated to reduce industry-wide occupational exposure by 0.72 person-sievert (72 person-rem) per year. If 20-year license extension is assumed, the estimate is 0.75 person-sievert (75 person-rem) per year.

Reducing the frequency of ILRTs will reduce future industry testing costs by approximately $330 to $660 million if tests are conducted once per 10 years versus the current three per ten years. These savings represent about 65 percent of the remaining costs of current appendix J requirements. Performance-based LLRT alternatives are estimated to reduce future industry testing costs by $40 million to $55 million. These savings represent about five percent of the total remaining costs of appendix J testing.

Therefore, based on the risks and costs evaluated, and other considerations discussed above, a performance-based appendix J which encompasses the following principles which differ moderately from those first described in the **Federal Register** (January 27, 1993 58 FR 6197) is proposed:

General. (1) Make appendix J less prescriptive and more performance-oriented; (2) Move details of appendix J tests to a regulatory guide as guidance; (3) Endorse approved industry guideline (NEI 94–01) on guidance on the conduct of containment tests in a regulatory guide. The methods for testing are contained in an industry standard (ANSI/ANS 56.8–1994) which is referenced in the NEI guideline; (4) Allow voluntary adoption of the new regulation, i.e., current detailed requirements in appendix J will continue to be acceptable for compliance with the modified rule.

Leakage Limits. Acknowledge the less risk-significant nature of allowable containment leakage (L_a) but pursue its modification as a separate action.

Type A Test Interval. (1) Based on the limited value of integrated leak-rate tests (ILRTs) in detecting significant leakages from penetrations and isolation valves, establish the test interval based on the performance of the containment system structure; (2) The performance criterion of the test will continue to be the allowable leakage rate (La); (3) The industry guideline allows extension of the Type A test interval to once every 10 years based on satisfactory performance of two previous tests; (4) In the regulatory guide, the NRC has included an exception for the extension of the interval of the general visual inspection of the containment system, and limited the interval to three times every 10 years as is current practice.

Type B & C Test Interval. (1) Allow local leak-rate test (LLRTs) intervals to be established based on the experience history of each component; (2) The performance criterion for the tests will continue to be the allowable leakage rate (La); (3) Specific performance criteria and factors for establishing extended test intervals (up to 10 years for Type B components, and 5 years for Type C components) are contained in the regulatory guide and industry guideline. In the regulatory guide, the NRC has included an exception to the extension of Type C test intervals up to 10 years that is proposed in the NEI industry guideline, and limited such extensions to 5-years.

Specific Areas for Public Comment

In its preliminary criteria for developing performance-based regulations, the NRC identified three issues to be addressed by the rulemaking process as a measure of the viability of the revised rule. These issues have been addressed in the rulemaking package and the NRC is seeking further public input on them.

1. Can the new rule and its implementation yield an equivalent level of, or would it only have a marginal impact on, safety?

The present study analyzed risks to the population and to workers from changes in appendix J requirements. The results of the present analysis confirm that population risks from severe reactor accidents are not sensitive to containment leak-rates. The calculated risks are well below the Safety Goals for all of the reactors considered even at assumed containment leak-rates 100-fold above current requirements. A change in the allowable leak-rate is estimated to have a negligible impact on occupational exposure. Results also show that relaxing the frequency of Type A, B, and C tests leads to an increase in overall reactor risk of approximately two percent. This increase is considered to be marginal to safety. Due to limitations of available plant data, the uncertainties of the risk impact of extending Type C test intervals beyond sixty months needs to be addressed.

Costs associated with complying with current appendix J requirements are estimated to be $165,000 for a complete battery of Type B/C tests, and $1,890,000 for Type A tests. Over the average remaining lifetime of 20 years, the present value of all remaining leak testing is about $7 million per reactor at a five percent discount rate. The estimates of remaining industry-wide costs to comply with the requirements of the current appendix J are approximately $720 to $1,080 million at a five percent discount rate, over 75 percent of which could be averted with a risk-based rule.

Based on the results of the present study, the NRC concludes that its safety objective for containment integrity can be maintained while at the same time reducing the burden on licensees. Thus, the new rule and its implementation can yield an equivalent level of, or only have a marginal impact on, safety.

2. Can the regulatory/safety objective (qualitative or quantitative) be established in an objective manner to allow a common understanding between licensees and the NRC on how the performance or results will be measured or judged?

Conformance to the new appendix J requirements will be measured by the adequacy of the methods for establishing the frequency of Type A, B and C testing. It is a fundamental principle of this rulemaking that changes to existing leak-test requirements be based objectively upon the performance history of components as analyzed by established methods.

To assist in the common understanding of new methods of establishing Type A, B and C test frequencies between the NRC and power reactor licensees, the NRC has had ongoing discussions with licensees. These discussions included participation in workshops designed to elicit a common understanding. From these efforts, the NRC is proposing to endorse a guidance document from industry which specifies acceptable methods for achieving compliance with Appendix J.

Further, the NRC proposes to require that plant technical specifications provide a general reference to the regulatory guide or other implementation document to ensure the prior review and approval by the NRC of licensee deviations from approved methods. This will help maintain a common understanding in the implementation of the performance-based rule, and ensure adequate basis for licensee deviations.

The NRC expects that its activities to date, the review and endorsement of a industry guideline in a regulatory guide, and the general reference of the regulatory guide in plant technical specifications, will establish regulatory safety objectives in an objective manner, and provide a common understanding on the measures of compliance.

3. Can the regulation and implementation documents be developed in such a manner that they can be objectively and consistently inspected and enforced against?

A guidance document developed by industry and approved for use by the NRC helps to ensure consistent interpretation and application of compliance requirements. As experience is gained under the new rule, adjustments may be reasonably anticipated to the industry's guidance document which will be reviewed and approved by the NRC through the regulatory guide revision process. The NRC's regulatory and inspection personnel shall be trained in the interpretation and use of all relevant implementation documents to assure consistent enforcement.

In addition to the above, the NRC solicits comments on the following two issues.

4. Should the proposed revision be made even less prescriptive?

The proposed rule is less prescriptive than existing requirements and provides licensees with greater flexibility in the implementation of safety objectives established by NRC. This action is proposed based on substantive technical analyses presented in draft NUREG–1493. Regulatory positions were developed by the NRC through insights from probabilistic risk analyses, operating data, and deterministic engineering considerations. The NRC solicits public comment on whether this revision should make the rule even less prescriptive than proposed in this notice; and if so, how?

Specifically, comments are solicited on the potential alternative of further relaxing the test frequency requirements for the Integrated Leak Rate Tests (ILRT) by establishing a fixed ten-year interval based on generic industry data, or perhaps eliminating the tests beyond the first pre-operational test. Analyses of historical test data and risk analyses presented in draft NUREG–1493 indicate that the ILRT interval could be extended beyond the proposed ten-year interval, and perhaps eliminated after the first pre-operational test with marginal impact on safety. Leakages detected by an ILRT are rare and random, and not generally related to previous performance at a plant. However, the NRC considers that a ten-year testing interval, based on satisfactory previous plant-specific performance, is appropriate at this time. It is consistent with current industry practice for testing of pressure vessels, and should detect the potential for aging mechanisms that could affect containment leaktightness. Historical test data have not yet shown evidence of such aging mechanisms but they might develop late in life where little data exists. Comments are solicited on other benefits provided by the ILRT, in addition to determining the leakage rate, that would need to be addressed to justify further relaxations or elimination of the test. NRC's current position is guided by the desire to maintain some conservatism to address uncertainties and adopt an evolutionary approach in the modification of its requirements. However, the NRC does not wish to maintain undue conservatism in its regulations, and therefore, will consider comments received to determine the degree of prescriptiveness, and any further relaxation of the ILRT requirements included in the final rule.

5. Should the proposed revisions be made mandatory?

The NRC is considering whether the proposed rule, which as currently proposed would provide licensees with a non-mandatory alternative to their existing appendix J containment leak testing program, should instead be adopted as a mandatory requirement for all licensees.

The proposed rule is drafted as a non-mandatory alternative to current appendix J requirements because the Staff recognized that some licensees may have technical programs which they may not wish to modify at this time, even though a proposed modification would constitute a ''relaxation'' from current requirements or provide other regulatory or economic benefit. For these reasons, the Commission earlier approved a Staff policy whereby any proposed revisions to existing NRC requirements developed by the Regulatory Improvement Program (*See* SECY–94–090, ''Institutionalization of Continuing Program for Regulatory Improvement,'' March 31, 1994) would not be mandatory, but would be proposed as alternatives (options) to existing requirements which may be voluntarily adopted by licensees. Given the history of difficulty and low success rate for attempts to resolve new safety issues simultaneously with improvements to regulatory efficiency, the Commission also approved a Staff policy for separating regulatory actions for new safety issues from those for improving regulatory efficiency. Therefore, this proposed rule does not address any new safety issues beyond the scope of the current appendix J requirements and is not aimed at improving safety.

The NRC is interested in the public's view as to whether the proposed rule should be made mandatory, in light of the overall long-term reduction in regulatory burden on licensees and the marginal impact on safety which would be entailed in the relaxation (see previous discussion in ''Proposed Modification of Type A, B, C Test Intervals). The NRC is interested in the public's views on using the increase in regulatory efficiency as a potential rationale for making the proposed rule mandatory for all licensees. The NRC also requests public comment on the underlying policy discussed above that NRC rulemakings which are not intended to increase safety, but are only intended to increase regulatory efficiency and reduce the regulatory burden imposed by the NRC's rules,

should be adopted as alternatives to existing requirements which may be voluntarily adopted by the regulated entity.

The NRC recognizes that if the proposed rule were made mandatory, that several backfitting issues are raised. These backfitting concerns are discussed in more detail in the next section on the ''Backfit Rule.''

Backfit Rule

As discussed above, the Commission is considering whether the proposed rule, which is currently drafted as providing licensees with a non-mandatory alternative relaxing the requirements for and frequency of containment leakage testing, should be adopted as a mandatory requirement (that is, the requirements of the rule would be imposed on all nuclear power plant licensees). If the alternative is made mandatory, the Commission acknowledges the potential relevance of the Backfit Rule. The Commission believes that the Backfit Rule was intended to constrain the Commission's adoption of mandatory relaxations of Commission requirements, if the mandated change imposed costs upon the licensee and that such mandatory relaxations are ''backfits'' as defined in § 50.109(a)(1). However, the Commission believes that it has the authority and basis for ''waiving'' the application of the Backfit Rule to the adoption of this rulemaking. The Commission requests public comments on each of these points.

1. The Proposed Rule Constitutes a ''Backfit''

The current version of the Backfit Rule, 10 CFR 50.109, was adopted in substantially its current form in 1985.[5] 50 FR 38097 (September 20, 1985). Based upon a review of the rulemaking record which led to the final 1985 rule, the Commission's objective in adopting the Backfit Rule was to prevent the imposition of new requirements, not otherwise needed to assure adequate protection or compliance, which were of marginal overall safety benefit or involved implementation costs which were out of proportion to the safety benefits. The SOC explained that under the new backfitting standard ''the Commission would not ordinarily expect that safety improvements would be required as backfits which result in an insignificant or small benefit to the public health and safety or common defense and security, regardless of the implementation costs'' (50 FR at 38102). Thus, the aim of the Backfit Rule was to instill into the regulatory process the need for disciplined analysis of proposed new requirements and regulatory initiatives (*See generally* 50 FR at 38101–38102).

The proposed revision relaxes and modifies existing requirements where the Commission believes that the burdens are not commensurate with their safety significance. Furthermore, the proposed rule does not contain any new requirements to address new safety issues not addressed in the original Appendix J rulemaking. However, if imposed as a mandatory requirement the proposed rule would mandate changes in a licensee's program for conducting containment leak rate tests, and would impose short-term costs on the licensee in order to reduce the long-term regulatory burden. However desirable such an imposition may be over the long term, it would nonetheless constitute a ''backfit'' as defined in § 50.109(a)(1). However, the Commission requests public comment on whether the definition of ''backfit'' in § 50.109(a)(1) was intended to encompass rulemakings of the type represented by this proposed rule.

2. Waiving the Applicability of the Backfit Rule

The Commission adopted the Backfit Rule as a self-imposed limitation on its rulemaking authority, and under the appropriate circumstances the Commission may ''waive'' its applicability, subject to the Administrative Procedure Act's requirement in rulemaking for notice and opportunity for public comment. The Commission believes that it is appropriate to ''waive'' the applicability of the Backfit Rule to the proposed rule if its requirements were made mandatory. The purpose of the rule is to relax and modify existing containment leak rate testing requirements where burdens are not commensurate with their safety significance. It does not contain any new requirements to address new safety issues not addressed in the original appendix J rulemaking. The proposed revision would relax existing marginal-to-safety requirements in order to reduce regulatory burden on nuclear power plant licensees and increase regulatory efficiency. This type of rulemaking complements the objectives of the Backfit Rule by eliminating requirements with little or no positive impact on safety, but whose regulatory burden is substantial. Therefore, if the Commission determines to impose the proposed rule's requirements, the Commission proposes to ''waive'' this rule from the requirements of the Backfit Rule.

The Commission requests public comment on the proposed rationale for ''waiving'' the application of the Backfit Rule to this rulemaking.

Regulatory Guide; Issuance, Availability

A draft regulatory guide, temporarily identified by its task number DG–1037, (on the same subject) ''Performance-Based Containment Leak-Test Program'' is also being published for comment. The regulatory guide endorses an industry standard which contains guidance on an acceptable performance-based leak-test program, leakage rate test methods, procedures, and analyses that may be used to implement these requirements and criteria.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the draft guide. Comments should be accompanied by supporting data. Specific comments are solicited on whether the regulatory guide and the industry guideline it endorses will result in a common understanding between licensees and the NRC on how performance will be measured and judged, and can be objectively inspected against. Written comments may be submitted 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. Comments will be most helpful if received by May 8, 1995. Comments on the draft regulatory guide may be submitted electronically as indicated elsewhere under the **ADDRESSES** heading.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced and are available free to the extent of supply) or for placement on an automatic distribution list for single copies of future draft guides in specific

[5] The Backfit Rule was subsequently amended in 1988 (53 FR 20603, June 6, 1988) in response to a decision of the U.S. Court of Appeals for the D.C. Circuit *Union of Concerned Scientists et al.* v. *U.S. Nuclear Regulatory Commission,* 824 F.2d 103) which remanded the 1985 rule to the NRC because the rule failed to clearly indicate that costs may not be a consideration in determining whether there is adequate protection to the public health and safety.

divisions should be made in writing to the Office of Administration, Printing and Mail Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. The draft regulatory guide may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking.

Implementation

The proposed Option B to Appendix J specifies that the rule will become effective 30 days after publication. At any time thereafter, a licensee or applicant would notify the NRC of its desire to perform containment leakage rate testing according to Option B. Accompanying this notification, a licensee would submit proposed technical specifications changes which would eliminate those technical specifications which implement the current rule and propose a new technical specification referencing the NRC regulatory guide or, if the licensee desires, an alternative implementation guidance. Implementation must await staff review and approval of the licensee's proposal. The staff anticipates that a generic communication will be issued which will provide the implementation procedure to all power reactor licensees.

Solicitation of Comments for Future Revisions

As indicated earlier in this notice, the NRC plans a second phase of modifications to requirements for containment leakage rate testing to further adopt risk-based methods, and to broadly examine the type of performance-based rule needed to ensure the adequacy of the containment function. This will include increasing the allowable leakage rate based on risk considerations, further examination of the risk significance of various attributes of containment performance (structural and leaktight integrity of containment structures and components, and inadvertent bypass), and consideration of the potential of on-line monitoring of containment integrity to address certain attributes. In order to guide this future effort, the NRC has formulated the following questions and solicits public comments on them:

1. Should NRC pursue a fundamental modification of its regulations in this area by establishing an allowable leakage rate based on risk analysis (as presented in draft NUREG–1493, Chapter 5), as compared to the current practice of using deterministic design basis accidents and dose guidelines contained in 10 CFR part 100; or should the NRC modify the allowable leakage rate within the current licensing basis by revising source terms and updating regulatory guides (R.G.s 1.3 and 1.4)[6] for calculating doses to the public? What are the advantages and disadvantages of the two approaches? What are some other considerations than risk to public, e.g. plant control room habitability, that might limit the allowable leakage rate?

2. If the allowable leakage rate is increased, could on-line monitoring of containment integrity replace other current containment tests? Could the results of the on-line monitoring be used to establish a new performance basis for containment integrity involving less stringent reporting requirements if there is high assurance there are no large leakage paths in containment (> 1 in. diameter).

3. Are there any other regulatory approaches and technical methods by which the NRC can adopt a complete performance and risk basis to its regulations for containment leaktight integrity? What are some of the attributes for performance, and what risk-based methods can be used to analyze these attributes?

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. There will be no radiological environmental impact offsite, and the occupational exposure onsite is expected to decrease by about 0.8 person rem per year of plant operation for plant personnel if licensees adopt the performance-based testing scheme provided in the revised regulation. Alternatives to issuing this revision of the regulation were considered and found not acceptable. Single copies of the environmental assessment and finding of no significant impact can be obtained by submitting a written request to: Dr. Moni Dey, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Because the rule will relax existing information collection requirements by providing an option to the existing requirements, the public burden for this collection of information is expected to be reduced by as much as 4583 hours per year, including the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the estimated burden reduction or any other aspect of this collection of information to the Information and Records Management Branch, T–6F33, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC; the PDR's mailing address is Mail Stop LL–6, Washington, DC 20555; phone (202) 634–3273; fax (202) 634–3343.

The Commission requests public comment on the draft analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set

[6] Copies may be purchased at current rates from the Superintendent of Documents, U. S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328 (telephone 202 512–2249 or 202 512–2171); or from the National Technical Information Service by writing NTIS at Port Royal Road, Springfield, VA 22161.

out in regulations issued by the Small Business Administration in 13 CFR part 121.

Backfit Analysis

This proposed revision to a current regulation by the inclusion of an option that may be voluntarily adopted by licensees, and which relaxes current requirements, is not considered a backfit under 10 CFR 50.109(a). Therefore, a backfit analysis is not necessary.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Sections 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Appendix J to 10 CFR Part 50 is amended by adding the following language between the heading and the Table of Contents and adding the language for Option B after Section V.B3.

Appendix J—Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors.

This appendix includes two options, A and B, either of which can be chosen for meeting the requirements of this appendix.

Options A—Prescriptive Requirements

* * * * *

Option B—Performance-Based Requirements

Table of Contents

I. Introduction.
II. Definitions.
III. Performance-based leakage test requirements.
A. Type A test.
B. Type B and C tests.
IV. Recordkeeping.
V. Implementation.

I. Introduction

One of the conditions required of all operating licenses for light-water-cooled power reactors as specified in § 50.54(o) is that primary reactor containments meet the leakage rate test requirements in either Option A or B of this appendix. These test requirements ensure that (a) leakage through these containments or systems and components penetrating these containments does not exceed allowable leakage rates specified in the Technical Specifications and (b) integrity of the containment structure is maintained during its service life. Option B of this appendix identifies the performance-based requirements and acceptance criteria for preoperational and subsequent periodic leakage rate testing.[7]

II. Definitions

Acceptance criteria means the performance standards against which test results are to be compared for establishing the acceptability of the containment system as a leakage limiting boundary.

Containment system means the principal barrier, after the reactor coolant pressure boundary, to prevent the release of quantities of radioactive material that would have a significant radiological effect on the health of the public.

Overall integrated leakage rate means the total leakage rate through all tested leakage paths, including containment welds, valves, fittings, and components that penetrate the containment system.

La (percent/24 hours) means the maximum allowable leakage rate at pressure Pa as specified in the Technical Specifications.

Pa (p.s.i.g) means the calculated peak containment internal pressure related to the design basis loss-of-coolant accident as specified in the Technical Specifications.

[7] Specific guidance concerning a performance-based leak test program, acceptable leakage rate test methods, procedures, and analyses that may be used to implement these requirements and criteria are provided in draft Regulatory Guide DG–1037, ''Performance-Based Containment System Leakage Testing.''

III. Performance-Based Leakage Test Requirements

A. Type A Test

Type A tests to measure the containment system overall integrated leakage rate must be conducted under conditions representing design basis loss-of-coolant accident containment peak pressure. A Type A test must be conducted (1) after the containment system has been completed and is ready for operation and (2) at a periodic interval based on the historical performance of the overall containment system as a barrier to fission product releases to reduce the risk from reactor accidents. A general visual inspection of the accessible interior and exterior surfaces of the containment system for structural deterioration which may affect the containment leaktight integrity must be conducted prior to each test, and at a periodic interval between tests based on the performance of the containment system. The leakage rate must not exceed the allowable leakage rate (La) with margin as specified in the Technical Specifications. The test results must be compared with previous results to examine the performance history of the overall containment system to limit leakage.

B. Type B and C Tests

Type B pneumatic tests to detect and measure local leakage rates across pressure retaining, leakage limiting boundaries, and Type C pneumatic tests to measure containment isolation valve leakage rates, must be conducted (a) prior to initial criticality, and (b) periodically thereafter at intervals based on the safety significance and historical performance of each boundary and isolation valve to ensure the integrity of the overall containment system as a barrier to fission product release to reduce the risk from reactor accidents. The performance-based testing program must contain performance goals and acceptance criteria, consideration of factors that affect performance when establishing test intervals, evaluations of performance of containment system components, and comparison to previous test results to examine the performance history of the overall containment system to limit leakage. The tests must demonstrate that (1) the sum of the leakage rates at accident pressure of Type B tests, and pathway leakage rates from Type C tests, is less than the total allowable leakage rate (La) specified in the Technical Specification with margin; and (2) the performance goal for the reliability of the overall containment system to limit leakage during reactor accidents is not exceeded.

IV. Recordkeeping

The results of the preoperational and periodic Type A, B, and C tests must be documented to show that acceptance criteria for leakage have been met. The comparison to previous results of the performance of the overall containment system and of individual components within it must be documented to show that the test intervals established for the containment system and components within it are adequate. These records must be available for inspection at plant sites.

If any Type A, B, or C tests fail to meet their leakage rate acceptance criteria as

defined in the plant Technical Specifications those failures must be assessed for Emergency Notification System reporting under §§ 50.72(b)(1)(ii) and 50.72(b)(2)(i), and for a Licensee Event Report under §§ 50.73(a)(2)(ii).

V. Implementation

A. Applicability

The requirements in either or both Option B, III.A for Type A tests, and Option B, III.B for Type B and C tests, may be adopted on a voluntary basis by an operating nuclear power reactor licensee as specified in § 50.54 in substitution of the requirements for those tests contained in Option A of this appendix. If the requirements for tests in Option B, III.A or Option B, III.B are implemented, the recordkeeping requirements in Option B, IV for these tests must be substituted for the reporting requirements of these tests contained in Option A of this appendix.

B. Effective Date

1. Specific exemptions to Option A of this appendix that have been formally approved by the AEC or NRC, according to 10 CFR 50.12, are still applicable to Option B of this appendix if necessary, unless specifically revoked by the NRC.

2. This amendment to this appendix, by inclusion of an additional option for meeting the requirements of the appendix, is effective (30 days after the publication of the final rule). At any time hereafter a licensee or applicant for an operating license can adopt Option B, or parts thereof, as specified in Section V.A of this appendix, by submitting a notification of its implementation plan and request for revision to technical specifications to the Director of the Office of Nuclear Reactor Regulation.

The regulatory guide or other implementation document used by a licensee, or applicant for an operating license, to develop a performance-based leakage testing program must be included, by general reference, in the plant's technical specifications. The detailed licensee programs must be available at the plant site for inspection thereafter. The programs must contain justification, including supporting analyses, if they deviate from methods approved by the Commission and endorsed in a regulatory guide. The deviations and their justifications must be described in the notification provided by the licensee of its implementation plan and the submittal for revision of plant technical specifications.

Dated at Rockville, MD, this 14th day of February, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 95–4167 Filed 2–17–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–120–AD]

Airworthiness Directives; Boeing Model 747SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 747SP series airplanes, that would have superseded an existing AD to require inspections to detect cracks in the web of the wing front spar, and modification, if necessary. That proposal was prompted by a report of cracking in the web in an area outside the inspection zone specified in the existing AD. A crack in the web that is not detected before it extends outside the chord footprints can allow fuel leakage. This action revises the proposed rule by reducing the compliance time for inspections of certain airplanes. The actions specified by this proposed AD are intended to prevent fuel leakage onto an engine and a resultant fire due to cracking in the web of the wing front spar.

DATES: Comments must be received by March 7, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–120–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: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2776; 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 94–NM–120–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. 94–NM–120–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 747SP series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 28, 1994 (59 FR 54134). That NPRM would have superseded an existing AD to require repetitive inspections to detect cracks in the web of the wing front spar over engine numbers 2 and 3, and repair, if necessary. That NPRM was prompted by a report of cracking in the web in an area outside the inspection zone specified in the existing AD. That condition, if not corrected, could result in fuel leakage onto an engine and a resultant fire.

Two commenters support the proposed rule.

One commenter to the NPRM, Boeing, requests that the proposed compliance time of 1,000 landings, specified in paragraph (b) of the NPRM for airplanes on which the terminating modification has not been accomplished, be shortened to 6 months, as recommended in the manufacturer's service bulletin. The FAA concurs with the commenter's request. Due to an error during publication of the NPRM, an incorrect compliance time was specified in paragraph (b). The FAA's intent was that this compliance time coincide with the recommendation of the manufacturer's service bulletin. Paragraph (b) of this supplemental NPRM has been revised to specify a compliance time of ''prior to the accumulation of 4,000 total landings on the airplane, or within 6 months after the effective date of the AD, whichever occurs later.''

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this supplemental NPRM to clarify this requirement.

The manufacturer has advised that it is currently developing a modification program for the engine struts on these airplanes that will positively address the fatigue cracking condition and other items associated with the engine struts. Once this modification program is developed and approved, the FAA may consider additional rulemaking.

There are approximately 35 Model 747SP series airplanes of the affected design in the worldwide fleet. The FAA estimates that 11 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 22 work hours per airplane to accomplish the proposed inspections (between front spar stations 628 and 675) specified in this AD, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $14,520, or $1,320 per airplane.

The total 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.

Should an operator elect to accomplish the terminating modification that would be provided by this AD action, it would take approximately 644 work hours to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be $21,800. Based on these figures, the total cost impact of the terminating modification would be $60,440 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 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 removing amendment 39–6702 (55 FR 33279, August 15, 1990), and by adding a new airworthiness directive (AD) to read as follows:

Boeing: Docket 94–NM–120–AD.

Applicability: Model 747SP series airplanes; variable numbers RG001 through RG142 inclusive, and RG171 through RG222 inclusive; 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) 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 fuel leakage onto an engine and a resultant fire, accomplish the following:

(a) For airplanes on which the ''terminating modification'' [between front spar station (FSS) 640 and FSS 670] specified in Boeing Alert Service Bulletin 747–57A2259, dated February 15, 1990; or Revision 1, dated September 6, 1990; has not been accomplished: Within the next six months after September 21, 1990 (the effective date of AD 90–17–18, amendment 39–6702), perform a visual and an ultrasonic inspection of the front spar web between front spar station (FSS) 636 and FSS 675 in accordance with Boeing Alert Service Bulletin 747–

57A2259, dated February 15, 1990, or Revision 1, dated September 6, 1990. If no crack is found, repeat these inspections at intervals not to exceed 1,000 landings until the inspections required by paragraph (b) of this AD are accomplished.

(b) For airplanes on which the ''terminating modification'' [between front spar station (FSS) 640 and FSS 670] specified in Boeing Alert Service Bulletin 747–57A2259, dated February 15, 1990; or Revision 1, dated September 6, 1990; has not been accomplished: Prior to the accumulation of 4,000 total landings on the airplane, or within 6 months after the effective date of this AD, whichever occurs later, perform the inspections specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD to detect cracks in the web between FSS 628 and FSS 675, in accordance with Boeing Alert Service Bulletin 747–57A2259, Revision 2, dated June 9, 1994. Accomplishment of these inspections terminates the repetitive inspection requirement of paragraph (a) of this AD. If no crack is found, repeat these inspections thereafter at intervals not to exceed 1,000 landings.

(1) Perform an ultrasonic inspection in the web under the upper and lower chord footprints; and

(2) Perform a high frequency eddy current inspection in the web in an area one inch below the upper chord and one inch above the lower chord footprints; and

(3) Perform a detailed visual inspection in the forward face of the web of the wing front spar at fastener locations in the web-to-stiffeners and web-to-rib posts.

(c) For airplanes on which the ''terminating modification'' specified in Boeing Alert Service Bulletin 747–57A2259, dated February 15, 1990; or Revision 1, dated September 6, 1990; has been accomplished: Prior to the accumulation of 4,000 total landings on the airplane, or within 6 months after the effective date of this AD, whichever occurs later, perform the inspections specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD to detect cracks in the web between FSS 628 and FSS 636, in accordance with Boeing Alert Service Bulletin 747–57A2259, Revision 2, dated June 9, 1994. If no crack is found, repeat these inspections thereafter at intervals not to exceed 1,000 landings.

(1) Perform an ultrasonic inspection of the web under the upper and lower chord footprints; and

(2) Perform a high frequency eddy current inspection of the web in an area one inch below the upper chord and one inch above the lower chord footprints; and

(3) Perform a detailed visual inspection of the forward face of the web of the wing front spar at fastener locations in the web-to-stiffeners and web-to-rib posts.

(d) If any crack is found during any inspection required by this AD, prior to further flight, accomplish a terminating modification (between FSS 623 and FSS 670) in accordance with Boeing Alert Service Bulletin 747–57A2259, Revision 2, dated June 9, 1994; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(e) Installation of a terminating modification (between FSS 623 and FSS 670) in accordance with Boeing Alert Service Bulletin 747–57A2259, Revision 2, dated June 9, 1994; or in accordance with a method approved by the Manager, Seattle ACO; constitutes terminating action for the requirements of this AD.

(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, Seattle ACO. 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.

(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 February 14, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4122 Filed 2–17–95; 8:45 am]

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14 CFR Part 39

[Docket No. 95–NM–12–AD]

Airworthiness Directives; De Havilland Model DHC–8–102, –103, –106, –301, –311, and –314 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 de Havilland Model DHC–8 series airplanes. This proposal would require modification of a certain battery temperature monitor. This proposal is prompted by reports of failure of the battery temperature monitor, which resulted in smoke in the flight compartment. The actions specified by the proposed AD are intended to prevent failure of the battery monitor, which could result in smoke in the flight compartment.

DATES: Comments must be received by April 3, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Electrical Engineer, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506; fax (516) 568–2716.

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–12–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–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–102, –103, –106, –301, –311, and –314 series airplanes equipped with Ametek/Weston battery temperature monitors having part number (P/N) 522487. Transport Canada Aviation advises that reports have been received of failure of the battery temperature monitor, which resulted in smoke in the flight compartment. The cause has been attributed to the failure of a current-limiting resistor in the power supply circuit in the battery temperature monitor. This condition, if not corrected, could result in smoke in the flight compartment.

De Havilland has issued Service Bulletin S.B. 8–24–53, dated September 7, 1994, which describes procedures for modification of a certain battery temperature monitor. This modification involves either replacing the Ametek/Weston battery temperature monitor having part number (P/N) 522487, with a new monitor having P/N 522487–1; or reworking the monitor having P/N 522487, to create a new P/N 522487–1. The rework procedure involves replacing a certain resistor (R1) with a new resistor; adding a certain diode (CR11) to the circuit board; and re-identifying the battery temperature monitor. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–94–22, dated November 24, 1994, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada 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, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, 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 modification of a certain battery temperature monitor. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.

The FAA estimates that 137 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost of required parts would be nominal. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $8,220, or $60 per airplane.

The total 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:

De Havilland, Inc.: Docket 95–NM–12–AD.

Applicability: Model DHC–8–102, –103, –106, –301, –311, and –314 series airplanes, serial numbers 003 through 389 inclusive; equipped with Ametek/Weston battery temperature monitor having part number (P/N) 522487; 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 (c) 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 battery temperature monitor, which could result in smoke in the flight compartment, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the battery temperature monitor in accordance with de Havilland

Service Bulletin S.B. 8–24–53, dated September 7, 1994.

(b) As of the effective date of this AD, no person shall install an Ametek/Weston battery temperature monitor, P/N 522487, on any airplane.

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

Note 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.

(d) 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 February 14, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4121 Filed 2–17–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–CE–03–AD]

Airworthiness Directives; Fairchild Aircraft SA26, SA226, and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking (NPRM) that would have revised AD 93–19–06, which requires repetitively inspecting acrylic cabin and cockpit windows for cracks on Fairchild Aircraft SA26, SA226, and SA227 series airplanes, and, if cracks are found that exceed certain limits, replacing that window. The revision document was proposed to more fully define the crack limits and establish clearer repetitive inspection intervals under those crack limits for the affected airplanes. Several incident reports of cockpit side window failures on the affected airplanes that were in compliance with AD 93–19–06 has prompted the FAA to propose a modification to these windows in another AD action, which would supersede the current AD. The FAA is withdrawing the current NPRM and issuing another NPRM to propose this modification.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5155; facsimile (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that would apply to Fairchild Aircraft SA26, SA226, and SA227 series airplanes was published in the **Federal Register** on March 30, 1994 (59 FR 14795). The action proposed to revise AD 93–19– 06, Amendment 39–8705, to more fully define the crack limits and establish clearer repetitive inspection intervals under those crack limits for the affected airplanes. AD 93–19–06 requires repetitively inspecting acrylic cabin and cockpit windows for cracks on certain Fairchild Aircraft SA26, SA226, and SA227 series airplanes, and, if cracks are found that exceed certain limits, replacing that window. The actions are accomplished in accordance with the following service bulletins (SB), as applicable:

Fairchild SB 226–56–001, Issued: February 2, 1983; Revised: November 26, 1991.
Fairchild SB 227–56–001, Issued: February 2, 1983; Revised: November 26, 1991.
Fairchild SB 226–56–002, Issued: March 3, 1983; Revised: May 29, 1992.
Fairchild SB 227–56–002, Issued: January 5, 1984; Revised: May 29, 1992, and April 1, 1993.
Fairchild SB 226–56–003, Issued: September 13, 1984; Revised: November 2, 1989.
Fairchild SB 227–56–003, Issued: September 13, 1984; Revised: November 2, 1989.
Fairchild SB 26–56–10–038, Issued: October 8, 1984; Revised: February 7, 1991.
Fairchild SB 26–56–20–042, Issued: November 28, 1988; Revised: February 7, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

Since issuance of the NPRM, the FAA has received several incident reports of cockpit side window failures on the affected airplanes. All of the airplanes involved in the referenced incidents are in compliance with AD 93–19–06. After a review of all available information related to the incidents referenced above, the FAA is proposing a modification to these windows in another AD action that would supersede AD 93–19–06, and is withdrawing the current NPRM.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another notice in the future or commit the agency to any course of action in the future.

Since this action only withdraws an NPRM, it is neither a proposed rule nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket No. 93–CE–03–AD, published in the **Federal Register** on March 30, 1994 (59 FR 14795), is withdrawn.

Issued in Kansas City, Missouri, on February 14, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4129 Filed 2–17–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–CE–22–AD]

Airworthiness Directives; Fairchild Aircraft SA26, SA226, and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede AD 93–19–06, which currently requires repetitively inspecting acrylic cabin and cockpit side windows for cracks on certain Fairchild Aircraft SA26, SA226, and SA227 series airplanes, and, if cracks are found that exceed certain limitations, replacing that window. The proposed action would require modifying certain cockpit side windows, and would more fully define the crack limitations and establish clearer repetitive inspection intervals for the affected airplanes. The actions specified by the proposed AD are intended to prevent acrylic cockpit or cabin side window failures, which, if not detected and corrected, could result in airframe damage and decompression injuries.

DATES: Comments must be received on or before April 28, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–22–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (210) 824–9421. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5155; facsimile (817) 222–5959.

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 should 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 that summarizes 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 No. 94–CE–22–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–22–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 93–19–06, Amendment 39–8705 (58 FR 51771, October 5, 1993), currently requires repetitively inspecting acrylic cabin and cockpit side windows for cracks on certain Fairchild Aircraft SA26, SA226, and SA227 series airplanes, and, if cracks are found that exceed certain limitations, replacing that window.

Since issuance of AD 93–19–06, the FAA has received several incident reports of cockpit side window failures on the affected airplanes in compliance with that AD.

After examining the circumstances and reviewing all available information related to the action referenced above including the referenced incident reports, the FAA has determined that (1) A modification should be incorporated on cockpit side windows that do not have inner window panes; (2) the crack limitations specified in AD 93–19–06 should coincide with the applicable service information; and (3) AD action should be taken to prevent acrylic cockpit or cabin side window failures, which, if not detected and corrected, could result in airframe damage and decompression injuries.

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA26, SA226, and SA227 series airplanes of the same type design, the proposed AD would supersede AD 93–19–06 with a new AD that would maintain the repetitive inspection requirements of AD 93–19–06, and add the modification referenced above. The proposed modification would be accomplished in accordance with the following service bulletins (SB), as applicable:

Fairchild SB 26–56–10–045, which incorporates the following table of effective pages:

Page Nos.	Date
3, 4, 5, and 9	Revised: December 1, 1994.
1, 2, 6, 7, 8, and 10 through 14.	Issued: August 11, 1994.

Fairchild SB 226–56–005, which incorporates the following table of effective pages:

Page Nos.	Date
3 through 7, and 9 ...	Revised: December 1, 1994.
1, 2, and 8	Revised: August 11, 1994.
10 through 16	Issued: July 31, 1991.

and Fairchild SB 227–56–005, which incorporates the following table of effective pages:

Page Nos.	Date
3 through 7, and 9 ...	Revised: December 1, 1994.
1, 2, and 8	Revised: August 11, 1994.
10 through 16	Issued: July 31, 1991.

The proposed repetitive inspections would be accomplished in accordance with the following SB's, as applicable:

Fairchild SB 226–56–001, Issued: February 2, 1983; Revised: November 26, 1991.
Fairchild SB 227–56–001, Issued: February 2, 1983; Revised: November 26, 1991.
Fairchild SB 226–56–002, Issued: March 3, 1983; Revised: May 29, 1992.
Fairchild SB 227–56–002, Issued: January 5, 1984; Revised: May 29, 1992, and April 1, 1993.
Fairchild SB 226–56–003, Issued: September 13, 1984; Revised: November 2, 1989.
Fairchild SB 227–56–003, Issued: September 13, 1984; Revised: November 2, 1989.
Fairchild SB 26–56–10–038, Issued: October 8, 1984; Revised: February 7, 1991.
Fairchild SB 26–56–20–042, Issued: November 28, 1988; Revised: February 7, 1991.

The compliance time for the proposed AD is presented in both hours time-in-service (TIS) and calendar time. The referenced acrylic cabin and cockpit side windows are affected by those conditions present while the airplane is in flight and while the airplane is on the ground. In addition, the utilization rates of the affected airplanes vary among operators. For example, operators in unscheduled service utilize their airplanes an average of approximately 200 to 300 hours TIS annually, while those in commuter service (scheduled) utilize their airplanes an average of approximately 2,000 hours TIS annually. Based on this wide utilization rate variance and the fact that these windows are affected when the airplane is in flight and on the ground, the FAA has determined that the compliance time for the proposed rule should be in hours TIS and calendar time.

The FAA estimates that 633 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 14 workhours per airplane to accomplish the proposed modification, and that the average labor rate is approximately $60 an hour. Parts cost approximately $5,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,696,720. AD 93–19–06 currently requires the same inspections as the proposed AD for all of the affected airplanes. Therefore, the cost impact of the

proposed inspections (3 workhours×$60×633 airplanes=$113,940) for operators of all affected airplanes is the same as AD 93–19–06. The figure does not take into account the cost of repetitive inspections, and is based on the assumption that no owner/operator has incorporated the proposed modification. The FAA has no way of determining how many repetitive inspections each owner/operator may incur.

In addition, Fairchild Aircraft has informed the FAA that approximately 250 of the 633 affected airplanes are equipped with cockpit side windows with inner window panes, and therefore do not need the proposed modification. With this in mind, the proposed cost impact upon U.S. operators would be reduced about 40-percent from $3,696,720 to $2,218,032.

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 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) 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 has been placed 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 removing AD 93–19- 06, Amendment 39–8705 (58 FR 51771, October 5, 1993), and by adding a new airworthiness directive to read as follows:

Fairchild Aircraft: Docket No. 94–CE–22–AD. Supersedes AD 93–19–06, Amendment 39–8705.

Applicability: Models SA26–T, SA26–AT, SA226–T, SA226- T(B), SA226–AT, SA226–TC, SA227–AT, SA227–AC, SA227–BC, and SA227–TT airplanes (all serial numbers for all models), certificated in any category.

Note 1: The applicability of this AD takes precedence over that specified in the service information.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

To prevent acrylic cockpit or cabin side window failures, which, if not detected and corrected, could result in airframe damage and decompression injuries, accomplish the following:

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

(a) Within the next 200 hours time-in-service (TIS) after the effective date of this AD or six calendar months after the effective date of this AD, whichever occurs first, modify all single pane cockpit side windows to dual panes (two acrylic cockpit side windows) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of the following service bulletins (SB), as applicable:

Fairchild SB 26–56–10–045, which incorporates the following table of effective pages:

Page Nos.	Date
3, 4, 5, and 9	Revised: December 1, 1994.
1, 2, 6, 7, 8, and 10 through 14.	Issued: August 11, 1994.

Fairchild SB 226–56–005, which incorporates the following table of effective pages:

Page Nos.	Date
3 through 7, and 9	Revised: December 1, 1994.
1, 2, and 8	Revised: August 11, 1994.
10 through 16	Issued: July 31, 1991.

and Fairchild SB 227–56–005, which incorporates the following table of effective pages:

Page Nos.	Date
3 through 7, and 9	Revised: December 1, 1994.
1, 2, and 8	Revised: August 11, 1994.
10 through 16	Issued: July 31, 1991.

Note 3: The above modification only applies to airplanes without existing inner window panes. The installation requires replacing the existing left and right hand outer window panes, except those panes with part number 26–21383–009/-010 that are installed and are in serviceable condition.

(b) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished within the last 1,000 hours TIS or 12 calendar months (compliance with AD 89–06–02 or AD 93–19–06), visually inspect all acrylic cabin and cockpit side windows for cracks in accordance with the following SB's, as applicable:

(1) For acrylic cabin side windows:

Model	Service bulletin
SA26–T	26–56–20–042, Issued: November 28, 1988, Revised: February 7, 1991.
SA26–AT	26–56–20–042, Issued: November 28, 1988, Revised: February 7, 1991.
SA226–T	226–56–001, Issued: February 2, 1983, Revised: November 26, 1991.
SA226–T(B)	226–56–001, Issued: February 2, 1983, Revised: November 26, 1991.
SA226–AT	226–56–002, Issued: March 3, 1983, Revised: May 29, 1992.
SA226–TC	226–56–002, Issued: March 3, 1983, Revised: May 29, 1992.
SA227–AT	227–56–002, Issued: January 5, 1984, Revised: May 29, 1992, and April 1, 1993.
SA227–AC	227–56–002, Issued January 5, 1984, Revised: May 29, 1992, and April 1, 1993.
SA227–BC	227–56–002, Issued January 5, 1984, Revised: May 29, 1992, and April 1, 1993.
SA227–TT	227–56–001, Issued February 2, 1983, Revised: November 26, 1991.

(2) For acrylic cockpit side windows:

Model	Service bulletin
SA26–T	26–56–10–038, Issued: October 8, 1984, Revised: February 7, 1991.
SA26–AT	26–56–10–038, Issued: October 8, 1984, Revised: February 7, 1991.
SA226–T	226–56–003, Issued: September 13, 1984, Revised: November 2, 1989.

Model	Service bulletin
SA226–T(B)	226–56–003, Issued: September 13, 1984, Revised: November 2, 1989.
SA226–AT	226–56–003, Issued: September 13, 1984, Revised: November 2, 1989.
SA226–TC	226–56–003, Issued: September 13, 1984, Revised: November 2, 1989.
SA227–AT	227–56–003, Issued: September 13, 1984, Revised: November 2, 1989.
SA227–AC	227–56–003, Issued: September 13, 1984, Revised: November 2, 1989.
SA227–BC	227–56–003, Issued: September 13, 1984, Revised: November 2, 1989.
SA227–TT	227–56–003, Issued: September 13, 1984, Revised November 2, 1989.

(c) If cracks are found that meet or exceed 4.3 inches in combined length, prior to further flight, replace the window with a new or serviceable window, and reinspect thereafter at intervals not to exceed 1,000 hours TIS or 12 calendar months, whichever occurs first.

(d) If cracks are found that are less than 4.3 inches in combined length but that meet or exceed .30 inches as specified in the Crack Limitations section of the service information referenced in paragraphs (b)(1) and (b)(2) of this AD, prior to further flight, accomplish one of the following:

(1) Replace the window with a new or serviceable window and reinspect thereafter at intervals not to exceed 1,000 hours TIS or 12 calendar months, whichever occurs first; or

(2) Fabricate a placard with the following words in letters at least 0.10-inch in height and install this placard within the pilot's clear view close to the pressurization controls: ''AIRPLANE MUST BE OPERATED UNPRESSURIZED'', and accomplish both of the following:

(i) Insert a copy of this AD into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM); and

(ii) Within the next 25 hours TIS or 30 calendar days, whichever occurs first, reinspect the cracked window for crack progression in accordance with the inspections specified in paragraphs (b)(1) and (b)(2) of this AD, as applicable, and accomplish either paragraph (c), (d) or (e) of this AD, as applicable.

(e) If cracks are found that are less than .30 inches as specified in the Crack Limitations section of the applicable service information referenced in paragraphs (b)(1) and (b)(2) of this AD, within the next 25 hours TIS or 30 calendar days, whichever occurs first, reinspect the cracked window for crack progression in accordance with the applicable service information specified in paragraphs (b)(1) and (b)(2) of this AD, and accomplish either paragraph (c), (d), or (e) of this AD, as applicable.

Note 4: The repetitive inspections required by this AD are also referenced in the FAA-approved Fairchild Airframe Airworthiness Limitations Manual, ST–UN–M001.

(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) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(h) All persons affected by this directive may obtain copies of the document referred to herein upon request to Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(i) This amendment supersedes AD 93–19–06, Amendment 39–8705.

Issued in Kansas City, Missouri, on February 14, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4132 Filed 2–17–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–ANM–5]

Proposed Amendment to Class E Airspace; Sheridan, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Sheridan, Wyoming, Class E airspace. This proposal would amend the Sheridan, Wyoming, Class E airspace from full-time back to part-time. This amendment would bring publications up-to-date giving continuous information to the aviation public.

DATES: Comments must be received on or before March 20, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–5, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–5, l601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ANM–5.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington

98055–4056. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Sheridan, Wyoming by designating the Class E airspace as full-time instead of part-time. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace is published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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) does not warrant preparation of regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows;

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM WY E5 Sheridan, WY [Revised]

Sheridan County Airport, WY
(Lat. 44°46′26″ N long. 106°58′37″ W)
Sheridan VORTAC
(Lat. 44°50′32″ N, long. 107°03′40″ W)

That airspace extending upward from 700 feet above the surface within a 6.1-mile radius of the Sheridan County Airport; that airspace extending upward from 1,200 feet above the surface within 6.1 miles southwest and 8.7 miles northeast of the Sheridan VORTAC 138° and 318° radials extending from 16.1 miles northwest to 29.6 miles southeast of the VORTAC, and that airspace southeast of Sheridan bounded on the north by a line located 4.3 miles south of and parallel to the Sheridan VORTAC 104° radial, on the east by a 30.5-mile radius of the Sheridan VORTAC, and on the south by a line located 8.7 miles north of and parallel to the Sheridan VORTAC 138° radial. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on February 2, 1995.

Bill H. Ellis,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–4207 Filed 2–17–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ANM–4]

Proposed Amendment to Class E Airspace; Worland, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Worland, Wyoming, Class E Airspace. This proposal would amend the Worland, Wyoming, Class E airspace from full-time back to part-time. This amendment would bring publications up-to-date giving continuous information to the aviation public.

DATES: Comments must be received on or before March 20, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–4, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–4, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ANM–4.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Line Avenue SW., Renton, Washington

98055–4056. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Worland, Wyoming, by designating the Class E airspace as full-time instead of part-time. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace is published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM WY E5 Worland, WY [Revised]

Worland Municipal Airport, WY
(Lat. 43°57′56″ N, long. 107°57′01″ W)
Worland VOR/DME
(Lat. 43°57′51″ N, long. 107°57″03′ W)

That airspace extending upward from 700 feet above the surface within 4 miles east and 8.3 miles west of the Worland VOR/DME 352° and 172° radials extending from 16.1 miles north to 5.3 miles south of the VOR/DME; that airspace extending upward from 1,200 feet above the surface within a 20.1-mile radius of the VOR/DME, and that airspace extending upward from 10.500 feet MSL bounded on the north by lat. 44°00′00″ N. on the east by the 20.1-mile radius of the Worland VOR/DME, on the south by V–319, and on the west by V–85. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on February 2, 1995.

Bill H. Ellis,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–4208 Filed 2–17–95; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for the Special Packaging of Household Substances; Reconsideration of Final Rule; Opportunity for Written Comment

AGENCY: Consumer Product Safety Commission.

ACTION: Reconsideration of final rule; notice of opportunity for additional written public comment.

SUMMARY: The Commission on February 6, 1995, approved a **Federal Register** notice amending its requirements under the Poison Prevention Packaging Act of 1970 for child-resistant packaging to change the child and adult tests under which child-resistant packaging is evaluated. Immediately thereafter, the Commission became aware of comments on the final rule that had not previously been submitted to the agency during the course of the rulemaking. As a result, the Commission on February 9, 1995, voted to withhold publication of the final rule in order to consider these new arguments.

The new arguments can be summarized as follows. First, in establishing an adult test panel consisting of adults aged 60–75, the Commission allegedly exceeded its statutory authority to require that child-resistant packaging not be difficult for ''normal adults'' to use properly. Second, the rule allegedly addresses consumer convenience, rather than safety, which the comment claims is not properly the subject of a Commission regulation.

DATES: Written comments limited to the new issues described below may be submitted on or before March 7, 1995.

ADDRESSES: Written comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 501, 4340 East-West Highway, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Suzanne Barone, Ph.D., Project Manager, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477, ext. 1196.

SUPPLEMENTARY INFORMATION:

The Poison Prevention Packaging Act of 1970 (''PPPA''), 15 U.S.C. 1471–1476, authorizes the Consumer Product Safety Commission to issue requirements that certain household substances be sold in child-resistant (''CR'') packaging. Under the PPPA, the Commission has defined and established standards for such ''special'' packaging. 16 CFR 1700.1(b)(4), 1700.3, 1700.15, and 1700.20. The Commission has also determined which household substances are required to have the special packaging. 16 CFR 1700.14.

To comply with the special packaging requirements, a package must resist entry by most young children and must be ''not difficult'' for ''normal adults'' to open and properly resecure, within specified time periods. 15 U.S.C. 1471(4). The existing requirements were developed before the widespread use of CR packaging (''CRP'') and, therefore, without the benefit of the actual use experience and test data that since have become available.

The current adult test protocol, 16 CFR 1700.20(a)(4) and (5), specifies a test panel of 100 adults, ages 18 through 45 years. Seventy percent of the adults must be females and 30 percent must be

males. The test period is 5 minutes. The adults are given the test package and asked to open and then properly close the package. For a package to meet the PPPA effectiveness criteria, at least 90 percent of the adults must be able to open and, if appropriate, properly close the package within the 5-minute test period. 16 C.F.R. 1700.15(b)(2).

In enacting the PPPA, the Congress was concerned that the elderly or individuals with disabilities would be unable to open CRP. Therefore, the PPPA was drafted to permit substances subject to CRP requirements to be marketed in non-CR packages (''non-CRP'') in certain circumstances.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CRP only if (1) the manufacturer (or packer) also supplies the substance in CRP of a popular size and (2) the non-CRP bears conspicuous labeling stating: ''This package for households without young children.'' 15 U.S.C. 1473(a). If the package is too small to accommodate this label statement, the package may bear a label stating: ''Package not child-resistant.'' 16 CFR 1700.5(b). The right of the manufacturer or packer to market a single size of the product in noncomplying packaging under these conditions is termed the ''single-size exemption.''

Furthermore, prescription substances subject to special packaging standards may be dispensed in non-CRP if directed by the prescriber or requested by the purchaser. PPPA § 4(b), 15 U.S.C. 1473(b).

Thus, persons who find CRP unduly difficult to use may purchase the single size of a nonprescription product that may be provided in noncomplying packaging or may request that his or her prescriptions be supplied in noncomplying packaging, thereby eliminating the protection that CRP provides against poisoning. Consumers are also making a substantial number of CRP ineffective after bringing them home, such as by leaving the package cap off or loose or by placing the package's contents in a non-CR container. The Commission was concerned that these consumer actions, all caused at least in part by packaging that is difficult for normal adults to use properly, were exposing children to avoidable poisonings.

On January 19, 1983, the Commission published an advance notice of proposed rulemaking (''ANPR'') outlining its concerns in this area and explaining possible actions to increase the proper use of CRP, simplify the test procedures, and make the test procedures less affected by possible variables. 48 FR 2389. After considering comments on the ANPR and other available information, the Commission decided to propose amendments to the protocol to address this problem. Also, the proposed amendments would change the protocol to make the test results more consistent and make the child test easier to perform. The Commission published its initial proposal in the **Federal Register** of October 5, 1990. 55 FR 40856.

Older adults typically have the most difficulty with CRP. Therefore, in order to eliminate the currently-marketed CR package designs that are most difficult for ''normal adults'' of all ages to open, the Commission proposed to substitute older adults, ages from 60–75 years, for the current panel of 100 18–45 year-olds.

The original period for written comments on the proposal expired January 3, 1991, and oral comments were received by the Commission on December 5, 1990. The written and oral comments included several requests that the comment period be extended for periods up to 180 days. The requests stated that the testing and evaluations needed to respond to the proposal required the additional time. Some requests also asked for a second opportunity to submit oral comments at the end of the extended period for submitting written comments. The Commission considered these requests and granted an extension of 180 days, until July 1, 1991, for submission of written comments. Additional oral comments were received on September 12, 1991.

During the original comment period, a commenter suggested certain changes to the proposed adult test. The Commission preliminarily concluded that this suggestion might have merit and requested comment on it. 56 FR 9181 (March 5, 1991).

The Commission received a number of comments in response to the proposed rule and the additional request for comment. The Commission then published a further request for comment on additional information used to address comments and on the changes to the test procedures that the Commission preliminarily concluded were appropriate. 59 FR 13264 (March 21, 1994). On December 20, 1994, the Commission was briefed by its staff on the comments on the proposed rule and the changes recommended by the staff.

On January 6, 1995, the Commission met and decided to approve the rule recommended by the staff, but to exclude from the scope of the rule those products that must be packaged in metal cans or aerosol form. The staff made appropriate changes to the draft **Federal Register** notice that would issue the final rule, and that notice was approved by the Commission on February 6, 1995. Immediately thereafter, certain portions of the packaging industry raised concerns about the Commission's action. Some of these concerns already had been addressed in the rulemaking proceeding. Two concerns, however, had not been the subject of specific comments by interested parties in this rulemaking.

Specifically, the new comments can be summarized as follows. First, in establishing an adult test panel consisting of adults aged 60–75, the Commission allegedly exceeded its statutory authority to require that child-resistant packaging not be difficult for ''normal adults'' to use properly. Second, the rule allegedly addresses consumer convenience, rather than safety, which the comment claims is not properly the subject of a Commission regulation. In addition, the second comment contends that to the extent that child-resistant packages exist that will pass the ''senior friendly'' test approved by the Commission, market forces will be an adequate and more appropriate mechanism to ensure that the more convenient packaging will be adopted.

The Commission wanted to assure that it had an opportunity to consider these new arguments that had not previously been raised in the rulemaking. Accordingly, on February 8, 1995, the Commission voted unanimously to withhold publication of the **Federal Register** notice that would have issued the final rule, to consider the new arguments. Written comments, limited to these two issues only, may be submitted until March 7, 1995. The Commission will consider any new information and arguments received on these issues alone, and will resolve these points as quickly as possible. Comments addressing other issues will not be considered.

Dated: February 16, 1995.

Sadye E. Dunn,

Secretary Consumer Product Safety Commission.

[FR Doc. 95–4307 Filed 2–17–95; 8:45 am]

BILLING CODE 6355–01–P

Notices

Federal Register

Vol. 60, No. 34

Tuesday, February 21, 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

Animal and Plant Health Inspection Service

[Docket No. 95–007–1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Corn

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Ciba Seeds seeking a determination of nonregulated status for corn designated as ''Event 176 Corn'' genetically engineered for insect resistance. The Petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn presents a plant pest risk.

DATES: Written comments must be received on or before April 24, 1995.

ADDRESSES: Please send an original and there copies of your comments to Docket No. 95–007–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–007–01. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Ved Malik, Biotechnologist, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, 4700 River Road Unit 147, Riverdale, MD 20737–1237. The telephone number of the agency will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February. Telephone: (301) 436–7612 (Hyattsville): (301) 734–7612 (Riverdale). To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 436–7601 (Hyattsville) or (301) 734–7601 (Riverdale).

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Information of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On November 15, 1994, APHIS received a petition (APHIS Petition No. 94–319–01p) from Ciba Seeds (a division of Ciba-Geigy Corporation) of Research Triangle Park, NC, requesting a determination of nonregulated status under 7 CFR part 340 for insect-resistant corn designated as ''Event 176 Corn.'' Event 176 Corn is genetically engineered with the synthetic gene that codes for an insecticidal protein naturally produced by *Bacillus thuringiensis* subsp. *kurstaki (Btk).* The Ciba Seeds petition states that the subject corn should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, the subject corn was genetically engineered to produce an insect control protein representing a truncated form of the CryIA(b) protein that occurs naturally in *Btk*, a common gram-positive soil bacterium. This protein is a member of a class of insecticidal proteins, also known as delta-endotoxins, that are produced as parasporal crystals by *B. thuringiensis* in nature, and are known to be quite selective in their toxicity to specific organisms, while nontoxic to all other organisms.

Btk proteins are very effective against certain lepidopteran (caterpillar) insects, including European corn borer (ECB) (*Ostrinia nubilalis* (Hubner)). ECB is a major corn pest that reduces yield by disrupting normal plant physiology and causing physical damage to the plant and ear that results in stalk lodging, dropped ears, and damaged grain. Results of field tests conducted by Ciba Seeds under permits granted by AHPIS and the Environmental Protection Agency (EPA) indicate that corn plants producing the CryIA(b) protein are quite effective in controlling ECB. The corn plants under evaluation preferentially express the insect control protein in leaf tissue and pollen (both feeding sources for ECB), while minimizing its production in other plant tissues, including kernels, where it is not needed for control of the target pest.

As described in the petition, the *cryIA(b)* gene expressed in the transgenic corn plants encodes a protein that is identical to the first 648 amino acids of the full-length, 1,155-amino-acid CryIA(b) protein that occurs in nature. This truncated protein contains the portion of the native protein that is responsible for its insecticidal activity. Two different tissue-specific promoters, both derived from corn, confer protein expression in green tissue and pollen, respectively. In addition to expressing the CryIA(b) protein, the plants also express the enzyme phosphinothricin acetyltransferase, currently used in the plant as a selectable marker. Expression of the selectable market gene is regulated by the 35S promoter, while expression of the CryIA(b) protein is controlled in part by the 35S terminator. The 35S promoter and the 35S terminator are derived from the plant pathogen cauliflower mosaic virus.

Ciba Seeds' Event 176 Corn is currently considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences

(vectors, promoters, and terminators) derived from plant pathogenic sources. Event 176 Corn was evaluated in field trials conducted under APHIS permits in 1992 and 1993, and under APHIS notifications in 1993 and 1994. In the process of reviewing the applications for field trials of the subject corn, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), ''plant pest'' is defined as ''any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.'' APHIS views this definition very broadly. The definition covers direct or indirect injury, disease or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

This genetically engineered corn is also currently subject to regulation by other agencies. The EPA is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including insecticides, be registered prior to distribution or sale, unless exempt by EPA regulation. Accordingly, Ciba Seeds has submitted to the EPA an application to register this transgenic plant pesticide, the *Btk* CryIA(b) insect control protein as produced in corn. On January 13, 1995, EPA announced receipt of this application (EPA File Symbol 66736–R) in the **Federal Register** (60 FR 3209; OPP–30377; FRL–4928–9).

Under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), pesticides added to raw agricultural commodities generally are considered to be unsafe unless a tolerance or exemption from tolerance has been established. Foods containing unsafe pesticides are deemed to be adulterated. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug, and Cosmetic Act; the Food and Drug Administration (FDA) enforces the tolerances set by the EPA. Ciba Seeds has also submitted to the EPA a pesticide petition (pp 4F4395) proposing to amend 40 CFR part 180 to establish a tolerance exemption for residues of the plant pesticide active ingredient *B. thuringiensis* delta-endotoxin as produced in corn by a *cryIA(b)* gene and its controlling sequences. On February 1, 1995, EPA announced receipt of this petition in the **Federal Register** (60 FR 6092–6093; PF–618; FRL–4930–3).

Consistent with the ''Coordinated Framework for Regulation of Biotechnology'' (51 FR 23302–23350, June 26, 1986), APHIS and the EPA are coordinating their review of this genetically engineered corn to avoid duplication and assure that all relevant issues are addressed.

The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA authority for ensuring food safety under the Federal Food, Drug, and Cosmetic Act, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the avaible information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Ciba Seeds' Event 176 Corn and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 13th day of February 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–4182 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 95–010–1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that seven applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, 4700 River Road Unit 147, Riverdale, MD 20737–1237. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February. Telephone: (301) 436–7612 (Riverdale).

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' require a person to obtain a permit before introducing (importing, moving

interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered ''regulated articles.'' The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
94–355–01	Betaseed Incorporated.	12/21/94	Sugar beet plants genetically engineered to express resistance to the rhizomania virus and tolerance to the herbicide glufosinate.	California, Idaho.
94–362–01	Betaseed Incorporated.	12/28/94	Sugar beet plants genetically engineered to express tolerance to the herbicide glufosinate.	Idaho.
94–362–02	University of Wisconsin.	12/28/94	Alfalfa plants genetically engineered to express either a lignin peroxidase or an alpha amylase, and marker genes encoding neomycin phosphotransferase or beta glucuronidase.	Oregon, Wisconsin.
95–003–01	U.S. Department of Agriculture, Agricultural Research Service.	1/03/95	*Fusarium graminearum* genetically engineered to express altered levels of mycotoxin production.	Illinois, Indiana.
95–010–01	Monsanto Company ..	1/10/95	Wheat plants genetically engineered to express genes for fungal resistance.	Illinois.
95–010–02	Monsanto Company ..	1/10/95	Wheat plants genetically engineered to express various marker genes.	Illinois, Montana.
95–019–01	Asgrow Seed Company.	1/19/95	Carrot plants genetically engineered to express genes for fungal resistance.	Michigan.

Done in Washington, DC, this 13th day of February 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–4181 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Siouxon Timber Sales and Other Integrated Resource Projects, Gifford Pinchot National Forest, Skamania County, Washington

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On October 11, 1990, a Notice of Intent to prepare an environmental impact statement (EIS) for the Siouxon Timber Sales and Other integrated Resource Projects on the Wind River Ranger District of the Gifford Pinchot National Forest was published in the **Federal Register** (55 FR 41363). The Forest Service has decided not to prepare an EIS on this proposal; therefore, this Notice of Intent is rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Julie Knutson, Project Leader, Wind River Ranger District, Carson, Washington 98610; phone (509) 427–5645.

Dated: February 6, 1995.

Ted Stubblefield,

Forest Supervisor.

[FR Doc. 95–4130 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–11–M

China Basin Fire Recovery and Associated Activities Kootenai National Forest, Lincoln County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The China Basin and Quartz 3 Wildfires burned over 7,400 acres of Kootenai National Forest system lands in the late summer of 1994. The Forest Service intends to prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects of opportunities designed to recover economic value of burned timber, reduce future fuels accumulations, improve bighorn sheep winter range, rehabilitate existing sediment sources, improve hydrologic conditions in affected watersheds, and protect long-term soil productivity. These objectives would be accomplished through salvage harvest of fire-killed timber; harvest of fire-killed and green timber in bighorn sheep winter range; reforestation of harvested and severely burned areas; fuels reduction in harvested areas; restoration of roads, revegatation of road cuts and fill slopes, and drainage improvement on existing roads; and providing for immediate and long-term recruitment of instream large woody material within the China Basin decision area. The China Basin decision area is located approximately 5 air miles northwest of Libby, Montana.

The proposal's actions to salvage fire-killed trees and reforest burned areas, harvest green and fire-killed trees in bighorn sheep habitat, restore roads, reduce fuels, and implement watershed recovery projects are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The EIS will tier to the Kootenai National Forest Land and Resource Management Plan and Final EIS of September 1987, which provides overall guidance for achieving the desired forest condition of the area.

DATES: Written comments and suggestions should be received within 30 days following publication of this notice.

ADDRESSES: The Responsible Official is Robert L. Schrenk, Forest Supervisor, Kootenai National Forest. Written comments and suggestions concerning the scope of the analysis should be sent to Lawrence A. Froberg, District Ranger, Libby Ranger District, 12557 HWY 37, Libby, Montana, 59923.

FOR FURTHER INFORMATION CONTACT: Michele Holman, Planning Forester, Libby Ranger Station. Phone: (406) 293–8861.

SUPPLEMENTARY INFORMATION: During the night of August 14–15, 1994, a lightning storm started 207 fires on the Kootenai National Forest in northwest Montana. Several fires ranging in size from less than one acre to over 7,000 acres occurred on the Libby Ranger District. The china Basin Fire Recovery EIS is being prepared in response to conditions resulting from two fires which burned within the boundary of the 12,000+ acre Libby Fire Complex. An interdisciplinary landscape analysis team used an ecosystem based approach to assess the fires affects and identify management opportunities that could be implemented to move the postfire landscapes toward a desired ecological condition.

The tree mortality levels which resulted from the China Basin and Quartz 3 wildfires varied considerably. Within the fire perimeters, approximately 1,518 acres average 90% tree mortality, approximately 2,315 acres average 70% tree mortality and approximately 3,643 acres average 30% tree mortality. The China Basin fire burned within and adjacent to a portion of the Kootenai River corridor currently under study for designation as a Recreation River as provided for under the Wild and Scenic Rivers Act. The China basin Fire also burned within and adjacent to the Flagstaff Mountain Roadless Area (X–690).

The China Basin decision area contains approximately 10,300 acres within the Kootenai National Forest in Lincoln County, Montana. A portion of the proposed projects are located in the Quartz Creek drainage, primarily within the Lamoka and West Fork Quartz subdrainages. The remainder of the proposed projects are located within Hunter Gulch, Dad Creek, Burrel Creek and China Creek, which flow directly into the Kootenai River. The legal location of the decision area is as follows: Sections 15, 16, 20, 21, 22, 27, 28, 29, 30 Township 32 North, Range 32 West; Section 36, Township 32 North, Range 33 West; Sections 1, 12, 13, Township 31 North, Range 33 West; Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 Township 31 North, Range 32 West; Principle Montana Meridian. The decision area includes land owned by the Department of Fish, Wildlife and Parks and lands owned by private individuals.

Proposed Action

The primary purposes of the project are to recover valuable timber products from trees burned by wildfires that occurred in 1994; restore watershed conditions within the Quartz Creek and China Creek drainages; and to improve bighorn sheep winter habitat. The Forest Service proposes to harvest approximately 14–19 million board feet of timber by salvaging fire-killed timber and imminently dead trees on approximately 1,955 acres of forest land outside riparian protection areas and to improve bighorn sheep habitat by harvesting approximately 4–5 million feet of fire-killed and green trees from approximately 1,141 acres in an area known locally as the Sheep Range. Only trees that were killed, or are expected to die as a result of the fires, would be harvested in the areas not designed to improve bighorn sheep winter range. The proposal includes prescribed burning of about 600 acres to improve bighorn sheep winter range and about 727 acres to reduce fuel loads in harvested areas. An estimated 1,500 acres of units proposed for harvest would be planted with conifer seedlings to help meet desired conditions for species diversity. An additional 650 acres of existing conifer plantation which burned would be replanted with conifer seedlings. All temporary roads constructed for this project, as well as an estimated 17.5 miles of existing system and non-system road are proposed for restoration to reduce sediment and water yields, and improve grizzly bear and elk habitat security. Stabilization of two slumps and riparian planting of damaged stream banks are included under the proposal. In addition, projects to improve watershed recovery, repair damaged hiking trails, and damaged wildlife structures (guzzler) would be accomplished if adequate funds are available.

Approximately 468 acres of existing old growth burned in the China Basin Fire. These stands no longer provide habitat for old growth dependent species and will be recommended for a change in management to big game summer range. These burned areas of pre-fire old growth have been proposed for salvage. Approximately 764 acres have been recommended for designation as old growth to replace the stands which burned.

The decision area includes a portion of the Flagstaff Mountain Roadless Area (X–690). Most of the proposed units intended to improve bighorn sheep winter range are located within this roadless area. The activities would include harvest and prescribed burning. There is no proposed road construction within the roadless area. No proposed activities are located in areas considered for inclusion to the National Wilderness System as recommended by the Kootenai National Forest Plan or present legislative wilderness proposals.

Due to the high level of tree mortality in proposed harvest units, most harvested areas would resemble clearcut, seedtree, or shelterwood silvicultural methods. Only those live trees which must be cut to facilitate logging fire-killed trees would be harvested, except in the units intended to improve bighorn sheep habitat where live trees would be designated for removal to enhance forage conditions. In addition to most live trees, clumps of snags and downed woody debris would remain on site for cavity habitat and for watershed purposes. Timber harvest is designed to have the minimal amount of ground disturbance. Proposed harvest would be completed by tractor, skyline, cable winching from existing roads and helicopter logging systems.

The Kootenai National Forest Land and Resource Management Plan provides overall management objectives in individual delineated management areas (MA's). The decision area contains nine MA's: 2, 10, 12, 13, 15, 18, and 19. Briefly described, MA 2 is managed to protect and enhance roadless recreation use and provide wildlife values. MA 10 is managed to maintain or enhance habitat effectiveness for winter use by big-game animals and protect scenic quality in areas visible from major travel routes. MA 12 is managed to maintain or enhance the summer range habitat effectiveness for big-game species and produce a programmed yield of timber. MA 13 is managed to provide the special habitat necessary for old growth dependent wildlife. MA 15 is managed primarily for timber production while providing for other resource values. MA 18 are areas which have regeneration difficulties and are managed by maintaining the vegetation in a healthy condition and maintaining populations of existing wildlife. MA 19 is managed to protect soil stability and water quality by maintaining the vegetation in a healthy condition and minimizing surface disturbance. Timber salvage and fuels reduction is proposed in MA 12 and MA 15. Harvest units and prescribed burns to improve bighorn sheep habitat are proposed within MA 10.

Preliminary Issues

Several preliminary issues of concern have been identified by the Forest Service. These issues are briefly described below:

- Water Quality—Streams in the decision area have been impacted by past management and large wildfires. How would the proposed action affect water yield, sediment production, stream stability, and recovery from past impacts?

• Timber Supply—An estimated 24 million board feet of timber was killed in the China Basin and Quartz 3 fires. Much of this fire-killed timber will quickly lose its commercial value due to rapid deterioration. To what extent does the proposed action recover the commercial value of fire-killed timber to help meet local and national needs?

• Activity in Roadless Areas—What effect would the proposal have on the roadless character of the Flagstaff Mountain Roadless Area?

• Grizzly Bear—The decision area lies within the recovery area for the Cabinet/Yaak grizzly bear ecosystem. How would the proposal maintain and enhance grizzly bear habitat, and contribute to recovery efforts?

• Fisheries—Some streams contain fisheries habitat and resident fish populations, including torrent sculpin (a Region 1 sensitive species), bull trout (currently being considered for listing as a threatened or endangered species), and westslope cutthroat trout (likely hybridized). How would the proposed action affect fisheries habitat and populations?

• Bighorn Sheep Habitat—The proposal contains approximately 1141 acres of ''special cuts'' intended to improve bighorn sheep habitat. To what extent does the proposed action improve forage for wintering bighorn sheep?

• Visual Quality along Kootenai River—The units proposed to improve bighorn sheep habitat are located along the Kootenai River Corridor and can be viewed in places from HWY 2. To what extent will the viewshed be altered from along HWY 2?

Forest Plan Amendment

The Kootenai National Forest Land and Resource Management Plan has specific management direction for the China Basin decision area. The China Basin proposed action is designed to maintain or improve resource conditions and move towards achieving desired ecological conditions, and is consistent with the goals and objectives of the Forest Plan. Prior to making a NEPA decision, a thorough examination of all standards and guidelines of the Forest Plan would be completed and, if necessary, plan exceptions or amendments would be addressed in the EIS.

Decisions To Be Made

The Kootenai National Forest Supervisor will decide the following:

Should dead and imminently dead trees within fire areas be harvested and if so how and where,

What amount, type, and distribution of watershed restoration projects, including road restoration, would be implemented,

What burned areas need to be replanted,

Should dead and green trees be harvested to improve bighorn sheep habitat and it so, how and where, and

If Forest Plan exception or amendments are necessary to proceed with the Proposed Action within the decision area.

Public Involvement and Scoping

Some public participation efforts have already been initiated under the Sheep Range Environmental Assessment, prior to the fires. The design of the proposed units to improve bighorn sheep habitat have been altered in response to the Sheep Range project public involvement. Consultation with appropriate State and Federal agencies has been initiated. Preliminary effects analysis indicated that the wildfires may significantly affect the quality of the human environment, and fire recovery activities have the potential to both intensify and reduce effects. These potential effects prompted the decision to prepare an EIS for the China Basin Fire Recovery Project.

This environmental analysis and decisionmaking process will enable additional interested and affected people to participate and contribute to the final decision. Public participation will be requested at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, and other individuals or organizations who may be interested in or affected by the proposed projects. This input will be used in preparation of the draft and final EIS. The scoping process will include:

• Identifying potential issues.

• Identifying major issues to be analyzed in depth.

• Exploring additional alternatives which will be derived from issues recognized during scoping activities.

• Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The analysis will consider a range of alternatives, including the proposed action, no action, and other reasonable action alternatives.

Estimated Dates for Filing

The draft China Basin Fire Recovery EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by May, 1995. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The final EIS is scheduled to be completed in August, 1995. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

Robert L. Schrenk, Forest Supervisor, Kootenai National Forest, 506 US Highway 2 West, Libby, MT 59923 is the Responsible Official. I have delegated the responsibility to prepare the China Basin Fire Recovery Environmental Impact Statement to Lawrence A. Froberg, District Ranger, Libby Ranger District. As the Responsible Official I

will decide which, if any, of the proposed projects will be implemented. I will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: February 10, 1995.

Robert L. Schrenk,

Forest Supervisor.

[FR Doc. 95–4084 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 33–93]

Foreign-Trade Zone 92—Gulfport/Biloxi, MS; Application for Subzone; Chevron U.S.A. Products Company (Oil Refinery), Pascagoula, MS; Amendment of Application

Notice is hereby given that the application of the Gulfport/Biloxi Foreign-Trade Zone, Inc., grantee of FTZ 92, requesting special-purpose subzone status for the oil refinery of Chevron U.S.A. Products Company (Chevron), in Pascagoula, Mississippi (58 FR 41710, 8/5/93) has been amended to expand the scope of authority for activity to be conducted under zone procedures.

The original application indicated that Chevron would accept approval subject to the standard oil refinery restrictions (privileged foreign status on incoming foreign merchandise and full duties on fuel consumed). The amendment requests authority for the option to elect nonprivileged foreign status (NPF option) on foreign-sourced inputs used in the production of petrochemical feedstocks and refinery by-products, including the following: benzene, toluene, xylene, liquified petroleum gas, propane, butane, ethane, ethylene, propylene, butylene, butadiene, petroleum coke, asphalt, sulfur, sulfuric acid, distillates, fuel oils, kerosene.

The application remains otherwise unchanged.

The comment period is reopened until March 23, 1995.

Dated: February 10, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–4198 Filed 2–21–95; 8:45 am]

BILLING CODE 3510–DS-P

International Trade Administration

[A–351–825, A–533–810, A–588–833]

Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3320 or (202) 482–6965, respectively.

Scope of Orders

The product covered by these orders is stainless steel bar (SSB). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.,* cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.,* cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to these orders is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Antidumping Duty Orders

In accordance with section 735(a) of the Tariff Act of 1930, as amended (''the Act''), on December 19, 1994, the Department of Commerce (''the Department'') made its final determinations that SSB from Brazil, India and Japan was being sold at less than fair value (59 FR 66914, 66915, 66930 (Brazil, India and Japan, respectively) December 28, 1994). On February 10, 1995, the International Trade Commission notified the Department of its final determinations, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of imports of the subject merchandise.

Therefore, all unliquidated entries of SSB from Brazil, India and Japan entered, or withdrawn from warehouse, for consumption on or after August 4, 1994, which is the date on which the Department published its notices of preliminary determination in the **Federal Register**, are liable for the assessment of antidumping duties.

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all relevant entries of SSB from Brazil, India and Japan. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The ''All Others'' rate applies to all exporters of subject merchandise not specifically listed below.

The *ad valorem* weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage (percent)
Brazil:	
Acos Villares, S.A.	19.43
All Others	19.43
India:	
Grand Foundry, Ltd.	3.87
Mukand, Ltd.	21.02
All Others	12.45
Japan:	
Aichi Steel Works, Ltd	61.47
Daido Steel Co., Ltd	61.47
Sanyo Special Steel Co., Ltd	61.47
All Others	61.47

This notice constitutes the antidumping duty orders with respect to SSB from Brazil, India and Japan, pursuant to section 736(a) of the Act. Interested parties may contact the

Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping orders currently in effect.

These orders are published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: February 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–4199 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

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), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–003. *Applicant:* The Pennsylvania State University, Materials Research Laboratory, University Park, PA 16802–801. *Instrument:* Automatic Grinding, Mixing Stirring and Kneading Machines. *Manufacturer:* Nitto Kagaku Co., Ltd., Japan. *Intended Use:* The instrument will be used to grind and mix raw powders such as BaO TiO_2, and PbO, which will then be used in the processing of ceramic samples. It will ensure homogeneous mixing in half the time since it has dual arms. *Application Accepted by Commissioner of Customs:* January 18, 1995.

Docket Number: 95–004. *Applicant:* Purdue University, West Lafayette, IN 47907. *Instrument:* Electron Microscope, Model CM200. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used for investigations that encompass structural studies of viruses and membranes to better understand processes of viral assembly, attachment, uncoating and replication and energy transduction through membranes. Experiments will include low irradiation transmission electron frozen-hydrated biological macromolecules and on-line image analysis and processing of images recorded on slow-scan, charge-coupled device. In addition, the instrument will be used for educational purposes in the biology courses BIOL 695N, 695M, 698, and 699. *Application Accepted by Commissioner of Customs:* January 19, 1995.

Docket Number: 95–005. *Applicant:* Lamont-Doherty Earth Observatory of Columbia University, Route 9W, Palisades, NY 10964–000. *Instrument:* Mass Spectrometer, Model VG 5400. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used for analysis of He isotope, tritium and Ne concentrations and $^3He/^4He$ ratios of water samples from natural systems (oceans, groundwater, lakes). The objective of these studies is the investigation of flow patterns and mean residence time of aquatic systems. During this research, graduate students will be trained in the methods of noble gas analysis. *Application Accepted by Commissioner of Customs:* January 25, 1995.

Docket Number: 95–006. *Applicant:* Northwestern University, 1847 Sheridan Road, Evanston, IL 60208–150. *Instrument:* Mass Spectrometer, Model OPTIMA. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to prepare gaseous samples and measure isotope ratios of low atomic weight chemical elements in gaseous chemical compounds. Studies of environmental and/or geological samples of solids, liquids, gases; for example, minerals, waters, petroleum, and microfossil shell and organic materials from sedimentary and aqueous environments will be conducted. In addition, the instrument will be used for training purposes in various graduate, advance undergraduate and sophomore to senior level courses which involve introductions in stable isotope geochemistry. *Application Accepted by Commissioner of Customs:* January 26, 1995.

Docket Number: 95–007. *Applicant:* Ohio State University, Department of Physics, 174 West 18th Avenue, Columbus, OH 43210. *Instrument:* Frequency Synthesizer. *Manufacturer:* KVARTZ Measuring Instruments & Systems, CIS. *Intended Use:* The instrument will be used to study low pressure gases including HNO_3, HOOH, H_2O, H_2S, SO_2 and CH_3F with two basic objectives: (1) to understand molecular structure and the dynamics of collisions between molecules and (2) to determine molecular spectroscopic parameters so that they can be used in remote sensing experiments of molecules in the atmosphere. *Application Accepted by Commissioner of Customs:* January 30, 1995.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 95–4200 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–DS–F

Minority Business Development Agency

Business Development Center Applications: Baton Rouge, LA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Baton Rouge Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Baton Rouge, Louisiana Metropolitan Area. The award number of the MBDC will be 06–0–95010–1.

DATES: The closing date for applications is March 20, 1995. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before March 20, 1995. A pre-application conference will be held on March 1, 1995, at 10:00 a.m., at the Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, (214) 767–8001.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230, (202) 482–3763.

FOR FURTHER INFORMATION CONTACT: Demetrice Jenkins at (214) 767–8001.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from August 1, 1995 to August 31, 1996,

is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first first period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, ''Intergovernmental Review of Federal Programs,'' is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to

DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: February 14, 1995.

Donald L. Powers,

Federal Register Liaison Office, Minority Business Development Agency.

[FR Doc. 95–4201 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–21–P

DEEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications: Shreveport, LA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Shreveport Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Shreveport, Louisiana Metropolitan Area. The award number of the MBDC will be 06–10–95004–01.

DATES: The closing date for applications is March 20, 1995. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before March 20, 1995. A pre-application conference will be held on March 1, 1995, at 10:00 a.m., at the Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, (214) 767–8001.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, NW., Room 5073, Washington, DC 20230, (202) 482–3763.

FOR FURTHER INFORMATION, CONTACT: Demetrice Jenkins at (214) 767–8001.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from June 1, 1995 to June 30, 1996, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first first period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, ''Intergovernmental Review of Federal Programs,'' is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may

terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: February 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–4202 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Shreveport, LA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency (MBDA) is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the Shreveport, Louisiana MBDC. This solicitation was originally published in the **Federal Register,** Thursday, November 3, 1994, Vol. 59, No. 212 55079.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: February 13, 1995.

Donald L. Powers,

Federal Register Liaison Office, Minority Business Development Agency.

[FR Doc. 95–4203 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–21–P

Native American Business Development Center Applications: New Mexico

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications for its New Mexico Native American Business Development Center (NABDC).

The purpose of the NABDC is to provide integrated business development services to Native American entrepreneurs. The recipient will provide service in the New Mexico Metropolitan Area. The award number of the NABDC will be 06–10–95007–01.

DATES: The closing date for applications is March 20, 1995. Applications must be received on or before March 20, 1995. Anticipated processing time of this award is 120 days. A pre-application conference will be held on March 1, 1995, at 2:00 p.m., at the Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, (214) 767–8001.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230, (202) 482–3763.

FOR FURTHER INFORMATION CONTACT: Demetrice Jenkins at (214) 767–8001.

SUPPLEMENTARY INFORMATION: The funding instrument for this project will be a cooperative agreement. Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from August 1, 1995 to August 31, 1996, is estimated at $197,825. The total Federal amount is $197,825 and is composed of $193,000 plus the Audit Fee amount of $4,825.

Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions. Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of Native American businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's

estimated cost for providing such assistance (20 points).

An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. The applicant with the highest point score will not necessarily receive the award.

If an application is selected for funding, MBDA has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of MBDA.

Executive order 12372, ''Intergovernmental Review of Federal Programs,'' is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Activities—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at the risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award activities.

Recipients and subrecipients are subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the NABDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Indirect Costs—The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100% of the total proposed direct costs dollar amount in the application, whichever is less.

Buy American-Made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.801 Native American Program

(Catalog of Federal Domestic Assistance)

Dated: February 14, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–4204 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–21–P

Native American Business Development Center Applications: North Dakota

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications for its North Dakota Native American Business Development Center (NABDC).

The purpose of the NABDC is to provide integrated business development services to Native American entrepreneurs. The recipient will provide service in the North Dakota Metropolitan Area. The award number of the NABDC will be 08–10–95008–01.

DATES: The closing date for applications is *March 20, 1995.* Applications must be received on or before *March 20, 1995.* Anticipated processing time of this award is 120 days. A pre-application conference will be held on March 1, 1995, at 2:00 p.m., at the Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, (214) 767–8001.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230, (202) 482–3763.

FOR FURTHER INFORMATION, CONTACT: Demetrice Jenkins at (214) 767–8001.

SUPPLEMENTARY INFORMATION: The funding instrument for this project will be a cooperative agreement. Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from August 1, 1995 to August 31, 1996, is estimated at $169,125. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125.

Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions. Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of Native American businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points).

An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. The applicant with the highest point score will not necessarily receive the award.

If an application is selected for funding, MBDA has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of MBDA.

Executive order 12372, ''Intergovernmental Review of Federal Programs,'' is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Activities —Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at the risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award activities.

Recipients and subrecipients are subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the NABDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for

lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Indirect Costs—The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100% of the total proposed direct costs dollar amount in the application, whichever is less.

Buy American-Made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.801 Native American Program
(Catalog of Federal Domestic Assistance)

Dated: February 14, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–4205 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–21–P

Native American Business Development Center Applications: Oklahoma

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications for its Oklahoma Native American Business Development Center (NABDC).

The purpose of the NABDC is to provide integrated business development services to Native American entrepreneurs. The recipient will provide service in the Oklahoma Metropolitan Area. The award number of the NABDC will be 06–10–95009–01.

DATES: The closing date for applications is March 20, 1995. Applications must be received on or before March 20, 1995. Anticipated processing time of this award is 120 days. A pre-application conference will be held on March 1, 1995, at 2:00 p.m., at the Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, (214) 767–8001.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230, (202) 482–3763.

FOR FURTHER INFORMATION, CONTACT: Demetrice Jenkins at (214)767–8001.

SUPPLEMENTARY INFORMATION: The funding instrument for this project will be a cooperative agreement. Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from August 1, 1995 to August 31, 1996, is estimated at $254,200. The total Federal amount is $254,200 and is composed of $248,000 plus the Audit Fee amount of $6,200.

Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions. Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of Native American businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points).

An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. The applicant with the highest point score will not necessarily receive the award.

If an application is selected for funding, MBDA has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of MBDA.

Executive order 12372, ''Intergovernmental Review of Federal Programs,'' is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Activities—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at the risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award activities.

Recipients and subrecipients are subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any cooperative agreement in

whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the NABDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Indirect Costs—The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100% of the total proposed direct costs dollar amount in the application, whichever is less.

Buy American-Made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.801 Native American Program
(Catalog of Federal Domestic Assistance)

Dated: February 14, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–4206 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–21–P

National Institute of Standards and Technology

Announcing a Meeting of Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Wednesday, March 22, and Thursday, March 23, 1995, from 9:00 a.m. to 5:00 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer sytems. All sessions will be open to the public.

DATES: The meeting will be held on March 22 and 23, 1995 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will take place at Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

Agenda

—Welcome and Update
—Overview of Meeting
—Common Criteria and Assurance Issues
—OMB Activites—Briefing and Discussion
—Security in Governmentwide E-Mail
—Security Policy Board
—Key Escrow Update
—Public Participation
—Pending Board Business
—Close.

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer System Security and Privacy Advisory Board, Computer Systems Laboratory, Building 225, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the board by March 15, 1995. Approximately 20 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, Room B154, Gaithersburg, MD 20899, telephone: (301) 975–3240.

Dated: February 14, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–4157 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–CN–M

Announcement of the American Petroleum Institute's Standards Activity

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of intent to develop a voluntary standard and request for public comments and participation in standard's development.

SUMMARY: The American Petroleum Institute (API), with the assistance of other interested parties, continues to develop standards, both national and international, in several areas. This notice list the standardization effort currently being conducted. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of API is being undertaken as a public service. NIST does not necessarily endorse, approve, or recommend the proposed standard being referenced in this notice.

SUPPLEMENTARY INFORMATION: The American Petroleum Institute is developing a voluntary standard on which to base a voluntary program to accredit laboratories that perform testing on petroleum products [Petroleum Test Laboratories Accreditation Program (PTLAP)]. The program objective is to assist users in identifying laboratories which meet specific industry standards and to improve the quality of petroleum testing results. The proposed standard and subsequent program will consist of the following elements:

- Accredited laboratories having a quality system based on the requirements of ISO Guide 25, *General Requirements of the Competence of Calibration and Testing Laboratories.*
- Labortories submitting to an on-site assessment by API-qualified assessors to establish compliance with program requirements. This assessment includes witnessing of test methods, evaluation of technical competence, and a quality system review.
- Laboratory participation in the ASTM Interlaboratory Crosscheck Program and the successful completion of one unannounced on-site assessment evaluation during the three-year accreditation period.

DATES: The voluntary standard is expected to be completed by March 1995 following peer review and an open meeting.

ADDRESSES: Comments regarding this proposal should be submitted to Roland Goodman, American Petroleum Institute, 1220 L Street NW., Washington, DC 20005, Telephone (202) 682–8189.

FOR FURTHER INFORMATION CONTACT: Roland Goodman, American Petroleum Institute, at above address, (202) 682–8189.

Authority: 15 U.S.C. 272.

Dated: February 14, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–4155 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–13–M

[Docket Number 950130031–5031–01]

Proposed Voluntary Product Standard; PS 1–95 ''Construction and Industrial Plywood''

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of circulation of proposed Voluntary Product Standard PS 1–95 ''Construction and Industrial Plywood.''

SUMMARY: This is to advise the public that the National Institute of Standards and Technology is circulating a revision of Voluntary Product Standard PS 1–83 ''Construction and Industrial Plywood'' for review and comment. The revised standard, PS 1–95 ''Construction and Industrial Plywood,'' is being processed in accordance with the provisions of the Department of Commerce ''Procedures for the Development of Voluntary Product Standards'' (15 CFR part 10, as amended; published June 20, 1986).

DATES: Written comments regarding the standard should be submitted to the Standards Management Program, Office of Standards Services, on or before May 8, 1995.

ADDRESSES: Written comments and requests for copies of PS 1–95 should be directed to the Standards Management Program, Office of Standards Services, National institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Barbara Meigs, Office of Standards Services, National Institute of Standards and Technology, telephone: 301–975–4025, FAX: 301–963–2871.

SUPPLEMENTARY INFORMATION: The revision, PS 1–95, was developed by the Standing Committee for Voluntary Product Standard PS 1–83, composed of representatives of producers, distributors, and consumers of construction and industrial plywood, and others with an interest in the Standard. Among the major changes for PS 1–83 are the incorporation in PS 1–95 of a performance-based method for evaluating new species not previously listed, desirable due to the changing available timber resource for plywood production; and the elimination of Structural II panel grades since this product has rarely been manufactured since first introduced in 1966. The text of the Standard has been reformatted in some instances, and units of measurement throughout the Standard are provided in both metric and conventional units.

The Standard provides basic technical requirements for the principal types and grades of construction and industrial plywood. It covers the wood species, veneer grading, glue bonds, panel construction and workmanship, dimensions and tolerances, marking, moisture content, and packing of plywood intended for construction and industrial uses. The Standard includes test methods to determine product compliance, a glossary of trade terms and definitions, and a quality certification program. Additional information is provided regarding reinspecting practices.

Authority: 15 USC 272.

Dated: February 14, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–4156 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Sri Lanka

February 15, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: February 15, 1995.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, 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).

The amount of special shift previously applied to Categories 340/640 is being reduced and the limit for Category 840 is being increased (see 59 FR 67702, published on December 30, 1994).

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 14152, published on March 25, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreement on Textiles and Clothing and the bilateral agreement, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 15, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 22, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1994 and extends through June 30, 1995.

Effective on February 15, 1995, you are directed to adjust the limits for the following categories, pursuant to the provisions of the Uruguay Round Agreement on Textiles and Clothing and the current bilateral agreement between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka:

Category	Adjusted eighteen-month limit [1]
340/640	1,765,547 dozen of which not more than 711,537 dozen shall be in Categories 340–Y/640–Y [2].
840	252,257 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–4197 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board/Defense Policy Board Task Force on Theater Missile Defense (TMD)

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board/Defense Policy Board Task Force on Theater Missile Defense (TMD) will meet in closed session on February 27–28 and March 13–14, 1995 at Science Applications International Corporation (SAIC), McLean, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, these meetings are scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the task Force will review the purposes of the U.S. theater missile defense effort, including the nature of the threat (types and quantities of missiles and payloads); how might it evolve; the degree of defense we seek; what we wish to defend; under what circumstances; and to what levels.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: February 15, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–4158 Filed 2–17–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Test Center Advisory Groups will meet on 1–2 March 1995 at the Air Force Operational Test and Evaluation Center (AFOTEC), Kirtland Air Force Base, New Mexico from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to receive briefings and review AFOTEC operational test plans for the B–1 Bomber.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–4143 Filed 2–17–95; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Test Center Advisory Groups will meet on 18–19 April 1995 at the Arnold Engineering Development Center, Arnold Air Force Base, Tennessee from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review test center developments and issues of concern to the Commander, AEDC.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–4144 Filed 2–17–95; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133D]

Office of Special Education and Rehabilitative Services National Institute on Disability and Rehabilitation Research; Notice Reinviting Applications and of a Pre-application Meeting for a New Award Under the Knowledge Dissemination and Utilization Program (D&U) for Fiscal Year (FY) 1995

Purpose: On February 10, 1995, a notice was published in the **Federal Register** at 60 FR 8126 reinviting applications for new awards under the D&U program for fiscal year 1995 to train persons with rights and duties under the Americans with Disabilities Act (ADA). The date ''April 11, 1995'' for which applications are available should be corrected to read.

''*Applications Available:* Feb. 21, 1995''.

FOR FURTHER INFORMATION CONTACT: Dianne Villines, U.S. Department of

Education, 600 Independence Avenue SW., Switzer Building, Room 3417, Washington, D.C. 20202. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Dated: February 15, 1995.

Howard R. Moses,

Acting Assistant, Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–4162 Filed 2–17–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–149–002, et al.]

Alabama Power Company, et al.; Electric Rate and Corporate Regulation Filings

February 13, 1995.

Take notice that the following filings have been made with the Commission:

1. Alabama Power Company

[Docket No. ER95–149–002]

Take notice that on January 30, 1995, Alabama Power Company tendered for filing amended procedures applicable to its recovery of emission allowance replacement costs under the Interconnection Agreement Between Alabama Power Company and Alabama Electric Cooperative, Inc., and the Agreement for Transmission Service to Distribution Cooperative Members of Alabama Electric Cooperative. The purpose of the filing is to comply with the Commission's Order of December 30, 1994 in Docket No. ER95–149–000.

Comment date: February 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Northeast Utilities Service Company

[Docket No. ER95–357–000]

Take notice that on January 30, 1995, Northeast Utilities Service company (NUSCO), tendered for filing on behalf of The Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO), Holyoke Water Power Company (HWP), Holyoke Power and Electric Company and Public Service company of New Hampshire (together, the NU System Companies) a missing Schedule B to a Distribution Service Agreement previously filed by NUSCO in the above-referenced docket.

NUSCO renews its request that the proposed rate schedule changes be permitted to become effective January 1, 1995. NUSCO states that a copy of the filing has been mailed or delivered to the affected parties.

Comment date: February 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Logan Generating Company, L.P.

[Docket No. ER95–471–000]

Take notice that on January 23, 1995, Logan Generating Company, L.P. tendered for filing a Notice of Succession notifying the Commission that Keystone Energy Service Company, L.P.'s name has changed to Logan Generating Company, L.P.

Comment date: February 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Midwest Power Systems Inc.

[Docket No. ER95–486–000]

Take notice that on January 27, 1995, Midwest Power Systems Inc. (Midwest) tendered for filing amendments to coordination rate schedules provide for the recovery of cost of emission allowances.

Midwest respectfully requests a waiver of Commission rules so that the amendments may be approved retroactive to January 1, 1995. Midwest agrees that any revenues collected from these amendments will collected subject to refund pending Commission action.

Midwest states that copies of this filing were served on the parties identified in Exhibit II of the filing.

Comment date: February 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. American Electric Power Service Corporation

[Docket No. ER95–497–000]

Take notice that on February 1, 1995, the American Electric Power Service Corporation (AEPSC) amended its filing in the above referenced Docket to add one agreement.

A copy of the filing was served upon the parties affected by the amendment and the affected state regulatory commissions for the states of Ohio, Indiana, Michigan, Virginia, West Virginia, Kentucky, and Tennessee.

Comment date: February 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER95–544–000]

Take notice that on January 20, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Enron Power Marketing, Inc. (Enron). This Service Agreement specifies that Enron has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was filed with the Commission on December 12, 1994 in Docket No. ER95–276–000 and allows GPU and Enron to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of December 20, 1994 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: February 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER95–545–000]

Take notice that on January 20, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Louis Dreyfus Electric Power Inc. (Louis Dreyfus). This Service Agreement specifies that Louis Dreyfus has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was filed with the Commission on December 12, 1994 in Docket No. ER95–276–000 and allows GPU and Louis Dreyfus to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for

good cause shown and an effective date of December 28, 1994 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: February 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER95–546–000]

Take notice that on January 20, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Long Island Lighting Company (LILCO). This Service Agreement specifies that LILCO has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was filed with the Commission on December 12, 1994 in Docket No. ER95–276–000 and allows GPU and LILCO to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of December 23, 1994 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: February 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Ohio Power Company

[Docket No. FA92–60–001]

Take notice that on January 27, 1995, Ohio Power Company tendered for filing a Compliance Filing pursuant to the Commission's Letter Order issued December 2, 1994.

Copies of the filing were served upon Wheeling Power Company, the Public Service Commission of West Virginia, the affected municipal customers and the Public Utilities Commission of Ohio.

Comment date: February 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. University Cogeneration, Inc.

[Docket Nos. QF86–529–003 and EL94–76–000]

On February 2, 1995, University Cogeneration, Inc. (Applicant) submitted for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the operation of Applicant's cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4109 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–92–000]

Atlantic Gas Systems, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Myer Compressor Station and Request for Comments on Environmental Issues

February 15, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an Environmental Assessment (EA) that will discuss environmental impacts of the construction and operation of the proposed Myer Compressor Station.[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

Atlantic Gas Systems, Incorporated (Atlantic) wants Commission authorization to construct and operate a new 825-horsepower (hp) compressor station on the site of an existing compressor foundation in Cabell County, West Virginia.

Atlantic would construct the following facilities:

- One skid-mounted 825-hp reciprocating engine-driven compressor unit leased from Cardinal Compression, Inc.;
- An insulated compressor building; and
- An office/control building.

The location of these facilities is shown in appendix 1.[2]

Land Requirements for Construction

Atlantic purchased a 3.42-acre site in Cabell County that was previously used for a compressor station. Atlantic would keep all construction disturbance within this site.

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 taken into account during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage 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:

- Geology and soils

[1] Atlantic Gas Systems, Incorporated'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, Room 3104, 941 North Capitol Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various 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 information provided by Atlantic. Keep in mind that this is a preliminary list. The list of issues will be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- The Myer Compressor Station would be a new source of air pollutant emissions.
- The operating noise of the proposed facility may impact the surrounding residences. The nearest noise-sensitive area is a residence 810 feet south of the Myer Compressor Station.

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, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426;
- Reference Docket No. CP95–92–000;
- Send a *copy* of your letter to: Mr. Steven G. Grape, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NW., room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before March 15, 1995.

If you wish to receive a copy of the EA, you should request one from Mr. Grape at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become in intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions 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. Steven G. Grape, EA Project Manager, at (202) 208–1046.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4146 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–715–000]

Koch Gateway Pipeline Co.; Notice of Availability of the Environmental Assessment for the Proposed Kiln Compressor Station

February 15, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the Kiln Compressor Station proposed by Koch Gateway Pipeline Company (Koch Gateway) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the Kiln Compressor Station. The project involves construction of a new 8,000-horsepower (hp) compressor station in Hancock County, Mississippi. The proposed facilities include:

- Two 4,000-hp Solar Centaur T–4700 turbine-driven compressor units;
- Two gas discharge coolers;
- Two oil storage tanks;
- One condensate tank;
- One inlet separator;
- One blowdown silencer;
- 70 feet of 30-inch-diameter tie-in pipeline;
- 1,850 feet of 16-inch-diameter pipeline;
- 2,000 feet of 24-inch-diameter suction and discharge headers and associated valves;
- 335 feet of 10-inch-diameter suction and discharge headers;
- A compressor building;
- An office/control building;
- A 200-foot-tall microwave tower;
- An auxiliary building; and
- 700 feet of new gravel road.

Koch Gateway would construct this station to provide greater flexibility and reliability on its system serving the Mobile-Pensacola market. Koch Gateway would be able to move an additional 169,000,000 cubic feet of gas per day (169,000 Mcfd) on its 30-inch-diameter Index 300 mainline that runs from Lirette, Louisiana to Mobile, Alabama.

Additonally, the Kiln Compressor Station would allow Koch Gateway to inject gas into Tennessee Gas Pipeline Company's (Tennessee) existing 30-inch-diameter ''500'' pipeline at an existing interconnect between Koch Gateway and Tennessee (Kiln Interconnect). Currently, high pressure in Tennessee's 500 pipeline prevents Koch Gateway from injecting gas into Tennessee's pipeline at the Kiln Interconnect. Koch Gateway would use the Kiln Compressor Station to provide up to 377,000 Mcfd to Tennessee.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol Street, N.E., Room 3104, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public

interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Mr. Steve Grape, Environmental Project Manager, Environmental Review and Compliance Branch II, Office of Pipeline Regulation, Room 7312, PR–11.2, 825 North Capitol Street, N.E., Washington, DC 20426, (202) 208–1046.

Any person wishing to comment on the EA may do so. Written comments must reference Docket No. CP94–715–000 and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Comments should be filed as soon as possible, but must be received no later than March 15, 1995, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Mr. Steve Grape, Environmental Project Manager, at the above address.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about this project is available from Mr. Steve Grape, Environmental Project Manager.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4145 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ES95–15–001, ES95–15–002 and ES95–15–003]

Citizens Utilities Company; Notice of Amended Application

February 14, 1995.

Take notice that on February 6, February 9, and February 14, 1995, Citizens Utilities Company (Citizens), filed amendments to its application under § 204 of the Federal Power Act requesting an order: (a) Disclaiming jurisdiction over the assumption by Citizens as guarantor or otherwise of all obligations of a its subsidiaries under a lease facility relating to nonjurisdictional equipment and facilities with a cost of up to $110 million; or (b) in the alternative and without prejudice to any determination of jurisdiction, authorizing the assumption by Citizens as guarantor or otherwise of said lease obligations. Also, Citizens requests exemption from the Commission's competitive bidding and negotiated placement regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4105 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–185–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

February 14, 1995.

Take notice that on January 30, 1995, Columbia Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314–1599, filed in Docket No. CP95–185–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a new point of delivery for firm transportation service to NEA Cross of N.Y., Inc. (NEA), in Chautauqua County, New York, under its blanket certificate issued in Docket No. CP83–76–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia states that NEA has requested the new point of delivery for firm transportation service for commercial use. Columbia further states that it will provide the transportation service pursuant to its blanket certificate issued in Docket No. CP–86–240–000. Columbia indicates that the estimated maximum daily quantity and the estimated annual quantity of natural gas that it will provide through the new delivery point is 35 Dth and 12,775 Dth, respectively. Additionally, Columbia states that the quantities to be provided through the new delivery point will be provided pursuant to an existing service agreement and therefore, there is no impact on Columbia's existing peak day obligations to its other customers as a result of the construction and operation of the proposed new point of delivery. Columbia indicates that it proposes to convert an existing receipt meter from NEA to a point of delivery to serve a resort area and NEA has agreed to purchase the existing 4-inch receipt meter and appurtenant facilities at a depreciated cost of $1,225. Columbia estimates that the cost to construct facilities is approximately $15,250. According to Columbia, NEA has agreed to reimburse Columbia for the actual total cost of converting the interconnection to a point of delivery.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules or Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7(c) of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4107 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–118–000]

East Tennessee Natural Gas Company; Amended Notice of Technical Conference

February 14, 1995.

In response to a request from Atlanta Gas Light Company and Chattanooga Gas Company, intervenors in a certificate proceeding in Docket No. CP95–118–000, and with the concurrence of East Tennessee Natural Gas Company (East Tennessee), East

Tennessee, its shippers and the commission staff will meet on February 22, 1995, to discuss Order No. 636 restructuring issues that have become known after on year's experience under East Tennessee's restructured tariff. The meeting will take place following a technical conference in Docket No. CP95–118–000 which will commence at 9:30 a.m., in Room 2402–A at the offices of the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426.

For additional information, contact Timothy W. Gordon at (202) 208–2265.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4106 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–575–000]

El Paso Natural Gas Company; Notice of Site Visit

February 14, 1955.

On February 23 through 24, 1995, members of the environmental staff of the Federal Energy Regulatory Commission (FERC) will conduct a site visit to facilities being proposed by El Paso Natural Gas Company (El Paso) in the above docket. The site visit will include an inspection of the proposed route of the San Juan Triangle Expansion Project loop pipeline in San Juan County, New Mexico.

Because the proposed loop would be on allotted, trust, and reservation lands administered by the Navajo Nation, the number of people who may participate in the site visit it limited. Interested parties should contact Jeanene Hafen of El Paso at (915) 541–3410. All parties who attend must provide their own transportation. For any other information, contact Paul Friedman, the FERC Environmental Project Manager, at (202) 208–1108.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4102 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–159–000]

Florida Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

February 15, 1995.

Take notice that on February 10, 1995, Florida Gas Transmission Company (FGT), tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

Original Sheet No. 125A

FGT states that its currently effective FERC Gas Tariff does not contain provisions for disposition of Unauthorized Gas delivered to FGT's system. Unauthorized Gas is defined in the proposed tariff provisions as volumes of gas delivered to FGT that FGT cannot identify as being delivered pursuant to a transportation nomination on behalf of an existing shipper.

FGT proposes that upon becoming aware of Unauthorized Gas, FGT will post notice on its Electronic Bulletin Board (EBB) the volume, the production month received and the point of receipt of such volumes. From the date of posting, claimants will then have thirty (30) calendar days to provide evidence of ownership. If a valid claim is received in the thirty (30) day period, FGT will purchase the Unauthorized Gas at a price equal to eighty percent (80%) of the Tivoli Index, as contained in the Cash-Out Provisions of Section 14 of the General Terms and Conditions of FGT's tariff, for the month in which the Unauthorized Gas is delivered into FGT or the month of settlement, whichever is less.

FGT states that it shall purchase a maximum of 12,000 MMBtu during a twelve (12) month calendar period from any single claimant or at any single receipt point. FGT has included these provisions to avoid becoming an unwilling ''purchaser of last resort'' for producers willing to accept 80% of the Tivoli Index who might intentionally deliver Unauthorized Gas to FGT. FGT believes the proposed changes provide an efficient and equitable mechanism for resolving Unauthorized Gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 23, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4153 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–197–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

February 14, 1995.

Take notice that on February 3, 1995, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP95–197–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate facilities at an existing meter station site in Calcasieu Parish, Louisiana under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway proposes to increase natural gas delivery at the existing meter station for serving the Firestone plant on behalf of Koch Gas Services Company (KGSC). The proposed revisions will increase delivery capacity from 2,400 MMBtu to 6,500 MMBtu per day. Koch Gateway states it has been authorized to provide this natural gas transportation service to Firestone on behalf of KGSC under an April 1, 1994 transportation agreement.

Koch Gateway will replace a 2-inch meter with a 3-inch meter and will install a flow computer at an existing meter station site on its Iowa Field-Cities Service Refinery line near Lake Charles in Calcasieu Parish, Louisiana. The delivery tap and meter station construction will be aboveground and entirely within the existing pipeline right of way on Firestone's plant property. The estimated cost is $9,000. Koch Gateway's service provided to KGSC will be interruptible, is within the current certificated level, will have no impact on Koch Gateway's curtailment plan or affect service to other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn

within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4108 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–158–000]

Natural Gas Pipeline Company of America Notice of Proposed Changes in FERC Gas Tariff

February 15, 1995.

Take notice that on February 10, 1995, Natural Gas Pipeline Company of America (Natural), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Eleventh Revised Sheet No. 14 and Ninth Revised Sheet No. 25, to be effective March 1, 1995.

Natural states that the filing is submitted to commerce recovering effective March 1, 1995, approximately $41.3 million in known and measurable gas supply realignment (GSR) costs which have been incurred by Natural as a consequence of Order Nos. 636, et seq. Natural states that these costs consist of: (1) $29.1 million in pricing differential costs pertaining to the supply which Natural is obligated to purchase from Mitchell Energy Company and $0.6 million for auctions of other gas supply; (2) $6.8 million representing three (3) months' amortization of buyout/buydown costs previously claimed in Natural's GSR filings in Docket Nos. RP94–122–000 and RP94–249–000; and (3) $1.9 million representing the costs associated with coal gasification supplies. Also reflected in the filing are unrecovered GSR costs totaling $1.0 million based upon comparison of the net deferred account balance of costs and recoveries at December 31, 1994.

Natural requested whatever waivers may be necessary to permit the tariff sheets as submitted herein to become effective March 1, 1995.

Natural states that copies of the filing are being mailed to Natural's jurisdiction 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, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 23, 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 the filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4152 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–36–013]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

February 15, 1995.

Take notice that on February 10, 1995, Natural Gas Pipeline Company of America (Natural), filed as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet Nos. 242, 243, 244, 378H and 378I, to be effective March 1, 1995.

Natural states that the purposes of the filing is to comply with the settlement in Docket No. RP93–36–009 approved by Commission letter order dated January 31, 1995. The settlement required Natural to file revisions to sections 6.1 and 7.2 of the General Terms and Conditions (GT&C) regarding contributions-in-aid of construction and section 38.8 of the GT&C regarding crediting of Rate Schedule ITS revenues by Natural to customers which are not parties to Commission-approved settlements on gas supply realignment cost matters.

Natural states that it previously filed tariff sheets setting out base rate levels consistent with the settlement to be effective February 1, 1995, on January 11, 1995 in Docket No. RP93–36–011.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective March 1, 1995.

Natural states that copies of the filing are being mailed to the parties to this proceeding, jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4147 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[EL95–28–000]

New York State Electric & Gas Corporation; Notice of Filing

February 14, 1995.

Take notice that on February 14, 1995, New York State Electric & Gas Corporation (NYSEG), filed a Petition, for Declaratory Order, Complaint, and Request for Modification of Rates in Power Purchase Agreements Imposed Pursuant to the Public Utility Regulatory Policies Act of 1978 (Petition). The Petition requests that this Commission: (1) issue a declaratory order providing that the Public Utility Regulatory Policies Act of 1978 (PURPA) prohibits NYSEG from being required to pay rates in excess of its avoided cost for energy purchased from Lockport Energy Associates, L.P. (Lockport) and Saranac Power Partners, L.P. (Saranac) under power purchase agreements mandated pursuant to PURPA; (2) promptly take action to modify the rates under the Lockport and Saranac agreements to insure compliance with PURPA's avoided cost rate ceiling; or (3) refer this matter to the New York Public Service Commission (NYPSC) with a declaration that the Commission invests the NYPSC with the authority and obligation to modify the agreements to conform them to PURPA's rate standard.

NYSEG asserts that its agreements with Lockport and Saranac require NYSEG to purchase energy at rates in excess of its avoided cost, in violation of PURPA's avoided cost rate standard, that such rates have never been acceptable to NYSEG, and that NYSEG entered into its agreements with Lockport and Saranac only after being ordered to do so by the NYPSC.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 7, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4104 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–53–000]

NorAm Gas Transmission Co.; Notice of Technical Conference

February 15, 1995.

In the Commission's order issued December 23, 1994, the Commission held that the filing in the above captioned proceeding raises issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Tuesday, February 28, 1995, at 2 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4149 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–120–000]

NorAm Gas Transmission Co.; Notice of Technical Conference

February 15, 1995.

In the Commission's order issued February 2, 1995, the Commission held that the filing in the above captioned proceeding raises issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Tuesday, February 28, 1995, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C. 20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4150 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–206–003]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

February 15, 1995.

Take notice that on February 8, 1995, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective March 10, 1995.

Second Revised Sheet No. 263
First Revised Sheet No. 263A

Northern is filing to roll over the Carlton Resolution for a limited one-year term, by changing the termination date from October 31, 1995 to October 31, 1996.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C., 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed on or before February 23, 1995. Protests will be considered by the Commission in determining the appropriate proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4148 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–156–000]

Northwest Pipeline Corp.; Notice of Account No. 191 Report

February 15, 1995.

Take notice that on February 8, 1995, Northwest Pipeline Corporation (Northwest), tendered for filing with the Federal Energy Regulatory Commission (Commission) an Account No. 191 report pursuant to § 28.7(c) of the General Terms and Conditions of Northwest's FERC Gas Tariff, Third Revised Volume No. 1.

Northwest states that § 28.7(c) requires Northwest to file a report with the Commission within 60 days of the amortization period pertaining to the Account No. 191 payments by Rate Schedule DS–1 Customers (as set forth in §§ 28.1 and 28.2) and Rate Schedule ODL–1 Customers (as set forth in §§ 28.4 and 28.5) showing the total amounts billed to each customer and containing workpapers supporting the amounts billed and paid by each customer.

Northwest states that a copy of this filing has been served upon Northwest's affected jurisdictional customers and relevant state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4151 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

Cases Filed With the Office of Hearings and Appeals During the Week of January 23 Through January 27, 1995

During the Week of January 23 through January 27 1995, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 13, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Jan. 23 through Jan. 27, 1995]

Date	Name and location of applicant	Case No.	Type of submission
01/24/95	Pitcher Sales, Inc., Lewiston, Utah	VEE–0004	Exception to the Reporting Requirements. If granted: Pitcher Sales, Inc., would not be required to file Form EIA–782B ''Resellers'/Retailers' Monthly Petroleum Products Sales Report.''
01/25/95	David K. Hackett, P.E., Knoxville, Tennessee.	VFA–0021	Appeal of an Information Request Denial. If granted: David K. Hackett, P.E., would receive a waiver of all fees incurred in processing of a Freedom of Information Request for certain Department of Energy information.
01/26/95	Oregon/Nation Helium, Time Oil, Coline, Belridge, Perry, Gas Palo Pinto.	RQ3–591, RQ334–592, RQ2–593, RQ8–594, RQ183–595, RQ5–596	Application for Second Stage National Helium, Time Oil, Coline, Belridge, Perry Gas, Palo Pinto Refunds. If granted: The second stage refund application submitted by Oregon in the National Helium, Time Oil, Coline, Belridge, Perry Gas and Palo Pinto Refund Proceedings would be granted.
01/27/95	J/R/A Associates, Mitchellville, Maryland	VFA–0022	Appeal of an Information Request Denial. If granted: The December 15, 1994 Freedom of Information Request Denial issued by the DOE Office of Contractor Employee Protection would be rescinded, and J/R/A Associates would receive access to the first page of each complaint of discrimination filed by employees with the DOE Office of Contractor Employee Protection.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
01/20/95	Farmers Coop Grain	RG272–19
01/20/95	Farmers Elevator Company	RG272–20
01/24/95	Dal Har Distributing Co.	RG272–21
01/26/95	Ellsworth-Williams	RG272–22

[FR Doc. 95–4189 Filed 2–17–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals During the Week of October 3 Through October 7, 1994

During the week of October 3 through October 7, 1994 the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

E.O. Smelser, 10/4/94, LFA–0420

E.O. Smelser filed an Appeal from a denial by the Bartlesville Project Office of a Request for Information which he submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the requested documents were not ''agency records'' and so were not subject to the FOIA. Accordingly, the Appeal was denied. In reaching this decision, the DOE considered that although the agency had access to the records, it did not possess the records when the request was made. Furthermore, the grant assistance agreement between the DOE and the grantee did not assign ownership of the records to the DOE.

John P. Connelly, 10/7/94, LFA–0419

John P. Connelly (Connelly) filed an Appeal from a determination issued to him by the Office of the Inspector General (OIG). The determination partially denied a Request for Information which Connelly submitted under the Freedom of Information and Privacy Acts. Connelly requested documents relating to employment announcements made by OIG for the position of Criminal Investigator at various DOE facilities, along with all records created by a former Assistant Inspector General regarding the specified announcements. In its determination, the OIG provided Connelly with various documents responsive to his Freedom of Information Act request. Connelly, in his Appeal, argued that (1) further responsive documents existed, (2) the documents that were provided to him were not provided to him in any logical order, and (3) OIG failed to make a search pursuant to the Privacy Act. In considering the Appeal, the DOE found that (1) the records responsive to his request were not contained in a system of records that was subject to the Privacy Act, (2) OIG had no obligation under the FOIA to provide responsive records in a particular order, and (3) an adequate search had been conducted in response to the request. Accordingly, Connelly's Appeal was denied.

Physicians for Social Responsibility, Inc., 10/6/94, LFA–0426

Physicians for Social Responsibility, Inc. (PSRI) filed an Appeal from a determination issued to it on August 26, 1994, by the Chief of the Freedom of Information and Privacy Acts Branch of the Reference and Information Management Division. In that determination, the Chief stated that responsive documents could not be found pursuant to a Freedom of Information Act request. Specifically, the Chief denied a request for documents relating to a study allegedly done involving the Integral Fast Reactor. PSRI's request and subsequent appeal concerned the identical documents involved in another case. In that case, the DOE had confirmed the possible existence of documents responsive to the appellant's request and remanded the case for a search of the DOE Oak Ridge Operations Office and the DOE

Office of Nuclear Energy. Accordingly, in view of the fact that the Appeals were identical, the DOE also remanded the PSRI request for a search of the same DOE Offices.

William H. Payne, 10/7/94, LFA–0416

William H. Payne filed an Appeal from a determination issued to him by the Office of the Inspector General (OIG) on a Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the OIG did not have the office-wide rosters of contacts between OIG staff members and employees of Sandia National Laboratory and of the Department of Justice that Mr. Payne sought. In addition, the DOE determined that making a burdensome survey of all OIG personnel for such records on an individual basis was not required by the FOIA. Accordingly, the Appeal was denied.

Requests for Exception

Brennan Oil & Heating Company, Inc., 10/3/94, LEE–0130

Brennan Oil & Heating Company, Inc. (Brennan) of North Providence, Rhode Island, filed an Application for Excepton from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report''. In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. On July 19, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed, the DOE issued the Proposed Decision and Order in final form, denying Brennan's Application for Exception.

Schwebel Petroleum Company, 10/3/94, LEE–0126

Schwebel Petroleum Company (Schwebel) of Bakersfield, California, filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. On July 18, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed, and the DOE issued the Proposed Decision and Order in final form, denying Schwebel's Application for Exception.

Refund Applications

Mid-State Coop, Tri-County Non-Stock Coop Association, Farmers Cooperative Oil Association, 10/5/94, RF272–92061, RF272–92062, RF272–92063

The DOE issued a Decision and Order concerning the Application for Refund of three cooperatives in the Subpart V crude oil overcharge refund proceeding. Each of the refund applications was filed by the Cooperative Finance Association (CFA) and requested that any refund check be made payable to CFA. The DOE determined that the CFA was not entitled to refunds based upon purchases made by the cooperatives. Accordingly, the Applications for Refund were denied.

Texaco Inc./Major Oils, 10/4/94, RR321–165

The DOE issued a Decision and Order denying a Motion for Reconsideration filed by George R. Dunn in the Texaco Inc. Subpart V special refund proceeding on behalf of Major Oils. The DOE had previously denied Major Oils' Application for Refund on the basis that Mr. Dunn had failed to establish that Major Oils purchased Texaco products or the volume of any such Texaco purchases. In the Motion for Reconsideration, Mr. Dunn failed to present any compelling reasons or new evidence that would warrant the reconsideration of Major Oils' refund claim. Accordingly, Major Oils' Motion for Reconsideration was denied with prejudice to any further refiling in the Texaco Inc. Subpart V special refund proceeding.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Appleton School District City of Tulia	RF272–79246, RF272–83088	10/04/94
Atlantic Richfield Company/Ray's Arco et al	RF304–14673	10/03/94
Callanan Industries, Inc.	RF272–69469	10/07/94
Davidson Cooperative Assoc. et al	RF272–94587	10/07/94
Gulf Oil Corporation/Farley Oil Co	RF300–18716	10/04/94
Gulf Oil Corporation/Line Garage	RF300–20439	10/07/94
Kankakee Valley School Corp. et al	RF272–95533	10/07/94
Melchior Armstrong Dessau Inc. Ray W. Malow Co	RC272–255, RC272–256	10/05/94
Metropolitan Petroleum & Fuel/Michael Campanile et al	RF349–13	10/03/94
Sterling Paving Co	RF272–68993	10/07/94
Sterling Paving Co	RD272–68993	.....
Sim J. Harris Co	RF272–86593	.....
Sloan Construction Co	RF272–86920	.....
Texaco Inc./Buz Olsen's Casino Texaco	RF321–20683	10/07/94
Casino Texaco	RF321–21036	.....
Texaco Inc./Howard's Texaco et al	RF321–11277	10/03/94
Village of Willowbrook et al	RF272–84678	10/07/94
Wynn-Fowler Trading Co., Inc.	RF272–67234	10/07/94

Dismissals

The following submissions were dismissed:

Name	Case No.
Chester County Aviation	RF272–97996
City of Marianna	RF272–97206
Gackle Cooperative Oil Co	RF272–94980
Garrett County Commissioners	RF272–93478

Name	Case No.
Grizzard West End Texaco	RF321–20446
Guinn Oil Company	Lee–0133
Independent School Dist. 706	RF272–96102
Jackson County Board of Education	RF272–97817
Jordano's Inc.	RF321–20457
Lincoln County Board of Education	RF272–97974
Midwest Aviation	RF272–98732
New Jersey	RM3–271
Oklahoma Natural Gas Co	RF272–93981
Seaboard Coastline R.R.	RF272–93763
Stewart's Texaco	RF321–20606
Town of Murfreesboro	RF272–84705
Western Maryland R.R.	RF272–93752
York Aero, Inc.	RF272–98746

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 9, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–4190 Filed 2–17–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of October 31 through November 4, 1994

During the week of October 31 through November 4, 1994, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Cowles Publishing Co., 10/31/94, LFA–0427

Cowles Publishing Company (Cowles) filed an Appeal from a determination issued by the DOE's Richland Operations Office (Richland) in response to a request from Cowles under the Freedom of Information Act (FOIA). Cowles sought the salary information of the president or highest-ranking official of the four major contractors working for Richland: Westinghouse Hanford Company, Battelle Pacific Northwest Laboratory, Kaiser Engineers Hanford Company and the Bechtel corporation. In considering the Appeal, the DOE found that Richland properly withheld the salaries of those positions under Exemption 6 of the FOIA. Accordingly, the Appeal was denied.

Glen M. Jameson 11/1/94, VFA–0001

Glen M. Jameson filed an Appeal from a determination issued by the DOE's Albuquerque Operations Office (Albuquerque) in response to a request from Mr. Jameson under the Freedom of Information Act (FOIA). Mr. Jameson sought the names and numbers of current and former PAI Corporation (PIA) employees working on Albuquerque Contract No. DE–AC04–91AL72747. In considering the Appeal, the DOE found that Albuquerque had mistakenly modified the request to exclude former PAI employees. Accordingly, the Appeal was remanded to Albuquerque to search its records for former PAI employees.

Refund Applications

Mrs. Baird's Bakeries, Inc., 11/4/94, RF272–92316

The DOE issued a Decision and Order concerning an Application for Refund in the Subpart V crude oil overcharge refund proceeding. The refund application was filed by Mrs. Baird's Bakeries, Inc. (Mrs. Baird's). The DOE determined that Mrs. Baird's was not entitled to a refund since it had filed a Surface Transporters Escrow Settlement Claim Form and Waiver. In that filing, Mrs. Baird's had requested a Stripper Well refund from the Surface Transporters escrow, thereby waiving its right to a Subpart V crude oil refund. Accordingly, the Application for Refund was denied.

Parnum Paving Company, 10/31/94, RR272–181

The DOE issued a Decision and Order granting a request for reconsideration in the Subpart V crude oil overcharge refund proceeding. The movant attested that it had made a mistake in answering the DOE's inquiry regarding the firm's use of escalator clauses in its contracts. Based on the corrected information, the DOE determined that the movant was entitled to an additional refund. The refund granted in this Decision was $11,470.

Whitaker Oil Corp./Philip Beamer Distributor, Inc., 11/01/94, RF351–29

The DOE issued a Decision and Order granting an Application for Refund filed by Philip Beamer Distributor, Inc. in the Whitaker Oil Corp. special refund proceeding. The Decision noted that the funds remaining in the Whitaker account are being distributed as required by the Petroleum Overcharge and Distribution and Restitution Act and that, therefore, no more applications will be accepted in the Whitaker proceeding.

Refund Applications

The Office of Hearing and Appeals issued the follow Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/A&B Arco	RF304–13927	11/01/94
City of Roseville et al	RF272–90531	11/04/94
Clinton Milk Co.	RF272–62	11/04/94
Enron Corp./Midpane Gas Company	RF340–74	11/04/94
Suburban Propane	RF340–168	.....
Gulf Oil Corporation/Forsyth Home, Inc.	RF300–18999	11/01/94

Gulf Oil Corporation/Graham's Gulf et al	RF300–13656	10/31/94
Gulf Oil Corporation/Town of Springfield et al	RF300–21604	11/04/94
McConnell Drilling Co., Inc. et al	RF272–97046	10/31/94
Oberer Construction EQT Co. et al	RF272–77411	10/31/94
Planters Cooperative Assoc. et al	RF272–94900	11/04/94
Red Top Trucking Co. et al	RF272–80176	11/04/94
Texaco Inc./Ike's Texaco #1 et al	RF321–17167	11/04/94
Texaco Inc./Rice Hill Texaco et al	RF321–4194	11/04/94
Westminster Hide & Tallow Company, Inc.	RF272–69835	10/31/94
Westminster Hide & Tallow Company, Inc.	RD272–69835	

Dismissals

The following submissions were dismissed:

Name	Case No.
Borough of Roselle	RF272–85451
Brown Transport Corporation	RF321–20802
California Highway Patrol	RF321–20753
Canoga Car Wash	RF321–21024
Citizen Action	VFA–0008
Collins & Aikman Corporation	RF321–20115
Falco Services	RF272–93679
Gary Dawley's Texaco	RF321–17134
Gene Defalco	RF272–93678
Jefferson County Commission	RF272–97553
Jefferson County Commission	RF272–97238
Joe Crain's Texaco	RF321–20941
Magma Copper Company	RF321–20754
Marshall Distributing Co., Inc	RF272–93724
Northwestern Steel and Wire Company	RF321–20752
Skip & Paula's Texaco	RF321–21038
Tallmadge Asphalt	RF321–20652
Wilsonville Texaco	RF321–20613

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 13, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–4191 Filed 2–17–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders; Week of November 28 through December 2, 1994

Office of Hearings and Appeals

During the week of November 28 through December 2, 1994 the decisions and orders summarized below were issued with respect to appeals and for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Weed Associates, 12/2/94, VFA–0009

Weed Associates (Weed) filed an Appeal from a determination issued to it on September 27, 1994, by the Office of Placement and Administration (OPA), an element of the Office of Headquarters Procurement Operations. In that determination, OPA denied in part Weed's request for information filed under the Freedom of Information Act (FOIA). In its Appeal, Weed challenged OPA's application of Exemption 4 to portions of the requested documents and asked that the DOE direct OPA to release the withheld portions of the documents. In considering the Appeal, the DOE found that OPA properly withheld some of the information at issue under Exemption 4. However, DOE found that the release of other portions of information would not cause substantial competitive harm to the submitter, and ordered their release. Therefore, the DOE granted in part Weed's Appeal.

Refund Applications

Miller Drilling Co. et al., 12/1/94, RF272–164 et al.

The Department of Energy denied a Motion for Reconsideration filed by Miller Drilling Co. and six affiliated companies. The movants sought reconsideration of a Decision in which the DOE denied the Applications for Refund that they filed in the Subpart V crude oil refund proceeding. In the Decision, the DOE stated that the earlier denial was based upon a finding that one of the movants' affiliated companies had applied for and received a refund from one of the eight stripper well escrow accounts, and in so doing had executed a valid and binding waiver of its and any affiliate's right to file a subpart V crude oil claim. The movants argued that they should nonetheless receive a Subpart V refund because the gallonages claimed in their respective Subpart V applications were not included in the earlier stripper well claim, and because the movants were owned in part by a company that filed the stripper well claim. The DOE rejected these claims, finding that the waiver was clearly applicable to the movants.

Texaco Inc./David Blvd. Texaco, 11/30/94, RF321–19219

The DOE issued a Decision and Order denying an Application for Refund in the Texaco Inc. special refund proceeding. John Jarovics (Jarovics) and Robert Kapner (Kapner) filed an Application Refund on behalf of Davie Blvd. Texaco, a service station located Ft. Lauderdale, Florida, for its purchases of Texaco petroleum products from Martin Petroleum (Martin). Martin

previously had been granted a refund for a service station at the same address as David Blvd. Texaco. Martin informed the OHA that it consigned its Texaco product purchases to various subleases of the station, of which Jarovics and Kapner were one. Jarovics and Kapner could not produce any evidence which could substantiate their claim that they purchased the Texaco products from Martin and did not take the products on consignment. The DOE determined the consignees of purchasers of Texaco products were not eligible for a refund and that Jarovics and Kapner had failed to establish that they in fact purchased the Texaco products from Martin. Consequently, the DOE determined that granting Jarovics and Kapner a refund would not constitute restitution for Texaco's alleged overcharges and their Application for Refund should be denied.

Texas Utilities Company, 11/28/94, RC272–265

A refund was granted to Texas Utilities Company (TUC) in the Subpart V crude oil refund proceeding in a decision dated September 29, 1994 (Case No. RF272–94695). However, a subsidiary of TUC, Texas Utilities Electric Company, had executed a Utilities Escrow Settlement Claim Form and Waiver and Release in the Department of Energy Stripper Well Exemption Litigation. The execution of this form waived the rights of the signatory, its parent and any affiliates to any future crude oil refund payments. Upon discovering the waiver signed by the subsidiary, the refund granted in Case No. RF272–94695 was rescinded.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Schock Arco	RF304–15462	11/29/94
Choctaw County et al	RF272–86600	11/30/94
Clark Oil & Refining Corp./Coleman's Clark Service	RF342–327	11/29/94
Farmers Union Oil Co. et al	RF272–86706	12/02/94
Farmers Union Oil Co. of Gary et al	RF272–92058	12/02/94
Glendenning Motorways, Inc.	RC272–266	11/29/94
Ralston Purina Co.	RF272–91916	11/29/94
Ralston Purina Co.	RF272–92153	.....
Ralston Purina Co.	RF272–97112	.....
Texaco Inc./Baker's Texaco #2	RF321–21040	12/01/94
Texaco Inc./Curran's Texaco	RF321–21048	11/30/94
Texaco Inc./E.A. Wilson Co.	RF321–12963	12/02/94
Booker Gas & Oil Co.	RF321–20875	.....
Bryant Oil Co., Inc.	RF321–20964	.....
Texaco Inc./Lake Worth Texaco et al	RF321–20199	11/30/94
Texaco Inc./Lee's Texaco et al	RF321–9564	11/30/94
Texaco Inc./North Union Texaco et al	RF321–8212	11/30/94
Texaco Inc./Ray Wietor's Texaco et al	RF321–1229	11/30/94
Texaco Inc./Spiros Karamalegos	RF321–21025	12/01/94

Dismissals

The following submissions were dismissed:

Name	Case No.
Arlington School District	RF272–80198
Arnold's Texaco #1	RF321–19807
D. Thurston's Sons, Inc.	RF321–12648
Farmers Union Oil Co. of Gary	RF272–92060
Farmers Union Oil Co. of Gary	RF272–92059
H. C. Petroleum, Inc.	LEE–0094
Leon Clements	RF321–12473
Leon Faddis & Son, Inc.	RF272–94771
Oak Hill Texaco	RF321–12398
Ray Marchand Oil Co.	VEE–0002
Robert Texaco	RF321–12405
Rubicon, Inc.	RR321–172
Supervalu, Inc.	RF321–20514
Wilkinson County	RF272–85575
Wounded Knee School District	RF272–80454

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 13, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–4192 Filed 2–17–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5156–4]

Public Water Supply Supervision Program; Program Revision for the State of Washington

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Washington is revising its approved State Public Water Supply Supervision Primacy Program. Washington has adopted drinking water regulations for certain inorganic, volatile organic and synthetic organic chemicals, collectively known as the Phase II and Phase V contaminants, and for lead and copper. EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions. By approving Washington's Phase II/V Contaminants Rule and its Lead and Copper Rule, EPA does not intend to affect the rights of Federally recognized Indian tribes within ''Indian Country,'' as defined in 18 U.S.C. 1151, nor does it intend to limit existing rights of the State of Washington.

All interested parties may request a public hearing. A request for public hearing must be submitted by March 23, 1995 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by March 23, 1995, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on March 23, 1995.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Department of Health (DOH), Division of Drinking Water, Airdustrial Center, Building #3, Olympia, Washington

DOH Northwest Regional Office, 1511 Third Avenue, #719, Seattle, Washington

DOH Eastern Regional Office, West 924 Sinto Avenue, Spokane, Washington

Environmental Protection Agency, Region 10 Library 1200 Sixth Avenue, Seattle, Washington

FOR FURTHER INFORMATION CONTACT: Wendy Marshall, EPA, Region 10, Ground Water and Drinking Water Branch, at the EPA address given above, telephone (206) 553–1890.

Dated: December 15, 1994.

Gerald A. Emison,

Acting Regional Administrator.

[FR Doc. 95–4186 Filed 2–17–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5156–2]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 104, Announcement of Extension of Application Deadline for the Competition for Brownfields Economic Redevelopment Initiative Pilots

AGENCY: Environmental Protection Agency.

ACTION: Notice to extend application period.

SUMMARY: The Environmental Protection Agency will accept proposals for Brownfields Economic Redevelopment Pilots beginning immediately. The application period which was to close March 1, 1995, has been extended to close April 17, 1995. For those applications received by March 1, 1995, the Agency intends to competitively select five Pilots by May 17, 1995. For those applications received by April 17, 1995—combined with those applications received by March 1, 1995 but not selected for the May 17, 1995 awards—the Agency intends to competitively select ten Pilots by July 21, 1995.

DATES: This action is effective as of December 1, 1994, and expires on April 17, 1995. All proposals must be received and/or post marked by the expiration date cited above.

ADDRESSES: Applications booklets can be obtained by calling the Superfund Hotline at 800–424–9346, or writing to: U.S. EPA—Brownfields Application, Superfund Document Center 5201G, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The Superfund Hotline, 800–424–9346.

SUPPLEMENTARY INFORMATION: EPA's Brownfields Initiative is an organized commitment to help communities revitalize abandoned contaminated properties, and to thereby eliminate potential health risks and restore economic vitality to areas where these properties exist.

The objectives of the initiative are: to build the capacity of affected and interested parties to shape how contaminated sites are cleaned up and productively reused; to stimulate a national search for innovative ways to overcome the current obstacles to the reuse of contaminated properties; and to coalesce federal, state, and municipal efforts to examine new approaches to achieving cleanup and reuse; and to explore the potential for combining an economic stimulus and a speeded-up environmental cleanup to contribute to achieving environment justice.

EPA's Brownfields Pilots (to be funded up to $200,000 each over two years) will test redevelopment models, direct special efforts toward removing regulatory barriers without sacrificing protectiveness, and facilitate coordinated efforts at the federal, state, and local levels. EPA will develop a coordinated federal strategy to help initiate a significant national effort to clean up and redevelop brownfields. Three national pilot projects already have been awarded.

Cities, counties, towns, states, and Native American tribes are all eligible to apply.

The Brownfields Economic Redevelopment Initiative is founded on the belief that ''economic development and environmental protection must go hand in hand,'' (Carol Browner, Administrator, Environmental Protection Agency, Announcing the Cleveland Brownfields Pilot on November 8, 1993.)

Proposals will be evaluated on the following Criteria (a more detailed and complete set of criteria will be included in the application booklet):

- Demonstrated commitment of public and private leadership to brownfields redevelopment.
- Plans for effective community involvement.

Clear delineation of how federal support will make a difference.

- Potential for national replication.
- Government support and technical, legal, and political capacity to complete goals.
- Clearly outlined potential sources of cleanup funding.
- Contributions to environmental justice goals.
- Well-defined approach to environmental assessment.

Dated: February 13, 1995.

Timothy Fields, Jr.,

Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 95–4187 Filed 2–17–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5156–3]

Invitation for Submittal to the Vendor Field Analytical and Characterization Technologies System (Vendor FACTS)

AGENCY: Environmental Protection Agency.

ACTION: Notice of Invitation.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing an invitation to vendors of innovative monitoring and measurement technologies for hazardous waste site characterization to participate in the Vendor FACTS database. Vendor FACTS is being developed by EPA's National Exposure Research Laboratory—Las Vegas (NERL–LV) of the Office of Research and Development and the Technology Innovation Office of the Office of Solid Waste and Emergency Response. The purpose of Vendor FACTS is to disseminate much needed information on innovative techniques for site characterization, and to promote the use of more cost effective methods for on-site monitoring and measurement. The system contains information provided by vendors of technologies that meet the eligibility criteria for inclusion in the database. These criteria are listed in the **SUPPLEMENTARY INFORMATION** section below. Vendors will submit information about their technologies on a Vendor Information Form (VIF). Information contained in the database will enable users to screen technologies for consideration in the site remediation process and to identify vendors who provide monitoring and measurement services. Most Vendor FACTS users are expected to be professionals responsible for the assessment or cleanup of Superfund sites, RCRA corrective action sites, state-lead clean-ups, federal facilities, and leaking underground storage tank (UST) sites. To make Vendor FACTS accessible to all system users, EPA will provide the software free of charge to the public.

DATES: Completed VIFs submitted by April 30, 1995, will be considered for inclusion in Vendor FACTS version 1.0 scheduled to be released in the third quarter of 1995.

ADDRESSES: Vendors of innovative monitoring and measurement technologies who wish to participate in Vendor FACTS version 1.0 must complete a Vendor FACTS VIF 1.0 (EPA–542–R–94–007), which can be obtained by faxing requests to U.S. EPA/National Center for Environmental Publications and Information (NCEPI) at (513) 489–8695. Please include your name, company name, address, and fax number, if available. After you have completed the VIF, send it to: Vendor FACTS System Operator, PRC Environmental Management, Inc., 1505 PRC Drive, Suite 220, McLean, VA 22101. The Vendor FACTS database can be ordered by fax at (513) 489–8695, and for verification, (513) 891–6561. Please include your name, company name, address, and phone number.

FOR FURTHER INFORMATION CONTACT: The Vendor FACTS Hotline at (800) 245–4505 or (703) 883–8448.

SUPPLEMENTARY INFORMATION: Technologies meeting the following criteria will be included in Vendor FACTS: (1) fieldable technologies: portable or transportable equipment for on-site monitoring, screening, and analysis of hazardous substances (equipment used for collecting samples for off-site analysis will not be considered); and (2) technologies to monitor and characterize contaminated sites, not industrial process waste streams; and (3) technologies that fall in one of the categories listed below.

Air Measurement (NAAQS)—This portable or transportable technology includes all means to determine whether air meets the National Ambient Air Quality Standards issued under the Clean Air Act and similar laws and regulations. Target analytes include carbon monoxide, nitrogen oxides, sulfur oxides, hydrocarbons, ozone, photochemical oxidants, and particulate matter. Some versions of the technology are designed for point readings, in time, space, or both, while others are intended to assess over a period of time (hours, days, weeks; as averages or as maxima) or an extent of space (a metropolitan area or neighborhood).

Analytical Detector—The analytical detector is the component of any analytical instrument which senses the analyte (target) and produces a signal, usually electrical. The rest of the instrument consists of (1) a translator which converts the signal from the detector into usable form, (2) the output for the translated signal (meter, digital display, strip chart), and (3) the power supply, controls, case, and other components which support the sensor, translator, and output.

Analytical Traps—This technology consists of means to concentrate a desired target chemical as the sample is being collected. At present, a few variations are in use, such as the charcoal, resins, and bubblers used in collecting air samples. In addition, similar techniques are used in the laboratory for the preparation of analytical samples, including ion-selective (ion-exchange) devices and molecular sieves (working on molecular size). For analytical trap technologies that have been in existence for more than 10 years, the vendor must provide an explanation of why the technology is innovative.

Biosensors—(1) This portable technology includes devices which use derivatives of living organisms (such as enzymes, tissues, microbes, or antibodies) as a biological sensing element. The biological sensing agent is in intimate contact with a physical transducer (such as electrochemical, acoustic, or optical) which together relate the concentrations of an analyte to a measurable electrical signal. They are commonly used in the clinical chemistry laboratory, especially in the form of electrodes sensitive to a target enzyme or chemical.

Chemical Reaction-Based Indicators—This portable technology includes chemicals which convert an inapparent change in the chemical state of the target system to a visible color change or other easily noted indication. Many methods look at chemical species other than the hydrogen atom, such as ferric/ferrous, chromic/chromate, and oxidizing/reducing species. Some versions of the technology give a graded response, rather than a dichotomous response, similar to wide-range pH paper.

Cone Penetrometer—A technology which uses a cylindrical, cone-tipped instrument, forced into the ground by hydraulic pressure. Built-in load cells measure the forces impinging on the conical tip and along the cylindrical section (friction) just behind the tip. In most instruments, these data are translated into soil classifications so one obtains instantaneous information on the stratigraphy of the soil. The technology has been used in Europe for decades and is becoming popular ''in the U.S.'' The innovations, some being tested by the SITE Program, include additional sensors added to the instrument to detect pollutants in the subsurface. Cone penetrometers themselves are *not* considered innovative for the purpose of Vendor FACTS.

Downhole Sensors—Saturated Zone—These portable or transportable sensors can be used to determine subsurface chemical or physical properties. These sensors must be capable of operation in the saturated zone, in either a dynamic or static mode. The dynamic mode would produce data in real time as the sensor was advanced through the subsurface. The static mode would involve a sensor that either could not provide data as it was advanced, or was not capable of being advanced through

the saturated zone. The static mode could be used in a borehole with a maximum diameter of six inches or less. Downhole sensors that can be used in a borehole with a diameter of two inches or less are preferred for the Vendor FACTS database. The Vendor FACTS database will not include common geophysical, gamma, spontaneous potential, gamma-gamma, caliper, and neutron logging tools. Vendor FACTS also will not include TV cameras that can be inserted down a borehole.

Downhole Sensors—Vadose Zone—These portable or transportable sensors can be used to determine subsurface chemical or physical properties. These sensors must be capable of operation in the vadose zone, in either a dynamic or static mode. The dynamic mode would produce data in real time as the sensor was advanced through the subsurface. The static mode would involve a sensor that either could not provide data as it was advanced, or was not capable of being advanced through the vadose zone. The static mode could be used in a borehole with a maximum diameter of six inches or less. Downhole sensors that can be used in a borehole with a diameter of two inches or less are preferred for the Vendor FACTS database. The Vendor FACTS database will not include common geophysical, gamma, spontaneous potential, gamma-gamma, caliper, and neutron logging tools. Vendor FACTS also will not include TV cameras that can be inserted down a borehole.

Fiber Optic Chemical Sensors and Analyzers—These field portable sensors employ fiber optics to transmit excitation energy to either a reaction chamber or directly onto a sample matrix. Fiber optics also are used to return the signal produced from either a fiber coating, a reaction chamber, or a sample matrix, directly into some type of detector. Generally colorometric or spectroscopic detectors are used in this process. These sensors produce real time in situ data.

Transportable Technologies—These technologies require a vehicle or mobile lab to get on site, alternating current power source (although not in all cases), and are operated on site.

Portable Technologies—These technologies are manually portable (generally weighing 30 pounds or less), battery operated (can have alternating current power), self-contained, and used on site.

Gas Chromatography (portable only)—These field portable instruments cause a chromatographic separation of chemical constituents. These instruments employ isothermal or temperature programmable ovens, and megabore, capillary, or packed chromatography columns to separate chemical constituents. These instruments use chemical detectors, and data acquisition and integration software to quantitate chemical constituent concentrations. Recent advances in gas chromatography that are considered innovative are portable, weather-proof units that have self-contained power supplies. High-speed gas chromatography is also a recent innovation.

Ground Penetrating Radar—This technology, in use for some years now, consists of emitting pulses of electromagnetic energy into the ground, and measuring its reflection/refraction by subsurface layers and other features (such as buried debris). It is analogous to seismic techniques, but with a pulse of electromagnetic energy, rather than sound (physical) energy.

High Frequency Electromagnetic (EM) Sounding—These technologies, used for nonintrusive geophysical exploration, project high frequency electromagnetic radiation into subsurface and detect the reflection/refraction of the radiation by varying soil layers. Unlike ground penetrating radar, it uses continuous waves, as opposed to pulses.

High Resolution Seismic Reflection—The classic technique of seismic reflection/refraction has been used for decades, primarily for examining relatively large features, such as the salt domes (often containing petroleum) of the Gulf Coast. This technology includes means to refine it to determine smaller scale features, such as debris or the lenses, buried channels, and other features found in till deposits. This technology must be able to measure features of interest within 100 feet of the ground surface to be considered innovative.

Immunoassay—These field portable test kits use immunochemistry to produce compound specific reactions (generally colorometric) to individual compounds, or classes of compounds. These reactions are used to detect and quantify contaminants. The immunochemical reactions center around polyclonal antibodies. These antibodies are engineered to produce compound specific reactions. The methods used to bring the antibodies into contact with a water sample or soil sample extract are variable.

Infrared (Long Path) Monitors—Classic infrared techniques involve a path of one centimeter or less in a solid or liquid. This technology looks at gases in longer path lengths, from a few centimeters to hundreds of meters. In some cases, the path may be inside the instrument. Alternatively, the air being sampled is ambient, not confined to the instrument. The air being sampled may represent a point source, such as a stack being monitored, or it may be an area. The newest variant involves remote reading of a source; this may involve checking the exhaust of a car driving on the road or the reflection from an approaching cloud.

Mass Spectrometry (portable only)—This field portable technology involves modifying a large, laboratory instrument so it can be taken into the field. Mass spectrometry breaks molecules into fragments and determines the concentrations and mass/charge ratios of the fragments. Each molecule generates a distinct pattern of fragments, so a sufficiently sensitive system can provide absolute identification of a contaminant. Less sensitive systems can readily determine class characteristics of molecules by identifying relevant radicals and other less than molecule size groups. Mass spectrometry units that are considered innovative are portable, weather-proof units that have self-contained power supplies.

Nuclear Magnetic Resonance—This field portable and transportable technology involves modifying a large, laboratory instrument so it can be taken into the field. Nuclear magnetic resonance measures the electronic environment (that is, adjacent and nearby chemical bonds) of the nuclei of a particular species of atom. The most common laboratory and clinical use is on protons, but it can be used for any atom with an odd number of protons (such as the alkali metals, aluminum, and phosphorus) or an odd number of neutrons (such as carbon-13, magnesium-25, silicon-29, and chromium-53, all significant fractions of the naturally occurring elements). Thus, it can determine the chemical composition, or variation in chemical composition, throughout the mass of a sample.

Soil Gas Analyzer Systems—These portable systems provide on site or remote monitoring of soil gas constituents. Their main components are a soil gas sampling system, soil gas analyzer, and data storage or transmission station. All of these components are microprocessor controlled and can be programmed to provide routine periodic sampling and monitoring, or on demand sampling and monitoring. These systems also use some type of standard to provide periodic checks of accuracy and precision.

Supercritical Fluid Extraction—These portable and transportable, self contained units use supercritical fluids such as carbon dioxide to extract

chemical constituents from environmental matrices.

Thermal Desorption Devices—These portable and transportable, self contained units use high temperatures to volatilize and extract volatile and semivolatile chemical constituents from environmental matrices.

Transient Electromagnetic (EM) Geophysics—These technologies are based on detecting changes in subsurface electromagnetic characteristics. Interpretation of this data provides information on the subsurface environment. This particular technology differs from ground penetrating radar in that it looks more at the shape of the pulse at the sensor, rather than at the pulse's time of arrival.

Voltammetric Stripping—These portable units use electrochemistry to detect and quantify metals in environmental samples. By changing the potential across an anode or cathode, these instruments cause metals in solution to plate-out or be released. By changing the anode and cathode material, specific metals can be targeted for detection and quantitation. This technology is generally applied to water samples, however, it may be possible to use this technology on extracts from soil samples.

X-Ray Fluorescence Analyzers—These self-contained, field portable instruments consist of an energy dispersive x-ray source, a detector, and a data processing system. The combination of a source and data processing system allow for the detection and quantitation of individual metals or groups of metals.

EPA may include additional categories of monitoring and measurement technologies in subsequent versions of Vendor FACTS depending on feedback from the users. Suggestions for additional technologies may be sent to: Vendor FACTS Project Manager, Technology Innovation Office (5102W), U.S. Environmental Protection Agency, 401 M Street, S.W. Washington, D.C. 20460.

Walter W. Kovalick,

Director, Technology Innovation Office.

[FR Doc. 95–4188 Filed 2–17–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

DATES: Comments are welcome and should be submitted on or before March 23, 1995.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829); for the hearing impaired only, telecommunications device for the deaf (TTD) (202-452-3544), Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-7340)

Request for OMB approval to extend, with revision, the following report:

1. Report title: Country Exposure Report.
Agency form number: FFIEC 009.
OMB Docket number: 7100-0035.
Frequency: Quarterly.
Reporters: State member banks and bank holding companies.
Annual reporting hours: 13,064.
Estimated average hours per response: 23.
Number of respondents: 142.
Small businesses are not affected.

General description of report: This information collection is mandatory to obtain or retain a benefit [(12 U.S.C. 248(a), 1844(c), and 3906)] and is given confidential treatment [(5 U.S.C. 552(b)(4) and (b)(8))].

SUPPLEMENTARY INFORMATION: This interagency report collects information on international claims of U.S. banks and bank holding companies that is used for supervisory and analytical purposes. The information is used to monitor country exposure of banks to determine the degree of risk in their portfolios and the possible impact on U.S. banks of adverse developments in particular countries. The proposed changes, which would be effective as of March 31, 1995, are as follows:

(1) A memorandum item, ''Revaluation Gains on Off-Balance-Sheet Items Reported in Column 4'', would be added as Column 9. This item contains revaluation gains (i.e. assets) from the marking to market of interest rate, foreign exchange rate, and other commodity and equity contracts held for trading purposes.

(2) A memorandum item, ''Amounts Reported in Column (4) after Adjustments in Columns 10-15 That Represent Securities Held in Trading Account,'' would be added as Column 16. The carrying value of any available-for-sale securities or of any loans or leases that are held for sale are not to be reported in this item.

(3) An existing item, ''Amount of Claims that Represent Guarantees Issued by the U.S. Government and its Agencies'' (Column 13), would be deleted.

(4) Three existing items collecting information on commitments, ''Commercial Letters of Credit'' (Column 20), ''Standby Letters of Credit and Risk Participations Purchased'' (Column 21), and ''All Other Commitments'' (Column 22), would be combined into one item, ''All Commitments.''

(5) An existing memorandum item, ''Trade Financing'' (Column 20), would be redefined to include ''Commercial Letters of Credit'' (Column 20), with the resulting item renumbered as Column 23.

(6) The country list would be updated to replace Belgium-Luxembourg with two countries, Belgium and Luxembourg and to replace Czechoslovakia with two countries, Czech Republic and Slovakia.

In addition, the instructions would be modified to state that all claims consisting of available-for-sale securities in Columns 1-4 are to be reported at amortized cost rather than at fair value. The instructions would also be clarified to state that the report must be completed in a manner consistent with the requirements of Financial Accounting Standards Board Interpretation No. 39, ''Offsetting of Amounts Related to Certain Contracts.'' Finally, the definition of ''Guaranteed Claims'' in the instructions would be broadened to address the treatment of off-balance-sheet items.

Request for OMB approval to extend, without revision, the following report:

2. Report title: Country Exposure Information Report.
Agency form number: FFIEC 009a.
OMB Docket number: 7100-0035.
Frequency: Quarterly.
Reporters: State member banks and bank holding companies.
Annual reporting hours: 2,840.
Estimated average hours per response: 5.

Number of respondents: 142.
Small businesses are not affected.

General description of report: This information collection is mandatory to obtain or retain a benefit [(12 U.S.C. 248(a), 1844(c), and 3906)] and is not given confidential treatment.

SUPPLEMENTARY INFORMATION: This report is a supplement to the Country Exposure Report (FFIEC 009) and provides publicly available information on material foreign country exposures (all exposures to a country in excess of one percent of total assets or 20 percent of capital, whichever is less) of U.S. banks and bank holding companies that file the FFIEC 009 report. Reporting institutions must also furnish a list of countries in which they have lending exposures above .75 percent of total assets or 15 percent of total capital, whichever is less. No changes are proposed to the FFIEC 009a reporting form or instructions.

Board of Governors of the Federal Reserve System, February 14, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–4135 Filed 2–17–95; 8:45am]

BILLING CODE 6210–01–F

Agency Forms Under Review

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 C.F.R. 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:
Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–52–829)
OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202–95–340)

Final approval under OMB delegated authority of the extension, with revisions, of the following reports:

1. Report title: Annual Survey of Eligible Bankers Acceptances.
Agency form number: FR 2006.
OMB Docket number: 7100–055.
Frequency: Annual.
Reporters: U.S. commercial banks, U.S. branches and agencies of foreign banks and Edge and agreement corporations.
Annual reporting hours: 65.
Estimated average hours per response: 0.65.
Number of respondents: 101.
Small businesses are not affected.

General description of report: This information collection is voluntary [12 U.S.C. §§ 248(a), 625, and 3105(b)] and is confidential [5 U.S.C. § 552(b)(4)].

This report provides detailed information on eligible U.S. dollar acceptances that are payable in the United States. The data are used for constructing the monetary aggregates and a measure of short-and intermediate-term business credit.

Abstract: The Federal Reserve reduced the reporting frequency from once a month to once a year, and eliminated nine of the thirteen items on the report. The panel selection criterion for future panel additions will change from the 100 most active issuers to those whose acceptances outstanding exceed $50 million on their quarterly condition reports. These revisions reduce the annual reporting burden for this report by 97 percent.

2. Report title: Notice by Financial Institutions of, and Termination of, Activities as a Government Securities Broker or Government Securities Dealer.
Agency form number: FR G-FIN and FR G-FINW.
OMB Docket number: 7100–224.
Frequency: On occasion.
Reporters: State member banks, foreign banks, state-chartered branches and agencies of foreign banks, and commercial lending companies owned or controlled by foreign banks.
Annual reporting hours: 37.
Estimated average hours per response: 1.
Number of respondents: 37.
Small businesses are affected.

General description of report: This information collection is mandatory [15 U.S.C. §78o-5(a)(1)(B)(ii)] and is not given confidential treatment.

Abstract: Each financial institution that acts as a government securities broker or dealer is required to notify its appropriate federal regulatory agency of its broker-dealer activities by filing an FR G-FIN, unless exempted from the notice requirement by Treasury Department regulation. Financial institutions that have previously filed an FR G-FIN and that have terminated their broker-dealer activities must notify their appropriate federal regulatory agency by filing an FR G-FINW. The revisions involve clarifying the instructions as to the appropriate regulatory authority for various categories of government securities brokers and dealers to reflect the Government Securities Act Amendments of 1993.

3. Report title: Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer; Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer.
Agency form number: FR MSD–, MSD–.
OMB Docket number: 7100–100, 7100–101.
Frequency: On occasion.
Reporters: State member banks who engage in activities as municipal securities dealers, and persons who are or seek to be associated with such dealers as municipal securities principals or representatives.
Annual reporting hours: 303, 33.
Estimated average hours per response: 2.75, 0.25.
Number of respondents: 110, 133.
Small businesses are not affected.

General description of report: This information collection is mandatory [15 U.S.C. §§78o-4(b)(2)(A) and 78o-4(c)(5)] and is given confidential treatment [5 U.S.C. §552(b)(6)].

Abstract: The filing of this application is required of a Municipal Securities Dealer Bank (MSD) and a person associated with a MSD, prior to such person functioning in a professional capacity. This application serves to verify compliance with the rules of the Municipal Securities Rulemaking Board and with related securities and banking laws. It is also used as a source document for entry into an interagency computer system of records. The MSD–notice must be filed within 30 days after a person associated in a professional capacity with a bank municipal securities dealer terminates employment. The notice is a compliance vehicle for rules of the Municipal Securities Rulemaking Board and for related securities and banking laws. It is also a source document for updating information on an interagency computer system of records. The proposed revisions involve changing the phrasing of one item on the FR MSD–.

4. Report title: Uniform Form for Registration as a Transfer Agent and for Amendment to Registration.
Agency form number: FR TA–.
OMB Docket number: 7100–099.
Frequency: On occasion.
Reporters: State member banks, bank holding companies, and nondeposit trust company subsidiaries of bank holding companies.
Annual reporting hours: 19.
Estimated average hours per response: 0.53.
Number of respondents: 36.

Significant effect on small businesses is not expected.

General description of report: This information collection is mandatory [Section 17A(c) of the Securities Exchange Act of 1934; and 12 CFR 208.8(f)(2)] and is not given confidential treatment.

Abstract: This interagency form fulfills the statutory registration requirements for entities acting as transfer agents and enables certain basic information changes concerning the transfer agents to become known by the supervisory agencies. Minor changes to the form are proposed to clarify the reporting of information relative to the location(s) where transfer agent activities are conducted and relative to those instances where transfer agents contract to either perform transfer activities for others or have transfer activities performed for themselves.

Final approval under OMB delegated authority of the extension, without revision, of the following report:

1. Report title: Notice Claiming Status as an Exempt Transfer Agent.
Agency form number: FR 4013.
OMB Docket number: 7100–137.
Frequency: On occasion.
Reporters: State member banks, bank holding companies, and trust company subsidiaries of bank holding companies that are subject to supervision by the Federal Reserve Board.
Annual reporting hours: 20.
Estimated average hours per response: 2.
Number of respondents: 10.
Small businesses are not affected.

General description of report: This information collection is authorized by law (§17A(c)(1) of the Securities Exchange Act of 1934, 15 U.S.C. §78q-1(c)(1) as amended by the Securities Acts Amendments of 1975) and is voluntary. The collection of the data by the Federal Reserve from state member banks, subsidiaries of state member banks, bank holding companies, and subsidiaries of bank holding companies (except national banks and state nonmember banks that are insured by the FDIC) is authorized by law (15 U.S.C. §78c(a)(34)(B)(ii)). Individual respondent data are not regarded as confidential.

Abstract: This voluntary notice provides a method for state member banks, bank holding companies, and trust companies that are subject to Federal Reserve supervision and that are engaged as a transfer agent on behalf of an issuer of securities to claim exemption from several of the Securities and Exchange Commission's rules applicable to registered transfer agents.

Board of Governors of the Federal Reserve System, February 14, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–4136 Filed 2–17–95; 8:45AM]

Billing Code 6210–01–F

FCFT, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 17, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. FCFT, Inc., Princeton, West Virginia; to acquire 10 percent of the voting shares of Bank of Mount Hope, Inc., Mount Hope, West Virginia.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bankshares, Inc., Fargo, North Dakota; to merge with Abbott Bank Group, Inc., Alliance, Nebraska, and thereby indirectly acquire The Abbott Bank, Alliance Nebraska.

2. Duke Financial Group, Inc., St. Paul, Minnesota; to acquire 53.06 percent of the voting shares of First National Bank of North County, Carlsbad, California.

3. Frandsen Financial Corporation, Forest Lake, Minnesota; to acquire 100 percent of the voting shares of Minnesota Bank Holding Company, Plymouth, Minnesota, and thereby indirectly acquire Citizens State Bank of Montgomery, Montgomery, Minnesota, and Citizens State Bank of Waterville, Waterville, Minnesota.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Lone Star National Bancshares-Nevada, Inc., Pharr, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Lone Star National Bank, Pharr, Texas.

2. Lone Star National Bancshares-Texas, Inc., Pharr, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Lone Star National Bank-Nevada, Inc., Pharr, Texas, and thereby indirectly acquire Lone Star National Bank, Pharr, Texas.

Board of Governors of the Federal Reserve System, February 14, 1995.

Willaim W. Wiles,

Secretary of the Board.

[FR Doc. 95-4137 Filed 2-17-95; 8:45 am]

BILLING CODE 6210-01-F

Quad City Holdings, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a

hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 7, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Quad City Holdings, Inc., Bettendorf, Iowa; to engage *de novo* through its subsidiary Quad City Bancorp, Inc. Bettendorf, Iowa, in the transfer of merchant credit card operation, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 14, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-4139 Filed 2-17-95; 8:45 am]

BILLING CODE 6210-01-F

Werner E. Schreiber Blind Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 7, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Werner E. Schreiber Blind Trust; and Marlene I. Havens, Larry W. Jochim, and Jerry J. James as co-trustee, all of Whitefish, Montana; all to acquire 22.89 percent of the voting shares of Flathead Holding Company, Bigfork, Montana, and thereby indirectly acquire Flathead Bank of Bigfork, Bigfork, Montana.

In addition Applicants also propose to acquire a total of 73.95 percent of the voting shares of Mountain Bank System, Inc., Whitefish, Montana, and thereby indirectly acquire Mountain Bank, Whitefish, Montana, and Valley Bank of Belgrade, Belgrade, Montana.

Board of Governors of the Federal Reserve System, February 14, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-4138 Filed 2-17-95; 8:45 am]

BILLING CODE 6210-01-F

Wilson and Muir Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 7, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Wilson and Muir Bancorp, Inc., Bardstown, Kentucky; to acquire Bankers Mortgage Corporation, Louisville, Kentucky, and thereby engage in the business of originating and making loans secured by mortgages on, or deeds of trust relating to, real property, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Community Bancorp, Inc., Glasgow, Montana; to acquire First National Agency, Hinsdale, Montana, and thereby engage in operating a general insurance agency in a town with a population of less than 5,000, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 14, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-4140 Filed 2-17-95; 8:45 am]

BILLING CODE 6210-01-F

HARRY S TRUMAN SCHOLARSHIP FOUNDATION

Harry S Truman Scholarship 1995 Supplemental Competition

AGENCY: Harry S Truman Scholarship Foundation.

ACTION: Notice of closing date for Supplemental Nominations from Eligible Institutions of Higher Education.

SUMMARY: Notice is hereby given that, pursuant to the authority contained in the Harry S Truman Memorial Scholarship Act, Public Law 93–642 (20 U.S.C. 2001), nominations are being accepted from eligible institutions of higher education for 1995 Truman Scholarships. Procedures are prescribed in 45 CFR 1801 (August 22, 1994; vol. 59, no. 161 sec. 13).

In order to be assured consideration, all documentation in support of nominations for the supplemental competition must be received by the Truman Scholarship Review Committee, 2255 N. Dubuque Road, P.O. Box 168, Iowa City, IA 52243 no later than March 31, 1995, from participating two- and four-year institutions.

Dated: February 10, 1995.

Louis H. Blair,

Executive Secretary.

[FR Doc. 95–4091 Filed 2–17–95; 8:45 am]

BILLING CODE BOAC–95001–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N–0357]

Surveillance System for Antimicrobial Resistance; Public Hearing; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening to April 1, 1995, the comment period for the notice of public hearing regarding approaches to surveillance for the development of bacterial resistance to human and animal antimicrobial drugs, which published in the **Federal Register** of October 14, 1994 (59 FR 52168). Interested persons were given until February 1, 1995, to submit comments. FDA is taking this action to provide interested persons with an opportunity to comment on submissions received after the public hearing.

DATES: Submit written comments by April 1, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Transcripts of the November 9 and 10, 1994, hearing are available for review at the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT: Ermona McGoodwin, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 14, 1994 (59 FR 52168), FDA announced that it would be holding a public hearing November 9 and 10, 1994, on surveillance systems for antimicrobial resistance. Interested persons were given until February 1, 1995, to submit comments. The purpose of the hearing was to solicit information from, and the views of, interested persons, including scientists, professional groups, and consumers, on the issues and concerns relating to approaches for regulatory purposes to surveillance for the development of bacterial resistance to antibacterial agents used in humans and in animals. This hearing was held in response to a recommendation for improved surveillance for the development of antimicrobial resistance in both animals and humans as discussed at the May 11 and 12, 1994, joint meeting of FDA's Anti-Infective Drugs Advisory Committee and the Veterinary Medicine Advisory Committee (see the **Federal Register** of April 15, 1994, (59 FR 18136 at 18137)).

FDA is actively seeking the views of professional and consumer groups regarding the implications of an animal and human bacterial resistance monitoring system for regulatory purposes on their constituent populations. To permit time for all interested persons to comment on submissions received after the public hearing, the administrative record of the hearing will remain open until April 1, 1995. Persons who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (address above) by April 1, 1995.

Dated: February 14, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–4213 Filed 2–17–95; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Environmental Health Sciences; 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 meeting:

Name of Committee: Environmental Health Sciences Review Committee

Date: March 27–29, 1995.

Time: 8:30 a.m. to Adjournment.

Place: National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

Contact Person: Dr. Ethel Jackson, Scientific Review Administrator, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–7826.

Purpose: To review and evaluate grant applications.

The meeting 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 the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Research and Manpower Development, National Institutes of Health.)

Dated: February 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–4114 Filed 2–17–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; 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 Initial Review Group (IRG) meeting:

Name of IRG: Heart, Lung, and Blood Program Project Review Committee.

Date: March 23–24, 1995.

Time: 8:00 a.m.

Place: Holiday Inn Chevy Chase, Chevy Chase, Maryland.

Contact Person: Dr. Jeffrey Hurst, 5333 Westbard Avenue, Room 555, Bethesda, Maryland 20892, (301) 594–7418.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552(b)(c)(4) and 552(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: February 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–4112 Filed 2–17–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting of the National Center on Sleep Disorders Research Advisory Board

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Center on Sleep Disorders Research Advisory Board, National Heart, Lung, and Blood Institute, March 15, 1995. This meeting will beheld at the National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will open to the public from 9:00 a.m. to adjournment, to discuss recommendations on the implementation and evaluation of the National Center on Sleep Disorders Research programs. Attendance by the public will be limited to space available.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meetings and a roster of the Board members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. James P. Kiley, Executive Secretary and Acting Director, National Center on Sleep Disorders Research, NHLBI, Building 31, Room 4A11, Bethesda, Maryland 20892, (301) 496–7443, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.838, Lung Diseases Research, National Institutes of Health).

Dated: February 14, 1995.

Susan K. Feldman,

Committee Management Office, NIH.

[FR Doc. 95–4118 Filed 2–17–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: NHLBI SEP on Dietary Protein and Blood Pressure.

Dates of Meeting: April 20, 1995.

Time of Meeting: 9:00 a.m.

Place of Meeting: National Institutes of Health, Rockledge Building, Conference Room 8115, 8th Floor, 6701 Rockledge Drive, Bethesda, Maryland 20892.

Agenda: The panel will review the current status of research in the designated areas, identify gaps and make recommendations regarding opportunities and priorities for future contract or grant solicitations.

Contact Person: Dr. Jeffrey Cutler, 7550 Wisconsin Avenue, Room 604C, Bethesda, Maryland 20892, (301) 496–2465.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: February 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–4117 Filed 2–17–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for March 1995.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and scientific review administrators, for approximately one hour at the beginning of the first session of the first day of the meeting unless otherwise listed. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Committee Management Officer, NICHD, 6100 Executive Boulevard, Room 5E03, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meetings and rosters of committee members.

Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer in advance of the meeting.

Other information pertaining to the meetings may be obtained from the Scientific Review Administrator as indicated.

Name of committee: Population Research Committee.

Scientific review administrator: Dr. A.T. Gregoire, 6100 Executive Boulevard—Rm. 5E03, Telephone: 301–496–1696.

Date of Meeting: March 2–3, 1995.

Place of meeting: Residence Inn, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: March 2, 1995, 8:00 a.m.–9:30 a.m.

Closed: March 2, 1995, 9:30 a.m.–5:00 p.m.; March 3, 1995, 8:00 a.m.–adjournment.

Name of committee: Maternal and Child Health Research Committee.

Scientific review administrator: Dr. Gopal Bhatnagar, 6100 Executive Boulevard—Rm. 5E03, Telephone: 301–496–1485.

Date of Meeting: March 7–8, 1995.

Place of Meeting: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: March 7, 1995, 8:00 a.m.–9:30 a.m.

Closed: March 7, 1995, 9:30 a.m.–5:00 p.m.; March 8, 1995, 8:00 a.m.–adjournment.

Name of committee: Mental Retardation Research Committee.

Scientific review administrator: Dr. Norman Chang, 6100 Executive Boulevard—Rm. 5E03, Telephone: 301–496–1485.

Date of Meeting: March 9–10, 1995.

Place of Meeting: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

Open: March 9, 1995, 8:00 a.m.–10:00 a.m.

Closed: March 9, 1995, 10:00 a.m.–5:00 p.m.; March 10, 1995, 8:00 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health.)

Dated: February 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–4113 Filed 2–17–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of General Medical Sciences; Notice of 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 advisory committee meeting of the National Institute of General Medical Sciences.

This meeting will be open to the public as indicated below with attendance limited to space available. Individuals who plan to attend and

need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 45, Room 3AS–43, Bethesda, Maryland 20892, (301) 495–7301, in advance of the meeting.

Mrs. Dieffenbach will provide a summary of the meeting and a roster of committee members upon request. Substantive program information may be obtained from the contact listed below.

Committee name: Minority Biomedical Research Support Review Subcommittee, Minority Programs Review Committee.
Meeting date: March 16–17, 1995.
Place: Holiday Inn Chevy Chase, 5522 Wisconsin Avenue, Chevy Chase, Maryland 20815.
Open: March 16, 8:30 a.m.–9:30 a.m.
Agenda: Special reports related to committee activities.
Closed: March 16, 9:30 a.m.–5 p.m.; March 17, 8:30 a.m.–adjournment
Agenda: Review and evaluation of grant applications.
Contact: Dr. Jean Flagg-Newton, Scientific Review Admin., Building 45, Room 1AS–25H, National Institutes of Health, Bethesda, MD 20892, Telephone (301) 594–3663.

This meeting will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasions of personal property.

(Catalog of Federal Domestic Assistance Program No. 93.859, 93.862, 93.863, 93.880, National Institute of General Medical Sciences, National Institutes of Health)

Date: February 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–4115 Filed 2–17–95; 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: Behavioral and Neurosciences.
Date: March 10, 1995.
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room 306 Telephone Conference.
Contact Person: Dr. Carol Campbell, Scientific Review Administrator, 5333 Westbard Ave., Room 306, Bethesda, MD 20892, (301) 594–7165.

Name of SEP: Chemistry and Related Sciences.
Date: March 13, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. John Beisler, Scientific Review Administrator, 5333 Westbard Ave., Room 334A, Bethesda, MD 20892, (301) 594–7149.

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.

Name of SEP: Multidisciplinary Sciences.
Date: March 23–24, 1995.
Place: Embassy Suites, Washington, DC.
Contact Person: Dr. Eileen Bradley, Scientific Review Administrator, 5333 Westbard Ave., Room 2A10, Bethesda, MD 20892, (301) 594–7391.

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.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institute of Health, HHS)

Dated: February 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–4116 Filed 2–17–95; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in April 1995.

The meeting of the CMHS National Advisory Council will include a discussion of the mission and programs of the Center, administrative announcements and program developments. It will focus on services and research related to the integration of services, research, and financing for co-occuring mental illness and substance use disorders. The Council will also be performing review of applications for Federal assistance and individual contract proposals; therefore, portions of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c) (3), (4) and (6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and/or a roster of Council members may be obtained from: Gloria Yockelson, Committee Management Officer, CMHS, Room 18C–07, Parklawn Building, Rockville, Maryland 20857, Telephone: (301) 443–7919.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Mental Health Services National Advisory Council.
Meeting Dates: April 3–4, 1995.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.
Closed: April 3, 9 a.m.–11 a.m.
Open: April 3, 11 a.m.–5 p.m.; April 4, 9 a.m.–adjournment.
Contact: Anne Mathews-Younes, Ed.D., Room 11C–26, Parklawn Building, Telephone: (301) 443–3606.

Dated: February 15, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–4214 Filed 2–17–95; 8:45 am]

BILLING CODE 4162–20–P

Social Security Administration

Commission on Childhood Disability

AGENCY: Social Security Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the second meeting of the Commission on Childhood Disability (the Commission).

DATE: Friday, February 24, 1995, 8:30 a.m. to 12:00 p.m. 1:00 p.m. to 5:00 p.m.

ADDRESS: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC, Ballroom D.

FOR FURTHER INFORMATION CONTACT: Elaine Fultz, Commission Staff Director, (202) 690–7409.

SUPPLEMENTARY INFORMATION:

I. Purpose

The Commission on Childhood Disability was established by Congress to assess the Social Security Administration's eligibility criteria for

Supplemental Security Income (SSI) childhood disability benefits and to consider alternative criteria. The Commission is chaired by the Honorable Jim Slattery and consists of 14 members.

II. Agenda

At its second meeting, the Commission will:

- Review other federal programs for children with disabilities;
- Review the 1990 *Sullivan* v. *Zebley* Supreme Court decision and analyze its requirements;
- Consider issues that have arisen in the Social Security Administration's implementation of the Individual Functional Assessment (IFA) required by the *Zebley* decision;
- Consider profiles of children with several specific disabilities, including mild mental retardation and Attention Deficit Hyperactivity Disorder (ADHD).

The meeting is open to the public to the extent that space is available. Public officials, representatives of professional and advocacy organizations, concerned citizens, and Social Security and SSI recipients may submit written comments on the issues considered by the Commission. The Commission will not take public testimony at this meeting but will provide ample opportunity for interested individuals and organizations to address it orally at future meetings. Interpreter services for persons with hearing impairments will be provided.

A transcript of the meeting will be available at an at-cost basis. Transcripts may be ordered from the information contact shown above. The transcript and all written submissions will become part of the record of these meetings.

Dated: February 14, 1995.

Ron Sribnik,

Social Security Administration Regulations Officer.

[FR Doc. 95–4327 Filed 2–17–95; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

PRT–798900

Applicant: Andy G. Grubbs, P.O. Box 208, San Marcos, Texas 78667

The applicant requests a permit to include take activities for the Bee Creek Cave harvestman (*Texella redelli*) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

Susan MacMullin,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–4128 Filed 2–17–95; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of 16 Applications for Incidental Take Permits for Construction of 16 Single Family Residences on Foxtree Cove, Section 4, Block D, Jester Point 2, Austin, Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Howard L. Burris, Jr. (Applicant) has applied to the Fish and Wildlife Service (Service) for 16 incidental take permits pursuant to section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned Permit Numbers PRT–798286 and PRT–798288 through PRT–798302. The requested permits, which are for a period of 5 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of 16 single family residences on Foxtree Cove, Section 4, Block D, Jester Point 2, Travis County, Texas

The Service has prepared the final Environmental Assessment/Habitat Conservation Plans (EA/HCP) for the incidental take applications. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the applications and EA/HCP should be received on or before March 23, 1995.

ADDRESSES: Persons wishing to review the applications may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP(s) may obtain a copy by contacting Joseph E. Johnston, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512)/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:00) at the Southwest Regional Office, Division of Endangered Species/Permits, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, or the Ecological Services Field Office (9:00 to 4:30), U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758. Written data or comments concerning the applications should be submitted to the Acting Field Supervisor, Ecological Services Field Office, Austin, Texas (see **ADDRESSES** above). Please refer to Permit Numbers PRT–798286 and PRT–798288 through PRT–798302 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Joseph E. Johnston at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Howard L. Burris, Jr. plans to construct single family residences on 16 lots on Foxtree Cove, Section 4, Block D, Jester Point 2 Subdivision, Travis County, Texas. This action will eliminate less than one-half acre of and indirectly impact less than one additional acre of golden-cheeked warbler habitat per residence. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing $1,500 for

each permit application into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

Alternatives to this action were rejected because selling or not developing the subject property with federally listed species present was not economically feasible.

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–4127 Filed 2–17–95; 8:45 am]

BILLING CODE 4310–55–M

North American Wetlands Conservation Council; Availability of Document

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that a final document, U.S. Grant Application Instructions Package For Funding Consideration Through the North American Wetlands Conservation Council Under Authority of North American Wetlands Conservation Act, is available.

DATES: Proposals may be submitted at any time. FY 1996 proposals will be accepted through August 4, 1995.

ADDRESSES: Copies of this document can be obtained by contacting the U.S. Fish and Wildlife Service, Publications Unit, Mail Stop 130 Webb, 4401 N. Fairfax Drive, Arlington, VA 22203 during normal business hours (7:45 am–4:15 pm) in writing or by phone (703) 358–1711.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Streeter, Coordinator, North American Wetlands Conservation Council at (703) 358–1784.

SUPPLEMENTARY INFORMATION: This document provides the schedules, review criteria, definitions, description of information required in the proposal, and a format for proposals submitted for Fiscal Year 1996 funding. This document was prepared to comply with the ''North American Wetlands Conservation Act.'' the Act established a North American Wetlands Conservation Council. This Federal-State-Private body annually recommends wetland acquisition, restoration, and enhancement conservation projects to the Migratory Bird Conservation Commission. These project recommendations will be selected from proposals made in accordance with this document. Proposals from State and private sponsors require a minimum of 50 percent non-Federal matching funds.

Dated: January 17, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–4131 Filed 2–17–95; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NV–055–1150–00, 5–0151–LM]

Caliente Management Framework Plan Desert Tortoise Amendment

AGENCY: Bureau to Land Management, Interior.

ACTION: Notice to Extend Scoping Period.

SUMMARY: The Bureau of Land Management (BLM) is extending the public scoping period for the proposal to amend the Caliente Management Framework Plan to implement the U.S. Fish and Wildlife Service Desert Tortoise (Mojave Population) Recovery Plan, from February 17, 1995 to March 7, 1995.

DATES: The 30-day scoping period for public comment on the desert tortoise amendment is extended. Written comments must be submitted and postmarked no later than Tuesday, March 7, 1995.

ADDRESSES: Written comments should be addressed to: Curtis G. Tucker, Area Manager, Caliente Resource Area, P.O. Box 237, Caliente, Nevada, 89126.

FOR FURTHER INFORMATION CONTACT: Kyle Teel, Wildlife Biologist, at the above address or telephone 702–726–8100.

SUPPLEMENTARY INFORMATION: On January 30, 1995, notice was published to initiate a 30-day public scoping period on the subject amendment. The closing date for scoping is extended from February 17, 1995 to March 7, 1995. The 30-day public scoping period is being conducted to give the public opportunity to comment on the proposal to amend the Caliente Management Framework Plan for implementing the U.S. Fish and Wildlife Service Desert Tortoise (Mojave Population) Recovery Plan.

Federal, state and local agencies, and other individuals or organizations who are interested in/or affected by aspects of amending the Caliente Management Framework Plan to implement the desert tortoise recovery plan, are invited to participate in this planning process.

Dated: February 13, 1995.

Thomas V. Leshendok,

Acting State Director, Nevada.

[FR Doc. 95–4215 Filed 2–17–95; 8:45 am]

BILLING CODE 4310–HC–M

[NV–010–1100–00]

Notice of Availability of the Wells Resource Management Plan Proposed Elk Amendment and Environment Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Wells Resource Management Plan Proposed Elk Amendment and Environmental Assessment is available to the public for a 30-day review and protest period. The proposed amendment analyzes the impacts of several alternatives for managing elk in the BLM's Wells Resource Area, Elko County, Nevada.

DATES: A 30-day protest period begins on February 23, 1995. Any protests on the proposed plan amendment must be postmarked no later than March 24, 1995.

ADDRESSES: Protests must be filed with the Director, Bureau of Land Management, Resource Planning Team (WO–480), P.O. Box 65775, Washington, D.C. 20035.

Copies of the proposed amendment may be obtained by writing to: Wells Resource Area, Bureau of Land Management, P.O. Box 831, Elko, Nevada, 89803. Copies may also be picked up in person at the Elko District Office, 3900 E. Idaho Street, Elko, Nevada.

FOR FURTHER INFORMATION CONTACT: Bill Baker, Wells Resource Area Manager, at the above Elko, Nevada address or telephone (702) 753–0200.

SUPPLEMENTARY INFORMATION: Through a review of elk habitat management in the Wells Resource Area, it was determined that elk numbers and habitat use areas are expanding from those identified in the Wells Resource Management Plan Record of Decision, approved July 16, 1985. Elk are recognized as highly adaptable creatures and during recent years have pioneered from the Pilot Mountain Management Area, northwest Utah, and southern Idaho to adjacent previously unoccupied habitats in the Wells Resource Area.

The purpose of this amendment is to establish elk habitat management areas, identify habitat requirements and specific management objectives and practices, establish target elk population management levels, develop factors for

attainment and future adjustments in elk population management levels, and identify constraints on other resources within the Wells Resource Area.

The proposed amendment may be protested by any person who participated in the planning process, and who has an interest which is or may be adversely affected by approval of the proposed plan amendment. A protest may raise only those issues which were submitted for the record during the planning process. Protests must be filed with the BLM National Director at the above address. All protests must be written and must be postmarked on or before March 24, 1995 and shall contain the following information:

(1) The name, mailing address, telephone number, and interest of the person filing the protest.

(2) A statement of the issue or issues being protested.

(3) A statement of the part or parts of the document being protested.

(4) A copy of all documents addressing the issue or issues previously submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the records.

(5) A short, concise statement explaining precisely why the BLM Nevada State Director's decision is wrong.

Upon resolution of any protests, an Approved Plan Amendment and Decision Record will be issued. The Approved Plan Amendment and Decision Record will be mailed to all individuals who participated in the planning process and all other interested public upon their request.

Dated: February 13, 1995.

Jean Rivers-Council,

Associate State Director, Nevada.

[FR Doc. 95–4126 Filed 2–17–95; 8:45 am]

BILLING CODE 4310–HC–M

[CO–942–95–1420–00]

Colorado: Filing of Plats of Survey

February 9, 1995.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., February 9, 1995.

The plat representing the metes-and-bounds survey in section 10, T. 2 N., R. 76 W., Sixth Principal Meridian, Colorado, Group No. 1035, was accepted August 12, 1994.

The plat representing the metes-and-bounds survey of the boundary line between lots 128 and 129 in section 16, T. 3 S., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 679, was accepted August 24, 1994.

The plat representing the dependent resurvey of a portion of the Grand Mesa National Forest Boundary, in section 11, 15, 16, 17 and 18 and portions of Tracts 39 and 40, T. 10 S., R. 93 W., Sixth Principal Meridian, Colorado, Group No. 973, was accepted September 13, 1994.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 9, T. 10 N., R. 74 W., Sixth Principal Meridian, Colorado, Group No. 1004, was accepted November 29, 1994.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 17, T. 7 N., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 1025, was accepted December 13, 1994.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The plat (in 21 sheets), representing the dependent resurvey of portions of certain mineral claims and a portion of the Silver Plume Townsite in section 13, 14, 23 and 24, T. 4 S., R. 75 W., Sixth Principal Meridian, Colorado, Group No. 689, was accepted November 28, 1994.

This survey was executed to meet certain administrative needs of the U.S. Forest Service and this Bureau.

The plat representing the dependent resurvey of a mineral survey number 326, White Elephant Placer, T. 19 S., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 456, was accepted September 13, 1994.

The plat representing the dependent resurvey of a portion of the south and east boundaries, portions of the subdivisional lines and the subdivision of school section 36, T. 8 N., R. 92 W., Sixth Principal Meridian, Colorado, Group No. 986, was accepted November 29, 1994.

The plat representing the dependent resurvey of portions of the First Standard Parallel North on the south boundary of T. 5 N., R's 59 and 60 W., a portion of the west boundary and subdivisional lines and the subdivision of section 6, T. 4 N., R. 59 W., Sixth Principal Meridian, Colorado, Group No. 1038, was accepted November 29, 1994.

The supplemental plat, creating lots 59, 60, 61, 62, 63, and 64 in the SW1/4 of section 24, T. 1 N., R. 72 W. Sixth Principal Meridian, Colorado, was accepted September 13, 1994.

The supplemental plat (in 2 sheets), creating lots 30, 31, 32, 33, 34, and 35 in section 36, and lots 7 and 8 in section 35, T. 6 S., R. 78 W., Sixth Principal Meridian, Colorado, was accepted September 16, 1994.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 95–4088 Filed 2–17–95; 8:45 am]

BILLING CODE 4310-JB(P)

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32653]

Blue Mountain Railroad, Inc.—Trackage Rights Exemption—Burlington Northern Railroad Company

Burlington Northern Railroad Company (BN) will agree to grant local and overhead trackage rights to Blue Mountain Railroad, Inc. (BMR) over approximately 0.7 miles of BN's rail line between BN milepost 75.8 and BN milepost 76.5 in Pullman, WA.[1] The purpose of this transaction is to facilitate a bridge-widening project by the State of Washington. The trackage rights were to become effective on or after February 1, 1995.

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 NW., Washington, DC 20004.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *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: February 13, 1995.

[1] BMR's local trackage rights will be limited to serving Washington State College located at BN milepost 76.21.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4173 Filed 2–17–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–55 (Sub-No. 484X)]

CSX Transportation, Inc.)—Abandonment Exemption—In the City of Suffolk, VA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: CSX Transportation, Inc. (CSXT) has petitioned for an exemption from the prior approval requirements of 49 U.S.C. 10903–10904 for the abandonment of its 3.81-mile segment of branch line track from milepost AB–214.0 to the end of the track at milepost AB–210.19 in the City of Suffolk, VA. We will grant the exemption, subject to standard labor protective conditions and a condition that CSXT consult with the City of Suffolk prior to completion of salvage operations.

DATES: This exemption will be effective on March 23, 1995, unless it is stayed or a formal expression of intent to file an offer of financial assistance is filed. Petitions to stay must be filed by March 8, 1995. Petitions for reconsideration or reopening must be filed by March 18, 1995. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by March 3, 1995.

ADDRESSES: Send pleadings, referring to Docket No. AB–55 (Sub-No. 484X), to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC. 20423; and (2) petitioner's representative: Charles M. Rosenburger, 500 Water Street—J150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's full decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Washington, DC. 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.].

Decided: February 7, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4172 Filed 2–17–95; 8:45 am]

BILLING CODE 7035–01P–M

[Docket No. AB–55 (Sub-No. 503X)]

CSX Transportation, Inc.—Abandonment Exemption—McMinn County, TN

CSX Transportation, Inc. (CSXT) has filed a verified notice under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 1.41-mile rail line between milepost 333.2 and 334.61 in Athens, McMinn County, TN.

CSXT has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line 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 complainant's favor within the last 2 years; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 and 1152.50(d)(1) (notice to government agencies), and 49 CFR 1105.12 (newspaper publication) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether employees are adequately protected, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective March 23, 1995, unless stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] statements of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 3, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 13, 1995. An original and 10 copies of any such filing must be sent to the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, one copy must be served on Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by February 24, 1995. A copy of the EA may be obtained by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes 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: February 14, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4174 Filed 2–17–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1678–94]

Draft Statement of Standards and Guidelines for Developing an Immigration and Naturalization Services Passenger Accelerated Service System (INSPASS)

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of availability.

SUMMARY: This notice advises interested parties that the Immigration and

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[1] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

Naturalization Service (Service) has prepared a draft statement of standards and guidelines for developing, building, installing, and operating an automated Immigration and Naturalization Service Passenger Accelerated Service System (INSPASS). These standards and guidelines are available for review and comment by interested parties who may wish to develop an automated system for use by the Service at selected Ports-of-Entry in the United States. The automated passenger accelerated service system is designed to decrease inspection processing time by automating the inspection of low risk frequent travelers to the United States.

DATES: Requests for the draft statement and guidelines should be received on or before March 23, 1995. Written comments on the draft statement and guidelines must be received on or before April 24, 1995.

ADDRESSES: Written requests for copies of the draft statement and guidelines should be submitted to the Immigration and Naturalization Service, 425 I Street, NW, Room 7228, Washington, DC 20536. ATTN: Inspections Division (INSPASS).

Please submit written comments on the draft statement and guidelines, in triplicate, to the Immigration and Naturalization Service, 425 I Street, NW., Room 7228, Washington, DC 20536. Attention: Assistant Chief Inspector Ronald J. Hays.

FOR FURTHER INFORMATION CONTACT: Assistant Chief Inspector Ronald J. Hays, Inspections Division, Immigration and Naturalization Service, 425 I Street, NW, Room 7228, Washington, DC 20536, telephone (202) 514–0912 or fax (202) 514–8345.

SUPPLEMENTARY INFORMATION:

Background

The Service developed INSPASS as a pilot program to be used by low risk frequent travelers to facilitate their entry into the United States at designated Ports-of-Entry. Under INSPASS, the applicant fills out an enrollment form, and his or her personal data is fed through a computer that checks with the databases of U.S. Customs, the U.S. State Department, the National Crime Information Center, and the Immigration and Naturalization Service. If the applicant is approved, biometric information is collected through the use of hand geometry. The applicant places his or her hand in an open, box-like structure, onto a small metal plate, and squeezes a few small pegs. The length, thickness and translucency of the hand is noted, and coded. Within seconds, a small credit-card sized INSPASS card is produced.

At the time of arrival at one of the designated Ports-of-Entry, the INSPASS holder proceeds to an automated inspectional booth for accelerated inspectional processing. The captured biometrics (encoded on the INSPASS card) are used to establish his or her identity.

INSPASS, is a subset of the Interagency Border Inspection System (IBIS), and is being pilot tested at the Newark International Airport, as of May 24, 1993; at John F. Kennedy International Airport, as of July 27, 1993; and at Pearson International Airport (Toronto, Canada), as of December 1, 1993. A land border version of INSPASS is under development for testing at Hidalgo, Texas.

INSPASS Hardware and Software Configuration

As currently deployed, INSPASS consists of two primary components: an enrollment center and an inspection kiosk. They include the following equipment:

Enrollment Center

Two 486 personal computers
Hand geometry scanner
Fingerprint scanner
OCR–B card reader
OCR–B card printer
Laser printer

Inspection Kiosk

ATM-like stand
486 personal computer
10 inch monitor
16-key keypad
Hand geometry scanner
OCR–B card reader
Receipt printer
Fingerprint scanner
Electrically locked gate

Results of the INSPASS Pilot Test

The results of the INSPASS pilot test have been very encouraging and have demonstrated the potential to reduce processing times for travelers significantly. However, the Service has identified the following areas in which improvements in the existing hardware configuration are required to reduce the inspection processing time further:

Monitor—to be replaced by a touchscreen.

Card readers—to be replaced by readers which are capable of reading OCR–B and integrated circuit cards. These readers must be styled as ATM card readers.

Printers—to be replaced by a faster, more robust printer. This printer must be capable of detecting the removal of the receipt as this action triggers the opening of the gate.

Fingerprint scanner—to be replaced by a more dependable scanner which complies with the Service's fingerprint capture and storage standards.

Kiosk—must be redesigned to improve ergonomics. Such a redesign must comply with the Americans With Disabilities Act, Occupational Safety and Hazards Act and other applicable laws and regulations.

INSPASS card—to be replaced with a smart card-based medium which contains data elements to be specified by the Service.

Gate—to be replaced by a gate which operates within a time cycle acceptable to the Service and which complies with applicable laws and regulations.

Draft Statement of Standards and Guidelines for Developing an Immigration and Naturalization Service Passenger Accelerated Service System (INSPASS)

During the INSPASS development cycle, numerous individuals and organizations, both public and private, have offered suggestions for improvements. The draft statement of standards and guidelines calls for a new relationship with the travel and tourism industry, based upon some of these suggestions, in which the industry and the Service will cooperate to install INSPASS at specific Ports-of-Entry. The Service will set the system specifications, determine which travelers will be allowed to be enrolled, and bear some of the cost of operations. This new relationship will allow the Government and the travel industry to avoid some costs they might otherwise have had to bear. This is exactly the type of cost saving synergy envisioned by the Vice President's National Performance Review. If the objective of this program is met, the Service will achieve a state-of-the-art automated inspections environment with reliable management information to deliver its services to the public. These standards and guidelines will be provided upon written request for review and comment. Based on any comments/concerns received, the Service may finalize these standards and guidelines, and request formal proposals in accordance with a notice to be published in the Commerce Business Daily and/or the **Federal Register**.

Dated: January 30, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–4089 Filed 2–17–95; 8:45 am]

BILLING CODE 4410–10–M

[INS No. 1674–94]

RIN 1115–AB93

Extension of the Visa Waiver Pilot Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice announces the extension of the Visa Waiver Pilot Program (VWPP) until September 30, 1996. Nationals of those countries eligible for participation under the VWPP, may continue to apply for admission to the United States for ninety (90) days or less, as nonimmigrant visitors for business or pleasure, without first obtaining a nonimmigrant visa. This notice also notifies those carriers who have entered into agreements with the Immigration and Naturalization Service (Service) under the provisions of the Visa Waiver Pilot Program, that the agreements will continue in effect until September 30, 1996. These actions will facilitate travel for both the public and United States businesses.

EFFECTIVE DATES: This extension of the Visa Waiver Pilot Program is effective on October 25, 1994, and will remain in effect until September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Ronald J. Hays, Assistant Chief Inspector, Immigration and naturalization Service, Room 7228, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–0912.

SUPPLEMENTARY INFORMATION:

Background

Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603, dated November 6, 1986, added section 217 to the Immigration and Nationality Act (ACT which established the nonimmigrant Visa Waiver Pilot Program. Section 313 of IRCA initially provided for the designation of eight (8) countries to participate in the Visa Waiver Pilot Program. Accordingly, the Service designated by regulations published in the **Federal Register**, the following eight (8) countries to participate in the VWPP:

Country	Effective date	Federal Register Citation
1. United Kingdom	July 1, 1988	53 FR 24901, June 30, 1988.
2. Japan	Dec. 15, 1988	53 FR 50161, Dec. 13, 1988.
3. France	July 1, 1989	54 FR 27120, June 27, 1988.
4. Switzerland	July 1, 1989	54 FR 27120, June 27, 1989.
5. Germany	July 15, 1989	54 FR 27120, June 27, 1989.
6. Sweden	July 15, 1989	54 FR 27120, June 27, 1989.
7. Italy	July 29, 1989	54 FR 27120, June 27, 1989.
8. Netherlands	July 29, 1989	54 FR 27120, June 27, 1989.

Section 201 of the Immigration Act of 1990, (IMMACT 90), Public Law 101–649, dated November 29, 1990, further amended the Visa Waiver Pilot Program by removing the eight country cap and extending the provisions to all countries that met the qualifying provisions contained in section 217 of the Act. In addition, section 201 of IMMACT 90 also extended the period for the VWPP until September 30, 1994. Subsequently, the Service designated the following fourteen (14) additional countries by regulations published in the **Federal Register**, to participate in the VWPP:

Country	Effective date	Federal Register Ciation
1. Andorra	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
2. Austria	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
3. Belgium	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
4. Denmark	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
5. Finland	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
6. Iceland	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
7. Liechtenstein	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
8. Luxembourg	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
9. Monaco	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
10. New Zealand	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
11. Norway	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
12. San Marino	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
13. Spain	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
14. Brunei	July 29, 1993	58 FR 40581, July 29, 1993.

Extension of the Visa Waiver Pilot Program

On September 27, 1994, the Assistant Commissioner, Office of Inspections, issued a memorandum to those carriers who signed a VWPP agreement with the Service, that during the month of October 1994, the Service would not fine carriers under section 273 of the Act for transporting to the Untied States, visitors without nonimmigrant visitor visas, who would otherwise be eligible for admission to the United States under the Visa Waiver Pilot Program. This action was necessary to accommodate the travelling public who made plans to visit the United States and who were not aware that the Visa Waiver Pilot Program would expire on September 30, 1994 unless the program was extended by Congress.

Subsequently, the Immigration and Nationality Technical Corrections Act of 1994, October 25, 1994 extended the expiration date of the Visa Waiver Pilot Program until September 30, 1996.

Therefore, unless designation is otherwise withdrawn sooner, nationals of those countries eligible for participation under the VWPP may continue to apply for admission to the United States for ninety (90) days or

less, as nonimmigrant visitors for business or pleasure, without first obtaining a nonimmigrant visa. In addition, the agreements with the Service, which carriers have entered into under the provisions of the Visa Waiver Pilot Program, will remain in Effect until September 30, 1996.

Dated: January 30, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–4090 Filed 2–17–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Secretary's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation: Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Secretary's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation was established in accordance with the Federal Advisory Committee Act (FACA) (Pub. L. 82–463)). Pursuant to Section 10(a) of FACA, this is to announce that the Task Force will meet at the time and place shown below.

TIME AND PLACE: The meeting will be held on Tuesday, March 14, from 9 a.m. to 4 p.m. and on Wednesday, March 15, from 9 a.m. to 3 p.m. in Conference Room N–3437 B–D in the Department of Labor, 200 Constitution Avenue, NW, Washington, DC.

AGENDA: At this meeting, the Task Force intends to hear testimony on and discuss the following topics, among others: (1) public safety, (2) work place attitudes towards collaboration and quality, and (3) polling and survey results of citizens' expectations of government.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact the Task Force to request appropriate accommodations. Individuals or organizations wishing to submit written statements should send 20 copies on or before March 6 to Mr. Charles A. Richards, Designated Federal Official, Secretary of Labor's Task Force on Excellence in State and Local Government through Labor-Management Cooperation, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S–2203, Washington, DC 20210. These statements will be thoroughly reviewed and become part of the record.

For the purposes of this meeting, the Task Force is primarily interested in statements that address the topics mentioned above under the heading ''Agenda.'' However, the Task Force continues to welcome submissions that address the questions in the mission statement and the following eight general areas: (1) Finding Models, Ingredients, and Barriers to Service Excellence and Labor-Management Cooperation and, as the following relate to promoting workplace cooperation and excellence; (2) Bargaining and Related Institutions and Practices; (3) Conflict Resolution Skills, Practices, and Institutions; (4) Legal and Regulatory Issues; (5) Financial Background, Financial Security, and Budget Systems; (6) Affects of Civil Service; (7) Political and Electoral Considerations and Relationships; and (8) Providing a Humane Work Environment.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles A. Richards, Designated Federal Official, Secretary of Labor's Task Force on Excellence in State and Local Government through Labor-Management Cooperation, U.S. Department of Labor, Room S–2203, Washington, DC 20210, (202) 219–6231.

Signed at Washington, DC this 15th day of February, 1995.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 95–4164 Filed 2–17–95; 8:45 am]

BILLING CODE 4510–86–M

Senior Executive Service; Appointment of a Member to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individual is hereby appointed to a three-year term on the Department's Performance Review Board: Carl Lowe.

For Further Information Contact: Mr. Larry K. Goodwin, Director of Human Resources, Room C5526, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C., 20210, telephone: (202) 219–6551.

Signed at Washington, D.C., this 14 day of February, 1995.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 95–4163 Filed 2–17–95; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–021]

NASA Advisory Council (NAC), Aeronautics Advisory Committee, Subcommittee on Human Factors; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 3665, Notice Number 95–004, January 18, 1995.

PREVIOUSLY ANNOUNCED DATES AND ADDRESSES OF MEETING: February 22, 1995, 8:30 a.m. to 4:30 p.m.; February 23, 1995, 8:30 a.m. to 4:30 p.m.; and February 24, 1995 8:30 a.m. to 11:30 a.m. National Aeronautics and Space Administration, Langley Research Center, Building 1268A, Room 2120, Hampton, VA 23681–0001.

CHANGES IN THE MEETING: Dates changed to March 29, 1995, March 30, 1995, and March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory W. Condon, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/604–5567

Dated: February 14, 1995.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 95–4171 Filed 2–17–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Company; Salem Nuclear Generating Station, Units 1 and 2; Exemption

I

The Public Service Electric and Gas Company (the licensee) is the holder of Facility Operating License Nos. DPR–70 and DPR–75, which authorize operation of the Salem Nuclear Generating Station, Units 1 and 2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facilities consist of two pressurized water reactors, Salem Nuclear Generating Station, Units 1 and 2, at the licensee's site located in Salem, New Jersey.

II

In its letter dated December 22, 1994, the licensee requested an exemption from the Commission's regulations. Title 10 of the Code of Federal Regulations, part 50, section 60 (10 CFR 50.60), ''Acceptance Criteria for Fracture Prevention Measures for Light-water Nuclear Power Reactors for Normal Operation,'' states that all light-water nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in appendices G and H to 10 CFR part 50. Appendix G to 10 CFR part 50 defines pressure/temperature (P/T) limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in appendices G and H to 10 CFR part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent low temperature overpressure transients that would produce pressure excursions exceeding the appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed a low temperature overpressure (LTOP) system. The system includes pressure-relieving devices called Power-Operated Relief Valves (PORVs). The PORVs are set at a pressure low enough so that if an LTOP transient occurred, the mitigation system would prevent the pressure in the reactor vessel from exceeding the Appendix G P/T limits. To prevent the PORVs from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint. In addition, in order to prevent cavitation of a reactor coolant pump, the operator must maintain a differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The licensee's current LTOP analysis, which removes the non-conservatism in a previous analysis by assuming one reactor coolant pump in operation, results in a calculated pressure that exceeds the appendix G safety margins for Salem 1 and falls just within the appendix G safety margins for Salem 2.

The licensee has requested the use of code Case N–514, which allows exceedance of the appendix G safety limits by 10%. Designated Code Case N–514, the proposed alternate methodology, is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. Code Case N–514, ''Low Temperature Overpressure Protection,'' has been approved by the ASME Code Committee. The content of this code case has been incorporated into appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. In order to utilize Code Case N–514 and exceed the appendix G safety limits, the licensee has requested an exemption to 10 CFR 50.60 in a letter dated December 22, 1994.

As a result of a teleconference between the licensee and the NRC on December 16, 1994, the licensee summarized in its letter of the same date the administrative controls currently in place for Salem, Units 1 and 2 to prevent the P/T limits from being exceeded due to injection of an Intermediate Head Safety Injection pump. These controls will be removed after the receipt of this approval.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *''.

The underlying purpose of 10 CFR 50.60, appendix G, is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of this appendix requires that the reactor vessel be operated with P/T limits at least as conservative as those obtained by following the methods of analysis and the required margins of safety of Appendix G of the ASME Code.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) Using a safety factor of 2 on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter (¼) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Salem reactor vessel material.

In determining the setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology and would reduce the safety factor on the principal membrane stresses, the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients and will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements.

IV

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), such that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 50.60 such that in determining the setpoint for LTOP events, the appendix G curves for P/T limits are not exceeded by more than 10 percent in order to be in compliance with these regulations. This exemption is applicable only to LTOP conditions during normal operation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (60 FR 7804).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 13th day of February 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II Office of Nuclear Reaction Regulation.

[FR Doc. 95–4170 Filed 2–17–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35369; File No. SR–CBOE–95–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the Chicago Board Options Exchange, Incorporated, Amending Its Rules Relating to Certain Procedures Regarding Trading Rotations and Opening Procedures

February 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 18, 1995, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') proposes to amend its rules relating to certain procedures regarding trading rotations and opening procedures. These amendments would: (i) Amend Rule 6.2; (ii) amend Interpretations .02 and .03 to Rule 6.2; (iii) add an Interpretation to Rule 6.2; (iv) amend Rule 24.13; and (v) amend Interpretation .03 to Rule 24.13.

The text of the proposed rule changes is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, CBOE included statements concerning the purpose of and the basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries set forth in Sections (A), (B) and (C) below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of the proposed rule changes is first to grant two Floor Officials the authority to call for a trading rotation and to delay the commencement of an opening rotation if the Floor Officials believe this will aid in producing a fair and orderly market. The rule changes further allow the Order Book Official to deviate from the rotation order and manner which the Floor Procedures Committee may have established, as long as two Floor Officials first approve such a deviation. If the appropriate Floor Procedures Committee has not established the rotation order and manner for the options under its purview in a particular situation, then the Order Book Official may determine the order and manner of the rotation.

Trading Rotations

Specifically, the proposal would amend Rule 6.2 to grant two Floor Officials discretion to direct that one or more trading rotations be employed on any business day. Presently, pursuant to Rule 6.2, only the Floor Procedures Committee has this discretion. Consequently, if circumstances arose during the day that made an additional rotation appropriate, such as either a rotation following a trading halt or a closing rotation, then the Floor Procedures Committee would have to assemble to make the decision to employ a rotation. CBOE believes it is impractical to assemble the entire Floor Procedures Committee for such an intra-day decision. Furthermore, under Rule 6.6(b)(iii), two Floor Officials already have the discretion to direct that one or more trading rotations be employed on any business day, but only when a fast market has been declared. CBOE believes that this discretion should not be limited only to fast market conditions. By amending Rule 6.2, two Floor Officials would have the discretion to direct that one or more trading rotations be employed, and this discretion would not be limited to a fast market situation.

The proposed rule would further amend Rule 6.2 to grant Order Book Officials more discretion regarding the rotation order and manner. This discretion may be exercised before the rotation begins as well as during a rotation. Presently Rule 6.2 provides that the Floor Procedures Committee shall specify both the particular option contracts to be included in each rotation and the sequence of such option contracts in that rotation. Under the proposed amendment to Rule 6.2, the ''appropriate'' Floor Procedures Committee, meaning the Floor Procedures Committee that makes policy regarding the particular class of options in question, would still have authority to set policy regarding the rotation order and manner. However, if the appropriate Floor Procedures Committee has not acted to establish any policy applicable to a particular situation, then the Order Book Official would be authorized to determine the appropriate order and manner for conducting the rotation. CBOE believes that the proposed amended Rule 6.2 would allow Order Book Officials to respond to particular circumstances the Floor Procedures Committee has not considered and to conduct the rotation as is appropriate under those circumstances.

In addition, pursuant to amended Rule 6.2, the Order Book Official, with the approval of two Floor Officials, would be permitted to deviate from a rotation policy or procedure previously established by the appropriate Floor Procedures Committee. In certain circumstances, it may be appropriate to deviate from the established procedure, but, as stated above, it would be impractical to assemble the Floor Procedures Committee for an intra-day decision allowing such a deviation. Instead of assembling the entire committee, two Floor Officials could act for the entire committee and approve or disapprove an Order Book Official's

proposed deviation from the previously established rotation policy or procedure. Presently, pursuant to Interpretation .01(b) to Rule 6.2, with the approval of two Floor Officials or the Floor Procedures Committee, the opening rotation may be conducted in a manner other than that set forth in Interpretation .01(b). Therefore, the proposed amendment would extend this existing policy to all rotations. The proposal would further amend Rule 6.2 so that the Order Book Official, rather than the committee, may prescribe that two or more trading rotations be employed simultaneously. CBOE believes that it would be impractical to assemble the Floor Procedures Committee for an intra-day decision regarding simultaneous trading rotations.

The proposal would further add Interpretation .04 to Rule 6.2 to specify that the decision to conduct an abbreviated rotation is one of the deviations from rotation policy or procedure and one of the modifications of rotation order and manner that is permitted under the amended rule. This change provides only an example of a type of rotation modifications or deviations that may be employed.

The proposal would further amend Rule 6.2 to give two Floor Officials the discretion to delay commencement of the opening rotation in any class of options in the interests of a fair and orderly market. It is CBOE's practice to allow Floor Officials to delay an opening, but no rule explicitly states this practice. CBOE believes that the rules should grant Floor Officials the power to react to market conditions and circumstances by delaying an opening rotation when it is in the interests of a fair and orderly market to do so, for the same reasons that the rules need to grant Floor Officials authority to modify the rotation order or manner. As explained above, pursuant to Interpretation .01(b) to Rule 6.2, two Floor Officials now have the authority to conduct the rotation in a manner other than that set forth in the Rule, but the Rule does not expressly state that the Floor Officials also may delay the opening rotation.

Interpretation .02 to Rule 6.2 lists reasons why it is permissible to conduct a rotation after the end of normal trading hours. CBOE believes that the proposed amendment to Interpretation .02 would clarify both that the reasons listed are not the exclusive reasons why a trading rotation may be employed after the close and that two Floor Officials have the discretion to conduct a rotation after the close for a number of reasons. The proposed amendment also would permit the commencement of more than one trading rotation after 3:10 p.m. (central time), but would make it clear that, in general, no more than one trading rotation will be commenced after 3:10 p.m. (central time). Again, CBOE believes that it is in the interests of a fair and orderly market to allow two Floor Officials to exercise their judgment in response to market conditions or circumstances and that not all of these conditions or circumstances can be enumerated in advance. Nonetheless, the proposal would amend Interpretation .02 to state the current practice of employing a trading rotation after the end of normal trading hours if it is in connection with a year-end rotation or due to the restart of a rotation which is already in progress. In these circumstances, CBOE believes it may be necessary to continue the rotation after the normal close of trading in order to complete the rotation.

Index Options Trading Rotations

Presently, Interpretation .03 to Rule 6.2 provides that ''a closing rotation for an expiring series of index options shall not be employed.'' (Emphasis added). This limitation is not in Interpretation .02 to Rule 6.2 as it is presently written or in the proposed amendment to Interpretation .02. Although closing rotations are not ordinarily employed in expiring series of index options, CBOE believes it is inappropriate to absolutely prohibit closing rotations for such series. CBOE believes the use of the word ''shall'' could be interpreted to prohibit closing rotations for expiring series of index options in all circumstances. CBOE, therefore, proposes to amend the interpretation to state that a closing rotation for such expiring series is not ordinarily employed. CBOE believes the proposed amendment to Interpretation .03 is necessary to clarify that, unlike the case with equity options, closing rotations are not ordinarily conducted in expiring series of index options, but that such closing rotations are not absolutely prohibited.[1] In addition, Interpretation .03 to rule 6.2 would be amended to give two Floor Officials the ability to deviate from the procedures for closing rotations if they determine such deviation is in the interests of a fair and orderly market. Again, CBOE believes that it is in the interests of a fair and orderly market to allow two Floor Officials to exercise their judgment in response to market conditions or circumstances.

Consistent with the above changes to Rule 6.2 regarding the order and manner of the rotation, the proposal would amend Rule 24.13 to give the Order Book Official the same discretion to determine the appropriate order and manner for conducting the rotation for index options when the appropriate Floor Procedures Committees not acted to establish a policy applicable to a particular situation. Just as in amended Rule 6.2, the Floor Procedures Committee that make policy for index options would have the authority to set policy regarding the order and manner of the opening rotation. However, if a Floor Procedures Committee has not acted to establish a policy applicable to a particular situation, then the Order Book Official would be permitted to determine the appropriate order and manner for conducting the opening rotation.

Consistent with the underlying reasoning for amended Rule 6.2, Rule 24.13 would also be amended by deleting the two sentences that provide that the Order Book Official shall open the nearest expiration series first and thereafter shall open the remaining series in a manner he deems appropriate. CBOE believes that the word ''shall'' could be interpreted as requiring the Order Book Official to open with the nearest expiration series even if a different order would be appropriate under the circumstances.

Again, just as amended Rule 6.2 provides, the proposal would further amend Rule 24.13 so that Order Book Officials could deviate from the appropriate Floor Procedures Committee's established procedure regarding the order and manner of the opening rotation so long as two Floor Officials approved such deviation. CBOE believes that it would be impractical to assemble a Floor Procedures Committee for an intra-day decision allowing a deviation from establish opening rotation policy or procedure. CBOE proposes to allow two Floor Officials to act for the entire committee and approve or disapprove of such deviation.

Presently, under Interpretation .03 to Rule 24.13, two Floor Officials may delay the commencement of the opening rotation in an *index* option for one or more five (5) minute intervals under certain specified unusual market conditions. The proposal would amend

[1] CBOE believes that a system malfunction or a major announcement in the markets late in the trading days, among other things, may require a closing rotation for expiring series of index options in order to accommodate any order flow problems resulting from such occurrences. Telephone conversation between Edward Joyce, CBOE, Michael Meyer, Attorney, Schiff, Hardin, and Waite, Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, and John Ayanian, Attorney, OMS, Division, Commission, on Monday, February 13, 1995.

Interpretation .03 to Rule 24.13 to delete the requirement that any delays in the opening rotation must be in five (5) minute intervals and to give two Floor Officials greater discretion to delay the commencement of the opening rotation. Rather than limiting the circumstances under which two Floor Officials may delay the opening, amended Interpretation .03 would permit Floor Officials to delay the opening rotation at their discretion in the interests of a fair and orderly market. The circumstances outlined in current Interpretation .03 to Rule 24.13, under which two Floor Officials may delay the opening, would remain as factors that Floor Officials may consider in deciding whether to delay the opening rotation. CBOE believes that these amendments to Interpretation .03 are consistent with the amendment proposed for Rule 6.2, which grants two Floor Officials the authority to delay the opening rotation in any class of options in the interests of a fair and orderly market. Current Interpretation .01 to Rule 24.13 provides that the procedures for modification of a rotation and other aspects of the rotation set forth in Rule 6.2 are applicable to index options. CBOE believes that the authority regarding delays in opening contained in Rule 6.2 should therefore apply to index options, so that Floor Officials' discretion to delay the opening is not more restricted in the case of index options.

The present requirement that the delay in the opening rotation for index options may only be in five (5) minute intervals would be deleted because CBOE believes the interests of a fair and orderly market are better served if the Floor Officials may end the delay and commence the opening when it is appropriate to do so, without having to wait until the prescribed five minutes has lapsed. In addition, CBOE believes that for lengthy delays, it is impractical to require two Floor Officials to remain at the index options post for the sole purpose of declaring successive five minute delays.

Conclusion

The proposed rule changes are intended to give Order Book Officials, with the approval of two Floor Officials, the discretion to conduct a trading rotation during the day and to structure the order and manner of the rotation as they consider appropriate under the circumstances. The rule changes would further allow any two Floor Officials to delay the opening rotation if it is in the interests of a fair and orderly market to do so. CBOE believes that the proposed rule changes are consistent with and further the objectives of section 6(b)(5) of the Act, in that the rule changes are designed to perfect the mechanism of free and open market and to protect investors and the public interest by enabling Floor Officials and Order Book Officials to evaluate and consider market conditions and circumstances in determining the appropriate order and manner of the rotation and whether to delay the opening rotation.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule changes will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so funding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the file number SR–CBOE–95–04 and should be submitted by March 14, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4161 Filed 2–17–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35364; File No. SR–NASD–95–8]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to a Six Month Extension of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature

February 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 10, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission in 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 proposed to extend, until October 2, 1995, the effectiveness of certain rules governing the operation of The Nasdaq Stock Market, Inc.'s (''Nasdaq'') Small Order Execution System (''SOES''). Specifically, these SOES rules, which were previously approved by the Commission on a pilot basis on December 23, 1993[2] and recently extended through March 27, 1995,[3] provide for: (1) a reduction in the minimum exposure limit for unpreferenced SOES orders from five times the maximum order size to two times the maximum order size, and for the elimination of exposure limits for preferenced orders (''SOES Minimum

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[2] 17 CFR 200.30–3(a)(12)(1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] See Securities Exchange Act Release No. 33377 (Dec. 23, 1993), 58 FR 69419 (Dec. 30, 1993) (''Interim SOES Rules Approval Order'').

[3] See Securities Exchange Act Release No. 35275 (Jan. 25, 1995), 60 FR 6327 (Feb. 1, 1995) (''Interim SOES Rules Extension Order'').

Exposure Limit Rule''); and (2) implementation of an automated function for updating market maker quotations when the market maker's exposure limit has been exhausted (''SOES Automated Quotation Update Feature''). These rules are part of a set of SOES rules approved by the SEC on a pilot basis known as the Interim SOES Rules.[4]

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On December 23, 1993, the SEC issued an order approving the Interim SOES Rules on a one-year pilot basis effective January 7, 1994. In response to two applications requesting a stay of the Interim SOES Rules Approval Order, however, the SEC granted a partial stay of the effective date of the order through January 25, 1994. Thus, absent further Commission action, the Interim SOES Rules initially were effective from January 26, 1994 through January 25, 1995.[5] On January 25, 1995, the SEC approval an NASD proposal to extend the effectiveness of the Interim SOES Rules through March 27, 1995.[6]

As described in more detail below, because the NASD believes implementation of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature have been associated with positive developments in the markets for Nasdaq securities and clearly have not had any negative effect on market quality, the NASD believes it is appropriate and consistent with the maintenance of fair and orderly markets and the protection of investors to extend the effectiveness of these rules. In addition, consistent with the termination of the Interim SOES Rule that prohibited the entry of short sales into SOES, the NASD believes its instant proposal to continue the effectiveness of some but not all of the original components of the Interim SOES Rules is appropriate and consistent with the Act. While the NASD believes the Interim SOES Rules collectively have had a beneficial impact on the market, the NASD also believes that each of the Interim SOES Rules has individually had a benefit on the market. Thus, each one of the Interim SOES Rules can be evaluated for consistency with the Act independent of the others. The SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature reflect a reasoned approach by the NASD to address the adverse effects on market liquidity attributable to active intra-day trading activity through SOES, while at the same time not compromising the ability of small, retail investors to receive immediate executions through SOES. Specifically, these rules are designed to address concerns that concentrated, aggressive use of SOES by a growing number of order entry firms has resulted in increased volatility in quotations and transaction prices, wide spreads, and the loss of liquidity for individual and institutional investor orders.

The NASD believes that the same arguments and justifications made by the NASD in support of approval of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature are just as compelling today as they were when the SEC relied on them to initially approve the rules. In sum, the NASD continues to believe that concentrated bursts of SOES activity by active order-entry firms contributed to increased short-term volatility, wider spreads, and less market liquidity on Nasdaq and that the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature are an effective means to minimize these adverse market impacts.

The NASD also notes that the SEC made specific findings in the Interim SOES Rules Approval Order that the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature were consistent with the Act. In particular, the SEC stated in its approval order that:

a. Because the benefits for market quality of restricting SOES usage outweigh any potential decrease in pricing efficiency, the Commission concludes that the net effect of the proposal is to remove impediments to the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that the proposed rule changes are designed to produce accurate quotations, consistent with Section 15A(b)(6) and 16A(b)(11) of the Act. In addition, the Commission concludes that the benefits of the proposal in terms of preserving market quality and preserving the operational efficiencies of SOES for the processing of small size retail orders outweigh any potential burden on competition or costs to customers or broker-dealers affected adversely by the proposal. Thus, the Commission concludes that the proposal is consistent with Section 15A(b)(9) of the Act in that it does not impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.[7]

b. The Commission also concludes that the proposal advances the objectives of Section 11A of the Act. Section 11A provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions, fair competition among market participants, and the practicality of brokers executing orders in the best market. The Commission concludes that the proposal furthers these objectives by preserving the operational efficiencies of SOES for the processing of small orders from retail investors.[8]

c. The Commission believes that it is appropriate to restrict trading practices through SOES that impose excessive risks and costs on market makers and jeopardize market quality, and which do not provide significant contributions to liquidity or pricing efficiency. * * * The Commission believes that it is more important to ensure that investors seeking to establish or liquidate an inventory position have ready access to a liquid Nasdaq market and SOES than to protect the ability of customers to use SOES for intra-day trading strategies.[9]

d. The Commission believes that there are increased costs associated with active intra-day trading activity through SOES that undermine Nasdaq market quality * * * Active intra-day trading activity through SOES can also contribute to instability in the market. * * *[10]

e. In addition, these waves of executions can make it difficult to maintain orderly markets. Given the increased volatility

[4] As first approved by the Commission on December 23, 1993, the Interim SOES Rules had four components: (1) The SOES minimum Exposure Limit; (2) the Automated Quotation Update; (3) a reduction in the maximum size order eligible for execution through SOES from 1,000 shares to 500 shares (''SOES Maximum Order Size''); and (4) the prohibition of short sales through SOES. In light of the SEC's approval of the NASD's short sale rule in June 1994, the NASD did not seek to extend the prohibition against the entry of short sales into SOES. Absent SEC approval of an extension of the effectiveness of the SOES Maximum Order Size rule, the rule will lapse effective March 28, 1995.

[5] Securities Exchange Act Release No. 33377 (Dec. 23, 1993), 58 FR 69419 (Dec. 30, 1993) (approving the Interim SOES Rules on a one-year pilot basis effective January 7, 1994). See also Securities Exchange Act Release No. 33424 (Jan. 5, 1994) (order denying stay and granting interim stay through January 25, 1994) and Securities Exchange Act Release No. 33635 (Feb. 17, 1994) (order denying renewed application for stay).

[6] See SOES Interim Rules Extension Order, *supra* note 3.

[7] Interim SOES Rules Approval Order, supra note 2, 58 FR at 69423 (footnote omitted).

[8] *Id.* (footnote omitted).

[9] *Id.* at 69424–25.

[10] *Id.* (footnote omitted).

associated with these waves of intra-day trading activity, market makers are subject to increased risks that concentrated waves of orders will cause the market to move away. As a result, individual market makers may be unwilling to narrow the current spread and commit additional capital to the market by raising the bid or lowering the offer. When market makers commit less capital and quote less competitive markets, prices can be expected to deteriorate more rapidly. Accordingly, the Commission believes that it is appropriate for the NASD to take measured steps to redress the economic incentives for frequent intra-day trading inherent in SOES to prevent SOES activity from having a negative effect on market prices and volatility.[11]

f. The Commission does not believe that intra-day trading strategies through SOES contribute significantly to market efficiency in the sense of causing prices to reflect information more accurately.[12]

g. The Commission has evaluated each of the proposed modifications to SOES, and concludes that each of the modifications reduces the adverse effects of active trading through SOES and better enables market makers to manage risk while maintaining continuous participation in SOES. In addition, the Commission does not believe that any of the modifications will have a significant negative effect on market quality. To the extent that any of the modifications may result in a potential loss of liquidity for small investor orders, the Commission believes that these reductions are marginal and are outweighed by the benefits of preserving market maker participation in SOES and increasing the quality of executions for public and institutional orders as a result of the modifications.[13]

h. The Commission * * * has determined that the instant modifications to SOES further objectives of investor protection and fair and orderly markets, and that these goals, on balance, outweigh any marginal effects on liquidity for small retail orders, and any anti-competitive effects on order entry firms and their customers. The Commission concludes that the ability of active traders to place trades through a system designed for retail investors can impair market efficiency and jeopardize the level of market making capital devoted to Nasdaq issues. The Commission believes that the rule change is an appropriate response to active trading through SOES, and that the modifications will reduce the effects of concentrated intra-day SOES activity on the market.[14]

The NASD believes these significant statutory findings by the SEC regarding the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature and the SEC's assessment of the likely benefits to the marketplace that would result from the rules have been confirmed and substantiated by econometric studies on the effectiveness of the Interim SOES Rules conducted by the NASD's Economic Research Department[5] and an independent economist commissioned by the NASD.[16] When the SEC approved the Interim SOES Rules, it stated that ''[a]ny further action the NASD seeks with respect to SOES—extension of these modifications upon expiration, or introduction of other changes—will require independent consideration under Section 19 of the Act.''[17] In addition, the SEC stated that, should the NASD desire to extend these SOES changes or modify SOES, the Commission would expect, ''the NASD to monitor the quality of its markets and assess the effects of the approved SOES changes on market quality for Nasdaq securities.'' Also, if feasible, the SEC instructed the NASD to provide a quantitative and statistical assessment of the effects of the SOES changes on market quality; or, if an assessment is not feasible, the SEC stated that the NASD should provide a reasoned explanation supporting that determination.

In sum, the NASD's study found that:

- Since the SOES changes went into effect in January 1994, the statistical evidence indicated that when average daily volume, stock price, and stock price volatility are held constant through regression techniques, quoted percentage spreads in Nasdaq securities experienced a decline in the immediate period following implementation of the changes and have continued to decline since then. The statistical evidence also showed that the narrowing of quoted percentage spreads became more pronounced and robust the longer the Interim SOES Rules were in effect. In particular, quoted spreads in cents per share for the 500 largest Nasdaq National Market securities experienced a sharp decline from April 28 to May 12 and from June 23 to July 18.[18]
- With the exception of a brief, market-wide period of volatility experienced by stocks traded on Nasdaq, the New York Stock Exchange, and the American Stock Exchange during the Spring, the volatility of Nasdaq securities appears to be unchanged in the period following implementation of the changes; and
- A smaller percentage of Nasdaq stocks experienced extreme relative price volatility after implementation of the rules and that these modifications, in turn, suggest a reduction in relative volatilities since the rules were put into effect.

The Furbush Study also corroborated the findings of the NASD's study. This study found that there was a statistically significant improvement in effective spreads for the top 100 Nasdaq stocks (based on dollar volume) during the three month period following implementation of the rules. Moreover, the study also found that the most significant improvement in effective spreads for the top 100 stocks occurred for trade sizes between 501 and 1,000 shares, precisely the level that was made ineligible for SOES trading by the Interim SOES Rules. In addition, the study found that the average number of market makers for the top ten Nasdaq-listed stocks increased from 44.3 to 46.0, or 3.8 percent, and from 30.2 to 30.9 for the top 100 stocks, or 2.3 percent. Although correlation does not necessarily imply causation, as noted by the SEC when it approved the Interim SOES Rules, the NASD believes that positive market developments clearly have been associated with implementation of the Interim SOES Rules.

The NASD also believes that these studies of the effectiveness of the Interim SOES Rules lend credence to another NASD study that was submitted to the SEC in support of approval of the Interim SOES Rules.[19] In the May 1993 SOES Study, the NASD found that concentrated waves of orders entered into SOES by active order-entry firms resulted in discernible degradation to the quality of the Nasdaq market. Specifically, the study found, among other things, that: (1) bursts of orders entered into SOES by active order entry firms frequently result in a decline in the bid price and a widening of the bid-ask spread; (2) there is a significant

[11] *Id.* at 69424–26 (footnote omitted).

[12] *Id.*

[13] *Id.*

[14] *Id.* at 69429.

[15] See letter from Gene Finn, Vice President & Chief Economist, NASD, to Katherine England, Assistant Director, National Market System & OTC Regulation, SEC, dated October 24, 1994 (letter submitted in connection with the NASD's N•PROVE filing, SR–NASD–94–13).

[16] See The Association Between the Interim SOES Rules and Nasdaq Market Quality, Dean Furbush, Ph.D., Economists, Inc., Washington D.C., December 30, 1994 (''Furbush Study'').

[17] Interim SOES Rules Approved Order, *supra* note 2, 59 FR at 69429.

[18] Some press reports have attributed the recent decline in spreads for Nasdaq stocks to the publication, on May 26 and 27, 1994, of newspaper articles in *The Wall Street Journal, The Los Angeles Times* and other publications reporting the results of an economic study conducted by two academicians that illustrated the lack of odd-eighth quotes for active Nasdaq stocks. Contrary to these press reports, this study shows that spreads had indeed narrowed before publication of these articles (from April 28 to May 12), stabilized at these narrower levels from mid-May until June 23, and declined again from June 23 to July 18.

[19] *See* 1NASD Department of Economic Research: Impact of SOES Active Trading Firms on Nasdaq Market Quality (May 12, 1993) (''May 1993 SOES Study''). *See also* Securities Exchange Act Release No. 32313 (May 17, 1993), 58 FR 29647 (publication of the study for comment).

positive relationship between increases in spreads and volume attributable to active order-entry firms as it related to total SOES volume per security; and (3) activity by active order-entry firms resulted in higher price volatility and less liquidity—higher price changes are associated with high active trading firm volume, even after controlling for normal price fluctuations.

Therefore, in light of all the above-cited statutory findings made by the SEC when it approved the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature, coupled with the NASD's findings that these rules, as well as the rest of the Interim SOES Rules, have been associated with positive market developments in terms of lower spreads on Nasdaq and less stocks with extreme relative price volatility, the NASD believes it would be consistent with the Act for the Commission to extend the effectiveness of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature for a six-month period. In sum, the NASD believes its study and the Furbush Study affirm the validity and correctness of the SEC's prior statutory findings made in connection with the approval of these rules. Moreover, even if the Commission is unwilling to find positive significance in the NASD's statistical analyses, at the very least, these studies indicate that the market has not been harmed by implementation of these rules.

In addition, even if the Commission concludes that the Interim SOES Rules have had no impact on market quality, the NASD believes the Commission's approval of New York Stock Exchange (''NYSE'') Rule 80A on a permanent basis illustrates that the Commission would still have a sufficient basis to approve an extension on the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature for a six month period.[20] When NYSE Rule 80A was proposed, the Commission received considerable adverse comment to the effect that there was no causal relationship between index arbitrage and market volatility and that activation of the rule during turbulent market conditions could have disastrous effects on related options and futures markets and actually exacerbate market volatility. Despite these comments, the commission approved the proposal on a one-year pilot basis noting that ''the NYSE proposal represents a modest step, proposed on a pilot basis, to attempt to address the issue of market volatility.''[21] After the one year pilot, the NYSE prepared a report that, in the SEC's words, found that the standard measures of NYSE market quality appear largely unaffected by Rule 80A. Specifically, the NYSE Report indicated that: (1) quotes on the NYSE did not widen after the 50 Dow Jones Industrial Average point trigger was reached; and (2) the imposition of Rule 80A did not have any negative effect on price continuity and depth in the market.[22] In addition, in approving Rule 80A on a permanent basis, the SEC noted that the rule ''represents a modest but useful step by the NYSE to attempt to address the issue of market volatility.''[23] that the rule ''has not been disruptive to the marketplace,''[24] and that there was a ''lack of evidence of any harmful effects of Rule 80A.''[25] In sum, the SEC discussion of the statutory basis for approval of NYSE Rule 80A focused in large part on the fact that Rule 80A did not have any adverse impacts on market quality on the NYSE and that, as a result, the NYSE should be given the latitude to take reasonable steps to address excessive volatility in its marketplace. Accordingly, the NASD believes the SEC should afford the NASD the same regulatory flexibility that it afforded the NYSE to implement rules reasonably designed to enhance the quality of Nasdaq and minimize the effects of potentially disruptive trading practices.

The NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Specifically, the NYSE is proposing to extend the effectiveness of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature for six months because of concerns that concentrated, aggressive use of SOES by a growing number of order entry firms has resulted in increased volatility in quotations and transactions prices, wider spreads, and the loss of liquidity for individual and institutional investor orders, all to the detriment of public investors and the public interest. The NYSE believes the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature have operated to rectify this situation while continuing to provide an effective opportunity for the prompt, reliable execution of small orders received from the investing public. Accordingly, in order to protect investors and the public interest, the NASD believes the Interim SOES Rules should be extended through October 2, 1995, so that small investors' orders will continue to receive the fair and efficient executions that SOES was designed to provide.

Section 15A(b)(9) provides that the rules of the Association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature apply across the board and do not target any particular user or participant, as all dealers may set their exposure limits at two times the tier size and all dealers may elect to utilize the automated quote feature. Accordingly, the NASD believes that these rules changes are not anti-competitive, as they are uniform in application and they seek to preserve the ability of SOES to provide fair and efficient automated executions for small investor orders, while preserving market maker participation in SOES and market liquidity.

Section 15A(b)(11) empowers the NASD to adopt rules governing the form and content of quotations relating to securities in the Nasdaq market. Such rules must be designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting and distributing quotations. The NASD is seeking to continue the effectiveness of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature so that SOES activity may not result in misleading quotations in the Nasdaq market. Market makers place quotes in the Nasdaq system and these quotes comprise the inside market and define the execution parameters of SOES.

[20] Rule 80A provides that when the Dow Jones Industrial Average declines or advances by 50 points or more, all index arbitrage orders to sell or buy must be executed in a market stabilizing manner.

[21] See Securities Exchange Act Release No. 28282 (July 30, 1990), 55 FR 31468, 31472 (Order approving File Nos. SR–NYSE–90–5 and 90–11).

[22] See Securities Exchange Act Release No. 29854 (Oct. 24, 1991), 56 FR 55963 (Oct. 30, 1991) (order approving file SR–NYSE–91–21) (''Rule 80A Approval Order'').

[23] Id. 56 FR at 55967.

[24] Id.

[25] Id. 56 FR at 55967–68

When volatility in the SOES environment causes market makers to widen spreads or to change quotes in anticipation of waves of SOES orders, quotes in the Nasdaq market become more volatile and may be misleading to the investing public. Accordingly, absent continuation of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature, the quotations published by Nasdaq may not reflect the true market in a security and, as a result, there may be short-term volatility and loss of liquidity in Nasdaq securities, to the detriment of the investing public. Further, the continuation of the automated refresh feature will ensure that a market maker's quotation is updated after an exposure limit is exhausted. Uninterrupted use of this function will maintain continuous quotations in Nasdaq as market makers exhausting their exposure limits in SOES will not be subject to a ''closed quote'' condition or an unexcused withdrawal from the market.

Finally, the NASD believes that the proposed rule change is consistent with significant national market system objectives contained in Section 11A(a)(1)(C) of the Act. This provision states it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, (i) economically efficient execution of securities transactions; (ii) fair competition among brokers and dealers; and (iii) the practically of brokers executing investor orders in the best market. Specifically, the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature advance each of these objectives by preserving the operational efficiencies of SOES for the processing of small investors' orders, by maintaining current levels of market maker participation through reduced financial exposure from unpreferenced orders, and by reducing price volatility and the widening of market makers' spreads in response to the practices of order entry firms active in SOES.

In addition, for the same reasons provided by the SEC when it approved the Interim SOES Rules that are cited above in the text accompanying footnotes 7 through 14, the NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not 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

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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 for copying in the Commission's Public Reference Room. 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 Number SR–NASD–95–8 and should be submitted by March 14, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. MacFarland,

Deputy Secretary.

[FR Doc. 95–4085 Filed 2–17–95; 8:45 am]

BILLING CODE 8010–01–M

[26] 17 CFR 200.30–3(a)(12) (1994)

[Release No. 34–35370; File No. SR–NASD–94–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Time Period for the Exchange of Documents Before an Arbitration Hearing

February 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 1, 1995, the National Association of Securities Dealers, Inc. (''NASD'') or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared 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 is proposing to amend Section 32(c) of the NASD Code of Arbitration Procedure (''Code'').[1] Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Code of Arbitration Procedure

* * * * *

General Provisions Governing Per-Hearing Proceedings

Sec. 32.

* * * * *

(c) Pre-Hearing Exchange. At least [ten (10)] *Twenty (20)* calendar days prior to the first scheduled hearing date, all parties shall serve on each other copies of documents in their possession they intend to present at the hearing and shall identify witnesses they intend to present at the hearing. The arbitrators may exclude from the arbitration any documents not exchanged or witnesses not identified. This paragraph does not require service of copies of documents or identification of witnesses which parties may use for cross-examination or rebuttal.

* * * * *

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

[1] *NASD Manual*, Code of Arbitration Procedure, Part III, Sec. 32(c) (CCH) ¶ 3732.

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.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Section 32(c) currently requires all parties to serve on each other copies of documents in their possession they intend to present at the hearing and to identify witnesses they intend to present at the hearing not less than 10 calendar days prior to the first scheduled hearing date. Parties often request additional discovery as a result of information obtained through the exchange of documents. These requests create a significant burden on the NASD's Arbitration Department, which currently must respond in a short period of time to numerous requests for additional discovery that arise from the exchange of documents intended to be used by the parties at the hearing. These requests also create a significant burden on the arbitrators and the parties. Accordingly, the NASD is proposing to amend Section 32(c) of the Code to increase the amount of time before a hearing where the parties are required to exchange documents from 10 to 20 days.[2] The proposed rule change is intended to reduce the burden to the Arbitration Department, arbitrators and the parties in responding to last minute discovery requests by increasing the time for exchanging pre-hearing memoranda.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[3] in that increasing the time for exchange of documents prior to arbitration hearing will facilitate the arbitration process by providing a more reasonable time frame in which to address last minute discovery requests and by reducing the burdens on the forum staff, arbitrators and the parties in dealing with such requests.

(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, as amended.

(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 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve 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 NW., 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4086 Filed 2–17–95; 8:45 am]

BILLING CODE 8010–01–M

[2] The Securities Industry Conference on Arbitration approved the proposed rule change as an amendment to the Uniform Code of Arbitration at its meeting on October 21, 1994.

[3] 15 U.S.C. 78*o*–3.

[Release No. 34–35373; File No. SR–NYSE–94–42]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Mailing of Interim Financial Statements to Shareholders

Februrary 14, 1995.

On December 1, 1994, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change to require corporations that distribute interim reports to shareholders to distribute such reports to both registered and beneficial shareholders.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35092 (December 12, 1994), 59 FR 65554 (December 20, 1994). No comments were received on the proposal.

Currently, the NYSE requires listed companies to publish interim earnings statements as press reports, but does not require that such statements also be sent to shareholders. The rule change to paragraph 203.02 of the NYSE's Listing Company Manual will continue to make the distribution of interim reports to shareholders voluntary, but will require that corporations choosing to distribute interim reports to shareholders must distribute the reports to both registered and beneficial shareholders.

The NYSE proposal is the product of a review by various industry groups, including the American Society of Corporate Secretaries and the Securities Industry Association, of listed companies' dissemination of interim earnings reports to shareholders. The groups have been attempting to achieve some uniformity among listed companies in the handling of interim earnings reports. Presently, while some listed companies distribute interim reports to both record and beneficial shareholders, some listed companies only send interim reports to record shareholders, and some do not send interim reports to any shareholders. The cost of providing interim reports to beneficial shareholders has been identified as a factor that discourages listed companies from making a full distribution of interim listed companies from making a full distribution of interim reports. Because broker-dealers that hold investors' securities in the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] CFR 240.19b-4 (1993).

broker-dealers' own name (''street-name'') charge issuers a fee for distributing interim reports to beneficial shareholders, many listed companies choose not to distribute them.

The industry review considered the cost of requiring interim reports to be mailed to all shareholders, particularly where securities are held in ''street-name.'' In this regard, while the industry groups have not reached an agreement with respect to the fees charged issuers to distribute interim reports to shareholders, they have reached agreement on the need to submit reports to registered and beneficial shareholders. This agreement is reflected in the NYSE's rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[3] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

Although the Commission does not require public companies to distribute interim reports to shareholders,[4] it believes that it is appropriate for the NYSE to improve the distribution by its listed companies of interim reports to shareholders. The NYSE proposal will accomplish this by ensuring equal treatment of record and beneficial shareholders in the distribution of reports. In addition, the NYSE's rule change reflects the results of the compromise reached by the various industry groups with regard to distribution of interim reports. The Commission believes the NYSE's adoption of this industry policy should help to create uniformity in the practices of NYSE-listed companies with respect to their distribution of interim financial reports.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (SR–NYSE–94–42) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delayed authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4159 Filed 2–17–95; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. § 78f(b) (1988).

[4] The interim reports that are the subject of the NYSE's rule change are not the quarterly financial reports required to be filed with the Commission on Form 10–Q pursuant to the Commission's authority under Sections 13(a) and 15(d) of the Securities Exchange Act of 1934. *See* 15 U.S.C. §§ 78m(a) and 78o(d) (1988). The reports are voluntarily prepared and published by companies as part of their shareholder relations activities.

[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30–3(a)(12) (1993).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2761]

Washington, Declaration of Disaster Loan Area; Amendment #1

The above-numbered Declaration is hereby amended to include Pierce County in the State of Washington as a contiguous county as a result of damages caused by heavy rains and flooding which occurred throughout December 1994.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 30, 1995, and for economic injury the deadline is October 27, 1995.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 10, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–4080 Filed 2–17–95; 8:45 am]

BILLING CODE 8025–01–M

Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on March 7, 1995, from 9 AM through 4 PM, at U.S. Small Business Administration, Office of Small Business Development Centers Conference Room, 4th Floor, 409 3rd Street, SW., Washington, DC 20416.

The purpose of the meeting is to discuss such matters as may be presented by Advisory Board members, staff of the SBA, or others present.

For further information, write or call Mary Ann Holl, SBA, 4th Floor, 409 3rd Street, SW., Washington, DC 20416, telephone 202/205–7302.

Dorothy A. Overal,

Director, Office of Advisory Councils.

[FR Doc. 95–4081 Filed 2–17–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket 50125]

Department of Transportation Proposed Environmental Justice Strategy

AGENCIES: Office of the Secretary: Departmental Office of Civil Rights and Office of the Assistant Secretary for Transportation Policy; DOT.

ACTION: Request for comment on U.S. Department of Transportation proposed environmental justice strategy.

SUMMARY: Executive Order 12898, signed by President Clinton on February 11, 1994, directs each Federal agency to develop a strategy to address environmental justice concerns in its programs, policies and regulations. The thrust of the Executive Order is to avoid disproportionately high and adverse impacts on minority and low-income populations with respect to human health and the environment.

The Department of Transportation (DOT) has prepared a proposed environmental justice strategy. The proposed strategy describes the approach we are considering to achieve environmental justice objectives throughout the Department. To help us formulate the final strategy, we are soliciting comments from a broad range of organizations and individuals with an interest in environmental justice and transportation matters.

DATES: Comments are requested by March 1, 1995. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket 50125, Department of Transportation, 400 7th Street, SW., Room PL 401, Washington, DC 20590. To facilitate consideration of the comments, commenters are requested to file six copies of each submission. Comments will be available for inspection at this address from 9 a.m. to 5 p.m., Monday through Friday. Commenters who wish the Department to acknowledge receipt of their comments should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Ira Laster, Jr., Office of Environment, Energy, and Safety, Office of the Assistant Secretary for Transportation Policy, telephone (202) 366–4859, or Alyce Boyd-Stewart, Departmental Office of Civil Rights, telephone (202) 366–9366, U.S. Department of

Transportation, 400 7th Street, SW., Washington, DC 20590.

Dated: February 13, 1995.

Antonio Califa,

Director, Departmental Office of Civil Rights.

Joseph Canny,

Deputy Assistant Secretary for Transportation Policy.

Attachment

Department of Transportation Proposed Environmental Justice Strategy

Introduction

Background

Executive Order 12898, signed by President Clinton on February 11, 1994, on ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' requires each Federal agency to develop a specific agency-wide strategy for implementing E.O.'s provisions. The thrust of the Executive Order is to avoid disproportionately high and adverse impacts on such populations with respect to human health and the environment.

The Department of Transportation (DOT) is committed to embracing the principles of environmental justice by promoting enforcement of all applicable environmental regulations and legislation, and by promoting non-discrimination in its programs, policies, and activities that affect human health and the environment consistent with the principles of environmental justice. DOT is also committed to bringing government decisionmaking closer to the communities and people affected by these decisions and ensuring greater public participation in decisions relating to human health and the environment.

In the period of the mid 1990's, we are witnessing dramatic changes in the philosophy of private and public decisionmaking. In the private sector, the hierarchical top-down decisionmaking apparatus, so characteristic of the American corporate giants in the past, is giving way to organizational arrangements which bring key decisionmaking authority to these directly performing tasks. Corporations are placing renewed emphasis on listening and responding to the corporate customer and making product quality and service, rather than cost minimization or short-term profit maximization, the top priorities in decisionmaking.

Likewise, American governmental decisionmaking structures are beginning to undergo extraordinary changes. The Vice President's National Performance Review is setting in motion actions that are intended to make government more effective by becoming more friendly to customers and responsive to taxpayers. All these actions are intended to involve stakeholders in decisions by government.

Adherence to environmental justice principles enhances these trends because they involve stakeholders in decisions by government. Key to these principles is an active community public participation process that provides opportunities for persons living in low-income neighborhoods and minority populations to participate more effectively in governmental decisions and programs.

The new emphasis on environmental justice coincides with DOT's previously announced intent to become a model transportation agency for protecting and enhancing the environment and putting people first. Secretary Federico Peña has called for harmonizing transportation policy and environmental concerns as a major objective within DOT. DOT agencies must now become environmental leaders and demonstrate sensitivity both to the natural environment and to neighborhoods and communities in everything DOT does.

Strategy Development Process

Upon receipt of the Executive Order and the accompanying Presidential memorandum, DOT established a Department-wide working group, which is comprised of representatives from appropriate secretarial offices and departmental operating administrations. The DOT Working Group established the overall framework for the development of the DOT environmental justice strategy, and over the course of the past several months, provided much of the information incorporated in this draft strategy.

The fundamental purpose of DOT's proposed environmental justice strategy is to design and implement a flexible process that assures the full use of necessary Departmental resources in identifying and addressing program and constituent needs and opportunities consistent with requirements of the Executive Order.

The Working Group's first major activity was to undertake a survey of DOT's current and proposed activities related to environmental justice. Results of this activity were forwarded to the Environmental Protection Agency (EPA) on July 13, 1994. Elements of DOT that completed the survey are using the results to determine the extent to which environmental justice requirements are being met. Where additional information is needed to determine the present level and scope of implementation, efforts are underway to acquire it.

Elements of the DOT Strategy

1. High Level Involvement

An overview of DOT environmental justice activities was an agenda item at a senior staff meeting in mid-December 1994. The overview consisted of a summary of Executive Order 12898, a discussion of the outline of DOT's proposed strategy, and an overview of operating administrations' responses to the survey of their environmental justice activities. DOT has, to some degree, already incorporated environmental justice principles into its mission through compliance with requirements and principles of the National Environmental Policy Act, Title VI of the Civil Rights Act of 1964, and related statutes.

Secretary Peña will communicate with all appropriate departmental officials expressing his support for the environmental justice executive order and encouraging them to incorporate the principles of environmental justice in program planning, budgeting, program development, program activities, and program evaluation, as appropriate. This will be done in conjunction with a DOT Order on establishing principles and procedures for environmental justice in all DOT programs, policies, and activities.

2. Public Outreach on DOT Environmental Justice Strategy

The following represents steps DOT has or is taking to involve the public in the development and implementation of DOT's Environmental Justice Strategy. All outreach activities described below will be carried out consistent with the requirements of the Federal Advisory Committee Act.

a. National Conference on Transportation, Social Equity, and Environmental Justice in Chicago

This conference, cosponsored by the Federal Transit Administration and the Surface Transportation Policy Project, brought together approximately 150 persons, mostly community activists from around the country, with DOT and other public officials. The meeting, held on November 17–18, 1994, in Chicago identified key transportation-related environmental and social issues of concern to persons living in predominately low-income and minority communities. Suggestions for actions to redress these concerns were also sought. A report of the conference findings is being prepared by the Surface Transportation Policy Project.

b. Inter-Departmental Public Meeting in Atlanta

On January 20, 1995, DOT participated, along with other Federal departments/agencies, in a public meeting in Atlanta, a portion of which was televised nationwide by satellite to designated downlink sites. The purpose of this public meeting was to provide an opportunity for Federal agency staffs to explain the main tenets of agencies' environmental justice strategies and to raise issues for the consideration and advice of participants.

c. Meeting With the Environmental Justice Network

In response to the Chicago meeting, DOT will discuss with members of the Environmental Justice Network how best to further engage persons living in minority and low-income communities about their environmental justice concerns and their views as to what steps might be taken by DOT to address these concerns.

d. **Federal Register** Notice on Environmental Justice

DOT will publish in the **Federal Register** the key elements of its proposed environmental justice strategy and seek comments on issues still under discussion. The public will be requested to provide comments by March 1, 1995. In addition, specific efforts under development will be made to solicit comments from members of minority populations and low-income populations.

e. Final Publication in the **Federal Register** of DOT environmental Justice Strategy

After considering the comments on the **Federal Register** announcement of the DOT strategy and the lessons learned from early grass-roots working meetings (see item f below). DOT will revise its proposed environmental justice strategy, as necessary, and publish it in the **Federal Register**. The strategy will be a ''living document'' and be subject to modification as a result of activities described in terms (f) through (h) below.

f. Grass Roots Environmental Justice Meetings

As recommended by participants attending the Chicago Environmental Justice Conference. DOT anticipates holding a series of meetings with community groups, individuals, and business groups, as well as local, public, and transportation officials. The intent will be to discover and understand community-based environmental justice problems and to discuss remedial strategies included in the first version of the DOT environmental justice strategy. The objective will be to build knowledge in an additive manner, so that each successive meeting with groups mentioned above builds upon the last.

Also, in response to requests from the public for educational outreach and training for low-income and minority persons, DOT will provide training to persons affected by the E.O. in how the transportation decisionmaking process works and the role of public participation in it. Persons affected by the E.O. will be afforded opportunities to inform DOT of any barriers to effective participation that may exist.

g. National Meeting on Public Participation and Environmental Justice

A national workshop to be hosted by the Secretary of Transportation would present an opportunity to share experiences from the grass-roots working sessions with a larger constituency of stakeholders, including nationally-based community advocacy groups, and transportation planning coordinators at the state, regional, and local levels. Through combined plenary and small breakout group discussions, participants will consider issues and provide recommendations.

h. DOT Regional Workshops for Grantees, State, and Local Officials

DOT anticipates holding workshops in selected regions for grantees, state and local officials on implementing the DOT Order and agency guidance on DOT's Environmental Justice strategy.

3. DOT Order on Environmental Justice

A key component of the DOT environmental justice strategy is a proposed DOT Order prescribing procedures to be followed by the Department and all of its operating administrations to implement Executive Order 12898. The Order will apply to all appropriate DOT regulations policies, guidance, and program activities as well as to any program, project, or activity undertaken by DOT or that receives financial assistance or permits from DOT, which may have environmental justice implications. The proposed DOT Order would ensure that all appropriate components of the Department will apply this strategy to all aspects of their programs, policies, and activities.

While the precise contents of the proposed DOT Order have not yet been fully developed, we anticipate that the Order will achieve three objectives.

First, it would set forth requirements regarding review and revision of DOT regulations, programs, policies, guidance, and procedures that affect human health or the environment. Second, it would provide a methodology for identifying and addressing adverse effects of DOT actions and determining whether such actions are likely to have a disproportionately high or adverse impact on low-income or minority populations. Third, It would, after consideration of mitigation measures, prohibit DOT or its agents from proceeding with any actions that will have a disproportionately high and adverse unmitigated effect on low-income and minority populations except under prescribed circumstances. Each of these objectives is explained more fully below.

a. Review and Revision of Regulations, Programs, Objectives, Policies, Guidance, and Procedures

Under the proposed Order, the Office of the Secretary and each operating administration of DOT would identify and assess regulations, programs, policies, guidance, and procedures that affect human health or the environment using the methodology described below, and revise them, as appropriate, to comply with Executive Order 12898. This process would include procedures to provide meaningful opportunities for public involvement by low-income and minority populations, including community input in identifying potential impacts, alternatives, and mitigation measures for DOT actions.

In addition, any long-range or short-range planning and programming processes conducted or funded by DOT that affect human health or the environment would include appropriate actions to address the effects of such planning [including actions, where practicable consistent with the E.O., that may result from such planning] on minority and low-income populations and communities.

Also, under the proposed DOT Order, DOT and its operating administrations would develop specific mitigation strategies and measures to address, as appropriate, disproportionately adverse effects of their actions, including pollution prevention measures, consistent with requirements of other statutes and procedures.

The proposed Order also would provide for additional data collection or research as needed to provide information to comply with Executive Order 12898. Public input will be solicited in these activities.

b. Methodology for identifying adverse Effects and Determining Whether They Have a Disproportionately High or Adverse Impact on Minority and Low-Income Communities

The proposed Order would set forth a methodology to be used by DOT grantees, state, and local officials to determine whether a DOT or a DOT-funded program, policy, project, or activity (DOT action) is likely to have a disproportionately high and adverse effect on low-income or minority populations. As part of this process, DOT or its agents will provide appropriate opportunities for comment by representatives of affected communities, both to obtain their input in identifying potential effects of the action and in devising mitigation strategies, where appropriate, to alleviate disproportionately high and adverse effects. Offsetting mitigation measures that will be taken by DOT or its agents, or any other compensatory benefits that will accrue to the affected minority or low-income populations as a result of the action, will be taken into account in determining if there is a disproportionately high and adverse impact.

c. Actions To Address Disproportionately High Adverse Effects

Although the precise standards are yet to be developed, it is anticipated that the proposed DOT Order will provide standards for any action to address disproportionately high adverse effect on minority or low-income populations. It is anticipated that the action will not be carried out unless:

(1) A substantial need for the action, based on the overall public interest, can be demonstrated; and

(2) alternatives that will have a less disproportionate adverse effect on minority or low-income populations would have unacceptable adverse health or environmental impacts (criteria concerning such adverse impacts will be specified in the DOT Order).

(3) In the case of adverse effects on populations protected by Title VI of the Civil Rights Act of 1964, there must also be a demonstration of compliance with Title VI and related statutes.

4. Public Participation

All public participation activities described below will be carried out consistent with the requirements of the Federal Advisory Committee Act.

In accordance with the proposed DOT Order, DOT's public participation processes would be reviewed and revised as necessary to ensure that persons living in minority and low-income communities have timely access to information and meaningful public participation opportunities in transportation decisions affecting such communities.

The proposed Order would provide that opportunity will be afforded the public, including low-income and minority citizens, to comment on any proposed revisions to DOT regulations, policies, and procedures that address human health and the environment in their communities. DOT shall ensure that revisions to DOT policies and procedures include provisions for access to public information relating to human health, the environment, transportation, or other planning regulations and enforcement. DOT will ensure meaningful opportunities for public involvement by affected minority and low-income persons.

DOT will seek minority and low-income involvement in identifying research and data collection needs, and designing environmental justice projects to address those needs.

DOT will conduct training and information outreach workshops for low-income and minority communities on participating in DOT supported programs.

DOT will produce and disseminate user-friendly materials explaining DOT public participation and other program requirements. This may include environmental justice information on public participation and other pertinent program requirements on a community bulletin board or a 1–800 number to answer environmental justice questions. DOT will seek low-income and minority community input in deciding these matters.

DOT has developed a set of principles to guide its public participation activities. These principles are enumerated as follows.

a. Public participation with respect to environmental justice stakeholders will be based on an interactive partnering approach. Environmental justice stakeholders should be involved in designing studies, determining date needs, and planning conferences and meetings.

b. Environmental justice stakeholders should, in most cases, be included in existing participatory activities. Environmental justice should not result in separate activities for environmental justice stakeholders which isolate them from the majority community. It may be necessary to start with activities specifically for environmental justice stakeholders to enable them to participate but the objective is to enlarge the community dialog on DOT initiatives to include these stakeholders.

c. Including environmental justice stakeholders means more than assuring that they receive notices of meetings or other events and that all events are convenient in terms of time and location. In many cases, the real barriers to participation by these stakeholders are attitudinal (''this is not for us'' or ''they are not really interested''), language barriers, cultural barriers, technical background, literacy, communications style, and privacy issues. Participant training and other approaches to enable environmental justice stakeholders to participate are likely to be the foundation of a successful approach.

d. Participatory efforts should reach out to non-leaders as well as stakeholder leaders through such techniques as focus groups or workshops.

e. Partnering with environmental justice stakeholders will require agencies to review how they do business. We must assure that our processes are accessible to and usable by stakeholders, to the extent possible.

f. The fundamentals of public involvement are that all interested groups and individuals have access to information, to participatory events, and to decisionmaking through a variety of techniques from the earliest stages of an activity through decisionmaking and implementation. all aspects of public involvement should be open to environmental justice stakeholders.

g. Public participation programs are best designed at the local or state level. The Federal role is to set performance standards for public involvement programs and to provide technical assistance in meeting those performance standards, not to require specific actions.

5. Role of Key DOT Elements in Complying With Environmental Justice Executive Order

In connection with implementing the DOT Order on environmental justice and, in some cases, to supplement these actions, each element of the Department will undertake actions. Some of the actions described below will be developed and refined as the Department's strategy evolves.

a. Departmental Office of Civil Rights

Dissemination of information on how Title VI of the Civil Rights Act of 1964 Pertains to Environmental Justice.

The DOT Order described previously will provide the operating administrations with a framework to ensure that their policies, programs, and procedures comply with the intent of the Executive Order, including meeting the requirements of Title VI.

In addition, the Departmental Office of Civil Rights will provide leadership and technical assistance to the operating administrations and in conjunction with the appropriate administrations, to major recipients of DOT funds in the administration of their Title VI responsibilities which relate to environmental justice. This may take the form of guidelines, memoranda of general applicability, and training designed to achieve environmental justice for members of minority and low-income populations.

b. Federal Aviation Administration (FAA)

The Federal Aviation Administration will adhere to the principles of environmental justice.

In the area of pollution prevention, FAA will:

- Review FAA policies, programs, and activities related to pollution prevention and safety and revise them, where appropriate, in accordance with the E.O. emphasizing their importance in avoiding environmental inequities;
- Review FAA policies, programs, and activities related to enforcing the Hazardous Materials Transportation Act and associated DOT regulations related to aviation;
- Review FAA policies, programs, and activities related to advising the shipping community, including FAA facilities, and other affected parties of their role in avoiding environmental and public health impacts;
- Review FAA policies, programs, and activities related to implementing the various executive orders on pollution prevention and waste reduction. Appropriate data collection, recordkeeping, and public participation and outreach procedures are being developed;
- Review FAA policies, programs, and activities related to complying with other environmental protection laws including, for example, Clean Water Act, Clean Air Act, RCRA, CERCLA, TSCA, FIFRA, SDWA, and related state laws. FAA will comply with OSHA to provide safe and healthful work environment for all its employees and provide training to all employees;
- Review FAA policies, programs, and activities related to aviation and airport safety and revise, where appropriate, consistent with the E.O.;
- Include environmental justice principles, where appropriate, in its environmental liability training.

With respect to NEPA, FAA will:

- Emphasize the important role of appropriate public participation and environmental review under NEPA in avoiding environmental inequities. The agency is revising its various NEPA implementation orders (see section 6 below) to include compliance with E.O. 12898;
- Include environmental justice in its training programs, including, for example, the community involvement training course that is currently being developed and ongoing NEPA and advanced NEPA courses.

In the area of research, FAA will:

- Review the allocation of FAA education and research funds to Historically Black Colleges and Universities and other minority institutions and minority students and faculty in light of E.O. 12898. In addition, FAA will review its research programs to determine whether and how minority and low-income populations may be more appropriately included in the scope of particular research projects. Improved outreach to affected populations will be developed.
- Review its research program and consider appropriate research projects for developing data collection methods that may be needed to comply with Executive Order 12898.

c. Federal Transit Administration (FTA)

FTA's Title VI implementing circular requires public transit grantees to perform fixed facility impact analyses for all construction projects to assess the impacts on minority and low-incomes communities. Additionally, public transit grantees with populations of 200,000 or more must describe and establish monitoring procedures to ensure that service levels and quality do not discriminate against persons living in minority communities, and thus, deny them the environmental, human health, social, and economic benefits of local public transit programs. Grantees also must describe efforts to encourage minorities to participate on transit decision making bodies in order to ensure that such boards reasonably reflect the racial/ethnic composition of the community affected by the transit program.

The FTA strategic plan articulates the agency's intent to renew efforts to develop meaningful services for minority and low-income communities by designing new service demonstrations in partnership with such communities. Furthermore, the FTA Strategic Plan calls for a reexamination of how Federal transit investments are made in local areas and the development of appropriate action to encourage equitable distribution of such investments for minorities and transit-dependent persons living in low-income communities. FTA is also participating in the President's Empowerment Zone/Enterprise Community Program aimed at addressing low-income community revitalization.

FTA is launching a new ''Livable Communities'' Initiative to instill principles in transit programs that support the development of vibrant and healthy communities within the transit service area. This program supports the principles of environmental justice by promoting local community partnerships in local neighborhood and community transportation decision making and by creating transit investments that will serve community goals, including environmental, land use, and human health objectives. This program will encourage the development of transit systems that offer day and health care facilities to patrons; will provide special access to job training and employment to economically disadvantaged citizens; will attract shopping and economic development opportunities at transit sites; and will help to shape attractive, people-friendly land use configurations in and around transit stations. The program encourages the development of safe and secure travel and commercial environments as well as fosters the development of local circulation systems that support the vitality and the attractiveness of individual neighborhoods and communities.

d. Federal Highway Administration (FHWA)

To encourage that environmental protection and enhancement are integrated into planning and project development processes, FHWA will, in consultation with stakeholders and other appropriate partners, identify exemplary environment/planning processes, projects, and individuals or teams and showcase them.

Further, FHWA with provide extensive outreach and training on the role of environmental, neighborhood, and community values in transportation investments and decisionmaking.

With FHWA as lead agency, several DOT agencies are sponsoring a conference in cooperation with the Environmental Justice Resource Center at Clark-Atlanta University to further understand the environmental justice issues surrounding transportation. The conference is tentatively scheduled for March 30-April 1, 1995.

e. Federal Railroad Administration (FA)

FRA addressed environmental justice issues in its Final Environmental impact Statement for the Northeast Corridor Improvement project—Electrification—New Haven, CT to Boston, MA and in

the recently issued FHWA/FRA Draft Environmental Impact Statement for the Alameda Corridor project in Southern California.

Amtrak's Northeast Corridor Improvement project received direct Federal funding, and environmental justice concerns have been and will continue to be addressed through the NEPA environmental review process. FRA grant activities are currently limited to Amtrak and the state rail assistance program. FRA has no direct control over Amtrak grant funds expenditures, and the state rail grants are small. Construction projects, under the state rail program, have been limited to rehabilitation of existing rail lines in non-urban areas, with minimal environmental impact. If high-speed rail funding is appropriated by the Congress, FRA will incorporate environmental justice considerations into its planning requirements. Environmental justice requirements are being referenced in the new joint Environmental Impact Assessment Procedures under development by FHWA, FTA, and FRA.

f. FTA and FHWA Public Involvement Activities

FTA, in cooperation with FHWA, made a major step toward providing stakeholders with access to the transportation planning, programming, and project development processes with the issuance of the joint regulations on planning, 23 CFR part 450 and 49 CFR part 613, on October 28, 1993. This is accomplished in two ways.

One is by requiring that transportation decisionmaking be done in coordination with affected institutional bodies, including, but not limited to, businesses, major employers, environmental groups, labor unions, local land use planners, human service agencies, and providers. Consulting with these stakeholders is an important step to properly considering the range of factors required as part of an area's transportation planning activities. Requiring the consideration of these factors recognizes the relationship between transportation systems and the economic, environmental, and social well-being of the communities and regions served by them. The intended effect of this transportation planning environment is to promote transportation decisions which complement other state and local policies with an eye toward community well-being.

Another important component to providing for an open decisionmaking process is the requirement that decisionmaking be similarly open to the public. In fact, FTA and FHWA require public involvement to be ''proactive and provide[s] complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement'' (23 CFR 450.212 and 450.316(15)(1b)), and to be a significant part of all statewide and metropolitan planning processes. In addition, a ''process for seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households which may face challenges accessing employment and other amenities'' (23 CFR 450.212(a)(6)). These requirements are treated in the regulatory language as expected outcomes of a public involvement process that is developed to meet the individual needs of the affected Metropolitan Planning Organization (MPO) or state.

To maximize the effective implementation of the above provisions, FTA and FHWA are working toward providing the staffs of MPOs and state departments of transportation with training and guidance on how to achieve these ends. To emphasize the importance of public involvement in local transportation decisionmaking, FTA and FHWA have developed a Policy on Public Involvement. The agencies have also developed guidance specific to implementing the public involvement provisions in the planning regulations. Additional training and assistance in public involvement is being developed to promote high quality public involvement, designed to actively involve the public in decisionmaking activities. A comprehensive course for both staff and decisionmakers of MPOs and state DOTs is under development, to be offered free of charge beginning late in 1995. In addition, there will be a full catalogue of public involvement techniques published to promote creativity in public involvement.

It is simply not enough to open the door and invite the public in. There needs to be some effort to ensure that persons and groups with substantial interests in their communities have access to the tools necessary for substantive participation in local transportation decisionmaking. Some of the project ideas that have surfaced to address this need include training workshops for community groups and the development of a 'citizens' guide to MPO and statewide transportation planning under Intermodal Surface Transportation Assistance Act (ISTEA), and a similar technical guide for citizens that focuses on transportation modeling, planning assumptions, and transportation's relationship to other community services and resources.

g. Maritime Administration (MARAD)

The Maritime Administration has addressed environmental justice issues by complying with the National Environmental Policy Act and the Department of Transportation Administrative Order 600–1. In particular, over the past four years MARAD has completed two successive environmental audit reviews at three MARAD Reserve Fleet facilities (James River, Beaumont and Suisun Bay) and at two other facilities (United States Merchant Marine Academy, Kings Point, N.Y. and the Fire Training Center, Swanton, Ohio). Further, MARAD is currently engaged in a comprehensive review and analysis of requirements relevant to future clean-up of Polychlorinated Biphenyls (PCBs) in its National Defense Reserve Fleets. In its role as the Federal advocate for increased productivity and competitiveness in the Nation's maritime affairs, MARAD will continue to address compliance with applicable environmental laws and regulations by the United States maritime community.

6. DOT Training on Environmental Justice

In order to ensure that environmental justice becomes integrated in all appropriate Departmental activities, DOT will hold informational seminars on environmental justice for selected program managers throughout the Department. Representatives of the environmental justice network will be invited to assist in the planning and conduct of these seminars.

7. Review and Revision of DOT Environmental Procedures

The Department will review and update, as appropriate, its Procedures for Considering Environmental Impacts, DOT Order 5610.1C,to ensure that it is consistent with Executive Order 12898 and DOT's proposed order on environmental justice. Attachment 2 to Order 5610.1C sets forth guidance on the format and content of environmental review documents and compliance with the National Environmental Policy Act and other environmental statutes, regulations, and executive orders such as Section 4(f) of the DOT Act. This attachment will be updated to reflect the requirements of Executive Order 12898

and to outline the need to address potential disproportionate adverse health, or environmental impacts on affected populations and communities. DOT modal administrations also will review and update environmental guidance.

[FR Doc. 95–4134 Filed 2–17–95; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Noise Exposure Map Notice, Receipt of Noise Compatibility Program and Request for Review; Austin Straubel International Airport, Green Bay, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Brown County for Austin Straubel International Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Austin Straubel International Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before July 19, 1995.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is January 20, 1995. The public comment period ends March 21, 1995.

FOR FURTHER INFORMATION CONTACT: William J. Flanagan, Federal Aviation Administration, Airports District Office, room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450, (612) 725–4463. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Austin Straubel International Airport are in compliance with applicable requirements of part 150, effective January 20, 1995. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before July 19, 1995. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies,and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Brown County submitted to the FAA on July 28, 1993, noise exposure maps, descriptions and other documentation which were produced during the FAR part 150 Noise compatibility Study from July 1991 to November 1994. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Brown County. The specific maps under consideration are the 1992 existing Noise Exposure Map and the 1997 future Noise Exposure Map. The FAA has determined that these maps for Austin Straubel International Airport are in compliance with applicable requirements. This determination in effective on January 20, 1995. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the prices relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detail overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator under section 150.21 of FAR part 150, that the statutory required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Austin Straubel International Airport, also effective on January 20, 1995. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 19, 1995.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Inerested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for reexamination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, D.C. 20591

Federal Aviation Administration, Minneapolis Airports District Office, Room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450

Office of the Airport Director, Austin Straubel International Airport, 2077 Airport Drive, Green Bay, Wisconsin 54313

Brown County Library, 515 Pine Street, Green Bay, Wisconsin 54301

Wisconsin Bureau of Aeronautics, State Transportation building, Room 701, 4802 Sheboygan Avenue, Madison, Wisconsin 53707.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Minneapolis, Minnesota, January 20, 1995.

Franklin D. Benson,

Manager, Minneapolis Airports District Office, FAA Great Lakes Region.

[FR Doc. 95–4210 Filed 2–17–95; 8:45 am]

BILLING CODE 4910–13–M

Change #2 to FAA P–8110–2, Airship Design Criteria (ADC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Change #2 to FAA P–8110–2, Airship Design Criteria (ADC) dated November 2, 1987. This change adds the requirements for fly-by-light control systems. Two new paragraphs have been added to the ADC that cover concerns related to optical couplings and optical degradation. The requirements for a control system not directly (mechanically) connected to the control surface are applicable to both fly-by-wire and fly-by-light. The fiber optics used in fly-by-light systems, though immune to some of the problems associated with fly-by-wire systems, have their own set of problems. Those problems are addressed in this change.

ADDRESSES: Copies of Change #2 can be obtained from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:

Terre Flynn, Standards Staff (ACE–110), telephone number (816) 426–6941.

Issued in Kansas City, Missouri, February 6, 1995.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4209 Filed 2–17–95; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application Use the Revenues From a Passenger Facility Charge (PFC) at Albany County Airport, Albany, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenues from a PFC at Albany County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 23, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito, Manager New York Airports District Office, 181 South Franklin Avenue, Room 305, Valley Stream, New York 11581.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Michael N. Polovina, Director of the Albany County Airport, at the following address: Albany County Airport, ARFF Building, 2nd. Floor, Albany, New York 12211.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Albany under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager of the New York Airports District Office, 181 South Franklin Avenue, Room 305, Valley Stream, New York, 11581, Tel. (718) 553–18182. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenues from a PFC at Albany County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act. Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Albany County Airport.

Issued in Jamaica, New York State on February 1, 1995.

Anthony P. Spera,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 95–4211 Filed 2–17–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Marion, Lake and Volusia Counties, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Marion, Lake and Volusia Counties, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Travis, Transportation Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301, (904) 942–9579; or Mr. William F. Sloup, P.E., Project Manager, Florida Department of Transportation, 719 S. Woodland Blvd, DeLand, Florida 32720, (904) 943–5406.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the U.S. Forest Service, the U.S. Coast Guard and the Florida Department of Transportation will prepare an EIS for a proposal to improve SR 40 in Marion, Lake and Volusia Counties, Florida. The proposed improvement would involve the reconstruction of SR 40 from the end of the 4-lanes in Silver Springs, Marion County to US 17/92 Barberville, Volusia County, a distance of 40 miles with 27 miles within the Ocala National Forest. Improvement to the corridor are considered necessary to provide for projected traffic demands and to meet the required Florida Intrastate Highway Systems (FIHS) minimum standards. The FIHS is a legislatively established interconnected system of limited and controlled access facilities designed for high speed, high volume traffic movements. SR 40 from CR 326 in Marion County to Interstate 95 in Volusia County has been designated as part of the FIHS.

Alternatives under consideration include: (1) Taking no action; (2) widening to a four lane divided roadway; or (3) providing alternate corridors.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have expressed interest in this proposal. A series of public meetings will be held in Marion, Lake and Volusia County between February 1995 and October, 1996. In addition at least two public hearings will be held. The Draft EIS will be made available for public and agency review and comment. Formal scoping meetings will be held during the early part of 1995.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301.

(Catalog of Federal Domestic Assistance Program Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-governmental consultation on Federal programs and activities apply to this program.)

Issued On: February 7, 1995.

Melisa L. Ridenour,

Supervisory Transportation Engineer, Tallahassee, Florida.

[FR Doc. 95–4087 Filed 2–17–95; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–12; OTS No. 03859]

AmericanTrust Federal Savings Bank, Peru, Indiana; Approval of Conversion Application

Notice is hereby given that on February 9, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of AmericanTrust Federal Savings Bank, Peru, Indiana, to covert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: February 14, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–4096 Filed 2–17–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–14; OTS No. 01985]

Avondale Federal Savings Bank, Chicago, Illinois; Approval of Conversion Application

Notice is hereby given that on February 10, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Avondale Federal Savings Bank, Chicago, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: February 14, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–4098 Filed 2–17–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–10; OTS No. 04411]

Bank West, F.S.B., Grand Rapids, Michigan; Approval of Conversion Application

Notice is hereby given that on February 2, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Bank West, F.S.B., Grand Rapids, Michigan, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: February 14, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–4094 Filed 2–17–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–16; OTS No. 02025]

The Cameron Savings and Loan Association, F.A., Cameron, Missouri; Approval of Conversion Application

Notice is hereby given that on February 10, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of The Cameron Savings and Loan Association, F.A., Cameron, Missouri, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: February 14, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–4100 Filed 2–17–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–15; OTC No. 06172]

First Federal Savings and Loan Association of Opelousas, Opelousas, Louisiana; Approval of Conversion Application

Notice is hereby given that on February 10, 1995, the Deputy Assistant Director Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Opelousas, Opelousas, Louisiana, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: February 14, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–4099 Filed 2–17–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–13; OTS No. 06527]

Queen City Federal Savings Bank Virginia, Minnesota; Approval of Conversion Application

Notice is hereby given that on February 10, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Queen City Federal Savings Bank, Virginia, Minnesota, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: February 14, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–4097 Filed 2–17–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–09; OTS No. 03357]

Reliance Federal Savings and Loan Association of St. Louis County, St. Louis, Missouri; Approval of Conversion Application

Notice is hereby given that on February 2, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Reliance Federal Savings and Loan Association of St. Louis County, St. Louis, Missouri, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: February 14, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–4093 Filed 2–17–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–17; OTS No. 03889]

Sobieski Federal Savings and Loan Association, South Bend, Indiana; Approval of Conversion Application

Notice is hereby given that on February 13, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Sobieski Federal Savings and Loan Association, South Bend, Indiana, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: February 14, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–4100 Filed 2–17–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–11; OTS No. 02794]

Teche Federal Savings Bank, Franklin, Louisiana; Approval of Conversion Application

Notice is hereby given that on February 2, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Teche Federal Savings Bank, Franklin, Louisiana, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: February 14, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–4095 Filed 2–17–95; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of Availability of Annual Report

Under Section 10(d) of Public Law 92–463 (Federal Advisory Committee Act), notice is hereby given that the Annual Report of the Department of Veterans Affairs' Special Medical Advisory Group for fiscal year 1994 has been issued. The report summarizes activities of the Group relative to the care and treatment of disabled veterans and other matters pertinent to the Department of Veterans Affairs' Veterans Health Administration. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, D.C. 20540

and

Department of Veterans Affairs, Office of the Under Secretary for Health, VA Central Office, room 819, 810 Vermont Avenue NW., Washington, D.C. 20420.

Dated: February 6, 1995.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–4142 Filed 2–17–95; 8:45 am]

BILLING CODE 8320–01–M

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving

veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

O.G.C. Precedent 17–94

Question Presented

May a supervisor for a State Approving Agency (SAA) enroll in and pursue training at a for-profit flight school in a course approved for training under a VA administered education benefits program?

Held

1. An SAA officer or employee will be considered to have received ''services'' from a for-profit educational institution within the meaning of section 3683 of title 38, United States Code, when the individual receives instruction in a course approved for VA purposes at that institution, even though the official or employee is enrolled in and pursuing the course on the same basis as similarly circumstanced students not so employed.

2. A waiver may be granted by the Director, Education Service, or by the Secretary, pursuant to 38 CFR 21.4005, when the facts show no detriment to the United States, veterans, or eligible persons will ensue from the receipt of such services by the SAA officer or employee.

Effective date: July 18, 1994

O.G.C. Precedent 18–94

Question Presented

Whether service as a precadet at the United States Air Force Academy Preparatory School may be considered ''active duty'' service for purposes of title 38, United States Code.

Held

Characterization of an individual's service at the United States Air Force Academy Preparatory School (USAFAPS) for purposes of entitlement to veterans' benefits depends upon the status in which the individual enters the USAFAPS. Service by an individual who attends the USAFAPS as a reservist called to active duty for the sole purpose of attending the USAFAPS constitutes ''active duty for training.'' This includes persons who are enlisted directly from civilian life or from the Air National Guard for the sole purpose of attending the USAFAPS, as well as members of reserve components who are called to active duty for this purpose. Service by an enlisted active-duty servicemember who is reassigned to the USAFAPS without a release from active duty constitutes a continuation of the servicemember's ''active duty.''

Effective date: October 3, 1994

O.G.C. Precedent 19–94

Question Presented

Is the prerequisite of 38 U.S.C. 5904(c)(1) and 38 CFR 20.609(c)(1) requiring a final decision by the Board of Veterans' Appeals (BVA) prior to charging an attorney fee satisfied when a ''repeat'' claim is filed after a final BVA decision has been issued regarding an earlier, similar claim, *e.g.*, a claim for pension, an increased rating, a total rating based on individual unemployability, or service connection for a prisoner of war (POW) presumptive disease?

Held

The prerequisite of a final decision by the Board of Veterans' Appeals (BVA) prior to charging an attorney fee contained in 38 U.S.C. 5904(c)(1) and 38 CFR 20.609(c)(1) is satified when a ''repeat claim'' for benefits is filed after a final BVA decision has been issued regarding an earlier, similar claim, *e.g.*, a claim for pension, an increased rating, a total rating based upon individual unemployability, or service connection for a prisoner of war presumptive disease.

Effective date: October 12, 1994

O.G.C. Precedent 20–94

Question Presented

When and under what conditions may the Board of Veterans' Appeals decide issues in a claim following an appeal to the United States Court of Appeals for the Federal Circuit from a decision of the United States Court of Veterans Appeals affirming, or reversing or vacating in whole or in part and remanding, a decision of the Board?

Held

When an appellant files a timely appeal to the United States Court of Appeals for the Federal Circuit from a United States Court of Veterans Appeals decision to affirm or to reverse or vacate in whole or in part and remand a Board of Veterans' Appeals decision, the Board's disposition of all aspects of the matter must await the issuance of the mandate of the Court of Veterans Appeals concluding the appeal.

Effective date: December 2, 1994

O.G.C. Precedent 21–94

Question Presented

Must the need for aid and attendance be permanent in order to qualify for a higher rate of improved pension?

Held

The statutory provisions in 38 U.S.C. 1502(b), 1521(d), and 1541(d), authorizing an increased improved-pension rate for persons in need of regular aid and attendance, do not require that the need be permanent as a predicate to an award of the increased rate. To the extent that the title of 38 CFR 3.352 suggests that the need must be permanent, that title is inconsistent with the governing statutes and should be revised. Increased improved pension based upon the need for regular aid and attendance may be awarded without regard to whether the need is permanent.

Effective date: December 13, 1994

O.G.C. Precedent 22–94

Question Presented

What effect does the judicial invalidation of a portion of the regulations governing effective dates of awards of benefits under the Restored Entitlement Program for Survivors (REPS) have on the payment of benefits under that program?

Held

The United States Court of Veterans Appeals and the United States Court of Appeals for the Federal Circuit, in their decisions in the Skinner and Cole cases, found Department of Veterans Affairs regulations establishing time-specific filing requirements for claims under the Restored Entitlement Program for Survivors (REPS) to be invalid. For new claims filed after issuance of those decisions and for claims pending at the time those decisions were issued, REPS benefits may be awarded without regard to when the claims were filed. Where claimants whose claims were finally decided prior to issuance of those decisions file claims for previously-denied REPS benefits based on the change in interpretation of law reflected in those opinions or on regulations reflecting that changed interpretation, the claims may be considered new claims and previously-denied REPS benefits for which the claimants are otherwise entitled may be awarded

without regard to when the claims were filed. Benefits may be paid beginning with the first month in which the claimant became eligible for REPS benefits.

Effective date: December 14, 1994.

By Direction of the Secretary.

Mary Lou Keener,

General Counsel.

[FR Doc. 95–4141 Filed 2–17–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 34
Tuesday, February 21, 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).

ASSASSINATION RECORD REVIEW BOARD

TIME AND DATE: 1:30 p.m., March 7, 1995.

PLACE: 600 E Street, NW, Second Floor, Washington, D.C. 20530.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Update by a representative of the National Archives and Records Administration (NARA) on the President John F. Kennedy Assassination Records Collection at NARA.
2. Discussion of written public comments, received as of the date of this meeting, to the proposed interpretive regulations published for public comment by the Assassination Records Review Board in the Federal Register on February 8, 1995 (60 FR 7506, Feb. 8, 1995).
3. Staff reports on upcoming Board activities.

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Press and Public Affairs Officer, 600 E Street NW., Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 95–4332 Filed 2–16–95; 2:38 pm]

BILLING CODE 6820–TD–M

U.S. COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Friday, March 3, 1995, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

STATUS: Open to the Public.

Agenda

I. Approval of Agenda
II. Approval of Minutes of January Meeting
III. Announcements
IV. Staff Director's Report
V. National Perspectives Hearing: Executive Summary
VI. Future Agenda Items
10:30 a.m. Briefing on Access to Mortgage Lending

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376–8105 (TDD 202–376–8116) at least five (5) days before the scheduled date of the hearing.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Dated: February 10, 1995.

Emma Monroig,

Solicitor.

[FR Doc. 95–4325 Filed 2–16–95; 2:07 pm]

BILLING CODE 6335–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, February 22, 1995.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: February 16, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–4326 Filed 2–16–95; 2:13 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF ENERGY, FEDERAL ENERGY REGULATORY COMMISSION

February 15, 1995.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: February 22, 1995, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 625th Meeting—February 22, 1995, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 2459–007, West Penn Power Company
CAH–2.
Docket No. EL94–32–001, Master Power Corporation, Inc.
CAH–3.
Omitted
CAH–4.
Project Nos. 2570–018, 019 and 020, Ohio Power Company
CAH–5.
Project No. 2727–046, Bangor Hydro-Electric Company
CAH–6.
Project No. 3258–005, Joseph M. Keating
CAH–7.
Project No. 4632–018, Clifton Power Corporation
CAH–8.
Project No. 8459–013, Geoffrey Shadroui
CAH–9.
Project No. 9156–003, Silver Star Hydro, Ltd.
CAH–10.
Project No. 6310–011, Gull Industries, Inc.
CAH–11.
Project Nos. 4678–015 and 4679–018, Power Authority of the State of New York

Consent Agenda—Electric

CAE–1.
Omitted
CAE–2.
Docket No. ER95–373–000, Boston Edison Company
CAE–3.
Docket Nos. ER95–371–000 and ER93–777–000, Commonwealth Edison Company
CAE–4.
Omitted
CAE–5.
Docket No. ER94–129–000, Massachusetts Electric Company
CAE–6.
Docket No. ER94–1377–001, Delmarva Power & Light Company
Docket No. TX94–5–001, Old Dominion Electric Cooperative, Inc. v. Delmarva Power & Light Company
CAE–7.
Docket No. ER95–112–002, Entergy Services, Inc.
Docket No. EL95–17–002, Entergy Services, Inc. and Entergy Power, Inc.
CAE–8.

Docket No. ER95–59–001, Southern Company Services, Inc.
Docket No. ER95–138–001, Mississippi Power Company
Docket No. ER95–149–001, Alabama Power Company
CAE–9.
Docket No. ER95–111–001, The Electric Exchange
CAE–10.
Docket No. ER94–1690–001, Engelhard Power Marketing, Inc.
CAE–11.
Omitted
CAE–12.
Docket No. EG95–16–000, Cardinal Power of Canada, L.P.
CAE–13.
Docket No. EG95–27–000, Renewable Energy Ireland Limited
CAE–14.
Docket No. EG95–23–000, Zhuang He Power Partners Limited Partnership
CAE–15.
Docket No. EG95–24–000, EI Power (China), Inc.
CAE–16.
Docket No. EG95–25–000, China Power Partners Limited Partnership
CAE–17.
Docket No. EG95–26–000, EI Power (China) III, Inc.
CAE–18.
Docket No. EG95–17–000, Cowley Ridge Wind Power Company Inc.
CAE–19.
Docket No. EG95–18–000, Cowley Ridge Partnership
CAE–20.
Docket No. EG95–19–000, LG&E-Westmoreland Hopewell
CAE–21.
Docket No. EG95–20–000, LG&E-Westmoreland Southampton
CAE–22.
Docket No. EG95–21–000, LG&E-Westmoreland Altavista
CAE–23.
Docket No. EG95–22–000, LG&E-Westmoreland Rensselaer
CAE–24.
Docket No. AC94–218–000, Pioneer Power & Light Company

Consent Agenda—Oil and Gas

CAG–1.
Docket No. PR94–21–000, Llano Inc.
CAG–2.
Docket No. PR94–22–000, Mobil Vanderbilt-Beaumont Pipeline Company
CAG–3.
Docket Nos. RP95–59–001 and RP94–67–018, Southern Natural Gas Company
CAG–4.
Omitted
CAG–5.
Docket No. RP95–139–000, Texas Gas Transmission Corporation
CAG–6.
Docket No. RP95–147–000, Carnegie Natural Gas Company
CAG–7.
Docket No. RP95–149–000, ANR Pipeline Company
CAG–8.
Docket No. RP95–134–000, Natural Gas Pipeline Company of America
CAG–9.
Docket No. RP95–136–000, Williams Natural Gas Company
CAG–10.
Docket No. RP95–137–000, Northern Natural Gas Company
CAG–11.
Docket No. RP95–140–000, Northern Natural Gas Company
CAG–12.
Docket No. RP95–141–000, Pacific Gas Transmission Company
CAG–13.
Docket No. RP95–145–000, Northwest Pipeline Corporation
CAG–14.
Docket No. RP95–151–000, Trunkline Gas Company
CAG–15.
Docket No. ST94–5766–000, NOARK Pipeline System, Limited Partnership
Docket No. ST94–5902–000, East Texas Gas System
Docket No. ST94–5988–000, Valero Transmission, L.P.
Docket No. ST95–272–000, TransTexas Pipeline
Docket No. ST95–390–000, Arkansas Western Gas Company
Docket No. ST95–404–000, Lone Star Gas Company
Docket No. ST95–492–000, Enogex, Inc.
Docket No. ST95–500–000, Arkansas Oklahoma Gas Corporation
CAG–16.
Docket No. RP89–161–030, ANR Pipeline Company
CAG–17.
Docket No. RP91–203–046, Tennessee Gas Pipeline Company
CAG–18.
Docket No. RP94–377–000, Texas Gas Transmission Corporation
CAG–19.
Docket No. RP95–128–000, East Tennessee Natural Gas Company
CAG–20.
Docket No. RP94–267–004, Wyoming Interstate Company, Ltd.
CAG–21.
Docket Nos. RP94–274–000, RP94–275–000 and RP94–385–000, Northern Natural Gas Company
CAG–22.
Docket No. RP95–101–000, K N Interstate Gas Transmission Company
CAG–23.
Docket No. RP95–60–002, Alabama-Tennessee Natural Gas Company
CAG–24.
Omitted
CAG–25.
Docket Nos. RP95–68–001, RP94–223–004 and RP94–379–001, Colorado Interstate Gas Company
CAG–26.
Docket No. RP94–357–002, Texas Eastern Transmission Corporation
CAG–27.
Docket No. RP95–112–001, Tennessee Gas Pipeline Company
CAG–28.
Docket Nos. RP95–5–002 and 001, Northwest Pipeline Corporation
CAG–29.
Docket Nos. RP95–15–001, 002 and 004, Texas Eastern Transmission Corporation
CAG–30.
Docket No. GT94–35–002, Northwest Pipeline Corporation
CAG–31.
Omitted
CAG–32.
Docket Nos. RP95–20–001 and 002, Southern Natural Gas Company
CAG–33.
Omitted
CAG–34.
Docket No. AC95–42–000, Koch Gateway Pipeline Company
CAG–35.
Docket No. RP94–389–000, New England Power Company v. Algonquin Gas Transmission Company
CAG–36.
Omitted
CAG–37.
Docket Nos. RP92–137–031 and RP93–136–003 (Phase II), Transcontinental Gas Pipe Line Corporation
CAG–38.
Docket No. CP94–196–001, Williams Natural Gas CompanyDocket No. CP94–197–001, Williams Gas Processing—Mid-Continent Region Company
CAG–39.
Docket No. RP95–94–003, NorAm Gas Transmission Company
CAG–40.
Omitted
CAG–41.
Docket No. CP94–282–001, Northwest Pipeline Corporation
CAG–42.
Docket No. CP95–19–000, Algonquin Gas Transmission Company
CAG–43.
Docket No. CP94–533–000, Tennessee Gas Pipeline Company
CAG–44.
Docket No. CP94–679–000, Great Lakes Gas Transmission Limited Partnership
CAG–45.
Docket No. CP93–689–000, Colorado Interstate Gas Company
CAG–46.
Docket No. RP95–124–000, Gas Research Institute
CAG–47.
Docket No. RP95–135–000, Williams Natural Gas Company
CAG–48.
Docket No. MG88–7–008, Northern Natural Gas Company
CAG–49.
Docket Nos. CP93–281–001 and 002, Paiute Pipeline Company
CAG–50.
Docket No. CP93–567–001, Texas Gas Transmission Corporation
CAG–51.
Docket No. IS94–4–000, All American Pipeline Company
CAG–52.
Docket No. CP93–618–003, Pacific Gas Transmission Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Omitted
E–2.
Omitted
E–3.
Docket No. EL95–16–000, Southern California Edison Company
Docket No. EL95–19–000, San Diego Gas & Electric Company. Whether the California Public Utilities Commission's determination of avoided costs for determining rates for electric utility purchases from QFs complies with PURPA and Commission regulations implementing PURPA.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Pipeline Certificate Matters

PC–1.
Reserved

Dated: February 15, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4285 Filed 2–16–95; 11:35 am]

BILLING CODE 6717–01–P

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 3:00 p.m., Tuesday, February 28, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to (a) the general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; and (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans. Specific item: Proposals regarding actuarial assumptions in Federal Reserve System benefit plans.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: February 16, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–4343 Filed 2–16–95; 3:19 pm]

BILLING CODE 6210–01–P

MERIT SYSTEMS PROTECTION BOARD

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:20 a.m. on Wednesday, February 15, 1995, the members of the Merit Systems Protection Board met in closed session. The purpose of the meeting was to discuss concerns over the delegation of authorities to Board legal offices, and also to consider the composition of the Board's National Performance Review II process team.

In calling the meeting, the Board determined that Board business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2) and (9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2) and 5 U.S.C. 552b(c)(9)(B)).

The meeting was held in the Board's conference room at Board headquarters at 1120 Vermont Avenue, N.W., Washington, DC 20419.

Dated: February 15, 1995.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 95–4272 Filed 2–16–95; 11:37 am]

BILLING CODE 7400–01–M

federal register

Tuesday
February 21, 1995

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Funds Availability for Youthbuild Programs Fiscal Year 1995; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–3876; FR–3817–N–01]

Youthbuild: Notice of Funds Availability for Youthbuild Programs Fiscal Year 1995

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funds Availability for the FY 1995 Youthbuild Competition.

SUMMARY: This Notice of Funds Availability (NOFA) announces the availability of up to $74.1 million of Fiscal Year 1995 program funds (including Fiscal Year 1994 funds that were merged with the 1995 appropriation) for grant assistance under the Youthbuild Program established by the Housing and Community Development Act of 1992. These funds will be awarded competitively. Both planning and implementation grants will be funded, but combined grants covering both types of awards will not be funded under this current competition. The body of this NOFA contains information on the following: the purpose of the NOFA, information regarding eligibility, available funding, the application process and selection criteria.

APPLICATION SUBMISSION: An original and one copy of the completed application for grant funds must be received in HUD Headquarters prior to close of business on May 8, 1995. Applications will be accepted at the following address: Processing and Control Unit, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7255, Washington, DC 20410. ATTN: Youthbuild. At close of business on the deadline date, applications will be received at either room 7255 or the South Lobby of the Department of Housing and Urban Development at the above address.

Applications which are mailed prior to May 8, 1995, but not received until after the deadline will be deemed to have been received by the date if postmarked by the United States Postal Service by no later than May 5, 1995. Express delivery items received after May 8, 1995, will be deemed to have been received by the deadline upon submission of documentary evidence that they were placed in transit with the express delivery service by no later than May 6, 1995. Applications may not be submitted by facsimile (FAX).

FOR A COPY OF THE APPLICATION PACKAGE, CONTACT: The HUD Processing and Control Unit, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Room 7255, Washington, DC 20410. Requests for application packages for the current competition must be made in writing, but may be faxed to (202) 708–3363. (This is not a toll-free number.) Applicants are strongly encouraged to use the fax transmission method to request applications, as it promotes accurate information and expedites HUD's response time. Requests for application packages must include the applicant organization's name, contact person, mailing address, zip code, area code and telephone number, and must refer to ''Youthbuild'' document FR–3817. The Youthbuild application package contains appropriate instructions, forms and required certifications for completing a grant request. Requests for Youthbuild application packages for the current competition should be made immediately. HUD will distribute application packages as soon as they become available.

FOR FURTHER INFORMATION CONTACT: All procedural and substantive questions should be directed to the Office of Economic Development, Department of Housing and Urban Development, Room 7136, 451 Seventh Street SW., Washington DC 20410; telephone (202) 708–2035 or TDD (202) 708–1455 for the hearing impaired. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this Notice have been approved under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) by the Office of Management and Budget (OMB), and have been assigned OMB control number 2506–0142, expiration date August 31, 1996.

I. Program Purpose

The purposes of the Youthbuild program are (1) to provide economically disadvantaged young adults with opportunities to obtain education, employment skills and meaningful on-site work experience as a service to their communities and a means to achieve self-sufficiency; (2) to foster the development of leadership skills and commitment to community; and (3) to expand the supply of permanent affordable housing for homeless and low- and very low-income persons by providing planning grants for program design and implementation grants for carrying out a Youthbuild Program.

A. Authority

The Youthbuild program is authorized under subtitle D of title IV of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 8011) (the Act), as added by section 164 of the Housing and Community Development Act of 1992 (Pub. L. 102–550). Implementing Regulations are found in the Final Rule published elsewhere is today's **Federal Register**.

B. Funding Availability

This Notice announces the availability of approximately $74.1 million in program funds. HUD intends to use approximately $5 million of this amount for planning grants, with the remainder for implementation grants. Of the total amount of program funds, $26.6 million was originally appropriated by the HUD appropriations act for Fiscal Year 1994 (Pub. L. 103–124, enacted October 28, 1993) and $47.5 million was appropriated by the HUD appropriations act for Fiscal Year 1995 (Pub. L. 103–327, enacted September 28, 1994). The latter act merged these two appropriations. Any unobligated funds from previous competitions or additional funds that become available as a result of deobligations from previous awards may also be used to fund applications submitted in response to this NOFA. Five percent of each fiscal year's program funds may be set aside for emergency purposes.

HUD may use any of the above funds to correct procedural errors from the previous competition in the event that HUD determines that the correction of the errors would have meant that the applications should have been funded under that competition. This provision is restricted to applicants who filed an appeal based on a procedural scoring error, in writing, no later than November 7, 1994 (four months from the announcement of FY 93 awards), and for which HUD determines that there was a procedural error.

In addition to the above program funds, $3.9 million is planned for technical assistance consistent with section 458(d) of the Act.

C. Objectives

The Youthbuild program is designed to help disadvantaged young adults who have dropped out of high school to 1) obtain the education and employment skills necessary to achieve economic self-sufficiency and 2) develop leadership skills and a commitment to community development in low-income

communities. Grant funds can be used to fund eligible educational and support services and activities, as defined by the Act, composed of basic skills instruction and remedial education, employment skills and leadership development, and counseling and other support services.

Another important objective of the Youthbuild program is to expand the supply of permanent affordable housing for homeless persons and members of low- and very low-income families. Giving disadvantaged young adults meaningful on-site training experiences in housing construction and rehabilitation enables them to provide a service to their communities by helping to meet the housing needs of homeless and low-income families.

An additional purpose of the program is to give, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, job training, employment, contracting and other economic opportunities to low-income persons and business concerns. To that purpose, section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) is applicable to Youthbuild implementation grant recipients.

II. Overview of Youthbuild Planning and Implementation Grants

A. Types of Grants

HUD will award Youthbuild planning grants to eligible applicants for the purpose of planning Youthbuild programs in accordance with subtitle D of title IV of the Cranston-Gonzales National Affordable Housing Act (NAHA). HUD will award Youthbuild implementation grants to eligible applicants for the purpose of carrying out Youthbuild programs in accordance with subtitle D. Applications will be selected in a competition in accordance with the grant selection process described in section V. below.

B. Maximum Awards

Under the competitions established by this NOFA, the maximum award for a Youthbuild planning grant is $100,000 and the maximum award for a Youthbuild implementation grant is $1,000,000. No amendments will be made to awards under this competition that will increase previously approved grant amounts.

C. Locational Considerations

(1) Planning grants: HUD will not approve multiple applications for planning grants in the same jurisdiction, unless HUD determines that the jurisdiction is sufficiently large to justify approval of more than one application.

(2) Implementation grants: Each application for an implementation grant may only include activities to carry out one Youthbuild program, i.e., to start a new Youthbuild program or to fund new classes of Youthbuild participants for an existing program. The same applicant organization may submit more than one application in the current competition if the proposed programs are in different jurisdictions. HUD will not approve multiple applications for implementation grants in the same jurisdiction unless HUD determines that the jurisdiction is sufficiently large to justify approval of more than one application.

D. Eligible Applicants

Eligible applicants are public or private nonprofit agencies, state or local housing agencies or authorities, states or units of general local government, Indian tribes or any other entity eligible to provide education and employment training under other Federal employment training programs, as further defined in 24 CFR 585.4.

E. Youthbuild Program Components

Youthbuild programs receiving assistance under this NOFA (for either program planning or implementation) must contain the three components described in items (1), (2) and (4) below. Other activities described in item (3) are optional.

(1) Educational and job training services.

(2) Leadership training, counseling and other support activities.

(3) Special activities such as entrepreneurial training, drivers' education, internships, programs for those with learning disabilities, and in-house staff training. (Optional)

(4) On-site training through actual housing rehabilitation and/or construction work. Each program must be structured so that 50 percent of each participant's time is spent in on-site training.

Refer to 24 CFR 585.3 for a detailed description of program components.

F. Eligible Participants

All participants in a Youthbuild program must be very low-income high school dropouts between the ages of 16 and 24, inclusive, at the time of enrollment. Up to 25 percent of participants may be above very low-income or high school graduates (or equivalent), but must have educational needs that justify their participation in the program.

G. Eligible Activities

(1) Planning grant activities used to develop a Youthbuild program may include:

(a) feasibility studies and research;

(b) establishment of a consortium of public and private participants, including service providers, housing developers, labor unions, etc.;

(c) identification of housing sites and arrangements for participants to have access;

(d) preliminary architectural and engineering work and cost estimates;

(e) the development of the educational, training, leadership development, counseling and other support service components of a Youthbuild program, including the staffing requirements;

(f) the preparation of an implementation grant application; and

(g) administrative costs. Youthbuild funds for these costs may not exceed 15 percent of the total amount of Youthbuild assistance.

Refer to 24 CFR 585.205 for further details on eligible planning activities.

(2) Implementation grant activities used to conduct a Youthbuild program may include:

(a) work and activities associated with the acquisition, rehabilitation, or construction of the housing and related facilities to be used in the program;

(b) relocation payments and other assistance required to comply with 24 CFR 585.308.

(c) costs for the ongoing training and technical assistance needs of the applicant that are related to carrying out a Youthbuild program.

(d) education, job training, counseling, employment and leadership development services and activities;

(e) wages, benefits and need-based stipends for participants; and

(f) administrative costs. Youthbuild funds for these costs may not exceed 15 percent of the total amount of Youthbuild assistance.

Refer to 24 CFR 585.305 for further details on eligible implementation activities.

H. Resources from Other Federal, State, Local or Private Entities

Applicants are encouraged to use existing housing and homeless assistance programs administered by HUD or other Federal, State, local or private housing programs as part of their Youthbuild programs. Use of other Federal, State, local or private funds available for vocational, adult and bilingual education programs or for job training under the JTPA Act and the Family Support Act of 1988 is also

encouraged. The selection process described in this NOFA provides for applicants to receive points where grant applications contain evidence of interest (for planning applications) or commitments (for implementation applications) from Federal, State, local, or private sources to provide resources to carry out Youthbuild activities.

I. Environmental Procedures and Standards

Implementation grant applicants are encouraged to select hazard-free and problem-free properties for their Youthbuild projects. Environmental procedures apply to HUD approval of implementation grants when the applicant proposes to use Youthbuild funds to cover any costs for the lease, acquisition, rehabilitation, or new construction of real property proposed for housing project development. Environmental procedures do not apply to HUD approval of implementation applications when applicants propose to use their Youthbuild funds solely to cover any costs for classroom and/or on-the-job construction training and support services.

For those implementation grant applicants that propose to use their Youthbuild funds to cover any costs of the lease, acquisition, rehabilitation, or new construction of real property, the applicant shall submit all relevant environmental information in its application to support HUD decision-making in accordance with the environmental procedures and standards set forth in 24 CFR 585.307.

J. Grant Periods

Funds awarded for a planning grant should be used within 12 months of the effective date of the planning grant agreement. Funds awarded for an implementation grant should be used within 30 months of the effective date of the implementation grant agreement.

III. Selection Criteria for Youthbuild Applications

HUD will review each application for a planning or an implementation grant and assign points in accordance with the selection criteria described in this section. Where there are differences between the criteria for planning and implementation applications, they are so noted. Each application will be assigned up to 100 points. In addition, applications may receive up to 5 bonus points for AmeriCorps participation (see section F below), and implementation applications may receive an additional 10 housing priority points (see section G below).

A. Capability: the qualifications, experience, or potential capabilities of the applicant and participating parties. (Maximum Points: 25) The capability of the applicant and participating parties to plan or implement a successful young adult education and training program within a reasonable time period, within budget, and in an effective manner as demonstrated through past performance. In assigning points for this criterion, HUD will consider evidence in the application that demonstrates:

(1) Young adult education and training experience: The past performance and experience of the applicant entity or other participating parties (applicant's partner, member of local Youthbuild consortium, or other entity participating in the program) in planning or implementing young adult education and training programs, including programs for low-income persons from economically distressed neighborhoods, or an explanation of how such capability will be obtained.

(2) Young adult leadership development experience: The past experience of the applicant entity or other participating party in providing leadership development training and activities for young adults, or an explanation of how such capability will be obtained.

(3) Housing experience: The knowledge, experience, and performance of the applicant entity or other participating parties in producing sound and affordable housing for the homeless and low-income families, or an explanation of how such knowledge and experience will be obtained.

B. Need: the need for the proposed program, as determined by the degree of distress of the community. (Maximum Points: 20) In assigning points for this criterion, HUD will consider the relative degree of distress of the jurisdiction(s) from which participants will be recruited and in which the housing will be constructed or rehabilitated. HUD will calculate the degree of need of the jurisdiction(s) in which the program will be located from generally available data. In addition, HUD will consider information provided by the applicant on the distress of target areas within the jurisdiction(s).

C. Program Quality and Feasibility: comprehensiveness and effectiveness of the proposed Youthbuild program. (Maximum Points: 35) HUD will consider the overall quality and feasibility of the proposed program as measured by the principles and goals of the proposed program, whether proposed program activities meet the overall objectives of the Youthbuild program, whether the proposed program activities will be accomplished within a reasonable time and at reasonable expense, whether the proposed program activities are comprehensive and integrated, and the potential success of the proposed program. Planning applications will be evaluated by the extent to which the applicant describes a strategy for developing plans. Implementation applications will be evaluated by the actual plan. Areas to be considered in this evaluation are:

(1) Outreach, recruitment and selection activities: A description of the proposed (a) outreach, recruitment (including specific steps to be taken to attract potential eligible participants who are unlikely to be aware of this program because of race, ethnicity, sex, or disability) and selection strategies; (b) special outreach efforts to recruit eligible young women and young women with dependent children; and (c) recruitment arrangements made with public agencies, courts, homeless shelters, local school systems, community-based organizations, etc.;

(2) Educational and job training services and activities: A description of the educational component of the program, including: (a) the types of instructional services to be provided; (b) the number and qualifications of program instructors and ratio of instructors to participants; (c) realistic scheduling plan for classroom and on-the-job training; and (d) reasonable payments of participant wages, stipends, and incentives.

(3) Leadership development and support services: A description of the leadership development, counseling, and referral services to be offered to participants, including: (a) leadership development strategies and activities and plans to build group cohesion and peer support; and (b) the type of counseling and support services and/or need-based stipends to be provided.

(4) Coordination: A description of how the Youthbuild program will make use of ongoing Federal, State, Indian tribe, local, private and community-based services and activities associated with (a) educational, job training, child care, social services, counseling and referral services; (b) homeless and housing programs; and (c) apprenticeship programs of local building trade unions.

(5) On-site training: A description of (a) the housing construction or rehabilitation activities to be undertaken by participants at the site(s) to be used for the on-site training component of the program, (b) the qualifications and number of on-site supervisors; and (c) the amounts, reasonable wages and/or

stipends to be paid to participants during on-site work.

(6) Job placement assistance: A description of the applicant's strategies and procedures for (a) participant placement in meaningful employment, enrollment in post-secondary education programs, job development, starting business enterprises, or other opportunities leading to economic independence; and (b) follow-up assistance and support activities to program graduates.

(7) Program evaluation: A description of a comprehensive evaluation plan that is designed to measure the success of the program.

D. Program Resources: expressions of interest (for planning applications) or commitment of resources (for implementation applications) obtained from other Federal, State, local and private sources. (Maximum Points: 10) In assigning points for this criterion, HUD will consider the extent of interest or level of resources obtained for cash or in-kind contributions to cover the following kinds of areas:

(1) social services (i.e., counseling and training);

(2) use of existing vocational, adult, bilingual educational courses;

(3) use of housing stock and/or housing funds available through existing public or private programs;

(4) construction and/or rehabilitation loans, grants, or interest rate subsidies;

(5) donation of labor, resource personnel, supplies, materials, classroom and/or meeting space;

(6) architectural and engineering work:

(7) public improvements, tax abatements, or other commitments.

E. Empowerment Zone/Enterprise Community: Up to 10 points will be assigned if the proposed Youthbuild program's participant recruitment and housing areas are, in whole or in part, in a Federally designated urban or rural Empowerment Zone, Enterprise Community, or Supplemental Empowerment Zone, as selected by HUD.

F. AmeriCorps Participation Bonus: Up to 5 points may be assigned to Youthbuild applicants who provide evidence of application and/or selection as an AmeriCorps program sponsor.

G. Implementation Applications Only: Housing Program Priority Points: 10 priority points will be assigned to all implementation applications that contain evidence that housing funds from other Federal, state, local or private sources are available to cover the costs, in full, for the following housing activities for the proposed Youthbuild program: acquisition, architectural and engineering fees, construction, and rehabilitation. Implementation applications proposing to use Youthbuild grant funds, in whole or in part, for any one of the housing activities listed above will not be entitled to the ten priority points.

IV. Application Requirements

Applicants must complete and submit applications for Youthbuild grants in accordance with instructions contained in the FY 1995 Youthbuild application package. The application package will request information in sufficient detail for HUD to determine whether the proposed activities are feasible and meet all the requirements of applicable statutes and regulations. In some cases, different information is needed for planning applications than for implementation applications. The application package requires a description of the applicant's and participating parties' experiences in young adult and housing programs, a description of the proposed Youthbuild program, a description of other public and private resources to be used for the program, including other housing resources, a schedule for the program, budgets, identification of housing sites(s), and demonstration of site access. The application package also contains certifications that the applicant will comply with fair housing and civil rights requirements, program regulations, regulations in 24 CFR part 135 with regard to economic opportunities for low-income persons and business concerns, and other Federal requirements. Applicants must also certify that the proposed activities are consistent with the HUD-approved Consolidated Plan in accordance with 24 CFR part 91. Applicants should refer to the Youthbuild application package for further instructions.

V. Selection Process

In order to afford applicants every opportunity to submit a ratable application, while at the same time ensuring the fairness and integrity of the selection process, HUD is adopting the following application submission and selection procedures:

A. Initial Screening: During the period immediately following the application deadline, HUD will screen each application to determine eligibility. Applications will be rejected if they (1) are submitted by ineligible applicants, (2) do not use the current FY 95 application package, (3) propose a program for which significant activities are ineligible, (4) there are any outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance, and (5) are submitted by applicants that have major unresolved audit or monitoring findings.

B. Rating and Ranking: Each eligible application will be rated based upon the criteria described in section III of this NOFA, with a maximum of 105 points assigned for planning applications and 115 points assigned for implementation applications. Using the scores assigned, the applications will be placed in rank order, with separate rankings for planning and implementation applications. Applications will be preliminarily selected for funding in accordance with their rank order. To promote national geographic diversity, HUD reserves the right to select lower-rated applications if necessary or to limit the amount or number of awards per jurisdiction or State.

If two or more applications have the same score and there are insufficient funds to fund all of them, the application(s) with the highest score for the Program Quality and Feasibility criterion shall be selected for funding. If a tie still remains, the application(s) with the highest score for the Capability criterion shall be selected. In the event of a procedural error that, when corrected, would result in selection of an otherwise eligible applicant during the funding round under this NOFA, HUD may select that application when sufficient funds become available.

C. Clarification of Application Information: In accordance with the provisions of 24 CFR part 4, subpart B, HUD may contact an applicant to seek clarification of an item in the application, or to request additional or missing information, but the clarification or the request for additional or missing information shall not relate to items that would improve the substantive quality of the application pertinent to the funding decision. For the Youthbuild program, these clarification items include, but are not limited to: (a) missing or unsigned program certifications, and (b) budget errors or inconsistencies. For implementation applications only, these clarification items also include: (c) failure to identify the address or equivalent property site identification for the housing project(s) to be used for the on-site training; (d) incomplete documentation to show that the applicant has obtained access to the

housing site(s) if the applicant does not own it; (e) failure to structure the proposed program so that fifty percent of the time spent by program participants is devoted to educational and support services and activities and fifty percent to on-site training; (f) failure to target the outreach and recruitment efforts to disadvantaged young adults between the ages of 16 and 24 years old; and (g) failure to designate the housing to be produced in conjunction with the program for the use of the homeless and low- and very low-income families. If an applicant fails to provide the clarification as requested, the application may be rejected.

D. Potential Environmental Disqualification: HUD reserves the right to disqualify an implementation application where one or more environmental thresholds are exceeded if it is determined that the environmental review cannot be conducted and satisfactorily completed by HUD within the HUD review period. (See 24 CFR 585.307.)

E. Reduction in Requested Grant Amount: HUD will approve an application for an amount lower than the amount requested by the applicant or adjust line items in the proposed grant budget within the amount requested (or both) if it determines that:

(1) the amount requested for one or more eligible activities is not supported in the application or is unreasonably related to the service or activity to be carried out;

(2) an activity proposed for funding does not qualify as an eligible activity and can be separated in the budget;

(3) the amount requested exceeds the total cost limitation established for a planning or implementation grant; or

(4) insufficient funds remain for the entire request.

F. Notification of Approval or Disapproval: HUD will notify the selected applicants and the applicants that have not been selected. HUD's notification to a selected applicant of the amount of the grant award, based on the approved application, will constitute a preliminary approval by HUD, subject to HUD and recipient execution of the grant agreement to initiate program activities.

VI. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

B. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that some of the policies contained in this NOFA will have a potential significant impact on the formation, maintenance, and general well-being of the family. The expected expansion of the housing supply for homeless and low- and very low-income persons and the provision of opportunities to economically disadvantaged young adults to enhance their education and employment skills will provide a positive impact on the family maintenance and general well-being. However, since the impact on the family is beneficial and the program involves very little HUD discretion, no further review is necessary.

C. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of the Executive Order 12612, *Federalism,* has determined that the policies contained in this NOFA do not have ''Federalism'' implications because they do not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

D. Section 102 of the HUD Reform Act—*Accountability in the Provision of HUD Assistance.*

1. Documentation and Public Access

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five year period beginning not less than thirty days after the award for assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR part 12, subpart B, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these requirements.)

2. Disclosures

HUD will make available to the public for five years all applicant disclosure reports (form HUD–2880) submitted in connection with this NOFA. Update reports (also form HUD–2880) will be made available along with the applicants disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (95 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on disclosure requirements.)

E. Section 103 of the HUD Reform Act—*Prohibition of Advance Disclosures of Funding Decisions.*

HUD's regulation implementing section 103 of the Reform Act was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. Also, refer to (58 FR 61016), a final rule amending part 4 regarding the regulations of certain conduct by HUD employees and by applicants for HUD assistance during the selection process for the award of financial assistance by HUD.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 or TDD (202) 708–1455 for the hearing-impaired. (These are not toll-free numbers.) The Office of Ethics can provide information of a general nature to HUD employees, as well.

F. Section 112 of the HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act (section 112 of the Reform Act) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the

payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912), and is codified as 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions regarding the rule should be directed to: Acting Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone: (202) 708–3815; TDD: (202) 708–1455. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD Office.

G. Prohibition Against Lobbying Activities.

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87 and 7 CFR part 1944, Subpart G, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

Required Reporting

A certification is required at the time application for funds is made that Federally appropriated funds are not being or have not been used in violation of section 319 and the *disclosure* will be made of payments for lobbying with other than federally appropriated funds. Also, there is a standard disclosure form, SF–LLL, ''Disclosure Form to Report Lobbying'', which must be used to disclose lobbying with other than Federally appropriated funds at the time of application.

H. Drug-Free Workplace.

The Drug-Free Workplace Act of 1988 (41 U.S.C. 701) requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with the drug- free workplace requirements of the Drug-Free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

I. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program title and number is 14.243.

Authority: 42 U.S.C. 8011; Pub.L. 102–550.

Dated: February 7, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 95–4120 Filed 2–17–95; 8:45 am]

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February 21, 1995

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 585

Opportunities for Youth: Youthbuild Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 585

[Docket No. R–95–1675; FR–3450–F–02]

RIN 2506–AB52

Opportunities for Youth: Youthbuild Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This is the final rule for the Youthbuild Program. The Youthbuild Program provides funding assistance for a wide range of multi-disciplinary activities and services to assist economically disadvantaged young adults. The opportunities are designed to help disadvantaged young adults who have dropped out of high school to obtain the education and employment skills necessary to achieve economic self-sufficiency and develop leadership skills and a commitment to community development in low-income communities. Implementation grant funds can be used to fund eligible educational and supportive services and activities composed of basic skills instruction and remedial education, employment skills and leadership development, and counseling, referral and support services. Planning grant funds can be used to develop a Youthbuild program that includes the activities of an implementation grant.

Another important objective of the Youthbuild program is to expand the supply of permanent affordable housing for homeless persons and members of low- and very low-income families. By giving disadvantaged young adults participating in the program meaningful on-site training experiences constructing or rehabilitating housing as a community service, they are helping to meet the housing needs of homeless and low-income families in their community.

EFFECTIVE DATE: March 23, 1995.

FOR FURTHER INFORMATION CONTACT: The Office of Economic Development, Department of Housing and Urban Development, Room 7136, 451 Seventh Street, SW, Washington, DC 20410. Telephone (202) 708–2035; TDD (202) 708–1455. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Information Collection Requirements

The information collection requirements contained in this rule have been approved under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) by the Office of Management and Budget (OMB) and have been assigned OMB control number 2506–0142; expiration date August 31, 1996.

II. Background

Section 164 of the Housing and Community Development Act of 1992 (Pub.L. 102–550) authorized the Youthbuild program under subtitle D of title IV of the National Affordable Housing Act (42 U.S.C. 8011). On September 23, 1993, the Department published a proposed rule (58 FR 49830) and a Notice of Funds Availability (NOFA) (58 FR 49849) for this program.

The Department is now publishing the final rule to be effective 30 days from the date of publication. This final rule does not contain the detailed selection criteria and application processing steps contained in the NOFA for Fiscal Year 1993. Information appropriate for a specific funding competition will now be contained in the NOFA published for the current competition and will not be part of the final rule. The final rule published here is presented in its entirety to reflect the addition of section numbers and all modifications made as a result of public comments and as a result of the Department's experience in running the first competition for Youthbuild grant fund.

III. Discussion of Public Comments on Proposed Rule

The Department received public comments from seven organizations (one state agency, one local government agency, two housing authorities and three nonprofit organizations) in response to the proposed rule published on September 23, 1993, at 58 FR 49830. The following discussion summarizes the comments and provides HUD's responses to those comments.

Comment: Participant eligibility should be extended to include juvenile offenders held in custody at state-operated training facilities. These juveniles meet the qualifications of economically disadvantaged young adults who have dropped out of high school and are in need of assistance to obtain education and employment skills. [one state agency]

Response: Such juvenile offenders would be eligible for a Youthbuild program without any changes to the regulations.

Comment: The paragraph entitled ''Lease'' included in the provisions on tenant protections under ''Project-related restrictions applicable to Youthbuild residential rental housing'' [§ 585.309 (b)(1)] calls for a model lease to become an addendum to the grant agreement, remaining in force for ten years. Housing authorities and other owners may have to make changes in lease provisions as required by HUD and state statutes. Provisions must be made to amend leases. [one housing authority]

Response: For grants covered by the requirements of section 585.309(b)(1), if the provisions of the model lease change, such changes will require approval by HUD. No change to the regulations is needed.

Comment: There is a conflict between § 585.309(b)(2) and 24 CFR 966.4(a)(1) and (3) relating to the rules to be followed by a Public Housing Authority for termination of tenancy. [one housing authority]

Response: The provisions of 24 CFR part 966 take precedence for public housing authorities.

Comment: Does the Youthbuild program require a justification of new construction through market and/or feasibility studies? [one nonprofit organization]

Response: No.

Comment: Is a mixed use project an eligible Youthbuild activity and, and if so, are there specific criteria involved? [one nonprofit organization]

Response: Mixed-use projects are eligible as long as the Youthbuild dollars are only used in conjunction with the housing and housing related facilities. See definition of ''related facilities'' in § 585.4.

Comment: Does the Youthbuild program require that one-third of the housing units assisted be accessible to handicapped people? [one nonprofit organization]

Response: Youthbuild applicants are required to certify that they will comply with the requirements of Section 504 of the Rehabilitation Act of 1973, which specifies the handicapped accessibility standards for housing created with Federal funds.

Comment: Several sources questioned HUD's use of 10 years to define ''the remaining useful life'' of a Youthbuild assisted property. One commenter thought that 10 years was too long and two thought it was too short. [one housing authority and two nonprofit organizations.]

Response: HUD considered a longer period, but found that a 10-year period

was consistent with similar HUD programs. Any Youthbuild recipient organization that wishes to impose longer restrictions on the use of a property could do so on its own.

Comment: HUD should not limit tenants with incomes between 60 and 80 percent of the area median income to only one year. This restriction should be removed. [two public housing authorities]

Response: HUD agrees that the one year limit may be too restrictive and has raised it to two years in § 585.309(a).

Comment: When project-related restrictions apply to Youthbuild residential rental housing, the requirement that units be advertised for low-income people should be reduced from 90-day periods to 60-day periods. [one housing authority]

Response: Because the maximum length of time that a tenant with an income between 60 and 80 percent of the area median income is allowed to rent a Youthbuild-assisted building has been raised from one to two years (see above), HUD believes it is necessary to maintain the 90-day requirement to ensure availability to lower-income tenants.

Comment: When a recipient has successfully completed the activities of a planning grant, it would be rare for such an investment of time and money to yield no workable program. HUD should guarantee that all planning recipients be awarded an implementation grant in the next funding cycle. [one public housing authority]

Response: While HUD agrees that a planning recipient will likely have a viable project at the end of its planning grant term, it may need additional time to be ready to implement a program that is superior to those of other applicants that did not receive planning grants. Further, given the number of planning grants awarded during the first funding round, there are insufficient funds to award implementation grants to each planning grant recipient. Each funding round is statutorily required to be a competition for funds, and fairness dictates that each application for funding be evaluated on its merits, regardless of whether the applicant received a previous planning grant. HUD also believes that the process of planning for a Youthbuild implementation grant is a valuable exercise, whether or not a HUD-funded Youthbuild implementation program is the result.

Comment: HUD should not require programs to channel participants into programs leading to a high school diploma or post-secondary education, because some participants may not be capable of reaching those goals and such expectations may lead them to drop out of the program. [one public housing authority]

Response: HUD believes that earning a high school diploma or its equivalent is crucial to achieving self-sufficiency. However, the educational component of the program does not require that participants achieve a high school equivalency, but merely requires recipients to provide services and activities designed to meet the basic education needs of participants. This requirement is sufficiently flexible to allow recipients to provide educational services that are appropriate to their individual participants.

Comment: HUD should not require applicants for planning grants to present information on the need for the program, considering that feasibility studies are eligible activities under the planning grant. [one public housing authority]

Response: Need, based on distress of the community, is a statutory selection criterion and is fundamentally different from feasibility studies. To present information on the degree of economic distress in a community in response to the Need rating criterion, an applicant must do research on the poverty, unemployment, dropout rate, and other factors currently existing in the community. Feasibility studies are eligible activities under the planning grant. Instead of assessing the current level of economic distress of the community, a feasibility study would focus on the physical environment, housing stock, and the social, human, and financial resources available for a Youthbuild program.

Comment: Given that HUD may approve more than the $1 million maximum if the application proposes to serve a large number of participants, HUD should indicate whether the number of participants is a factor in the rating of an application, and, if so, should specify the average expected number of participants. [one public housing authority]

Response: HUD does not have strict participant enrollment requirements but does consider the reasonableness of cost per student in rating program quality and feasibility. HUD also recognizes that costs may vary depending on the location of the program.

Comment: HUD should allow program recipients to make stipends high enough to compete with illegal endeavors by participants. [one public housing authority]

Response: HUD does not stipulate a stipend level, and leaves the amount up to the individual applicants. Unreasonable and excessive stipend levels will be considered in rating program quality and feasibility.

Comment: HUD should state in the rule that stipends may not result in a rent increase for program participants. [one public housing authority]

Response: The enabling statute and rule state that the Youthbuild program is subject to section 142 of the Job Training Partnership Act. Section 142(b) of the JTPA states that such wages and stipends are not considered as income for any Federal or Federally-assisted program based on need, other than those under the Social Security Act.

Comment: HUD should strike the requirement that applicants may not commit or expend State, local or other funds to undertake property acquisition, rehabilitation or construction until a grant agreement is executed by HUD. [one city housing agency]

Response: This provision only applies when Youthbuild funds have been requested to acquire, rehabilitate, or newly construct a property. The purpose is to allow HUD to conduct an environmental review on the property, which the statute requires to be done before an application can be approved. Applicants that expend their own or other funds on a proposed property are in jeopardy of using their funds on a property that could potentially be deemed ineligible as a result of the environmental review. If an applicant proposes to fund the acquisition, rehabilitation, or new construction entirely with non-Youthbuild funds, there is no restriction on using those funds before notification of grant award. Section 585.307(a)(3) has been changed to clarify this distinction.

Comment: The provision that makes Davis-Bacon prevailing wage rates not applicable to program participants should be expanded to include state and local wage rate restrictions. [one city housing agency]

Response: The provision making Davis-Bacon wage rates inapplicable to Youthbuild trainees is required by a specific statutory provision. HUD has no authority to declare State and local wage regulations inapplicable on the basis of an employee's status as a Youthbuild trainee. However, in this final rule, the Department has revised the provision in the proposed rule regarding the need to apply Davis-Bacon prevailing wage rates to Youthbuild trainees where additional Federal assistance is provided. Subsequent to the issuance of the proposed rule, the Department's attention was drawn to a decision of the United States Department of Labor's Wage Appeals Board in in the matter of

100 Court Ave. Street Project, Kurtz Building, UDAG Proj. No. B–83–AA–19–0020, Des Moines, Iowa (WAB Case No. 88–9, March 16, 1990). That case concerned a project involving training under the Job Training Partnership Act (JTPA), which excludes trainees from Davis-Bacon requirements, as well as assistance under the Urban Development Action Grant (UDAG) program, which has its own Davis-Bacon provisions. The Wage Appeals Board determined that JTPA's statutory Davis-Bacon exclusion for trainees applied to exclude a JTPA trainee from Davis-Bacon rate requirements even where the trainee was employed on the UDAG project. Since the Housing and Community Development Act of 1992 applies the JTPA Davis-Bacon provision (and its exclusion of trainees from Davis-Bacon rates) to the Youthbuild program, the Department has concluded that the Wage Appeals Board's ruling is applicable to the Youthbuild program. Accordingly, the final rule provides that Davis-Bacon wage rates are not applicable to Youthbuild trainees, regardless of whether other Federal assistance is involved. However, neither the JTPA provision nor the Wage Appeals Board decision excludes trainees from wage rates other than Davis-Bacon wage rates. Therefore, the rule notes that Youthbuild trainees must be paid HUD-determined wage rates on public and Indian housing work where those rates would be applicable to trainees under the United States Housing Act of 1937 (e.g., on work such as ''non-routine maintenance''). However, where HUD wage rates are applicable to trainees, the rates determined by HUD to apply to Youthbuild trainees will be trainee wage rates rather than journeyperson rates.

Comment: Limitations on profit imposed on housing should not apply to projects which are owned by governmental agencies. [one city housing agency]

Response: This is a statutory restriction, that has been interpreted to apply only when construction is financed, in whole or in part, with Youthbuild funds. (See § 585.309)

Comment: The rule should include all of the essential purposes of the program that were stated in the legislation. [one nonprofit organization]

Response: The purpose of the Youthbuild program in § 585.2 has been revised accordingly.

Comment: HUD should state that construction site supervisors essential for the training of the participants are not considered construction or rehabilitation costs. [one nonprofit organization]

Response: Section 585.306 has been added to make that clarification.

Comment: Related facilities which stand alone should be considered appropriate construction sites for trainees. [one nonprofit organization]

Response: HUD construes the term ''housing and related facilities'' to mean residential property, which does not include stand-alone facilities that do not include housing.

Comment: The definition of the term ''self-sufficiency'' should be providing for oneself and one's immediate ''dependents,'' not ''family.'' [one nonprofit organization]

Response: The definition of ''self-sufficiency'' has been deleted from the final rule.

Comment: In the list of ''Other activities'' as delineated in the discussion of program components, ''short-term placement with private contractors as internships to enhance the participant's preparation for unsubsidized employment'' should be added. [one nonprofit organization]

Response: The list of ''other activities'' is not exclusive, and a variety of other activities can be done under this heading.

Comment: The Corporation for National and Community Service should be added to the list of other Federal entities from which applicants are encouraged to enlist support. [one nonprofit organization]

Response: The list of potential resources in § 585.105 comes from the statute, and is not intended to be a comprehensive list or limitation of all possible resources that can be used in the program.

Comment: The requirements for the Performance Evaluation Report and Quarterly Progress Report should include additional information. [one nonprofit organization]

Response: All specific reporting elements of the required reports have been deleted from the Rule and are now contained in Youthbuild Program Reports (HUD–40201).

Comment: Additional points should be given for counseling and leadership development services; the points for housing resources and the housing priority points seem excessive; the requirements for public support are not realistic. [one nonprofit organization]

Response: The rule has been amended to state only the statutory rating criteria. The point awards and subcategories of statutory and administratively imposed criteria will be announced for each competition in the NOFA for that fiscal year.

Comment: The discussion of Geographic Diversity provides that lower ranked applications will be selected if any of the 10 HUD Regions receive substantially fewer awards; this language does not reflect the differences in need and interest between the HUD regions. [one nonprofit organization]

Response: HUD regions have been abolished under the Department's recent reorganization. HUD reserves the right to invoke this provision to ensure fairness and meet the needs of distressed communities.

Other Matters

a. *Environmental Impact.* A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

b. *Regulatory Flexibility Act.* The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities because the Youthbuild program affects primarily economically disadvantaged young adults by providing assistance for a wide range of multi-disciplinary activities to assist those young adults. The opportunities are designed to help disadvantaged young adults who have dropped out of high school to obtain the education and employment skills necessary to achieve economic self-sufficiency and develop leadership skills and a commitment to community development in low-income communities. A related objective of the program is to add to the supply of permanent affordable housing for homeless persons and members of low- and very low-income families by giving young adults participating in the program meaningful on-site training experiences in construction and rehabilitation of housing. It is anticipated that fewer than 120 projects will receive assistance under this program.

c. *Executive Order 12612, Federalism.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that this rule does not have ''federalism implications'' because it

does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

d. *Executive Order 12606, the Family.* The General Counsel, as the Designated Official under Executive Order 12606, *the Family,* has determined that some of the policies of this rule would have a potential significant impact on family formation, maintenance, and general well-being. The expected expansion of the housing supply for homeless and low- and very-low income persons and the provision of opportunities to economically disadvantaged young adults to enhance their education and employment skills will provide a positive impact on the family maintenance and general well-being. However since the impact on the family is beneficial and the rule involves very little HUD discretion, no further review is necessary.

e. *Semi-Annual Agenda of Regulations.* This rule was listed as item number 1843 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57663) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

f. *Catalog of Federal Domestic Assistance.* The Catalog of Federal Domestic Assistance Program number assigned to this program is 14.243.

List of Subjects in 24 CFR Part 585

Grant programs—housing and community development, Homeless, Low- and very low-income families, Reporting and record keeping requirements.

Accordingly, Subchapter C of Chapter V of Title 24 of the Code of Federal Regulations is amended to add a new part 585, consisting of subparts A through F, to read as follows:

PART 585—YOUTHBUILD PROGRAM

Subpart A—General

Sec.
585.1 Authority.
585.2 Program purpose.
585.3 Program components.
585.4 Definitions.

Subpart B—Application and Grant Award Process

585.100 Notice of funds availability.
585.101 Emergency funds.
585.102 Application requirements.
585.103 Combined planning and implementation applications.
585.104 Selection criteria.
585.105 Support of other Federal, State, local or private entities.
585.106 Selection process.
585.107 Prohibition of disclosure.

Subpart C—Youthbuild Planning Grants

585.201 Purpose.
585.202 Award limits.
585.203 Grant term.
585.204 Locational considerations.
585.205 Eligible activities.

Subpart D—Youthbuild Implementation Grants

585.301 Purpose.
585.302 Award limits.
585.303 Grant term.
585.304 Locational considerations.
585.305 Eligible activities.
585.306 Designation of costs.
585.307 Environmental procedures and standards.
585.308 Relocation assistance and real property acquisition.
585.309 Project-related restrictions applicable to Youthbuild residential rental housing.
585.310 Project-related restrictions applicable to Youthbuild transitional housing for the homeless.
585.311 Project-related restrictions applicable to Youthbuild homeownership housing.
585.312 Wages, labor standards, and nondiscrimination.
585.313 Labor standards.

Subpart E—Administration

585.401 Recordkeeping by recipients.
585.402 Grant agreement.
585.403 Reporting requirements.
585.404 Program changes.
585.405 Obligation and deobligation of funds.
585.406 Primarily religious organizations.

Subpart F—Applicability of Other Federal Requirements

585.501 Application of OMB Circulars.
585.502 Certifications.
585.503 Conflict of interest.
585.504 Use of debarred, suspended, or ineligible contractors.

Authority: 42 U.S.C. 3535(d) and 8011.

Subpart A—General

§ 585.1 Authority.

(a) *General.* The Youthbuild program is authorized under subtitle D of title IV of the National Affordable Housing Act (42 U.S.C. 8011), as added by section 164 of the Housing and Community Development Act of 1992 (Pub. L. 102–550).

(b) *Authority restriction.* No provision of the Youthbuild program may be construed to authorize any agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials used by any educational institution or school system participating in a Youthbuild program.

§ 585.2 Program purpose.

The purposes of the Youthbuild program are:

(a) To provide economically disadvantaged young adults with opportunities to obtain education, employment skills and meaningful on-site work experience as a service to their communities and a means to achieve self-sufficiency;

(b) To foster the development of leadership skills and commitment to community; and

(c) To expand the supply of permanent affordable housing for homeless and low- and very low-income persons by providing planning grants for program design and implementation grants for carrying out a Youthbuild Program.

§ 585.3 Program components.

A Youthbuild implementation program uses comprehensive and multi-disciplinary approaches designed to prepare young adults who have dropped out of high school for educational and employment opportunities by employing them as construction trainees on work sites for housing designated for homeless persons and low- and very low-income families. A Youthbuild planning grant is designed to give recipients sufficient time and financial resources to develop a comprehensive Youthbuild program that can be effectively implemented. Youthbuild programs must contain the three components described in paragraphs (a), (b) and (d) of this section. Other activities described in paragraph (c) of this section are optional:

(a) *Educational Services,* including:

(1) Services and activities designed to meet the basic educational needs of participants. For example, a Youthbuild program may include basic skills instruction and remedial education, bilingual education for individuals with limited English proficiency, secondary educational services and activities designed to lead to the attainment of a high school diploma or its equivalency (GED), or counseling and assistance in attaining post-secondary education and required financial aid;

(2) Vocational classroom courses geared to construction terminology and concepts; and

(3) Strategies to coordinate with local trade unions and apprenticeship programs where possible.

(b) *Leadership Training, Counseling and Other Support Activities,* including:

(1) Activities designed to develop employment and leadership skills, including support for youth councils;

(2) Counseling services to assist trainees in personal, health, housing, child care, family or legal problems and/or referral services to appropriate social service resources;

(3) Support services and stipends necessary to enable individuals to participate in the program and, for a period not to exceed 12 months after completion of training, to assist participants through continued support services;

(4) Job development and placement activities and post-graduation follow-up assistance; and

(5) Pre-employment training plan aimed at developing job seeking skills.

(c) *Other activities.* A local program may be designed to include other, special activities such as:

(1) Entrepreneurial training and courses in small business development;

(2) Assistance to correct learning disabilities; or

(3) Drivers' education courses.

(d) *On-site training,* through actual housing rehabilitation and/or construction work. This component must include:

(1) Access to housing sites where construction/ rehabilitation work is being carried out;

(2) Work site training plan for a closely supervised construction site;

(3) Construction or rehabilitation plan and timetable; and

(4) Approaches to work site safety.

(e) The Youthbuild implementation program must be structured so that 50 percent of each full-time participant's time is spent in educational services and activities [paragraphs (a), (b), and (c) of this section] and 50 percent is spent in on-site training [paragraph (d) of this section]. Youthbuild planning grant applications must contain strategies, plans and approaches to be used during the planning process to ultimately implement these program requirements.

§ 585.4 Definitions.

As used in this part:

1937 Act means the United States Housing Act of 1937.

1992 Act means the Housing and Community Development Act of 1992.

Access to housing applies to Youthbuild implementation grants required to document that the program has access to the housing project(s) for young adult on-site training, e.g. program participants have permission to work on the housing site.

Adjusted income has the meaning given the term ''adjusted income'' in section 3(b) of the United States Housing Act of 1937.

Applicable residential rental housing quality standards shall mean those standards of the applicable HUD or other Federal, State or local program providing assistance for residential rental housing involved in a Youthbuild implementation grant as used under section 455(a), Youthbuild Program Requirements, of the Act.

Applicant means a public or private nonprofit agency, including:

(1) A community-based organization;

(2) An administrative entity designated under section 103(b)(1)(B) of the Job Training Partnership Act;

(3) A community action agency;

(4) A State or local housing development agency;

(5) A community development corporation;

(6) A public and/or Indian housing authority and resident management corporations, resident councils and resident organizations;

(7) A State or local youth service or conservation corps; and

(8) Any other entity (including States, units of general local government, and Indian Tribes) eligible to provide education and employment training.

Combined Youthbuild application means the submission by an applicant of a single application to HUD for a planning and implementation grant request for one Youthbuild program.

Community Based Organization means a private nonprofit organization that:

(1) Maintains, through significant representation on the organization's governing board or otherwise, accountability to low-income community residents and, to the extent practicable, low-income beneficiaries of programs receiving assistance under this subtitle; and

(2) Has a history of serving the local community or communities where a program receiving assistance under this subtitle is located.

Consolidated Plan means the document that is submitted to HUD that serves as the planning documents (comprehensive housing affordability strategy and community development plan) of the jurisdiction and an application for funding under any of the Community Planning and Development formula grant programs which is prepared in accordance with the process described in 24 CFR part 91.

Full-Time Participation for program eligible participants is limited to not less than 6 months and not more than 24 months.

Graduates are those participants who have completed the full-time education/ on-site training components of a Youthbuild program and who are eligible to take advantage of meaningful opportunities in continued education, in owning their own businesses, in meaningful employment or in other means by which the participant can attain economic self-sufficiency.

Homeless Act means the Stewart B. McKinney Homeless Assistance Act, as amended, (42 U.S.C. 11301 et seq.).

Homeless individual has the meaning given the term in section 103 of the Stewart B. McKinney Homeless Assistance Act.

Housing development agency means any agency of a State or local government, or any private nonprofit organization that provides housing for homeless or low-income families.

Indian Tribe has the same meaning given such term in section 102(a)(17) of the Housing and Community Development Act of 1974 [42 U.S.C. 5302(a)(17)].

Individual who has dropped out of high school means an individual who is neither attending any school nor subject to a compulsory attendance law and who has not received a secondary school diploma or a certificate of equivalency for such diploma.

Institution of Higher Education has the meaning given the term in section 120(a) of the Higher Education Act of 1965.

JTPA means the Job Training Partnership Act (P.L. 102–235), as amended.

Limited-English proficiency has the meaning given the term in section 7003 of the Bilingual Education Act.

Low-income Family has the meaning given the term in section 3(b) of the United States Housing Act of 1937.

Offender means any adult or juvenile with a record of arrest or conviction for a criminal offense.

Participant means:

(1) An individual who is:

(i) 16 to 24 years of age, inclusive, at time of enrollment;

(ii) A very low-income individual or a member of a very low-income family; and

(iii) An individual who has dropped out of high school.

(2) An exception of not more than 25 percent of all full-time participants is permitted for young adults who do not meet the program's income or educational requirements but who have educational needs despite attainment of a high school diploma or its equivalent.

Private Nonprofit Organization means any private nonprofit organization that:

(1) Is organized and exists under Federal, State, local, or tribal law;

(2) Has no part of its earnings inuring to the benefit of any individual, corporation, or other entity;

(3) Has a voluntary board;

(4) Has an accounting system or has designated a fiscal agent in accordance

with requirements established by HUD; and

(5) Practices nondiscrimination in the provision of assistance.

Project-related restrictions mean Youthbuild housing restrictions applicable only in cases where a Youthbuild implementation grant is providing assistance to residential rental, transitional or homeownership housing projects for specific costs relating to property acquisition, architectural and engineering fees, construction, rehabilitation, operating costs, or replacement reserves.

Recipient means any entity that receives assistance under this part.

Related facilities include cafeterias or dining halls, community rooms or buildings, child care centers, appropriate recreation facilities, and other essential service facilities that are physically attached to the housing to be constructed or rehabilitated. Related facilities which stand alone are not appropriate construction sites for trainees.

Secretary means the Secretary of Housing and Urban Development.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territories of the Pacific Islands, or any other territory or possession of the United States.

Title IV means title IV of the National Affordable Housing Act, as amended (42 U.S.C. 1437).

Transitional housing means a project that has as its purpose facilitating the movement of homeless individuals and families to permanent housing within a reasonable amount of time (usually 24 months). Transitional housing includes housing primarily designed to serve deinstitutionalized homeless individuals and other homeless individuals with mental or physical disabilities and homeless families with children.

Useful life shall mean a period of 10 years upon construction completion and issuance of an occupancy permit applicable to a residential rental, transitional or homeownership property acquired, constructed or rehabilitated (including architectural and engineering fees), or maintained (i.e., operating costs or replacement reserves), in whole or in part, with Youthbuild implementation grant funds (as used in section 455(a), Youthbuild Program Requirements, of the Act).

Very low-income family has the meaning given the term in section 3(b) of the United States Housing Act of 1937.

Subpart B—Application and Grant Award Process

§ 585.100 Notice of funds availability.

When funds are made available for assistance, HUD will publish a notice of funds availability (NOFA) in the **Federal Register** in accordance with the requirements of 24 CFR part 12. The notice will:

(a) Give the location for obtaining application packages, which will provide the application requirements and specify the application deadline for the competition;

(b) State the amount of funding available and the kind of grants to be funded under the notice;

(c) Describe the factors relative to each selection criteria and the weight or relative importance given to each criteria as they will be applied to the competition announced in the notice; and

(d) Provide other appropriate program information and guidance.

§ 585.101 Emergency funds.

(a) The Secretary may reserve up to five percent of each Fiscal Year's program funds for implementation grants for emergency purposes to respond quickly to vital needs to stimulate the provision of services to disadvantaged young adults and to expand the supply of affordable housing for the homeless and low- and very low-income persons.

(b) Unforeseen emergency needs may result from natural and other disasters including hurricanes, tornadoes, earthquakes, fires, floods, etc. Other unpredictable and sudden circumstances, such as civil disturbances, may affect the provision of services to young adults or result in housing deprivation and increased demand for housing for low-income persons and the homeless. The Secretary will determine whether the emergency is of sufficient severity to warrant use of Youthbuild funds.

(c) The Secretary will establish a separate and expedited process to award funds for emergency purposes. Specific instructions governing the use of these funds may be published by notice in the **Federal Register**, as necessary. If the set-aside funds are not used for emergency purposes by the time that awards for each fiscal year's funds are to be announced, these funds will be made available for the general implementation grant competition for that year.

§ 585.102 Application requirements.

Applications for grants must be submitted in the form prescribed by HUD in the application kit, must meet the requirements of this part, and must be submitted within the time period established by HUD in the NOFA or application kit. HUD reserves the right to reject applications from any applicant with an outstanding obligation to HUD that is in arrears or for which a payment schedule has not been agreed to, or whose response to an audit finding is overdue or unsatisfactory. Applicants should refer to the Youthbuild application package for further instructions.

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§ 585.103 Combined planning and implementation applications.

(a) If permitted in the NOFA, applicants may apply for both types of grants using one application. In such competitions, the application package will provide instructions on submitting a combined Youthbuild application. Combined planning and implementation grant applications will compete separately during the competition, based on the criteria defined in the NOFA. In such cases, an implementation grant request will be disqualified from the implementation grant competition if its companion planning grant request is not selected for the planning grant competition. However, any implementation grant request failing to be selected under the implementation grant competition will not cause its companion planning grant application to be disqualified from the planning grant competition provided the planning grant qualifies and HUD has determined that the activities proposed in the planning grant request stand alone and are not contingent upon activities proposed in the implementation grant request.

(b) When both parts of a combined application are approved, the receipt of the implementation grant award is conditioned upon the successful completion of the eligible activities funded by the planning grant and submission of the recipient's plan and performance evaluation report to HUD for approval. Upon HUD approval, reserved implementation grant funds would be released to the recipient in accordance with the grant agreement.

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§ 585.104 Selection criteria.

HUD will review applications and assign rating scores based upon the following criteria, which will be

described in more detail in the notice published in the **Federal Register** for each funding competition:

(a) Capability.

(b) Need.

(c) Program quality and feasibility.

(d) Program resources.

(e) Housing program priority points (Implementation only).

(f) *Other factors*: HUD may use additional factors to rate an application as defined in the NOFA for an individual competition.

§ 585.105 Support of other Federal, State, local or private entities.

Applicants are encouraged to use existing housing programs administered by HUD or other Federal, State, local or private housing programs as part of their Youthbuild programs. Use of other Federal, State, local or private funds for vocational, adult and bilingual education programs or for job training under the JTPA Act and the Family Support Act of 1988 is also encouraged. The selection process for Youthbuild grants described in a NOFA provides for applicants to receive points where grant applications contain evidence of proposed plans to finance, in whole or in part, Youthbuild activities from other Federal, State, local, or private sources.

§ 585.106 Selection process.

(a) *Clarification of Application Information:* Procedures for clarifying application information or curing deficiencies in technical information that does not affect an applications's score will be explained in the notice of funds availability. For implementation applications such deficiencies include, but are not limited to:

(1) Failure to structure the proposed Youthbuild program so that fifty percent of the time spent by program participants is devoted to educational services and activities and fifty percent to on-site training;

(2) Failure to target the outreach and recruitment efforts to be used by the program to disadvantaged young adults between the ages of 16 and 24 years;

(3) Failure to identify the housing to be used for the on-site training;

(4) Incomplete documentation showing that the applicant has obtained access to the housing site(s) if the applicant does not own the site(s).

(5) Failure to designate the housing to be produced in conjunction with the program for the use of the homeless and low- and very low-income families.

(b) *Potential environmental disqualification:* HUD reserves the right to disqualify an implementation application where one or more environmental thresholds are exceeded and it is determined that the environmental review cannot be conducted and satisfactorily completed by HUD within the HUD review period. (Refer to § 585.307, Environmental procedures and standards, for further information.)

(c) *Selecting applicants.* HUD will rank applications according to total points assigned. Applications will be selected for funding from the rank order. However, HUD reserves the right to select lower rated applications if necessary to achieve geographic diversity.

(d) *Breaking tie scores.* The NOFA for the funding round will indicate which selection criteria will be used to break a tie if two or more applications receive the same number of points and sufficient funds are not available to fund all such applications.

(e) *Reduction in requested grant amount.* HUD will approve an application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines that:

(1) The amount requested for one or more eligible activities is not supported in the application or is unreasonable related to the service or activity proposed for the population to be served or the housing to be provided;

(2) An activity proposed for funding does not qualify as an eligible activity;

(3) The amount requested exceeds the cost limitation established for a Youthbuild grant; or

(4) There are insufficient funds remaining to fund the applicant's original grant request.

(f) *Notification of approval or disapproval.* After completion of the ranking and selection of applications, but no later than four months after the date applications are due under the applicable NOFA, HUD will notify the selected applicants and the applicants that have not been selected. HUD's notification to the applicant of the grant award amount, based on the approved application, will constitute a preliminary approval by HUD, subject to HUD and recipient execution of a grant agreement to initiate program activities.

§ 585.107 Prohibition of disclosure.

The selection process for assistance under this part is subject to the prohibition of disclosure of covered information regarding the selection process, as described in 24 CFR part 4. Applicants for or recipients of assistance who have received covered selection information may be subject to appropriate sanctions.

Subpart C—Youthbuild Planning Grants.

§ 585.201 Purpose.

HUD will award Youthbuild planning grants to eligible applicants for the purpose of developing Youthbuild programs in accordance with subtitle D of title IV of the National Affordable Housing Act. Applications will be selected in a national competition in accordance with the selection process described in the current NOFA.

§ 585.202 Award limits.

Maximum awards. The maximum amount of a Youthbuild planning grant is $150,000 unless a lower amount is established in the NOFA. HUD may for good cause approve a grant in a higher amount.

§ 585.203 Grant term.

Funds awarded for planning grants are expected to be used within 12 months of the effective date of the planning grant agreement. The award of a Youthbuild planning grant does not obligate HUD to fund the implementation of the program upon completion of the approved planning activities (unless the companion implementation grant was submitted as a combined application and funded in the implementation grant competition).

§ 585.204 Locational considerations.

HUD will not approve multiple applications for planning grants in the same jurisdiction unless it determines that the jurisdiction is sufficiently large to justify approval of more than one application.

§ 585.205 Eligible activities.

Planning grant activities to develop a Youthbuild program may include:

(a) The undertaking of studies and research efforts to determine the feasibility and need for a Youthbuild program in a selected location including whether a proposed program can meet the education and training needs of young adults, aid in the expansion of affordable housing to meet the needs of the community, and achieve financial feasibility;

(b) The formation and establishment of a consortium among Federal, State, or local training and education programs, service providers, housing programs and providers including but not limited to homeless providers, housing owners, developers, and other organizations necessary for the establishment of a Youthbuild program;

(c) The preliminary identification and potential selection of housing for the Youthbuild program including an assessment of the type of housing

program to be used and the method by which program participants will have access to the housing project;

(d) The planning and identification of resources required for basic skills instruction and education, job training and job development, leadership and employment skills development, counseling, referral, and other related support services that will be provided as part of the Youthbuild program;

(e) The preparation of an application for an implementation grant.

(f) Preliminary architectural and engineering (A & E) work for the Youthbuild proposed housing including:

(1) The development of cost and time estimates associated with the amount of work to be done through new construction or the rehabilitation of existing housing;

(2) Technical studies to evaluate environmental problems and to determine whether mitigation is feasible on the potential site; and

(3) The identification and initiation of the permit process required to commence work on the selected site;

(g) The planning and development of multi-disciplinary educational and employment training curricula, leadership development training, counseling, and other supportive services and activities for the Youthbuild program including the identification and training of staff assigned to each program component;

(h) The identification and establishment of relationships with local unions, apprenticeship programs, housing owners, local employers and public or private community organizations for job training, development, and placement opportunities;

(i) *Administration.* Youthbuild funds for administrative costs may not exceed 15 percent of the total amount of Youthbuild program and project costs or such higher percentage as HUD determines is necessary to support capacity development by a private nonprofit organization.

Subpart D—Youthbuild Implementation Grants

§ 585.301 Purpose.

HUD will award Youthbuild implementation grants to eligible applicants for the purpose of carrying out Youthbuild programs in accordance with subtitle D of title IV of the National Affordable Housing Act. Applications will be selected in a national competition in accordance with the selection process described in the current NOFA.

§ 585.302 Award limits.

Maximum awards. The maximum award for a Youthbuild implementation grant will be defined in the NOFA for each competition and may vary by competition. HUD may for good cause approve a grant in a higher amount than the specified limit.

§ 585.303 Grant term.

Funds awarded for implementation grants are expected to be used within 30 months of the effective date of the implementation grant agreement.

§ 585.304 Locational considerations.

Each application for an implementation grant may only include activities to carry out one Youthbuild program, i.e., to start a new Youthbuild program or to fund new classes of Youthbuild participants for an existing program. The same applicant organization may submit more than one application in the current competition if the proposed programs are in different jurisdictions. HUD will not approve multiple applications for implementation grants in the same jurisdiction unless it determines that the jurisdiction is sufficiently large to justify approval of more than one application.

§ 585.305 Eligible activities.

Implementation grant activities to conduct a Youthbuild program may include:

(a) Acquisition of housing and related facilities to be used for the purposes of providing homeownership, residential rental housing, or transitional housing for the homeless and low- and very low-income persons and families;

(b) Architectural and engineering work associated with Youthbuild housing;

(c) Construction of housing and related facilities to be used for the purposes of providing homeownership, residential rental housing, or transitional housing for the homeless and low- and very low-income persons and families;

(d) Rehabilitation of housing and related facilities to be used for the purposes of providing homeownership, residential rental housing, or transitional housing for the homeless and low- and very low-income persons and families;

(e) Operating expenses and replacement reserves for the housing assisted in the Youthbuild program;

(f) Relocation payments and other assistance required to comply with § 585.308, legal fees, and construction management;

(g) Outreach and recruitment activities, emphasizing special outreach efforts to be undertaken to recruit eligible young women (including young women with dependent children);

(h) Education and job training services and activities including work experience, basic skills instruction and remedial education, bilingual education; secondary education leading to the attainment of a high school diploma or its equivalent; counseling and assistance in attaining post-secondary education and required financial aid;

(i) Wages, benefits and need-based stipends provided to participants;

(j) Leadership development, counseling, support services, and development of employment skills;

(k) Defraying costs for the ongoing training and technical assistance needs of the recipient that are related to developing and carrying out a Youthbuild program;

(l) Job placement (including entrepreneurial training and business development), counseling, and support services for a period not to exceed 12 months after completion of training to assist participants; and

(m) *Administration.* Youthbuild funds for administrative costs may not exceed 15 percent of the total amount of Youthbuild program and project costs or such higher percentage as HUD determines is necessary to support capacity development by a private nonprofit organization.

§ 585.306 Designation of costs.

The following budget items are to be considered training or other costs under the Youthbuild implementation grant and should not be considered costs associated with acquisition, rehabilitation, or new construction for the purposes of §§ 585.307, 585.309, 585.310, and 585.311.

(a) Trainees' tools and clothing.

(b) Participant stipends and wages.

(c) On-site trainee supervisors.

(d) Construction management.

(e) Relocation costs.

(f) Legal fees.

(g) Clearance and demolition.

§ 585.307 Environmental procedures and standards.

(a) *Environmental procedures.* Applicants are encouraged to select hazard-free and problem-free properties for their Youthbuild projects. Environmental procedures apply to HUD approval of implementation grants when the applicant proposes to use Youthbuild funds to cover any costs for the lease, acquisition, rehabilitation, or new construction of real property that is proposed for housing project development. Environmental procedures do not apply to HUD

approval of implementation grants when applicants propose to use their Youthbuild funds solely to cover any costs for classroom and/or on-the-job construction training and supportive services. For those applicants that propose to use their Youthbuild funds to cover any costs of the lease, acquisition, rehabilitation, or new construction of real property, the applicant shall submit all relevant environmental information in its application to support HUD decision-making in accordance with the following environmental procedures and standards.

(1) Before any Youthbuild implementation application that requests funds for acquisition, rehabilitation, or construction can be selected for funding, HUD shall determine whether any environmental thresholds are exceeded in accordance with 24 CFR part 50, which implements the National Environmental Policy Act (NEPA) and the related Federal environmental laws and authorities listed under 24 CFR 50.4.

(i) If HUD determines that one or more of the thresholds are exceeded, HUD shall conduct a compliance review of the issue and, if appropriate, establish mitigating measures that the applicant shall carry out for the property;

(ii) In performing its review, HUD may use previously issued environmental reviews prepared by local, State, or other Federal agencies for the proposed property;

(iii)(A) The application for the Youthbuild implementation grant shall provide HUD with:

(*1*) Applicant documentation for environmental threshold review; and

(*2*) Any previously issued environmental reviews prepared by local, State, or other Federal agencies for the proposed property.

(B) The applicant is encouraged to contact the local community development agency to obtain any previously issued environmental reviews for the proposed property as well as for other relevant information that can be used in the applicant documentation for the environmental threshold review. In using previous reviews by other sources, HUD must, however, conduct the environmental analysis and prepare the environmental review and be responsible for any required environmental findings.

(2) HUD reserves the right to disqualify any application where one or more environmental thresholds are exceeded if HUD determines that the compliance review cannot be conducted and satisfactorily completed within the HUD review period for applications.

(3) If Youthbuild funds are requested for acquisition, rehabilitation, or construction, applicants are prohibited from committing or expending State, local or other funds to undertake property acquisition (including lease), rehabilitation or construction under this program until notification of grant award.

(b) *Environmental thresholds:* HUD shall determine whether a NEPA environmental assessment is required. Also, HUD shall determine whether the proposed property triggers thresholds for the applicable Federal environmental laws and authorities listed under 24 CFR 50.4 as follows:

(1) For minor rehabilitation of a building and any property acquisition (including lease), Federal environmental laws and authorities may apply when the property is:

(i) Located within designated coastal barrier resources;

(ii) Contaminated by toxic chemicals or radioactive materials;

(iii) Located within a floodplain;

(iv) A building for which flood insurance protection is required;

(v) Located within a runway clear zone at a civil airport or within a clear zone or accident potential zone at a military airfield; or

(vi) Listed on, or eligible for listing on, the National Register of Historic Places; located within, or adjacent to, an historic district, or is a property whose area of potential effects includes a historic district or property.

(2) For major rehabilitation of a building and also for substantial improvement in floodplains, in addition to paragraphs (b)(1) (i) through (vi) of this section, other Federal environmental laws and authorities may apply when the property:

(i) Has significant impact to the human environment;

(ii) Is a project involving five or more dwelling units severely noise-impacted; or

(iii) Affects coastal zone management.

(3) For new construction, conversion or increase in dwelling unit density, in addition to paragraphs (b)(1) (i) through (vi) and paragraphs (b)(2) (i) through (iii) of this section, other Federal environmental laws and authorities may apply when the property:

(i) Is located near hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature;

(ii) Affects a sole source aquifer;

(iii) Affects endangered species; or

(iv) Is located within a designated wetland.

(c) *Qualified data sources.* The environmental threshold information provided by applicants must be from qualified data sources. A qualified data source means any Federal, State, or local agency with expertise or experience in environmental protection (e.g., the local community development agency; the local planning agency; the State environmental protection agency; the State Historic Preservation Officer) or any other source qualified to provide reliable information on the particular property.

(d) *Minor rehabilitation* means proposed fixing and repairs:

(1) Whose estimated cost is less than 75 percent of the property value after completion;

(2) That does not involve changes in land use from residential to nonresidential, or from nonresidential to residential;

(3) That does not involve the demolition of one or more buildings, or parts of a building, containing the primary use served by the property; and

(4) That does not increase unit density more than 20 percent.

§ 585.308 Relocation assistance and real property acquisition.

The Youthbuild program is subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and implementing regulations at 49 CFR part 24. HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition, available from the Relocation and Real Estate Division at the address listed in this section, describes these policies and procedures. Any occupied property used in a Youthbuild program is subject to the URA regardless of the source of the property or construction funds. The URA requires recipients to provide relocation assistance to persons (families, individuals, businesses, and nonprofit organizations) that are displaced as a direct result of acquisition, rehabilitation or demolition for an assisted project. Property occupants who are not displaced also have certain rights. Therefore, if a proposed Youthbuild implementation program involves occupied property, before submitting the application the applicant should consult with staff of the Relocation and Real Estate Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7154, 451 Seventh Street, SW, Washington, DC 20410; telephone: (202) 708–0336. TDD: (202) 708–1455. Fax: (202) 708–1744. (These are not toll-free numbers.)

§ 585.309 Project-related restrictions applicable to Youthbuild residential rental housing.

Where the award of a Youthbuild implementation grant includes the eligible activities of acquisition, architectural and engineering fees, construction, rehabilitation, operating costs or replacement reserves for residential rental units, and where the costs for these activities are to be funded, in whole or in part, from the Youthbuild grant award, the recipient shall be required to comply with the following Youthbuild project-related restrictions for a period of not less than 10 years:

(a) *Occupancy by low- and very low-income families.* (1) For the 10 year period of the residential rental Youthbuild project, the recipient or rightful owner will be required to maintain at least a 90 percent level of occupancy for individuals and families with incomes less than 60 percent of the area median income, adjusted for family size—''the 90 percent category.'' The recipient or rightful owner must offer each available rental unit to the 60 percent of area median income group for an advertising period of not less than 90 days upon each vacancy occurrence throughout the 10 year period. Community-wide advertisements for tenants of this income group must be conducted.

(2) In order to maintain the financial stability of the project and to provide flexibility in averting long-term vacancies in the 90 percent category, the rightful owner is permitted, under certain circumstances described below, to execute temporary two year leases with individuals and families with incomes between 60 and 80 percent of the area median income. This temporary deviation is permitted when no qualifying tenant (with an income of 60 percent or less of median) leases the unit upon the end of the 90 day advertising period. The owner may then advertise the unit to individuals and families with incomes less than 80 percent of the area median income, adjusted for family size, for another advertisement period of 90 days. Temporary leases for tenants whose incomes are between 60 and 80 percent of the area median income (exclusive of the 10 percent allowance) shall be limited to two years. Temporary tenants are not covered by Youthbuild tenant protections regarding termination of tenancy [paragraph (b)(2) of this section], tenant selection plan [paragraph (b)(4) of this section] and tenant participation plan [paragraph (d) of this section].

(3) The remaining 10 percent of the units must be made available to and occupied by low-income families—''the 10 percent category.'' The income test must be conducted for both the 90 percent and 10 percent categories only at time of entry for each unit available for occupancy.

(b) *Tenant protections.* Upon submission of the implementation grant application, the applicant or rightful owner of the residential rental units covered under this paragraph shall certify to the following tenant protections:

(1) *Lease.* As part of the Youthbuild implementation grant application, the applicant or rightful owner of the property shall provide a model lease containing terms and conditions acceptable to HUD. The model lease shall become an addendum to the executed grant agreement and shall remain in force for a period of 10 years. The lease between a tenant and the owner of residential rental housing shall be for a period of not less than one year, unless otherwise mutually agreed to by the tenant and the owner, and shall contain such terms and conditions as HUD determines to be appropriate. Any change to a lease must be approved by HUD.

(2) *Termination of tenancy.* Upon submission of the implementation grant application, the applicant or other rightful owner of the property must certify that the following restrictions will be applied to all lease terminations initiated by the owner. The restrictions must state that an owner shall not terminate the tenancy or refuse to renew the lease of a tenant occupying a Youthbuild residential rental housing unit except for serious or repeated violations of the terms and conditions of the lease, or for violation of applicable Federal, State, or local laws, or for other good cause. Any termination or refusal to renew the lease must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action. With regard to leases for tenants in units controlled by public housing authorities, 24 CFR part 966 shall take precedence over this provision.

(3) *Maintenance and replacements.* Upon submission of the implementation grant application, the applicant or rightful owner of Youthbuild residential rental housing must certify that the premises will be maintained in compliance with all applicable housing quality standards and local code requirements for the 10 year period. HUD's Section 8 housing quality standards apply when no other public assistance is involved other than the Youthbuild grant. In other cases, the applicable HUD or other Federal, State or local program guidelines shall apply.

(4) *Tenant selection.* The applicant or rightful owner of Youthbuild residential rental housing must develop and adopt a tenant selection plan containing selection policies and criteria that are consistent with HUD requirements. The tenant selection plan shall remain in force for the 10 year period. Upon submission of the implementation grant application, the applicant or owner of the property must certify that the plan complies with the following HUD requirements:

(i) The plan is consistent with the purpose of providing housing for homeless and very low-income families and individuals;

(ii) The plan is reasonably related to program eligibility and the applicant's or owner's ability to perform the obligations of the lease;

(iii) The plan gives reasonable consideration to the housing needs of families that would qualify for a preference under section 6(c)(4)(A) of the United States Housing Act of 1937;

(iv) The plan provides for the selection of tenants from a written waiting list in the chronological order of their application, to the extent practicable, and for the prompt notification in writing of any rejected applicant of the grounds for any rejection; and

(v) The plan acknowledges that a family holding tenant-based assistance under section 8 of the United States Housing Act of 1937 will not be refused tenancy because of the status of the prospective tenant as a holder of such assistance.

(c) *Limitation on rental payments.* Upon submission of the implementation grant application, the applicant or other rightful owner of Youthbuild residential rental housing project involved in a Youthbuild program shall certify that tenants in each rental unit shall be not required to pay rent in excess of the amount provided under section 3(a) of the United States Housing Act of 1937.

(d) *Tenant participation plan.* The Youthbuild program shall require a tenant participation plan applicable to the rightful owner of Youthbuild residential rental housing, provided such owner is a nonprofit public or private organization. Upon submission of the implementation grant application, the nonprofit owner shall certify that the tenant participation plan is the plan to be adopted and followed for tenant participation in management decisions for the 10 year period.

(e) *Limitations on profit.* Youthbuild residential rental housing projects

meeting the requirements of this section shall be restricted from producing profit in excess of the following limitations:

(1) *Monthly rental limitation.* The aggregate monthly rental for each eligible project may not exceed the operating costs of the project (including debt service, management, adequate reserves, and other operating costs) plus a 6 percent return on any equity investment of the project owner.

(2) *Profit limitations on partners.* A nonprofit organization receiving Youthbuild assistance for a residential rental housing project shall agree to use any profit received from the operation, sale, or other disposition of the project for the purposes of providing housing for low- and moderate-income families. Profit-motivated partners in a nonprofit partnership may receive:

(i) Not more than a 6 percent return on their equity investment from project operations; and

(ii) Upon disposition of the project, not more than an amount equal to their initial equity investment plus a return on that investment equal to the increase in the Consumer Price Index for the geographic location of the project since the time of the initial investment of such partner in the project.

(f) *Restrictions on conveyance.* Conveyance restrictions apply to Youthbuild residential rental housing project(s) meeting the requirements of this section. Ownership of the property may not be conveyed unless the instrument of conveyance requires a subsequent owner to comply with the same restrictions imposed upon the original owner for the balance of the 10 year period.

(g) *Ten year restriction.* The restrictions listed in paragraphs (a) through (f) of this section shall remain in force for a period of not less than 10 years after construction completion and issuance of an occupancy permit for all Youthbuild residential rental housing projects receiving Youthbuild assistance.

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§ 585.310 Project-related restrictions applicable to Youthbuild transitional housing for the homeless.

Where the award of a Youthbuild implementation grant includes the eligible activities of acquisition, architectural and engineering fees, construction, rehabilitation, operating costs or replacement reserves of transitional housing units, and where the costs for these activities are funded, in whole or in part, with Youthbuild grant funds, the housing project shall be required to comply with the following Youthbuild project-related restrictions:

(a) *Limitations on profit.* (1) Youthbuild transitional housing projects meeting the requirements of this section shall be restricted from producing profit in excess of the following limitations:

(i) *Monthly rental limitation.* The aggregate monthly rental for each Youthbuild project may not exceed the operating costs of the project (including debt service, management, adequate reserves, and other operating costs) plus a six (6) percent return on any equity investment of the project owner.

(ii) *Profit limitations on partners.* A nonprofit organization receiving Youthbuild assistance for a housing project shall agree to use any profit received from the operation, sale, or other disposition of the project for the purposes of providing housing for low- and moderate-income families.

(2) Profit-motivated partners in a nonprofit partnership may receive:

(i) Not more than a six (6) percent return on their equity investment from project operations; and

(ii) Upon disposition of the project, not more than an amount equal to their initial equity investment plus a return on that investment equal to the increase in the Consumer Price Index for the geographic location of the project since the time of the initial investment of such partner in the project.

(b) *Restrictions on conveyance.* Conveyance restrictions apply to Youthbuild transitional housing projects meeting the requirements of this section. Ownership of the property may not be conveyed unless the instrument of conveyance requires a subsequent owner to comply with the same restrictions imposed upon the original owner for the balance of the 10 year period.

(c) *Program requirements for Transitional housing.* (1) Youthbuild transitional housing projects meeting the requirements of this section shall adhere to the requirements regarding service delivery, housing standards and rent limitations applicable to comparable housing receiving assistance under the Transitional Housing component of the Supportive Housing Program (title IV of the Stewart B. McKinney Homeless Assistance Act).

(2) The Secretary may waive these requirements to permit the conversion of a Youthbuild transitional housing project to a permanent housing project only if such housing complies with the Youthbuild project-related restrictions for residential rental housing projects found in § 585.309.

(d) *Ten Year Restriction.* The restrictions listed in paragraphs A through C of this section shall remain in force for a period of not less than 10 years after construction completion and issuance of an occupancy permit for a Youthbuild transitional housing project receiving Youthbuild assistance.

§ 585.311 Project-related restrictions applicable to Youthbuild homeownership housing.

Where the award of a Youthbuild implementation grant includes the eligible activities of acquisition, architectural and engineering fees, construction, or rehabilitation of homeownership housing, and where the costs for these activities are to be funded, in whole or in part, with Youthbuild grant funds, the housing project shall be required to comply with the following Youthbuild project-related restrictions:

(a) *Program compliance.* Each homeownership project meeting the requirements of this section shall comply with the requirements of the HOPE II or HOPE III programs authorized under subtitles B or C respectively of title IV of the National Affordable Housing Act.

(b) *Restrictions on conveyance.* Conveyance restrictions apply to Youthbuild homeownership housing projects meeting the requirements of this part. Ownership of the property may not be conveyed unless the instrument of conveyance requires a subsequent owner to comply with the same restrictions imposed upon the original owner for the balance of the 10 year period.

(c) *Ten Year Restriction.* The restrictions listed in paragraphs (a) and (b) of this section shall remain in force for a period of not less than 10 years after construction completion and issuance of an occupancy permit for Youthbuild homeownership housing projects meeting the requirements of this part.

§ 585.312 Wages, labor standards, and nondiscrimination.

Sections 142 (wages and benefits), 143 (labor standards), and 167 (nondiscrimination) of the Job Training Partnership Act shall apply to Youthbuild programs as if the programs were conducted under the Job Training Partnership Act. This provision may not be construed to prevent Youthbuild recipients from using funds from non-Federal sources to increase wages and benefits under such programs, if appropriate.

§ 585.313 Labor standards.

(a) *Trainees.* Davis-Bacon prevailing wage rate requirements are not applicable to trainees on housing

projects or in training programs assisted by Youthbuild grant funds, regardless of whether other Federal assistance is involved. However, where the trainees' performance of public and Indian housing work is subject to HUD-determined prevailing wage rates under Section 12 of the United States Housing Act of 1937, trainees must be paid HUD-determined wage rates; as a matter of policy, the wage rates determined by HUD to apply to Youthbuild trainees will be the trainee wage rates rather than journeyperson rates.

(b) *Laborers and mechanics other than Youthbuild Trainees.* (1) All laborers and mechanics (other than Youthbuild trainees) employed by contractors or subcontractors in any construction, alteration or repair, including painting and decorating, of housing that is assisted by a Youthbuild grant shall be paid at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a through 276a–5). The employment of such laborers and mechanics on assisted housing shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 333). Where these requirements are applicable, recipients, sponsors, owners, contractors and subcontractors must comply with all related Department of Labor and HUD rules, regulations and requirements.

(2) The labor standards requirements in paragraph (b)(1) of this section do not apply where a Youthbuild grant is provided solely for classroom and/or on-the-job training and supportive services for Youthbuild trainees, and the grant does not include costs for housing project development involving acquisition (including lease), rehabilitation or new construction of real properties; however, if other Federal programs provide assistance to the housing project, labor standards apply to laborers and mechanics other than Youthbuild trainees to the extent required by the other Federal programs. Applicants need to review applicable Federal regulations to determine which relevant requirements apply to their individual situations.

Subpart E—Administration

§ 585.401 Recordkeeping by recipients.

(a) Each recipient of a planning or implementation Youthbuild grant award must keep records that will facilitate an effective audit to determine compliance with program requirements and that fully disclose:

(1) The amount and disposition by the recipient of the planning or implementation Youthbuild grants received, including sufficient records that document the reasonableness, accuracy and necessity of each expenditure;

(2) The amount and disposition of proceeds, if any, from financing obtained in connection with the Youthbuild program, e.g., housing sales to eligible low-income families, property sales to other public or private entities;

(3) The total cost from all sources of funding for the Youthbuild program including all educational, training, counseling, placement, and housing activities and services;

(4) The amount and nature of any other assistance, including cash, property, services, materials, in-kind contributions or other items contributed as a condition of receiving an implementation grant;

(5) Any other proceeds received for, or otherwise used in connection with, the Youthbuild program.

(6) *Participant information.* The recipient must maintain records on each Youthbuild participant, including such information as age, high school drop out status, income level, gender, employment status, and racial and ethnic characteristics.

(7) *Housing information.* If Youthbuild grant funds are used for acquisition, architectural and engineering fees, construction, rehabilitation, operating costs or replacement reserves for housing used in a Youthbuild program, the recipient must maintain records on family size, income, and racial and ethnic characteristics of families renting or purchasing Youthbuild properties.

(8) *Relocation Assistance and Real Property Acquisition.* The recipient shall maintain records sufficient to demonstrate compliance with relocation assistance and real property acquisition requirements, as described in Chapter 6 of HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition. See § 585.308.

(b) Implementation grant recipients must submit reports pursuant to Section 3 regulations at 24 CFR part 135.

(c) *Access by HUD and the Comptroller General.* For purposes of audit, examination, monitoring, and evaluation, each recipient must give HUD (including any duly authorized representatives and the Inspector General) and the Comptroller General of the United States (and any duly authorized representatives) access to any books, documents, papers, and records of the recipient that are pertinent to assistance received.

(Approved by the Office of Management and Budget under control number 2506–0142)

§ 585.402 Grant agreement.

(a) *General.* The recipient will provide education and job training in accordance with the requirements of this part as incorporated in a grant agreement executed by HUD and the recipient.

(b) *Enforcement.* HUD will enforce the obligations in the grant agreement through such actions as may be appropriate, including repayment of funds that have already been disbursed to the recipient.

§ 585.403 Reporting requirements.

(a) *Quarterly Progress Reports.* Each recipient of a Youthbuild grant must submit a report on a quarterly basis. The form and substance of the quarterly progress report will be provided to recipients. The Performance Evaluation Report noted in paragraph (b) of this section will constitute the final Quarterly Report.

(b) *Performance Evaluation Report.* Each recipient of a Youthbuild grant must submit a Performance Evaluation Report on activities undertaken and completed in accordance with the grant agreement. The form and substance of the Performance Evaluation Report shall be provided to recipients.

(Approved by the Office of Management and Budget under control number 2506–0142)

§ 585.404 Program changes.

(a) There are three basic types of changes that recipients may wish to make to their programs:

(1) Grant Agreement amendments.

(2) Material changes, which include, but are not limited to changes in housing sites, changes in significant participating parties, and changes in approved activities. All material changes require HUD approval.

(3) Self-implementing program changes, which may include changes in recipient staffing and content of curriculum. All self-implementing changes require documentation in the recipient's files.

(b) Approval for Grant Agreement Amendments and material changes is contingent upon the application ranking remaining high enough after the approved change to have been competitively selected for funding in the year the application was selected.

§ 585.405 Obligation and deobligation of funds.

(a) *Obligation of funds.* When HUD and the applicant execute a grant

agreement, funds are obligated to carry out approved activities consistent with §§ 585.205 or 585.305 of this part and in accordance with the grant agreement.

(b) *Increases.* After the initial obligation of funds, HUD will not make revisions to increase the amount obligated.

(c) *Deobligation.* (1) HUD may deobligate all or parts of grants if the grant amounts are not expended within the term of the grant or if there is a condition of default as defined in the grant agreement.

(2) HUD may award deobligated funds to applications previously submitted in response to the most recently published NOFA, and in accordance with subpart B of this part.

§ 585.406 Primarily religious organizations.

(a) *Provision of assistance to primarily religious organizations.* (1) HUD will provide Youthbuild assistance to a recipient that is a primarily religious organization if it agrees to provide housing, educational and training activities or supportive services in a manner that is free from religious influences and in accordance with the following principles:

(i) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give employment preference to persons on the basis of religion;

(ii) It will not discriminate against any person applying for Youthbuild activities, supportive services or housing on the basis of religion and will not limit such activities or services or give preference to persons on the basis of religion; and

(iii) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of housing, education, training activities, or support services.

(2) HUD will provide Youthbuild assistance to a recipient that is a primarily religious organization if the assistance will not be used to construct or rehabilitate a property to be owned by the recipient, except as described in paragraph (b) of this section.

(b) *Rehabilitation and new construction of structures owned by a primarily religious organization.* Grant funds may be used to rehabilitate or newly construct a structure owned by a primarily religious organization if the following conditions are met:

(1) The structure (or portion of the structure) that is to be rehabilitated or newly constructed with HUD assistance has been leased to a recipient that is an existing or newly established wholly secular organization which may be established by the primarily religious organization under the provision of paragraph (c) of this section;

(2) The HUD assistance is provided to the wholly secular organization (and not the primarily religious organization) to make the improvements;

(3) The leased structure will be used exclusively for secular purposes available to all persons regardless of religion;

(4) The lease payments paid to the primarily religious organization do not exceed the fair market rent of the structure before any rehabilitation was completed;

(5) The portion of the costs of any improvements that benefit any unleased portion of the structure will be allocated to, and paid for by, the primarily religious organization;

(6) The primarily religious organization agrees that, if the recipient does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the primarily religious organization will pay an amount equal to the residual value of the improvements to the secular organization, and the secular organization will remit the amount to HUD.

(c) *Assistance to a wholly secular private nonprofit organization established by a primarily religious organization.*

(1) A primarily religious organization may establish a wholly secular private nonprofit organization to serve as a recipient. The wholly secular organization may be eligible to receive other forms of assistance available under this part.

(i) The wholly secular organization must agree to provide housing and support services in a manner that is free from religious influences and in accordance with the principles set forth in paragraph (a) of this section.

(ii) The wholly secular organization may enter into a contract with the primarily religious organization to operate the housing or to provide support services. In such a case, the primarily religious organization must agree in the contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with the principles set forth in paragraph (a) of this section.

(iii) The rehabilitation or new construction grants are subject to the requirements of paragraph (a) of this section.

(2) HUD will not require the primarily religious organization to establish the wholly secular organization before the selection of its application. In such a case, the primarily religious organization may apply on behalf of the wholly secular organization. The application will be reviewed on the basis of the primarily religious organization's financial responsibility and capacity, and its commitment to provide appropriate resources to the wholly secular organization after formation. Access to the housing site is demonstrated if the primarily religious organization provides a commitment to transfer control of the site to the wholly secular organization after its formation. If such an application is selected for funding, the obligation of funds will be conditioned upon the establishment of a wholly secular organization that meets the definition of private nonprofit organization in § 585.4.

Subpart F—Applicability of Other Federal Requirements

§ 585.501 Application of OMB Circulars.

(a) The policies, guidelines and requirements of OMB Circular Nos. A–87 (Cost Principles Applicable to Grants, Contracts and other Agreements with State and Local Governments) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments) apply to the award, acceptance and use of assistance under the program by applicable entities, and to the remedies for non-compliance, except where inconsistent with the provisions of NAHA, other Federal statutes or this part. 24 CFR part 84 (Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations), OMB Circular A–122 (Cost Principles Applicable to Grants, Contracts and other Agreements with Nonprofit Institutions), and, as applicable, OMB Circular A–21 (Cost Principles for Educational Institutions) apply to the acceptance and use of assistance by covered organizations, except where inconsistent with the provisions of NAHA, other Federal statutes or this part. Recipients are also subject to the audit requirements of 24 CFR part 44 (Audit Requirements for State and Local Governments) and 24 CFR part 45 (Audit Requirements for Institutions of Higher Education and other Nonprofit Institutions), as applicable. HUD may perform or require additional audits as it finds necessary or appropriate.

(b) Copies of OMB Circulars may be obtained from E.O.P. Publications, Room 2200, New Executive Office

Building, Washington, DC 20503, telephone (202) 395–7332. (This is not a toll-free number.) There is a limit of two free copies.

§ 585.502 Certifications.

In addition to the standard assurances of compliance with Federal rules and OMB Circulars contained in applications for Federal grant assistance, applicants must also make the following certifications:

(a) *Consolidated Plan.* (1) *Applicants that are States or units of general local government.* The applicant must have a HUD-approved Consolidated Plan in accordance with 24 CFR part 91 for the current year and must submit a certification that the proposed activities are consistent with the HUD-approved Consolidated Plan.

(2) *Applicants that are not States or units of general local government.* The applicant must submit a certification by the jurisdiction or jurisdictions in which the proposed program will be located that the applicant's proposed activities are consistent with the jurisdiction's current HUD-approved Consolidated Plan. A required certification must be made by the unit of general local government if it is required to have, or has, a Consolidated Plan. Otherwise the certification may be made by the State.

(3) The Insular Areas of Guam, the Virgin Islands, American Samoa and the Northern Mariana Islands are not required to have a Consolidated Plan or to make a Consolidate Plan certification. An application by an Indian tribe or other applicant for a Youthbuild program that will be located on a reservation of an Indian tribe does not require a certification by the tribe or State. However, where an Indian tribe or an Indian Housing Authority (IHA) is the applicant for a Youthbuild program that will not be located on a reservation, the requirement for a certification by the jurisdiction or jurisdictions in which the Youthbuild program will be located under the preceding paragraph applies.

(b) *Fair Housing and Equal Opportunity.* A certification that the applicant is in compliance and will continue to comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing, or, in the case of a Youthbuild application from an Indian tribe or an Indian Housing Authority (IHA), a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(c) *Drug-free workplace.* A certification that the applicant will comply with the requirements of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701) and HUD's implementing regulations at 24 CFR part 24, subpart F.

(d) *Employment opportunities.* A certification that the applicant will comply with the requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 17017), as implemented by 24 CFR part 135. Section 3 requires that employment and other economic opportunities generated by HUD assisted housing and community development programs shall, to the greatest extent feasible, be directed toward section 3 residents and business concerns.

(e) *Anti-lobbying.* In accordance with the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The Byrd Amendment) and the implementing regulations at 24 CFR part 87, applicants for and recipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. Applicants and recipients must also disclose where nonappropriated funds have been spent or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. Substantial monetary penalties may be imposed for failure to file the required certification or disclosure.

(f) *Relocation Assistance and Real Property Acquisition.* A certification that the applicant will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR part 24 and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition. See § 585.308.

(g) *Use of Housing.* A certification that the housing to be produced in conjunction with the Youthbuild program is to be provided for the homeless and low- and very low-income families.

(h) *Lead-Based Paint.* A certification that the applicant will comply with the requirements of the Lead-Based Paint Poisoning Prevention Act and implementing regulations at 24 CFR part 35.

(i) *State and Local Standards.* A certification that all educational programs and activities supported with funds provided under this subtitle shall be consistent with applicable State and local educational standards. Standards and procedures with respect to the awarding of academic credit and certifying educational attainment in such programs shall be consistent with applicable State and local educational standards.

(j) *Labor Standards.* A certification that the applicant and related parties will comply with the provisions of the Davis-Bacon Act, as amended (40 U.S.C. 276a through 276a-5), the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 333), and HUD Handbook 1344.1, Revision 1, Federal Labor Standards in Housing and Community Development Programs, as applicable, available from the Office of Assistant to the Secretary for Labor Relations, room 7118, 451 Seventh Street, SW., Washington, DC 20410; Telephone (202) 708–0370; FAX, (202) 619–8022; TDD, (202) 708–1455. (These are not toll-free numbers).

(Approved by the Office of Management and Budget under control number 2506–0142)

§ 585.503 Conflict of interest.

(a) (1) In addition to the conflict of interest requirements in 24 CFR parts 84 and 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or cooperating entity named in the application and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter, except that a resident of an eligible property may acquire an ownership interest.

(2) *Exception.* HUD may grant an exception to the exclusion in paragraph (a)(1) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the Youthbuild program. An exception may be considered only after the applicant or recipient has provided a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict, a description of how the public disclosure was made, and an opinion of the applicant's or recipient's attorney that the interest for which the exception is sought would not violate State or local law. In determining whether to

grant a requested exception, HUD will consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the Youthbuild program that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class intended to be the beneficiaries of the activity and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process, with respect to the specific activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (a)(2) of this section;

(vi) Whether undue hardship will result either to the applicant, recipient, or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

(b) [Reserved]

§ 585.504 Use of debarred, suspended, or ineligible contractors.

The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

Dated: February 7, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

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Part IV

Securities and Exchange Commission

17 CFR Parts 275 and 279

Disclosure By Investment Advisers Regarding Soft Dollar Practices; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. 34–35375; IA–1469; S7–5–95]

RIN 3235–AG36

Disclosure by Investment Advisers Regarding Soft Dollar Practices

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and form.

SUMMARY: The Commission is proposing for comment a new rule and form under the Investment Advisers Act of 1940 that would require certain investment advisers to provide clients with an annual report regarding their use of client brokerage. The proposed report would include disclosure about an adviser's use of its clients' brokerage commissions during the previous year, including information about research and other services obtained by the adviser with those commissions. The proposed annual report is intended to provide investment advisory clients with important information about the brokerage commissions they pay and their advisers' receipt of ''soft dollar'' benefits from those commissions.

DATES: Comments should be received on or before May 19, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. All comment letters should refer to File No. S7–5–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Eric C. Freed, Special Counsel, or Robert E. Plaze, Assistant Director, (202) 942–0721, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is proposing for comment:

(1) rule 204–4 (17 CFR 275.204–4) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) (''Advisers Act''), which would require an investment adviser registered or required to be registered under the Advisers Act to deliver to its clients an annual report on the adviser's direction of client brokerage transactions and its receipt of research and other services in connection with those transactions; and

(2) Form ADV–B under the Advisers Act, which would set forth the information required to be included in the annual report.

Executive Summary

The Commission is proposing a new rule and form under the Advisers Act to require each investment adviser (''adviser''), registered or required to be registered under the Advisers Act, that has the discretion to direct client brokerage transactions and receives services other than execution in exchange for that brokerage, to provide its clients with a report that would contain information about its use of client brokerage. The report would disclose for the adviser's most recently completed fiscal year, (1) the twenty brokers to which the adviser directed the largest amounts of commissions and certain other transaction-related payments (collectively, ''commissions''), (2) the three brokers substantially all of whose services for the adviser were execution services (''execution-only brokers'') to which the adviser directed the largest amounts of commissions, (3) the aggregate amount of commissions directed by the adviser to each broker listed and the percentage of the adviser's total discretionary brokerage this amount represents, (4) the average commission rate paid to each broker listed, and (5) for each broker other than an execution-only broker, information concerning products or services obtained from the broker. The report would also disclose the percentages of the adviser's total commissions that are directed to execution-only brokers, to other brokers, and at the request of clients. The report would require only information about an adviser's use of client brokerage on an aggregate basis; it would not require separate information about the brokerage of the adviser's various clients. The report would be provided to existing advisory clients annually and to prospective advisory clients no later than the time that an advisory agreement is entered into.

I. Background

Soft dollar practices are arrangements under which products or services other than execution of securities transactions (''soft dollar services'') are obtained by an adviser from or through a broker in exchange for the direction by the adviser of client brokerage transactions to the broker.[1] Soft dollar practices are common in the institutional brokerage market. According to an informal annual survey of investment advisers and other institutions, nearly ninety percent of these institutions engage in soft dollar arrangements, and more than forty percent of commissions are directed primarily for the purpose of obtaining research services.[2]

Soft dollar practices originally developed as a means by which brokers provided discounts on brokerage commissions that were fixed pursuant to exchange and commission rules. In 1975, the Commission prohibited fixed commission rates[3] and, later that year, Congress codified the Commission's action.[4] After the Commission abolished fixed rates, concerns were raised whether the soft dollar practices that had developed in the context of fixed rates would continue to be consistent with various state and federal laws, including the Advisers Act.[5]

Underlying these concerns is an adviser's fundamental obligation under the Advisers Act (and state law) to act in the best interest of its clients.[6] This duty requires the adviser to obtain best execution of client transactions,[7] and precludes the adviser from using client assets for its own benefit or the benefit of other clients, at least without client consent.[8] Upon the Commission's eliminating fixed commission rates, some argued that an adviser could be deemed to have violated this duty if the adviser caused a client's account to pay anything but the lowest commission rates. If this view was upheld, soft dollar arrangements could have been effectively precluded by the decision to eliminate fixed commission rates.

[1] See Securities Exchange Act Rel. No. 23170 (Apr. 23, 1986) [51 FR 16004 (Apr. 30, 1986)] (''Release 23170'') at § I; Robert J. Moran & Cathy G. O'Kelly, Soft Dollars and Other Traps for the Investment Adviser, 1 DePaul Bus. L.J. 45, 45 n.5 (1989).

[2] Greenwich Associates, Soft-Dollars: Opportunities and Challenges (special presentation of May 10, 1994); Greenwich Associates, Institutional Equity Investors 1994 (statistical supp.) 3, 17.

[3] Securities Exchange Act Rel. No. 11203 (Jan. 23, 1975) (40 FR 7394 (Feb. 20, 1975)).

[4] Securities Acts Amendments of 1975, Pub. L. No. 94–29, 89 Stat. 97, 107–08 (enacting Section 6(e)(1) of the 1934 Act (15 U.S.C. 78f(e)(1))).

[5] S. Rep. No. 75, 94th Cong., 1st Sess. 70 (1975).

[6] *See SEC* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963).

[7] *Delaware Management Co.*, 43 S.E.C. 392, 396 (1967). An adviser is obligated to use reasonable diligence to select a broker who will ''execute securities transactions for clients in such a manner that the client's total cost or proceeds in each transaction is most favorable under the circumstances.'' Securities Exchange Act Rel. No. 23170 (Apr. 23, 1986) [51 FR 16004 (Apr. 30, 1994)] (''Release 23170'') at § V (citing *Kidder, Peabody & Co.*, 43 S.E.C. 911, 915 (1968)). An adviser should consider the full range and quality of the broker's services, including the value of research received, in assessing whether a broker will provide best execution. *Id.*

[8] Restatement (Second) of Trusts § 170 comment a, § 216 (1959).

Congress, in codifying the abolition of fixed commission rates, responded to these concerns by enacting Section 28(e) of the Securities Exchange Act of 1934 (the ''1934 Act'') [15 U.S.C. 78bb(e)], which provides a safe harbor for certain soft dollar arrangements.[9] Section 28(e) provides, in pertinent part, that an adviser with investment discretion over an account will not be deemed to have acted unlawfully or to have breached its fiduciary duty by causing the account to pay a higher commission to a broker that provides research benefiting the adviser's accounts. To rely on the Section 28(e) safe harbor, an adviser must determine in good faith that the commissions paid are reasonable in relation to the value of the brokerage and research services provided, either in terms of the particular transaction or the adviser's overall responsibilities towards its discretionary accounts.[10]

Section 28(e) modifies a fiduciary's strict duty to act in the best interest of each client with respect to the management of each client's assets. Thus, it permits an adviser to cause a client to pay higher commissions than otherwise are available to obtain research that may not be used exclusively for the benefit of the client or used to benefit the client at all. Section 28(e), however, does not afford a safe harbor with respect to all conflicts of interest between the adviser and its clients that may arise from soft dollar arrangements. For example, soft dollar arrangements may cause an adviser, in order to obtain soft dollar services, to violate its best execution obligations by directing client transactions to brokers who could not adequately execute the transactions. Soft dollar arrangements also may give advisers incentives to trade client securities inappropriately to generate credits for soft dollar services.[11]

Soft dollar practices also diminish the ability of a client to evaluate the expenses it incurs in obtaining portfolio management services and may hinder the ability of the client to negotiate fee agreements, because the costs of soft dollar services are ''hidden'' from investors in brokerage commissions. By permitting advisers to use their clients' transactions to pay for research services that they otherwise would have to purchase with ''hard dollars,'' soft dollar arrangements permit advisers to charge fees that do not fully reflect the cost of portfolio management. Advisers that do not engage in soft dollar arrangements may be put at a competitive disadvantage if they pay for services with hard dollars and attempt to pass the cost of these services on to clients through higher fees.

Congress recognized the conflicts that soft dollar practices present and provided in section 28(e) authority for the Commission to require advisers to disclose to their clients their policies and practices with respect to the use of client commissions.[12] The Commission has never adopted rules under section 28(e),[13] but has instead required certain disclosure in Part II of Form ADV, which specifies the content of the disclosure document or ''brochure'' that an adviser is required to provide to clients before entering into advisory relationships.[14] If soft dollar arrangements are a factor in selecting brokers to effect client transactions, the brochure must disclose the nature of the adviser's soft dollar practices, including: (i) the services that the adviser obtains through soft dollar arrangements; (ii) whether clients may pay higher commissions (''pay up'') as a result of the arrangements; (iii) whether soft dollar services are used to benefit all client accounts or only those accounts the brokerage of which was used to purchase the services; and (iv) any procedures that the adviser uses to allocate brokerage.[15]

Two broker-dealers, Goldman, Sachs & Co. and Morgan Stanley Group Inc., themselves providers of research services to advisers, have strongly criticized the effectiveness of current disclosure requirements.[16] Current disclosure primarily focuses on the policies and practices that the adviser intends to follow with respect to the use of client brokerage.[17] This disclosure does not, Goldman, Sachs and Morgan Stanley assert, adequately disclose to clients the extent to which an adviser has soft dollar commitments or the specific benefits that accrue to the adviser from the use of the client brokerage. These brokers have proposed that the Commission adopt a requirement that advisers periodically report to clients the soft dollar benefits that they have received and the specific value of those benefits, as well as certain information about how the brokerage of each client was directed (the ''Goldman/Morgan Proposal'').[18] Other participants in soft dollar arrangements, organized by the Alliance in Support of Independent Research, have argued that current client disclosure by advisers is adequate and that the Goldman/Morgan Proposal is anticompetitive and discriminatory.[19]

[9] Securities Acts Amendments of 1975, Pub. L. No. 94–29, 89 Stat. 97, 161–62.

[10] The Commission has stated that a product or service may legitimately be considered a ''brokerage or research service'' covered by the safe harbor if it provides ''lawful and appropriate assistance to the [adviser's] decision-making process.'' Release 23170, *supra* note 1. The Commission's Division of Market Regulation has addressed the types of transactions that are afforded the protection of the safe harbor. *See* U.S. Department of Labor (pub. avail. July 25, 1990) (safe harbor does not extend to principal, riskless principal and futures transactions); Hoenig & Co. (pub. avail. Oct. 15, 1990) (same); Instinet Corporation (pub. avail. Jan. 15, 1992) (safe harbor does apply to agency transactions in equity securities on a computer-based real time market information and brokerage system and after-hours order matching system).

[11] See *Securities and Exchange Commission* v. *Galleon Capital Management*, Litigation Rel. No. 14315 (Nov. 1, 1994). The Commission's complaint in *Galleon*, in addition to alleging excessive trading in order to generate soft dollar credits, alleged that the adviser requested brokers to make soft dollar payments to a consulting firm, and that these payments eventually were rebated to the adviser. See also Letter from Bradford P. Schaaf, Chairman, and Victor J. Fontana, President and Chief Executive Officer, Autranet, Inc. to Barry P. Barbash, Director, Division of Investment Management and Brandon Becker, Director, Division of Market Regulation (Nov. 10, 1994) (''Autranet Letter'') (proposing that the Commission prohibit a broker from requiring an adviser, by contract or understanding, to commit to direct any specified amount of commissions to the broker in order to receive soft dollar services).

[12] Section 28(e)(2) (15 U.S.C. 78bb(e)(2)).

[13] In 1976, the Commission proposed rule 28e2–1 under the 1934 Act, but the rule was never adopted. See note 41 infra.

[14] Rule 204–3 under the Advisers Act (17 CFR 275.204–3) requires that a registered investment adviser deliver the brochure to a prospective client before entering into an advisory contract with the client, and, annually thereafter, provide or offer to provide the client with the brochure. The Commission is not at this time proposing to amend the Form ADV requirements regarding disclosure of soft dollar arrangements. The Commission, however, is considering whether changes to these requirements would be appropriate, and may propose changes in connection with future revisions to Form ADV.

[15] Item 12 of Part II of Form ADV. Registered investment companies are required to include similar disclosure in their Statements of Additional Information. See, e.g., Item 17 of Form N–1A (17 CFR 239.15A, 274.11A).

[16] See Future of the Stock Market: Soft Dollars, Hearing Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce, 103d Cong., 1st Sess. (1993) (''1993 Hearings'') (testimony of David M. Silfen, Partner, Goldman, Sachs & Co. and Anson M. Beard, Jr., Managing Director, Morgan Stanley Group Inc.).

[17] The Commission has instituted a number of enforcement actions against advisers based, at least in part, on the failure to disclose soft dollar arrangements adequately. See, e.g., Securities and Exchange Commission v. Galleon Capital Management, supra note 11; Kingsley, Jennison, McNulty & Morse, Inc., Investment Advisers Act Rel. No. 1396 (Dec. 23, 1993); DeMarche Associates, Investment Advisers Act Rel. No. 1392 (Nov. 23, 1993); Jack Allen Pirrie, Investment Advisers Act Rel. No. 1284 (July 29, 1991); Robert Michael Lee, Investment Advisers Act Rel. No. 1249 (Sept. 17, 1990); Patterson Capital Corp., Investment Advisers Act Rel. No. 1235 (June 25, 1990).

[18] The Goldman/Morgan Proposal will be placed in the public comment file for the Commission's proposal.

[19] *See* Letter from The Alliance in Support of Independent Research to Jonathan G. Katz,

Continued

The difference in the views of these two groups may reflect the differences in the ways the two groups provide research services to advisers and the effect that the Goldman/Morgan Proposal would have on each group. Goldman, Sachs and Morgan Stanley operate as ''full service brokers'' and provide a variety of execution, research and related services to clients. An adviser who executes client securities transactions through these firms typically receives research services developed by the firms (''proprietary'' soft dollar services), much of which is provided without being directly requested by the adviser. The cost of such services generally are bundled in the overall commission charged by the full service broker. In contrast, a ''soft dollar broker'' typically provides advisers with services prepared or produced by parties other than the broker (''third-party'' soft dollar services) in exchange for the allocation of specified amounts of commission dollars.[20] In these types of arrangements, an explicit price denominated in commission dollars, rather than in hard dollars, is typically attached to the research.[21]

The Goldman/Morgan Proposal would affect the two groups of brokers differently. Because proprietary soft dollar services are not offered for a specific price in commission dollars, under the Goldman/Morgan Proposal, disclosure would be required only about the price and value of third-party soft dollar services. Soft dollar brokers argue that if the Commission required more extensive disclosure of third-party soft dollar services than proprietary soft dollar services, advisory clients might be led to believe that advisers derive benefits from soft dollar brokers at the clients' expense that they do not derive from full service brokers, when, in fact, both types of firms confer benefits on advisers.[22] As a result, advisers might be discouraged from using soft dollar brokers.

Representatives of some investment advisers have asserted that current disclosure requirements are adequate.[23] According to these advisers, clients rarely request information about the soft dollar benefits that the adviser receives, and those that are interested currently may obtain the information on request.[24] Other investment advisers, however, argue that the nature of the conflicts involved in soft dollar arrangements warrant more extensive client disclosure than is currently required.[25]

The Commission staff considered issues related to soft dollars in its ''Market 2000'' report on the equity markets released in January 1994.[26] In that report, the staff recommended that quantifiable information about soft dollar services be required to be provided to advisory clients.[27] The report also stated that ''[m]ost importantly * * * any new disclosure requirements should apply equitably. Thus, research and other services obtained either from (full service) firms or (soft dollar) firms should be subject to disclosure.''

II. Discussion

The Commission believes that, in light of the conflicts of interest presented by soft dollar arrangements, additional disclosure about these practices may be warranted. While current disclosure may provide sufficient notice to a client that the adviser has these conflicts, it may not provide the client with sufficient information to permit it to assess the extent to which the adviser obtains soft dollar services or pays up for those services, or the types of services that the adviser obtains through soft dollar arrangements. Enhanced disclosure may provide existing clients with information useful in negotiating limits on the use of their brokerage, and enable prospective clients to make better informed choices of advisers.

The Commission is therefore proposing that certain registered advisers be required to provide clients with annual reports setting forth certain information about their use of client brokerage and the soft dollar services each adviser received during its most recently completed fiscal year.[28] The proposal is intended to provide an advisory client with information that can be used to evaluate the extent to which the client benefits from the adviser's brokerage practices, the extent to which the adviser benefits, and whether the client should attempt to limit the adviser's use of its brokerage. Consistent with the recommendations of the staff in the Market 2000 report, the proposed disclosure requirements would not impose different

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Secretary, Securities and Exchange Commission (Oct. 17, 1994), Commission File No. S7–22–94 (''Alliance Letter''); see also Autranet Letter, *supra* note 11. The Alliance in Support of Independent Research is ''a group of broker-dealers, money managers and research firms sharing a common interest in fostering a favorable regulatory environment in which independent research services and products may be furnished to the money management community.''

[20] In 1980, the Commission stated that research provided through third-party arrangements falls within Section 28(e) of the Exchange Act, even if the money manager participates in selecting the research services provided to it and the research is delivered directly to the money manager by the third party. Securities Exchange Act Rel. No. 17371 (Dec. 12, 1980) (45 FR 83707 (Dec. 19, 1980)). The Section 28(e) safe harbor is not available to third-party soft dollar arrangements unless, among other things, the broker is obligated to the third party to pay for the services. Release 23170, *supra* note 1, at § III; *Kingsley, Jennison, McNulty & Morse, Inc.*, *supra* note 17.

[21] Some full service brokers also will enter into third-party soft dollar arrangements with advisers.

[22] See Alliance Letter, *supra* note 19.

[23] See, e.g., 1993 Hearings, *supra* note 16 (statement of Holly A. Stark, Senior Vice President, Dalton, Greiner, Hartman, Maher & Co.).

[24] Many pension plans require some form of soft dollar reporting from their money managers, primarily in response to a pronouncement of the Department of Labor, the principal federal regulator of employee benefit plans under the Employee Retirement Income Security Act of 1974 (''ERISA''), concerning the ongoing duty of plan fiduciaries to monitor the use of soft dollars by managers. See ERISA Technical Release No. 86–1.

Section 15(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–15(c)) requires the directors of a registered investment company to request and review, and the company's adviser to supply, such information as may reasonably be necessary to evaluate the terms of the advisory contract between the adviser and the investment company. As discussed above, soft dollar arrangements may bear upon the reasonableness of advisory fees. *See* text accompanying note 12 *supra*. Investment company advisers that engage in soft dollar arrangements therefore must provide their boards of directors with information regarding soft dollar arrangements. See Release 23170, *supra* note 1, at § IV.B.3.

Various institutional investors have expressed their views on soft dollar arrangements. *See* 1993 Hearings (statement of Fred G. Weiss, Chairman, Financial Executive Institute's Committee on Investment of Employee Benefit Assets (''CIEBA'')). Mr. Weiss stated that CIEBA, which represents 150 corporate benefit plan sponsors with assets of approximately $600 billion, was unable to develop a clear consensus on whether soft dollar practices were desirable or not. CIEBA did, however, call for more comprehensive reporting of soft dollar arrangements at a firm-wide level to supplement the client-specific information that most of its members currently receive. Other institutional investors believe that current disclosure is adequate. *See* 1993 Hearings (written statement of State Board of Administration of Florida). In addition, the Institutional Investors Committee of the National Association of Securities Dealers, Inc. (''NASD Committee''), which includes representatives of institutional investors, advisers, and brokerage firms, submitted a recommendation to the Commission's staff for additional soft dollar disclosure. The NASD Committee's recommendation was approved by the NASD's Board of Governors. The NASD Committee's recommendation will be placed in the public comment file for the Commission's proposal.

[25] *See* Letter from Louis R. Cohen and Marianne K. Smythe, Wilmer, Cutler & Pickering to Jonathan G. Katz, Secretary, Securities and Exchange Commission (Oct. 17, 1994) (on behalf of Investors Research Corp.) (''Investors Research Letter''), Commission File No. S7–22–94.

[26] *See* U.S. Securities and Exchange Commission, Division of Market Regulation, Market 2000: An Examination of Current Equity Market Developments (Jan. 1994).

[27] *Id.* at V–15.

[28] The proposed amendments would not require that advisers provide each client with information about how that client's transactions were directed. See Section II.F infra.

requirements on third-party and proprietary soft dollar arrangements.

A. The Annual Report in General

The Commission is proposing a new rule under the Advisers Act, rule 204–4, that would require any adviser, registered or required to be registered under the Advisers Act, that has brokerage discretion [29] over any client account and that receives soft dollar services to deliver an annual report to clients on its use of client brokerage. The contents of the annual report would be specified in new Form ADV–B.

The core of the annual report would be a table disclosing information regarding the adviser's direction of client brokerage. The table would list the twenty brokers other than execution-only brokers (''research brokers'') to which the adviser directed the greatest amount of client commissions,[30] and the three execution-only brokers to which the adviser directed the greatest amount of client commissions during its most recent fiscal year.[31] For each broker listed, the table would disclose: the aggregate amount of commissions directed by the adviser to the broker; the percentage of the adviser's discretionary brokerage commissions that this represents; the average commission rate (in cents per share) paid to the broker; and a description of the soft dollar services provided by the broker.[32]

The table would provide an overview of the brokers used by an adviser to execute client transactions, the commissions charged by the brokers, and the soft dollar services received from research brokers. This disclosure is intended to assist an advisory client in evaluating the adviser's use of its brokerage, including whether the client could be paying lower commissions, whether the adviser is obtaining soft dollar services that can be used to benefit the client, and whether the advisory fee charged to the client is appropriate in light of the services that the adviser pays for with client commissions. Institutional clients using the services of more than one adviser and prospective clients considering different advisers will be able to use the table to compare advisers' use of brokerage, including the commission rates that they negotiate and the types of services that they receive. The disclosure regarding execution-only brokers would assist clients in making these determinations by providing information about the availability of brokerage alternatives, and, by implication, the effect that soft dollar services may have on commission rates.[33]

The table would be followed by certain data concerning the adviser's direction of brokerage: the percentages of the adviser's total brokerage that are directed (1) by the adviser to research brokers, (2) by the adviser to execution-only brokers, and (3) pursuant to specific client instructions.[34] This data would provide clients with an overall picture of how the adviser directs brokerage.

B. Disclosure of Brokers

As noted above, the report would be required to include information about twenty research brokers and three execution-only brokers.[35] Limiting the required disclosure to this number of brokers is intended to result in reports that provide useful information in a relatively concise manner. Comment is requested whether the proposed numerical thresholds are appropriate. Comment is also requested whether, as an alternative, disclosure should be required about brokers to which the adviser directed more than a specified percentage of its brokerage, such as one percent.

For the purposes of the amendments, a broker would be considered an ''execution-only'' broker if substantially all of the services that the broker provides to the adviser are execution services, *i.e.*, effecting securities transactions and performing functions incidental to or required in connection with effecting those transactions.[36] Consequently, a broker would not be permitted to be considered an execution-only broker if it provided any significant amount of soft dollar services to the adviser, even if the services were not solicited or used by the adviser.[37] If a broker provided only execution services to an adviser, however, the adviser would include the broker as execution-only even if the broker provided additional services, such as research, to its other customers. The definition of execution-only broker would include automated trading systems (e.g., the Instinet and Lattice systems) if the adviser received only execution and execution-related services as a result of using the system, regardless of whether the system itself is required to be registered as a broker-dealer under the 1934 Act.[38]

An adviser that did not utilize any research brokers or that did not utilize any execution-only brokers would be required to so state under the appropriate heading in the table.[39] An adviser that directed client commissions to fewer than twenty research brokers and/or fewer than three execution-only brokers would be required to disclose under the appropriate headings those brokers to which it did direct client commissions. As a result, an adviser's annual report would always include some reference to the existence of execution-only brokers. Comment is requested whether there are better ways to disclose to clients the availability and cost of brokerage alternatives. For instance, comment is requested whether an adviser should be required to disclose execution-only brokers that offered to execute client transactions. Similarly, comment is requested whether the table should include

[29] The definition of ''brokerage discretion'' is discussed at notes 58–59 and accompanying text infra.

[30] For the purposes of the amendments, ''commissions'' would include amounts of mark-ups and mark-downs on principal transactions if those amounts are included on the confirmation of the transaction required under rule 10b–10 under the 1934 Act. See Section II.E infra. These mark-ups and mark-downs, however, are not commissions for purposes of Section 28(e). See note 10 supra.

[31] The definition of ''execution-only broker'' is discussed at notes 36–38 and accompanying text infra.

[32] Items 2–3 of proposed Form ADV–B. For purposes of determining the amount of commissions and the corresponding percentage of the adviser's discretionary brokerage that this amount represents, sales loads on transactions in investment company shares would be considered commissions. Because sales loads typically are not calculated on a cents per share basis and could potentially distort the average commission rate data, sales loads would not be considered in calculating average commission rates. Instruction 3 to Item 2 of proposed Form ADV–B.

[33] The Commission recognizes that the use of execution-only brokers would not be appropriate or possible in many circumstances. The proposed disclosure about execution-only brokers is not intended to imply that such brokers could have been used in all circumstances. Furthermore, an adviser would be permitted to explain its policies regarding the use of execution-only brokers in a narrative portion of the annual report. See General Instruction 6 to Proposed Form ADV–B.

[34] Item 4 of proposed Form ADV–B.

[35] For purposes of the annual report, a ''broker'' would include a bank that is not registered as a broker-dealer under the 1934 Act. Instruction 1 to Item 2 of proposed Form ADV–B.

[36] Instruction to Item 3 of proposed Form ADV–B. The definition of execution-only broker is derived from Section 28(e)(3)(C) of the 1934 Act [15 U.S.C. 78bb(e)(3)(C)]. Under that section, custody of securities is a function incidental to effecting a transaction in the securities.

[37] A broker would be permitted to be considered an execution-only broker if it provided a minimal amount of soft dollar services to the adviser, such as a single research report or a single contact with a securities analyst.

[38] Instruction to Item 3 of proposed Form ADV–B. Typically, the sponsor of an automated trading system will be required to be registered as a broker-dealer under the 1934 Act. An automated trading system would be included in the definition of broker in Form ADV–B if a fee is charged for using the system, regardless of the basis for the fee (*e.g.*, a flat usage fee or transaction-based fees).

[39] Items 2 and 3 of proposed Form ADV–B.

disclosure regarding *all* brokers used by the adviser.[40]

Comment is requested generally on the definition of an execution-only broker, and whether the proposal's classification of brokers into two types, execution-only and all others, is appropriate or practicable. Instead of classifying brokers by type, the Commission considered proposing that advisers be required to classify brokers or specific trades based upon the purposes for which the trades were directed to the broker (e.g., execution or research). Under this approach, trades directed to a broker that provided soft dollar services could be considered to be directed for the purposes of execution if the services were a minimal factor in directing the brokerage. The Commission is not proposing this approach because determining the purposes for which brokers are used or individual trades are directed may be impracticable and burdensome.[41] The proposed approach, which would not permit an adviser to treat a broker from whom it receives significant soft dollar services as an execution-only broker, seeks to reduce the burden on advisers by providing a more objective basis for classifying brokers. Nevertheless, comment is requested whether the annual report should require advisers to classify brokers or trades by the purposes for which the adviser directed the brokerage.

C. Disclosure of Products and Services Received

The annual report would describe the soft dollar services received by the adviser from each research broker listed. Except as discussed below, soft dollar services would be required to be identified specifically.[42] The producer of a third-party soft dollar service would be identified unless its name was evident from the name of the product. This information is intended to permit a client to assess whether it benefits from the soft dollar services that the adviser receives and, consequently, whether it should attempt to limit the adviser's use of its brokerage.

In many cases, an adviser receives research reports from a broker or is given access to the broker's securities professionals in exchange for the direction of brokerage. An adviser would not be required to list separately every report that it received or each professional with whom it had contact. Instead, an adviser would be permitted to refer to these services generically according to the following categories: (1) Analyses and reports on specific securities, issuers or industries, (2) political or economic analyses or reports, or (3) access to securities analysts.[43] All other services, including computer hardware, software, databases, and on-line services, financial or other publications available by subscription, and any products or services falling outside the scope of Section 28(e) of the 1934 Act, would be required to be identified specifically.

Comment is requested whether soft dollar services should be identified in this manner. Should the Commission require more specific disclosure of research reports or access to securities analysts or other professionals, or permit general descriptions of other services? Comment is requested whether, either in lieu of or in addition to separate identification of the services received, soft dollar services should be required to be classified into specified categories, and, if so, what those categories should be.[44]

In addition to requiring a description of the soft dollar services received, the Goldman/Morgan Proposal would have required that an adviser disclose the price in commission dollars and fair market value of each third-party soft dollar service (which typically will be provided at an explicit price). As noted above, the Goldman/Morgan proposal would not require this disclosure regarding proprietary soft dollar services, as these services are not explicitly assigned a price. Price and fair value information may be useful as an expression of the value of the soft dollar services obtained by the adviser.[45] The Commission is concerned, however, that unless the values of proprietary soft dollar services are also included in the report, the information provided to the client would be incomplete and may distort client understanding about the benefits that advisers receive through client brokerage. Clients, for example, may incorrectly believe that soft dollar services are not a consideration in an adviser's direction of client brokerage to full service brokers or that third-party soft dollar services are of greater value (either to advisers or clients) than proprietary soft dollar services. Moreover, the Goldman/Morgan Proposal may provide an investment adviser an incentive to direct brokerage to a full service broker rather than a soft dollar broker for the same types of soft dollar services, simply because of differing client reporting requirements. This consequence may not be in the best interests of advisory clients and may be unfair to soft dollar brokers. Thus, consistent with the staff's recommendations in the Market 2000 report, the Commission is not proposing that only third-party soft dollar services be valued.

The Commission also considered requiring advisers to report the fair market value of all soft dollar services, regardless of their source. Because there often is no agreed upon price for proprietary soft dollar services, their fair market value may not readily be ascertainable. One approach might be to require advisers to disclose the cost to the broker of producing proprietary soft dollar services. The cost of producing services, however, may not reflect their fair market value, and an adviser may not be able to verify cost information provided by brokers.[46] Alternatively, the value of soft dollar services to the adviser receiving them could be

[40] In order to keep the report at a manageable length, an adviser could be permitted merely to indicate whether or not it received soft dollar services, rather than to identify the services received, from brokers that were not among those it used most frequently (e.g., the top twenty).

[41] In 1976, the Commission proposed rule 28e2–1 under the 1934 Act, which would have required advisers to make certain disclosures to clients concerning soft dollar practices in a separate annual report. Securities Exchange Act Rel. No. 13024 (Nov. 30, 1976) (41 FR 53356 (Dec. 6, 1976)). The proposed rule, which was not adopted, would have required, among other things, narrative disclosure concerning research received ''in return for'' brokerage. Commenters stated that it was impracticable to determine whether research was obtained ''in return for'' specific services, particularly when the research was not solicited. *See* Securities Exchange Act Rel. No. 10569 (Jan. 30, 1979) (44 FR 7864 (Feb. 7, 1979)) (''Release 10569'').

[42] Instruction 7 to Item 2 of proposed Form ADV–B.

[43] *Id.*

[44] In connection with its annual survey of institutions regarding their brokerage practices, *see* note 2 and accompanying text *supra*, Greenwich Associates uses the following nine categories of soft dollar services: performance measurement, third-party research, corporate fundamental databases, technical analysis software, portfolio modeling and strategy software, on-line stock price quotations, specialized political or economic analyses, terminals and computers, and custody services. Greenwich Associates, Institutional Equity Investors 1994 (statistical supp.) 19.

[45] The Commission recently proposed that estimates of the value of non-monetary payments for order flow be disclosed to customers of brokers receiving such payments. Securities Exchange Act Rel. No. 34903 (Oct. 27, 1994) (59 FR 55014 (Nov. 2, 1994)). Payment for order flow is payment by a broker, dealer, securities exchange, securities association or exchange member to a broker or dealer in return for the routing of customer orders to the broker, dealer, securities exchange, securities association, or exchange member.

[46] In addition, it is unclear how a broker's ''cost'' should be determined. An ''average cost'' could be obtained by dividing the cost of producing the services by the number of recipients. ''Marginal cost'' would measure the actual cost of providing the research to the last adviser. Full service brokers frequently distribute to advisers and other customers research services that were initially produced for other purposes. The marginal cost of such research might be only the cost of its distribution.

required to be disclosed, but it may be inappropriate and misleading to reflect services that the adviser did not solicit or use as having no value.[47]

An adviser could be required to make a good faith estimate of what the proprietary soft dollar services would have cost in an arms-length transaction.[48] This approach would require advisers to report positive values for unsolicited and unused services, which could lead investors to believe that the adviser (or the client) substantially benefited from the direction of the brokerage when, in fact, receipt of the services was incidental to brokerage direction decisions made wholly on the basis of the broker's execution capabilities. In addition, good faith estimates may be very difficult to make if the services provided are unlike those available for hard dollars. In this regard, the Commission is concerned with the burden that a good faith estimate requirement would impose on advisers and brokers and the accuracy of the information that would be reported to clients.[49]

The disclosure that the Commission is proposing to require is designed to alert a client that the adviser receives soft dollar services from directing client commissions, and provide some indication of the extent to which the client benefits from that direction. The commission rate information, including the commission rates of execution-only brokers, may provide valuable information on the costs of soft dollar arrangements and may render valuation estimates unnecessary. If additional information is desired, the client can request it from the adviser.

Comment is requested whether the commission price and fair market value of particular soft dollar services, or the soft dollar services obtained from a broker in the aggregate, should be required in the annual report. Commenters favoring inclusion of this information should discuss how the price and value of proprietary soft dollar services should be determined.

D. Client-Directed Brokerage

Many clients of investment advisers instruct their advisers to direct some or all of their transactions to a particular broker or brokers. A client may direct its brokerage, among other reasons, to obtain services for its own benefit or because of a pre-existing relationship with the broker.

In addition to disclosing the percentages of an adviser's total commissions that are directed to execution-only and research brokers, the proposed annual report would be required to disclose the percentage of commissions that is directed by clients.[50] Client restrictions on an adviser's brokerage discretion may be of interest to other clients of the adviser because they may cause a larger proportion of the brokerage of the other clients to be used to obtain soft dollar services for the adviser. Information on client-directed brokerage, therefore, may be useful to clients in determining the amount of brokerage available to the adviser to purchase soft dollar services. Comment is requested whether the proposed disclosure of the percentage of client-directed brokerage would be useful, and whether the Commission should require that the data be accompanied by disclosure explaining its usefulness.

E. Principal Transactions

Proposed Form ADV–B would require an adviser to include in the commission and commission rate in the table mark-ups and mark-downs paid in connection with principal transactions if the amounts of these mark-ups or mark-downs are included in the confirmations of the transactions required under rule 10b–10 under the 1934 Act. Rule 10b–10 requires that a dealer include transaction cost data in confirmations of (1) riskless principal transactions in equity securities if the dealer is not a market maker in the securities, and (2) transactions in a listed equity securities and certain Nasdaq securities.[51]

Proposed Form ADV–B would not require disclosure of information about other principal transactions or the mark-ups, mark-downs or spreads paid on these transactions. It may be difficult to accurately determine transaction costs associated with these principal transactions. Furthermore, disclosure about adviser direction of principal transactions may not be necessary, as soft dollar arrangements involving principal transactions may be less common than those involving agency transactions because principal transactions are not afforded the safe harbor provided by Section 28(e).[52]

Comment is requested whether the annual report should include information on all principal transactions, and, if so, how the associated costs should be determined. Comment is also requested whether disclosure requirements that apply primarily to agency transactions would cause more transactions to be executed on a principal basis.

The proposal would require disclosure of the brokers to which the greatest amounts of commissions had been directed. Alternatively, the obligation to disclose information about a broker could be based on the dollar amount of transactions, both principal and agency, directed to the broker. The resulting disclosure might be more useful to clients in assessing any relationship that may exist between the adviser's use of principal transactions and its receipt of soft dollar services. Comment is requested whether the basis for requiring a broker to be listed in the annual report should be the dollar amount of transactions directed to the broker, rather than the amount of commissions.

F. Client-Specific Information

The proposed amendments would not require that an adviser provide each client with information about how that

[47] An adviser could be required to report only those proprietary soft dollar services for which it specifically directed brokerage. Such a limitation, however, would require highly subjective determinations by advisers, and, as a practical matter, might elicit disclosure about only third-party soft dollar services.

[48] This approach was suggested by one commenter on the Commission's recent proposal to require that mutual fund expenses paid by brokers should be included in fund expense and performance data. *See* Investors Research Letter, *supra* note 25. In that proposal, the Commission requested comment whether the value of research services received by a fund's adviser should also be included in fund expenses, and how the research should be valued. *See* Investment Company Act Rel. No. 20472 (Aug. 11, 1994) (59 FR 42187 (Aug. 17, 1994)), at § II.A.1. Most commenters on the proposal, however, opposed the inclusion of research services in fund expenses, and those commenters that favored it generally provided little guidance regarding how to value proprietary services.

[49] In proposing rule 28e2–1, the Commission proposed that the fair value of non-research services be disclosed, and requested comment on the feasibility and desirability of requiring disclosure of specific dollar amounts of brokerage commissions paid to receive research services. Commenters asserted that it would be impracticable to value soft dollar services or to separate commissions into their research and execution components. *See* Release 10569, *supra* note 41.

[50] Item 4 of proposed Form ADV–B.

[51] Paragraph (a)(8) of rule 10b–10 [17 CFR 10b–10(a)(8)].

[52] The safe harbor does not encompass soft dollar arrangements under which research services are acquired as a result of principal transactions. *See* note 10 *supra*. Notwithstanding the lack of availability of the safe harbor, the Commission understands that full service brokers sometimes provide research and other services based, at least in part, on principal transactions. If an adviser were required to list a broker in its annual report because the broker is used frequently for agency transactions, the adviser would be required to take all of the soft dollar services obtained from the broker into account in responding to the report's requirement to list the services obtained, even if some of the services could be deemed to be received as a result of principal transactions not within the scope of the proposed amendments. Instruction 7 to Item 2 of proposed Form ADV–B.

client's brokerage was directed (''client-specific information''). Client-specific information could assist a client in comparing the use of its brokerage with that of the adviser's other clients.[53] The benefits of a requirement to disclose client-specific information, however, may be outweighed by the time and cost to advisers of preparing separate reports for every client. This cost would likely be passed on to advisory clients. Furthermore, advisory clients currently receive or have access to confirmations of their transactions that disclose the identities of the brokers used and the amounts of commissions charged.[54] Comment is requested whether client-specific information should be required in the annual report and, if so, what information should be required.[55]

G. Delivery and Filing

Reports on Form ADV–B would be prepared on an annual basis and would report on brokerage directed during the adviser's most recently completed fiscal year.[56] The report would be required to be filed with the Commission and delivered to clients no later than sixty days after the end of the fiscal year, and delivered to prospective clients no later than the time that an advisory contract is entered into.[57]

Because the report would provide information about brokerage over which the adviser has discretion, the report would be required to be delivered only to those clients over whose accounts the adviser has or will have brokerage discretion. An adviser would be considered to have brokerage discretion over an account if it (1) had the authority to determine, without obtaining specific client consent, the brokers to be used or the commissions paid in connection with any transactions for the account, or (2) significantly influenced the selection of brokers by a client and received soft dollar services from a broker chosen by the client.[58] An adviser would not be required to provide the report to a client that, without the adviser's influence, directed that a single broker execute its transactions, or prior to each transaction approved the broker to be used for the transaction.[59] Comment is requested whether this definition of brokerage discretion is appropriate, and whether the report should be required to be delivered to clients over whose accounts the adviser does not have brokerage discretion.

The Commission is proposing that the report be prepared on an *annual* basis. More frequent reporting would be more costly and may not be necessary for clients to monitor an adviser's brokerage direction practices. Furthermore, an annual report may provide a more representative sample of an adviser's brokerage practices. Comment is requested whether the report should be required to be prepared more frequently than annually, such as quarterly.[60]

H. Goldman/Morgan Proposal

The Goldman/Morgan Proposal differs from the Commission's proposal in a number of respects. The Goldman/Morgan Proposal would, among other things, require quarterly rather than annual reporting, require disclosure of the commission price and value of specific third-party soft dollar services, and require disclosure of certain client-specific information. The Commission has requested comment on these elements of the Goldman/Morgan Proposal separately in this Release. The Commission also requests comment whether the Goldman/Morgan Proposal generally would be preferable to the Commission's proposal.

III. Disclosure By Brokers Providing Soft Dollar Services

The amendments being proposed in this Release would require disclosure by *advisers* that receive soft dollar services from brokers. In a letter to the staff, Autranet, Inc. (''Autranet''), a broker providing third-party soft dollar services to advisers, proposed an entirely different approach that would impose certain recordkeeping and disclosure requirements on *brokers* providing third-party soft dollar services to ensure that the services were provided within the safe harbor of Section 28(e) of the Exchange Act.[61] Under the Autranet

[53] To the extent differences between the manner in which an adviser uses a particular client's brokerage and the brokerage of the adviser's other clients is caused by client-directed brokerage, the requirement of the proposal to disclose the percentage of client-directed brokerage might render client-specific information unnecessary. *See* Section II.D *supra.*

[54] *See* rule 10b–10 under the 1934 Act [17 CFR 240.10b–10] (requiring broker-dealers to send immediate confirmations of transactions to their customers). The confirmations, or quarterly statements containing all of the information required in the confirmations, must be sent to the holder of the account, rather than any fiduciary managing the account. *See* Securities Exchange Act Rel. No. 34962 (Nov. 10, 1994) [59 FR 59612 (Nov. 17, 1994)] at § II.A.2.

[55] As noted above, an adviser to an investment company is required to provide information about its soft dollar arrangements to the company's board of directors. *See* note 24 *supra.* The information provided by the adviser generally should include specific information about the adviser's use of the investment company's brokerage. The proposed annual report would supplement this fund-specific information.

[56] Paragraph (a) of proposed rule 204–4; General Instructions 1 and 5 to proposed Form ADV–B. The table in the annual report would be required to disclose commissions paid during the adviser's most recently completed fiscal year even if soft dollar services paid for with those commissions had been or will be received during another fiscal year. Conversely, disclosure of soft dollar services received during a fiscal year would be required even if commissions were or will be directed to pay for those services during another fiscal year. General Instruction 5 to proposed Form ADV–B.

[57] Paragraphs (a) and (b) of proposed rule 204–4; General Instructions 3 and 4 to proposed Form ADV–B. Rule 204–3 under the Advisers Act, which generally requires advisers to furnish a disclosure brochure to prospective clients no later than 48 hours prior to the time that the advisory contract is entered into, permits the brochure to be delivered at the time that the contract is entered into if the contract can be terminated without penalty within five business days. Paragraph (b)(1) of rule 204–3 [17 CFR 275.204–3(b)(1)]. Proposed rule 204–4 would not similarly differentiate between providing the annual report before or at the time that the contract is entered into. Generally, however, the determination of when a contract is entered into would be the same for the purposes of both rules.

[58] Paragraph (c)(1) of proposed rule 204–4; General Instruction 2 to proposed Form ADV–B. An adviser would not be deemed to have brokerage discretion over an account if substantially all of the client's transactions were directed to a broker that was compensated for executing the transactions based upon a percentage of the assets managed by the adviser, such as in a ''wrap fee'' program, even if the adviser could in certain circumstances direct the client's transactions to other brokers.

[59] An adviser would be required to deliver the annual report to a client if the adviser had discretion over any of the client's brokerage, even if some or most of the client's brokerage was directed by the client. Delivery of the annual report also would be required if the adviser had the authority to select brokers for particular transactions from a list previously approved by the client.

[60] The Morgan/Goldman Proposal would have required quarterly reporting.

[61] Autranet also has proposed that the Commission prohibit understandings that commit an adviser to a predetermined amount of commissions in exchange for soft dollar services. The Commission requests comment on the feasibility of this proposal. In particular, the Commission requests comment whether prohibiting a stated commission ratio in exchange for soft dollar services will deter the negotiation of commission rates and cause advisers that are less sophisticated or influential to pay higher commissions.

In addition, Autranet proposed that the Commission ensure that an independent research originator make its services available to a number of brokers and not enter into exclusive agreements. For instance, under ''bump up'' or bonus arrangements a vendor will assign a cash value to its product and offer it to the public at large for a lower price than charged to a broker providing the product pursuant to a soft dollar arrangement. In other arrangements, a vendor will tie the availability of its product to a single affiliated or unaffiliated broker, thus causing all trades to go through that broker in exchange for the service. Autranet believes that by eliminating commission commitments and exclusivity arrangements, a client can be better assured that the adviser obtained the best execution of the client's order. The Commission requests comment on the feasibility of a prohibition on exclusivity and bonus arrangements and whether such a proposal would accomplish the objective of assuring best execution. The Commission also has forwarded these proposals to the NASD for its consideration under its authority to promulgate just and equitable principles of trade.

proposal, these brokers would be required to demonstrate that they incurred a legal obligation to provide soft dollar services to an adviser. This obligation could be demonstrated either by a contract that indicates the broker's financial obligation to purchase the soft dollar services from an independent research originator, or by an invoice showing the broker's payment for the services for those soft dollar services not typically the subject of a contract.

In addition, Autranet proposes that third-party soft dollar brokers be required to provide a description of the soft dollar services provided in an arrangement and specify how the product assists an adviser in its investment decisions. A broker would be required to make this description available to the managed account upon request and provide the managed account a quarterly report showing the cost of the soft dollar service. For products having a mixed-use, Autranet proposes that the broker providing such a product obtain from the adviser a description of the adviser's use of the product and the adviser's allocation between the research and non-research functions of the product.

Autranet proposes that these descriptions be reflected in an annual report that third-party soft dollar brokers would file with the Commission and provide to the advisers receiving soft dollar services and to the clients of those advisers whose commissions were used to obtain the soft dollar services. Autranet proposes that the report include (1) a disclosure statement describing the business of the third party broker; (2) a financial summary, quantifying on an aggregate basis the value by category and, if necessary, sub-category, of the soft dollar services provided; (3) a compliance report, demonstrating that the soft dollar services were in compliance with the requirements set forth above and within the safe harbor of Section 28(e); and (4) an independent auditor's report. Autranet believes that such a reporting requirement would not be costly to third-party brokers because the information required is readily available and the reporting requirements should reflect compliance procedures already established by third-party brokers providing soft dollar services.

The Commission requests comment on whether some or all of the Autranet proposals would be practical additions to the disclosure currently required and proposed of advisers. In particular, the Commission requests comment on the costs associated with this disclosure approach and the ease with which this information could be obtained by brokers and provided to advisers and their clients. In addition, the Commission requests comment on the extent to which full service brokers providing proprietary soft dollar services could or should be subject to any of the reporting requirements proposed by Autranet.

IV. General Request For Comments

Any interested persons wishing to submit written comments on the proposals that are the subject of this Release, to suggest additional changes, or to submit comments on other matters that might have an effect on the proposals that are contained in this Release, are requested to do so.

V. Cost/Benefit Analysis

The rule and form proposed today are intended to provide material information to clients and prospective clients of investment advisers that can be used to evaluate an adviser's brokerage direction and soft dollar practices. The proposals would enable an advisory client to better assess whether its adviser is directing its brokerage in accordance with its best interests, and whether the advisory fee it pays is appropriate in light of the services provided and costs incurred directly by the adviser.

Adoption of the proposal would impose some additional costs on advisers required to prepare the report and deliver it to clients. The Commission believes, however, that the proposals appropriately balance the need for additional disclosure with the costs of providing that disclosure. The information that would be required by the proposal should readily be determinable by an adviser. A number of alternatives that would make the disclosure requirements more burdensome, such as requiring advisers to disclose the value of soft dollar services received or report on the use of each client's brokerage, are not being proposed. Furthermore, because the report would need to be prepared and delivered only annually, the costs of preparing and delivering the report should be minimized. In short, the Commission believes that the costs of the proposals would be outweighed by the benefits to advisory clients in receiving more useful information about their advisers' direction of client brokerage.

VI. Summary Of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments. The analysis notes that the rule and form proposed in this Release are intended to provide investment advisory clients for whom the adviser selects brokers to execute client transactions with information about the services the adviser receives from those brokers and the commissions charged by those brokers. Other aggregate cost-benefit information reflected in the ''Cost/Benefit Analysis'' section of this Release also is reflected in the analysis. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Jana M. Cayne, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 10–6, Washington, DC 20549.

VII. Statutory Authority

The Commission is proposing rule 204–4 and Form ADV–B under the authority set forth in Sections 204, 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b–4, 80b–6(4) and 80b–11(a)] and Section 28(e)(2) of the 1934 Act [15 U.S.C. 78bb(e)(2)].

Text Of Proposed Rule And Form Amendments

List of Subjects in 17 CFR Parts 275 and 279

Investment advisers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 is amended by adding the following citation:

Authority: 15 U.S.C. 80b–3, 80b–4, 80b–6A, 80b–11, unless otherwise noted.

* * * * *

Section 275.204–4 is also issued under 15 U.S.C. 78bb(e)(2).

2. By adding § 275.204–4 to read as follows:

§ 275.204–4 Annual report on brokerage practices.

(a) Each investment adviser, registered or required to be registered under Section 203 of the Act on the last day of its most recently completed fiscal year, that exercised brokerage discretion over the account of any client during that fiscal year *and* obtained services other than execution services from a broker to which it directed client brokerage during that fiscal year shall file a report on Form ADV–B with the Commission no later than 60 days after the end of that fiscal year, unless the investment adviser's registration was

withdrawn, cancelled or revoked after the end of the fiscal year.

(b) An investment adviser required to file a report on Form ADV–B pursuant to paragraph (a) of this section shall furnish such report for its most recently completed fiscal year:

(1) No later than 60 days after the end of each fiscal year, to each advisory client over whose account the investment adviser exercises brokerage discretion; and

(2) No later than the time that a written or oral investment advisory contract is entered into, to each new or prospective advisory client over whose account the investment adviser will or proposes to exercise brokerage discretion.

(c) For purposes of this section:

(1)(i) An investment adviser exercises ''brokerage discretion'' over a client's account if it:

(A) Has authority to determine, without obtaining specific client consent, the broker to be used or the commission rates paid in connection with any transaction of the client; or

(B) Significantly influences the selection of brokers by the client and receives services other than execution services from a broker chosen by the client.

(ii) An investment adviser does not exercise brokerage discretion over a client's account if substantially all of the client's transactions were directed to a broker that was compensated for executing such transactions solely based upon a specified percentage of the assets managed by the investment adviser; and

(2) Execution services mean those services set forth in paragraph (e)(3)(C) of Section 28 of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(e)(3)(C)).

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

3. The authority citation for Part 279 is amended by adding the following citation:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

Section 275.204–4 is also issued under 15 U.S.C. 78bb(e)(2).

4. By adding § 279.9 and Form ADV–B to read as follows:

§ 279.9 Form ADV–B, annual report on investment adviser's brokerage direction practices.

This form shall be filed annually by an investment adviser, registered or required to be registered under the Investment Advisers Act of 1940, that has the authority to select brokers to execute the transactions of any client and that obtains services other than execution from a broker to which it directs client brokerage.

Note: Form ADV–B is attached as Appendix 1 to this document. The Form will not appear in the Code of Federal Regulations.

Dated: February 14, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix 1

OMB Approval
OMB Number:
Expires:
Estimated average burden hours per response:
U.S. Securities and Exchange Commission, Washington, DC 20549

Form ADV–B

Annual Report on Brokerage Practices for Registered Investment Advisers Having Discretion Over Client Brokerage

Applicant: _____

SEC File Number: 801– _____

Date: _____

MM/DD/YY

General Instructions for Preparing and Filing Form ADV–B

1. Applicability of Form Requirement. A report on Form ADV–B must be prepared and filed by every investment adviser that (i) was registered or required to be registered under the Investment Advisers Act of 1940 on the last day of its most recently completed fiscal year (unless the adviser's registration has since been withdrawn, cancelled or revoked), (ii) exercised ''brokerage discretion'' over the account of any advisory client during that fiscal year, and (iii) obtained services other than ''execution services'' from a broker to which it directed client brokerage during that fiscal year.

2. Definitions.

Brokerage Discretion. An investment adviser exercises brokerage discretion over a client's account if it (i) has the authority to determine, without obtaining specific client consent, the broker to be used or the commission rates paid in connection with any transaction of the client, or (ii) significantly influences the selection of brokers by the client and receives services other than execution services from a broker chosen by the client. An investment adviser does not have discretion over a client's account, however, if substantially all of the client's transactions were directed to a broker that was compensated for executing such transactions solely based upon a specified percentage of the assets managed by the adviser, even if the adviser has the discretion to direct certain of the client's transactions to other brokers.

Execution Services. Execution services mean those services described in Section 28(e)(2)(C) of the Securities Exchange Act of 1934, *i.e.*, effecting securities transactions and performing functions incidental thereto or required in connection therewith by rules of the Securities and Exchange Commission or a self-regulatory organization.

3. Format and Filing of Report. The report required by this form should be prepared as a separate document, not on copies of this Form. The report shall be filed in triplicate with the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Each copy of the report filed with the Commission should be attached to a completed copy of this page, although only one such copy need be manually executed. The report shall be filed no later than 60 days after the end of the adviser's fiscal year.

Execution: The undersigned represents that he or she has executed this form on behalf of, and with the authority of, said investment adviser. The undersigned and the investment adviser represent that the information and statements contained herein, including exhibits attached hereto and other information filed herewith, all of which are made a part hereof, are current, true, and complete.

Dated the _____ day of _____, 19_____

_____
(Name of registrant)

By: _____
(Signature and title)

4. Delivery.

Existing Clients. Rule 204–4 under the Investment Advisers Act of 1940 requires that the report be furnished no later than 60 days after the end of the investment adviser's most recently completed fiscal year to each advisory client over whose account the adviser exercises brokerage discretion (as defined in Instruction 2 above).

Prospective Clients. Rule 204–4 also requires that the report be furnished no later than the time that a written or oral investment advisory contract is entered into to each new or prospective advisory client over whose account the adviser will or proposes to exercise brokerage discretion.

5. Period of Required Data. An investment adviser must provide the requested information for its most recently completed fiscal year. Brokerage commissions directed or services received during a fiscal year should be included in the table, even if the services corresponding to commissions directed during the fiscal year were or will be received during another fiscal year, or the commissions corresponding to services received during the fiscal year were or will be directed during another fiscal year.

6. Additional Information. An investment adviser may, in addition to providing the required information, provide other information, including additional data and explanations of the required information, about its brokerage practices in its response to this Form.

Information Required in Annual Report

Item 1. General Description of Report

In an introduction to the report:

(a) explain that the report contains information about the adviser's practices in selecting brokers to execute transactions for its investment advisory clients that can be used to evaluate whether the adviser directs

client transactions consistent with the best interests of its clients;

(b) explain that the information contained in the report is provided on a firm-wide basis, that the report does not include specific information about the brokerage of any particular client or the extent to which services obtained are used for the benefit of any particular client, and that clients should refer to the confirmations or quarterly account statements provided by their brokers or contact the adviser for information about the brokers used to execute their transactions;

(c) explain, if applicable, that the report does not include information about many transactions executed on a ''principal'' basis, that, in principal transactions, transaction costs typically are included in the price of the securities purchased or sold and are not charged as separate commissions, and that transactions in certain types of securities typically are executed on a principal basis; and

(d) provide an address or phone number at which a client can contact the adviser to request more information.

Item 2. Information Regarding the Twenty Most Frequently Used Brokers

Using the captions and tabular format illustrated below, provide the required information for the twenty brokers (other than ''execution-only'' brokers as defined in Item 3) to which the investment adviser directed the greatest amount of client commissions. If no or fewer than twenty such brokers were used, state either ''no brokers used that provided services other than execution'' after the title or ''no additional brokers used'' after the last broker listed.

THE TWENTY BROKERS TO WHICH THE GREATEST AMOUNTS OF CLIENT COMMISSIONS WERE DIRECTED

Name of broker	Aggregate amount of discretionary commissions paid to broker (in dollars)	Commissions paid to broker (as a percentage of adviser's discretionary commissions)	Average commission rate (in cents/share)	Description of services obtained (other than execution services)

Instructions

1. For the purposes of this Form, brokers include broker-dealers registered under the Securities Exchange Act of 1934, banks, and, as set forth in Item 3, automated trading systems.

2. ''Discretionary commissions'' are those commissions, mark-ups and mark-downs that are disclosed on the transaction confirmations required under rule 10b-10 under the Securities Exchange Act of 1934 and that are paid in connection with transactions for which the investment adviser had the authority to determine, without obtaining specific client consent, the broker or dealer to be used or the commission rates paid.

3. Commissions include sales loads paid in connection with transactions in investment company shares, although sales loads should not be considered in calculating the average commission rate. If the adviser directed transactions in investment company shares to a broker other than the principal underwriter of the investment company, that broker, rather than the principal underwriter, should be considered to have executed the transaction.

4. For purposes of this Form, commissions do not include fees for brokerage services that are based upon a specified percentage of the assets managed (*i.e.,* fees paid under ''wrap fee'' programs).

5. Calculate average commission rates on a ''share-weighted'' basis (*i.e.,* by dividing the total amount of client commissions that the investment adviser directed to the broker by the total number of shares, exclusive of investment company shares, purchased or sold by the broker for the adviser's clients).

6. For the purposes of determining commission amounts and average commission rates, convert any commission charged in foreign currency to dollars (and cents per share). The investment adviser may use any reasonable means and times for determining the applicable exchange rate as long as those means and times are used on a consistent basis.

7. Under ''Description of Services Obtained,'' products or services obtained by the investment adviser from each broker, including computer hardware, software, databases, and on-line services, publications available by subscription, and services falling outside the scope of Section 28(e) of the Securities Exchange Act of 1934, generally should be identified separately and specifically. Research reports and contacts with securities analysts or professionals, however, may be described generally by the following terms: (i) analyses and reports on specific securities, issuers, or industries, (ii) general political or economic analyses or reports, or (iii) contacts with securities analysts. The party that produced a specifically identified product or service should also be identified unless the producer's name is evident from the name of the product or service. An adviser should report all products or services received from a broker, even if some of the services could be deemed to have been received as a result of principal transactions the costs of which are not required to be reported in the table.

Item 3. Information Regarding Three Most Frequently Used Execution-Only Brokers

Using the captions specified under Item 2 (except ''Description of Services Obtained''), provide a table titled ''The Three Execution-only Brokers to which the Greatest Amounts of Client Commissions were Directed'' that includes the required information for the three execution-only brokers to which the investment adviser directed the greatest amount of client commissions. If no or fewer than three execution-only brokers were used, state either ''no execution-only brokers used'' after the title or ''no additional execution-only brokers used'' after the last broker listed.

Instruction

For the purposes of this Item, a broker should be considered an execution-only broker if substantially all of the services that it provides to the adviser are execution services (see the definition in Instruction 2 of the General Instructions). An automated trading system should be considered an execution-only broker if substantially all of the services received by the adviser in connection with using the system are execution services and if a fee is charged for using the system, regardless of the basis for the fee (*e.g.,* a flat usage fee or transaction-based charges).

Item 4. Information Regarding Brokerage Business Directed by Clients

Provide the following information under the following captions:

Percentage of Total Commissions Directed to Brokers Providing Research and Other Services in Addition to Execution:

Percentage of Total Commissions Directed to Execution-only Brokers:

Percentage of Total Commissions Directed by Clients:

Instruction

For the purposes of this Item, commissions directed by clients are those commissions paid by accounts managed by the adviser that were directed pursuant to client requests or instructions. Total commissions equal the sum of the adviser's discretionary commissions, as defined in Item 2, and the commissions directed by clients.

[FR Doc. 95–4160 Filed 2–17–95; 8:45 am]

BILLING CODE 8010–01–P

federal register

Tuesday
February 21, 1995

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 896
Performance Standard for the Infant Apnea Monitor; Proposed Rule

DEPARTMENT HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 896

[Docket No. 83N–0193]

RIN 0905–AD83

Performance Standard for the Infant Apnea Monitor

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing a regulation to establish a mandatory performance standard for infant apnea monitors, which are a subset of breathing frequency monitors also called neonatal apnea monitors. The infant apnea monitor is a system intended for use on infants to detect cessation of breathing. FDA believes that a performance standard is necessary to ensure that infant apnea monitors accurately and reliably detect the absence of effective respiration and provide an alarm in such cases. The objective of this proposed regulation is to establish performance requirements and test methods that will provide reasonable assurance of the safety and effectiveness of the infant apnea monitor.

DATES: Submit written comments by May 22, 1995. FDA is proposing that any final rule that may issue based on this proposal become effective 1 year following its publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James J. McCue, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 10, 1982 (47 FR 39816), FDA issued a final rule under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) classifying the generic type of device, the breathing (ventilatory) frequency monitor (21 CFR 868.2375), into class II (performance standards). In the **Federal Register** of July 8, 1983 (48 FR 31392), FDA initiated a proceeding to establish a performance standard for the breathing frequency monitor, pursuant to section 514(b) of the act (21 U.S.C. 360d(b)) and part 861 (21 CFR part 861). The notice provided interested persons with the opportunity to request a change in the classification of the device. In the **Federal Register** of February 26, 1986 (51 FR 6886), FDA continued the proceeding to establish a performance standard pursuant to section 514(c) of the act (21 U.S.C. 360d(c)) and part 861. The notice invited interested persons to submit an existing standard as a proposed performance standard under section 514 of the act for the device, or to submit an offer to develop such a proposed standard. In that notice, FDA limited the proceeding to those breathing frequency monitors commonly called neonatal apnea monitors, which are intended for use on infants to detect cessation of breathing.

In the **Federal Register** of July 1, 1986 (51 FR 23832), FDA announced that, in accordance with the provisions of section 514(e)(3) of the act and § 861.32, the agency might, upon application (which could be made before the acceptance of the offer), agree to contribute to an accepted offeror's cost for developing a proposed standard if FDA were to determine that its contribution would likely result in a more satisfactory standard than would be developed without such contribution. Subsequently, FDA allocated approximately $250,000 to contribute to the cost for the first year of effort in developing a proposed standard.

In the **Federal Register** of April 22, 1988 (53 FR 13296), FDA advised that a notice of grant award (cooperative agreement) had been issued to the Emergency Care Research Institute (ECRI), 5200 Butler Pike, Plymouth Meeting, PA 19462. The cooperative agreement with ECRI was completed on August 31, 1988. Because certain performance requirements for the infant apnea monitor were not addressed in ECRI's draft document, FDA proceeded to develop a proposed standard itself for the infant apnea monitor, using the information developed during the cooperative agreement with ECRI (21 U.S.C. 380d(f)).

In the **Federal Register** of January 4, 1989 (54 FR 187), FDA announced the availability of its ''First Draft Proposed Standard for the Infant Apnea Monitor—October 1988,'' and requested public comments on the draft standard. In accordance with § 861.30, in the same notice, FDA also announced an open public meeting to discuss the draft standard. The meeting was held on January 25, 1989, in conjunction with the Seventh Annual Conference on Apnea of Infancy held in Rancho Mirage, CA.

In the **Federal Register** of July 25, 1989 (54 FR 30951), FDA announced an open public meeting that was held on September 11 and 12, 1989, at the Crowne Plaza Holiday Inn, Rockville, MD, to discuss current sensor modalities and devices used to measure infant apnea, combinations of sensors used to detect apnea and the pathophysiological result of apnea, and currently used test methods.

In the **Federal Register** of December 6, 1989 (54 FR 50437), FDA announced the availability of its ''Second Draft Proposed Standard for the Infant Apnea Monitor—October 1989'' and again requested public comments on the draft. In the same notice FDA also announced an open public meeting to discuss the draft standard. The meeting was held on January 24, 1990, in conjunction with the Eighth Annual Conference on Apnea of Infancy held in Rancho Mirage, CA.

A summary of the proceedings of the public meetings and all data and information submitted to FDA during these meetings are part of the administrative record of this rulemaking and are available to the public under 21 CFR 20.111 from the Dockets Management Branch (address above).

II. The Proposed Regulation

The second draft proposed standard was based on 22 written comments received in response to the **Federal Register** request for comments on the first draft proposed standard and on the information received at the public meetings. This proposed mandatory standard is based on 22 written comments received in response to the **Federal Register** request for comments on the second draft proposed standard, on information received at the public meeting, and on other information available to FDA.

The proposed standard includes specific requirements for infant apnea monitors in four areas: Patient monitoring, electrical characteristics, mechanical and environmental characteristics, and labeling. FDA has prepared several ancillary documents intended to assist the manufacturer and other interested persons in understanding both the reasons for specific requirements and the recommended means of testing specific devices against the requirements. A document entitled: ''Recommended Test Methods—Infant Apnea Monitor Standard'' (Ref. 1) recommends test methods and groups them in a similar manner to those in the proposed standard. Another document entitled:

''Rationale for Requirements—Infant Apnea Monitor Standard'' (Ref. 3) provides a rationale for each of the requirements contained in the standard and an associated bibliography. In developing the proposed standard, FDA has made extensive use of existing international standards, particularly the International Electrotechnical Commission standards. A section on definitions is intended to provide precise meanings for terms used in the proposed regulation.

The section on patient monitoring includes the requirement that each infant apnea monitor system contain a secondary monitoring modality. The purpose of this requirement is to increase the likelihood that the monitor will detect apneic events. Visual and audible alarms (status indicators) are required, as is the availability of a remote alarm unit for monitors intended for home use. In order to alert the care giver to any malfunction before using the device, a self test requirement is included.

The electrical requirements for infant apnea monitors include requirements for battery backup, operation from an ungrounded power source, and limitation of leakage current. An extensive set of requirements is provided to ensure electromagnetic compatibility of infant apnea monitors, which can be a serious device problem. Given the complexity of certain testing for these devices, FDA has prepared a document entitled: ''Additional Guidance for Testing Immunity to Radiated Electromagnetic Fields—Infant Apnea Monitor Standard'' (Ref. 2), which provides manufacturers some assistance in conducting immunity testing.

The mechanical and environmental requirements mandate tamper proof controls, protection against misconnection of wires and tubing, and the ability to withstand normal shock, vibration, temperature extremes, and fluid spills.

The labeling requirements specify information to be provided by the manufacturer to both operators and health care practitioners, and include specific device labeling requirements.

Recommended test procedures (Ref. 1) are included for each requirement in the standard. These procedures are referee test methods, i.e., they are the methods FDA will use to verify that a specific apnea monitor meets the requirements of the standard. Manufacturers are required, after the effective date of the standard, to meet the requirements of the standard. However, manufacturers may choose to use alternative but equivalent or better test methods for each monitor or, in lieu of individual testing, an analysis for a specific production run of monitors or, in lieu of any specific testing, an analysis which shows that each device meets the requirements of the standard.

The ''Rationale for Requirements—Infant Apnea Monitor Standard'' (Ref. 3) contains a detailed rationale for each requirement in the proposed standard.

Accordingly, the agency is proposing to add new part 896, to the Code of Federal Regulations, to establish a mandatory performance standard for the infant apnea monitor.

Additional guidance for the tests used to determine the immunity of monitors to radiated electromagnetic fields is provided in a separate document (Ref. 2).

III. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(3) 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 impactstatement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed 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 proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed 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 of a rule on small entities. The agency has concluded that the proposed rule will have a minimal impact on manufacturers of infant apnea monitors. A copy of this analysis is on file in the Dockets Management Branch (address above).

The proposed rule will require that manufacturers comply with performance requirements in four major areas: Patient monitoring, electrical characteristics, mechanical and environmental characteristics, and labeling. This is a set of minimal requirements based on existing technologies. Additionally, the proposed rule will not become effective for 1 year after it is issued in final form. Current manufacturers will have ample time to meet these minimum standards as part of a normal cycle of product improvement and development. Therefore, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities and, under the Regulatory Flexibility Act, no further analysis is required.

V. Paperwork Reduction Act of 1980

This proposed rule contains information collections which have been reviewed by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and approved under control no. 0910–0073. The title, description, and respondents of the information collections are shown below with the annual recordkeeping burden.

Title: Standard for the Infant Apnea Monitor.

Description: The standard describes basic performance features, and labeling information, for infant apnea monitors which are intended for hospital and/or home use. The monitor shall be a complete system, suitable for its intended purpose of accurately and reliably providing alarms as needed to the caregiver.

Description of Respondents: Manufacturers of apnea monitors. The burden of 360 hours for recordkeeping concerning the design of, and rationale for, the tests used to meet this standard, together with analysis and results of the tests is approved under the OMB information collection 0910–0073. The annual burden for recordkeeping is as follows:

ANNUAL BURDEN FOR RECORDKEEPING

CFR section	Total annual responses	Hours per response	Total hours
896.59	30	12	360

Organizations and individuals desiring to submit comments regarding this burden or any aspects of these information collection requirements including suggestions for reducing the burden, should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

VI. Comments

Interested persons may, on or before May 22, 1995, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

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

1. Center for Devices and Radiological Health (CDRH), ''Recommended Test Methods—Infant Apnea Monitor Standard,'' September 1993.

2. CDRH, ''Additional Guidance for Testing Immunity to Radiated Electromagnetic Fields—Infant Apnea Monitor Standard,'' September 1993.

3. CDRH, ''Rationale for Requirements—Infant Apnea Monitor Standard,'' September 1993.

List of Subjects in 21 CFR Part 896

Administrative practice and procedure, Incorporation by reference, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that new part 896 be added to read as follows:

PART 896—PERFORMANCE STANDARD FOR INFANT APNEA MONITORS

Subpart A—General Provisions

Sec.
896.10 Scope.
896.11 Applicability.
896.12 Definitions.

Subpart B—Patient Monitoring Requirements

896.20 Primary monitoring modality.
896.21 Secondary monitoring modality.
896.22 Visual status indicators (alarms).
896.23 Audible status indicators (alarms).
896.24 Remote alarm.
896.25 Self test.

Subpart C—Electrical Performance Requirements

896.30 Battery power.
896.31 Electrical power indicators.
896.32 Overcurrent protection.
896.33 Dielectric withstand.
896.34 AC (alternating current) power grounding and polarity.
896.35 Leakage current.
896.36 Electromagnetic compatibility.
896.37 Auxiliary output.

Subpart D—Mechanical and Environmental Performance Requirements

896.40 Controls protection.
896.41 Connector protective incompatibility.
896.42 Mechanical safety.
896.43 Mechanical vibration and shock resistance.
896.44 Fluid spill resistance.
896.45 Temperature and humidity.
896.46 Surface temperature.
896.47 Toxic materials.
896.48 Strangulation.

Subpart E—Labeling Requirements

869.49 General.
896.50 Operator information.
896.51 Health care practitioner information.
896.52 Servicing information.
896.53 Label specifications.
896.54 Controls, connectors, switches, and indicators.
896.55 Standard compliance.
896.56 Switched outlet warning.
896.57 Air mattress warning.
896.58 Monitors intended for hospital use only.
896.59 General test methods.

Authority: Secs. 501, 502, 513, 514, 530–542, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360c, 360d, 360gg–360ss, 371, 374); secs. 351, 361 of the Public Health Service Act (42 U.S.C. 262, 264).

Subpart A—General Provisions

§ 896.10 Scope.

The standard set forth herein describes basic performance features and labeling requirements that infant apnea monitors, intended for hospital and/or home use, are required to meet. The monitor shall be a complete system, suitable for its intended purpose of accurately and reliably providing alarms as needed to the care giver.

§ 896.11 Applicability.

(a) *General.* The provisions of this standard are applicable to all infant apnea monitors manufactured, imported, or offered for import in any State or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico after (insert date 1 year after date of publication of the final rule in the **Federal Register**).

(b) *Applicable documents.* Compliance with certain requirements of this section shall be determined by the standards described in the following references, to the extent specified herein, which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Except as otherwise indicated, copies of these publications may be purchased from the American National Standards Institute, 11 West 42d St., New York, NY 10036, and may be examined at the Office of Science and Technology, Center for Devices and Radiological Health (HFZ–100), 5600 Fishers Lane, Rockville, MD; or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC:

(1) ''IEC 601–1 (1988): Medical electrical equipment, part 1: General requirements for safety,'' 2d edition.

(2) ''IEC 529 (1989): Classification of degrees of protection provided by enclosures.''

(3) ''IEC 801–1 (1984): Electromagnetic compatibility for industrial process control equipment.''

(4) ''IEC 801–2 (1991): Electrostatic discharge requirements.''

(5) ''IEC 801–3 (1984): Radiated electromagnetic field requirements.''

(6) ''IEC 801–4 (1988): Electrical fast transient/burst requirements.''

(7) ''CISPR 11 (1990): Limits and methods of measurement of radio-interference characteristics of industrial,

scientific, and medical (ISM) equipment.''

(8) ''CISPR 16 (1987): CISPR specification for radio interference measuring apparatus and measurement methods.''

(9) ''ANSI C95.3–1991: Recommended practice for the measurement of potentially hazardous electromagnetic fields—RF and microwave.''

(10) ''IEC 68 (1988): Environmental testing.''

(11) ''ANSI/AAMI EC13–1983: Standard for cardiac monitors, heart-rate meters and alarms.'' Copies of this publication may be purchased from the Association for the Advancement of Medical Instrumentation, 3300 Washington Boulevard, suite 1440, Arlington, VA 22201, and may be examined at the Center for Devices and Radiological Health (HFZ–100), 5600 Fishers Lane, Rockville, MD; or the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(12) ''MIL–STD–461C (August 4, 1986): Electromagnetic Emissions and Susceptibility Requirements for the Control of Electromagnetic Interference.'' Copies of this publication may be purchased from the Naval Publishing and Printing Service Office, 700 Robbins Ave., Philadelphia, PA 19111–5094, and may be examined at the Center for Devices and Radiological Health (HFZ–100), 5600 Fishers Lane, Rockville, MD; or the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(13) ''MIL–STD–462 (July 31, 1967): Standard for the Measurement of Electromagnetic Interference Characteristics.'' Copies of this publication may be purchased from the Naval Publishing and Printing Service Office, 700 Robbins Ave., Philadelphia, PA 19111–5094.

(c) *Precedence of documents*. All referenced documents shall apply to the extent specified herein. When any requirement of this standard conflicts with a requirement in any of the references specified in paragraph (b) of this section, the following rules of precedence shall apply:

(1) *This standard*. This standard shall have precedence over all applicable subsidiary documents specified in paragraph (b) of this section.

(2) *Referenced documents*. Any referenced document shall have precedence over any applicable subsidiary document referenced therein.

§ 896.12 Definitions.

(a) *Apnea* means cessation of respiratory air flow. The respiratory pause may be central or diaphragmatic (i.e., no respiratory effort), obstructive (usually due to upper airway blockage), or mixed (combination of central and obstructive).

(b) *Artifact* means a signal which may be misinterpreted by the monitor; the three most commonly recognized types of artifacts are cardiogenic, electromagnetic, and motion, as defined in paragraphs (d), (g), and (n) of this section.

(c) *Breath* means an inhalation of a volume of at least 2 milliliters of air per kilogram of body weight.

(d) *Cardiogenic artifact* means an artifact produced by theelectrical and/or mechanical activity of the heart.

(e) *Component* means any material, substance, piece, part, or assembly used during device manufacture that is intended to be included in the finished device.

(f) *Damage* means deformation, loosening, breakage, corrosion, change of fit of any component or part, or any other physical condition resulting in nonconformance of the monitor to the requirements of this standard.

(g) *Electromagnetic artifact* means an artifact produced by extraneous electromagnetic energy.

(h) *Finished device* means a device, or any accessory to a device, which is intended for use, whether or not the device is packaged or labeled for commercial distribution.

(i) *Health care practitioner* means a doctor, nurse, therapist, or other health care provider who is licensed by the State or locality in which he/she practices or is credentialed by a nationally recognized agency.

(j) *Infant apnea monitor* means a complete system intended to alarm upon the cessation of breathing and its consequences that is used on humans less than 3 years of age. The infant apnea monitor includes: Sensors; electrodes; leads; cables; tubing; signal processing systems; alarm systems; power supplies; accessories supplied, recommended, or specified by the manufacturer; complete monitoring systems when the apnea function is supplied as a module; and labeling. The terms ''device'' and ''monitor,'' when used in this standard, also mean infant apnea monitor.

(k) *Inspection* means any examination, visual or auditory, performed without the use of special laboratory instruments or procedures and/or verification of manufacturing and test records.

(l) *Intended* means the same as ''intended uses as specified by the manufacturer.''

(m) *Monitor* means an infant apnea monitor.

(n) *Motion artifact* means an artifact produced by movement of the patient.

(o) *Operator* means the individual who applies the infant apnea monitor to the patient, or who monitors the patient and the functioning of the device. The term ''operator'' includes individuals, such as parents, nurses, therapists, care givers, etc., but does not include business entities, such as hospitals, corporations, partnerships, etc.

(p) *Operator maintenance* means performance by the operator or health care practitioner of those adjustments or procedures specified in the operator or health care practitioner information provided by the manufacturer for the purpose of assuring the continued safe and effective performance of the monitor.

(q) *Patient* means the individual being monitored by the infant apnea monitor.

(r) *Primary monitoring modality* means a method for detecting the cessation of breathing (apnea).

(s) *Secondary monitoring modality* means a method that measures, on a continuous basis, a physiological parameter that responds to the pathophysiological consequences of apnea, such as bradycardia, hypoxemia, or hypercarbia (hypercapnia).

(t) *Service* means performance of the procedures or adjustments described in the manufacturer's service instructions that may affect any aspect of the performance of the infant apnea monitor to which this standard applies.

(u) *Shall* means that a provision is mandatory.

(v) *Should* means that a provision is recommended.

(w) *Status indicator* means a device subsystem that shows, in a timely manner, either the status or condition of a physiological parameter of the patient or a particular characteristic of the device.

Subpart B—Patient Monitoring Requirements

§ 896.20 Primary monitoring modality.

Each monitor shall provide:

(a) A primary monitoring modality which shall incorporate a means for detecting the cessation of breathing or of breathing effort (apnea). The manufacturer shall specify the types of apnea that the primary monitoring modality will detect.

(b) A timer to measure apnea duration, and a system of visual and audible warning status indicators designed to activate (alarm) when the measured apnea duration is greater than the preset time, which shall not exceed 20 seconds. The indicators shall be activated within 1 second after the preset time is exceeded in accordance

with §§ 896.22 and 896.23. Apnea monitors intended for use on both infants and older patients may provide duration settings beyond 20 seconds only if special tools or procedures are required to effect those settings.

(c) A sensor fault alarm for determining when the signal level from the primary sensor is outside the range of values specified for proper operation by the monitor manufacturer. When this condition occurs, audible and visual warning status indicators shall be activated within 5 seconds.

§ 896.21 Secondary monitoring modality.

Each monitor shall provide:

(a) A secondary monitoring modality, which shall incorporate a means for detecting a pathophysiological consequence of apnea that occurs within 60 seconds of the onset of apnea. This modality shall be designed such that values of the critical physiological parameter that are outside the extremes of the monitor's range are not interpreted as being within range. A monitor that includes heart rate monitoring shall meet the requirements of the standard ANSI/AAMI (American National Standards Institute/ Association for the Advancement of Medical Instrumentation) EC13–1983 for pediatric monitors.

(b) A system of visual and audible warning status indicators designed to activate (alarm) when the measured critical physiological parameter goes above or falls below a selected preset limit. The warning indicators shall be activated within 5 seconds after the measured parameter is outside the range of values specified by the preset limit in accordance with §§ 896.22 and 896.23.

(c) A control for presetting secondary modality alarm limits.

(d) A sensor fault alarm for determining when the signal from the sensor for the physiological parameter is outside the range of values specified for proper operation by the monitor manufacturer. When this condition occurs, audible and visual warning status indicators shall be activated within 5 seconds.

§ 896.22 Visual status indicators (alarms).

(a) Visual status indicators shall be of two visually distinct types:

(1) Warning indicators shall indicate the need for immediate attention to the patient.

(2) Ready indicators shall indicate proper operation of the monitor.

(b) Different colors shall be used to distinguish the two types of visual status indicators as follows:

(1) Red for warning indicators; and

(2) Green for ready indicators.

(c) All visual status indicators shall be visible in both a fully illuminated and a darkened room, and shall be located so that they are not obscured from view in the use orientation of the monitor specified by the manufacturer.

(d) Means for disabling any required visual status indicator during operation shall not be provided.

(e) Reset controls for visual status indicators shall function such that neither continuous activation nor failure of the reset control will permanently disable the status indicators.

(f) Warning indicators shall continue being activated until manually reset even if the condition causing indicator activation resolves.

(g) Visual status indicators shall be subject to the labeling requirements specified in § 896.54.

§ 896.23 Audible status indicators (alarms).

(a) All audible status indicators shall be of two audibly distinct types:

(1) Warning indicators shall indicate the need for immediate attention to the patient.

(2) Ready indicators if provided shall indicate proper operation of the monitor.

(b) Different sound characteristics, i.e., pitch, sound level, and time duration, shall be used to distinguish between the types of audible status indicators as follows:

(1) Warning audible indicators shall sound intermittently at 1-second intervals. Sound level shall be at least 85 decibels at 1 meter for home monitors and 70 decibels for hospital monitors.

(2) Ready audible indicators if provided shall have distinctly different sound characteristics than paragraph (b)(1) of this section.

(c) Means for permanently disabling an audible status indicator during operation shall not be provided. Activation of any manual means (reset) for temporarily silencing an audible status indicator shall be accompanied by an automatic realarming of the audible indicator within 2 minutes, and a clear indication of silencing (reset) shall be provided. The audible indicator may automatically reset if the condition causing indicator activation resolves, but any visual status indicator that correlates with a required audible indicator shall continue being activated until manually reset.

(d) Audible status indicator reset controls shall function such that neither continuous activation nor failure of the reset control will permanently disable the status indicators.

§ 896.24 Remote alarm.

(a) Manufacturers of monitors intended for home use shall provide a remote alarm unit for use with the monitor. The remote alarm unit shall include audible warning status indicators that indicate when a warning status indicator at the site of the patient has been activated and when the unit is unable to detect the status indicator signals from the site of the patient as specified in § 896.23.

(b) The use of a remote alarm unit shall not disable the status indicators at the site of the patient.

(c) The remote alarm unit shall have a visual power ready status indicator (pilot light) and an audible power interrupt warning status indicator. If battery operated, the remote alarm unit shall have audible and visual low battery warning status indicators (alarms) that activate when the battery has sufficient charge remaining to supply power to the remote alarm unit for no more than 15 minutes of operation as specified in §§ 896.22 and 896.23.

(d) If line power operated, battery backup shall be provided that automatically activates within 5 seconds after the power fails for any reason. The battery shall have sufficient capacity, when fully charged, to supply power for normal operation for at least 8 hours.

§ 896.25 Self test.

Monitors shall incorporate a self test, for confirmation by the operator, to operate or exercise all visual and audible status indicators each time the monitor is turned on.

Subpart C—Electrical Performance Requirements

§ 896.30 Battery power.

(a) All line-powered monitors intended for use in the home shall have a battery power backup which shall, unless the overcurrent protection specified in § 896.32 has activated, automatically activate when the power fails. The monitor shall operate in compliance with the standard within 5 seconds after the battery backup power has activated.

(b) Monitors intended for use in the home shall have a battery of sufficient capacity, when fully charged, to supply power for normal operation for at least 8 hours.

(c) Monitors intended for use in the home shall have audible and visual battery depletion warning status indicators that activate when the battery has sufficient charge remaining to supply power for monitor operation in accordance with the standard for at least

60 minutes, and which remain activated until the battery is depleted. The monitor shall have a means for silencing the audible battery status indicator.

(d) Housings containing batteries from which gases can escape during charging or discharging shall be ventilated to minimize the risk of accumulation and ignition. Battery compartments shall be designed to prevent the risk of accidentally short-circuiting the battery.

(e) If a safety hazard or monitor malfunction could result from incorrect connection or replacement of a battery, the monitor shall be designed to prevent incorrect polarity of connection.

§ 896.31 Electrical power indicators.

(a) Visual ready status indicators shall be provided to indicate that the monitor is energized. Such indicators shall be located conspicuously on the device and shall distinguish between battery power and line power sources when both sources are provided.

(b) In monitors incorporating a means for battery charging, the charging mode shall be visible to the operator.

§ 896.32 Overcurrent protection.

(a) Overcurrent protection shall be provided for all line powered monitors.

(b) An audible warning status indicator shall be activated if the overcurrent protection device is activated and the monitor cannot be operated; this status indicator (alarm) shall be capable of sounding for at least 15 minutes.

(c) Monitors shall not be fitted with protective devices which may cause disconnection of the monitor from the power line (supply mains) by producing a short circuit which results in operation of an overcurrent protection device.

§ 896.33 Dielectric withstand.

Power source lines, patient contact circuits, and transducer circuits shall be adequately insulated to assure protection of the patient and monitor from overvoltages. The monitor shall meet the requirements of the standard IEC 601–1, Clause 20.

§ 896.34 AC (alternating current) power grounding and polarity.

All monitors intended for home use that operate or recharge batteries from the AC power line shall comply with this standard when operating from an ungrounded power source. If monitor power line connectors are not polarized, the monitor shall operate in compliance with this standard in both polarities of power line connector insertion.

§ 896.35 Leakage current.

Monitors shall meet the requirements of the standard IEC 601–1 for Type BF equipment.

§ 896.36 Electromagnetic compatibility.

All monitors shall meet the electromagnetic compatibility requirements contained herein. Monitors intended for home use shall also meet these requirements when recharging batteries, or operating, from a grounded or an ungrounded AC power source. If monitor power line plugs are not polarized, the monitor shall meet these requirements in both polarities of power line plug insertion.

(a) *Emissions*. The monitor shall operate in compliance with this standard without emitting electromagnetic energy in excess of the levels specified in paragraphs (a)(1) and (a)(2) of this section. The required emission limit shall be that specified by the referenced document, adjusted downward by the root-mean-square sum of all errors in the measurement of that quantity.

(1) *Radiated and conducted electromagnetic energy*. The monitor shall comply with the relevant requirements of CISPR 11 when tested according to the test methods contained therein. These tests shall be conducted using passive patient simulators, which need not simulate normal patient signals. A 1-kilohm resistor shall be used for impedance and electrocardiograph sensors, room air shall be used for CO_2 sensors, a rigid cylinder shall be used for circumference and cross-sectional-area sensors, and an optical filter having optical density between 2 and 4 at both red and infrared wavelengths shall be used for oxygen saturation sensors.

(2) *Magnetic fields*. The monitor shall comply with the relevant requirements of RE01 of the standard MIL–STD–461C, when tested according to RE01 of the standard MIL–STD–462.

(b) *Immunity*. The monitor shall operate in compliance with this standard during and after exposure to electromagnetic interference at the levels specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section. The required immunity level shall be the level stated, adjusted upward by the root-mean-square sum of all errors in the measurement of that quantity, with the exception of the lower steady-state AC voltage limit and the line-voltage sag level, which shall be adjusted downward by the root-mean-square sum of the measurement errors. Unless expressly permitted in paragraphs (b)(1), (b)(2), and (b)(3) of this section, the monitor shall not, as a result of the specified test condition: Detect a false primary or secondary monitoring modality event, indicate a false primary or secondary monitoring modality alarm, indicate an equipment alarm, exhibit temporary degradation or loss of function or performance requiring operator intervention or system reset, or exhibit loss or corruption of stored data. Except as specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section, patient simulators shall be used to provide simulated normal stimulus to primary and secondary sensors during electromagnetic immunity testing.

(1) *Electrostatic discharge*. The monitor shall operate in compliance with this standard within 5 seconds of air discharges of 2, 4, 6, and 8 kilovolt and contact discharges of 2, 4, and 6 kilovolt, both positive and negative, to any point on the monitor accessible to the operator or patient, when tested according to the standard IEC 801–2, with the conditions and modifications specified in paragraphs (b)(1)(i) through (b)(1)(iv) of this section. The monitor shall operate in compliance with this standard within 5 seconds of when contact discharges are applied to horizontal and vertical conducting planes in the vicinity of the monitor, as specified in paragraph (b)(1) of this section, with the exception that detection of a single false primary or secondary monitoring modality event is permitted as a result of each discharge.

(i) The monitor shall be tested according to the test method described in standard IEC 801–2 for tabletop equipment.

(ii) The relative humidity shall not exceed 50 percent during air discharges.

(iii) Air discharges shall be conducted at 2, 4, 6, and 8 kilovolt. Contact discharges shall be conducted at 2, 4, and 6 kilovolt. Discharges of both positive and negative polarity shall be conducted at each voltage.

(iv) In addition to air and contact discharges directly to the monitor, contact discharges shall be made to the horizontal coupling plane under the monitor and to the vertical coupling plane positioned parallel to the faces of the monitor. At least 10 single discharges at each voltage (2, 4, and 6 kilovolt) and polarity shall be applied to each test point.

(2) *Radiated electromagnetic fields*. The monitor shall operate in compliance with this standard during and after exposure to electromagnetic fields at frequencies between 10 megahertz and 1 gigahertz at field strengths of 0.3, 1, and 3 volts per meter, when unmodulated, amplitude modulated 80 percent with a 0.5-hertz

sine wave. Test conditions shall be as follows:

(i) The radiated electric-field (E-field) shall be uniform and linearly polarized in a horizontal plane.

(ii) The test shall be performed with each of the six faces of the monitor facing the antenna. All cables shall be aligned with the horizontal E-field vector over the majority of their length throughout the test. For exposure methods in which the monitor cables cannot be extended fully, if the length of any conducting cable is greater than 1.5 meters, the first 0.75 meters of cable (closest to the monitor) shall be aligned with the horizontal E-field vector and the remaining length shall be bundled in a noninductive, serpentine configuration.

(iii) The test shall be performed with all monitor components and cables positioned at an appropriate distance from any radio frequency (RF)-reflecting object and at a distance from any conducting ground plane that is appropriate for tabletop equipment.

(iv) Patient simulators used during the test shall be either simple passive devices, isolated from earth ground using fiber optic links, or battery operated and shielded. For impedance and electrocardiograph sensors, testing for erroneous breath and heartbeat detection shall be performed using a 1-kilohm resistor as a patient simulator, or a more suitable value defined by the manufacturer for a particular model of apnea monitor. Testing for erroneous breath detection shall also be performed using a battery operated simulator set to produce electrocardiograph signals, but not respiration signals (i.e., set to the apnea mode). Testing for all other fault conditions shall be performed using a battery operated simulator set to produce both respiration signals and electrocardiograph signals.

(v) Connections not normally used during monitor operation that are made to the monitor to assess performance during the test shall be isolated using fiber optic links.

(3) *AC voltage fluctuations, transients, and conducted interference*. The following requirements apply to all monitors that recharge batteries or operate from the AC power line:

(i) *Steady-state voltage*. The monitor shall remain in compliance with this standard, without changing a voltage selection switch, when powered from line voltages between 95 and 132 volts root-mean-square. For monitors intended for home use, the battery power backup shall activate automatically when the line voltage falls below the minimum level necessary for line powered monitor operation, which shall be no greater than 95 volts root-mean-square, and line powered operation shall automatically resume when the line voltage returns to the 95- to 132-volt range.

(ii) *Dropout*. The monitor shall operate in compliance with this standard during and after line voltage dropouts for durations of 10 milliseconds and less.

(iii) *Slow sags and surges*. The monitor shall operate in compliance with this standard during and after line voltage surges to 150 volts root-mean-square and sags to 90 volts root-mean-square, for durations of 500 milliseconds and less.

(iv) *Fast transient bursts*. The monitor shall operate in compliance with this standard during and after bursts of transients of 0.5, 1, and 2 kilovolts applied to AC power leads, and transients of 0.25, 0.5, and 1 kilovolts coupled by way of a capacitive clamp to signal leads, when tested according to IEC 801–4, with the exception that the burst repetition frequency shall not exceed 30 per minute.

(v) *Fast surges*. The monitor shall operate in compliance with this standard during and after exposure to common-mode and differential-mode combination voltage/current transients, both positive and negative, applied to AC power leads.

(A) The test generator used shall have the following specifications:

Open-circuit voltage, differential mode: 0.5 and 1 kilovolts.

Open-circuit voltage, common mode: 0.5, 1, and 2 kilovolts.

Open-circuit voltage risetime: 1.2 microseconds.

Open-circuit voltage falltime: 50 microseconds.

Generator source impedance: 2 kilohm.

Short-circuit current risetime: 8 microseconds.

Short-circuit current falltime: 20 microseconds.

Peak short-circuit current: 1 kilo ampere.

(B) Capacitive coupling shall be used to apply the combination wave to the AC power leads of the monitor under test. Surges shall be applied at the point where the monitor normally would be connected to AC line power.

(C) A decoupling network shall be used to isolate the monitor under test from the AC power network.

(D) A line-to-line test (differential mode) shall be performed using 0.5 and 1-kilovolt surges of both positive and negative polarity applied using a generator source impedance of 2 kilohm and coupling capacitance of 18 micro farads.

(E) A line-to-ground and a both-lines-to-ground test (common mode) shall be performed using 0.5, 1, and 2-kilovolt surges of both positive and negative polarity applied using a generator source impedance of 12 kilohm (10-kilohm resistor in series with test generator) and coupling capacitance of 9 micro farads.

(F) Surges at each amplitude and polarity shall be applied at phase angles of 0, 45, 90, 135, 180, 225, and 270 degrees with respect to the AC line.

(G) Each test shall be repeated 10 times at a rate between 1 and 30 surges per minute.

(vi) *Conducted electromagnetic energy*. The monitor shall operate in compliance with this standard during and after exposure to both differential and common mode conducted electromagnetic energy on the AC power leads at frequencies between 150 kilo Hertz and 80 megahertz at voltages of 0.3, 1, and 3 volts root-mean-square (when unmodulated), amplitude modulated 80 percent with a 0.5 hertz sine wave, added to the power line voltage, when tested according to CS02 of the standard MIL–STD–462, with the modifications and additions specified in paragraphs (b)(3)(vi)(A) through (b)(3)(vi)(E) of this section. If continuous sweep of the test frequency is used, the sweep rate shall not exceed 1×10^{-3} decades per second. If discrete frequency steps are used, the maximum step size is 1 percent of the test frequency, and the minimum dwell time is 10 seconds per step.

(A) The impedance of AC inputs shall be stabilized using line impedance stabilization networks appropriate for the test frequency range.

(B) The power leads under test shall be elevated 5 centimeters above the ground plane.

(C) The interference signal shall be injected at a distance of 5 centimeters from the point at which AC line power enters the monitor. For battery chargers which plug directly into AC outlets, a 10 centimeter length of wire shall be added between the line impedance stabilization networks (LISN's) and the charger. The low-voltage output cable of the charger shall be elevated 5 centimeters above the ground plane.

(D) The differential-mode test shall be conducted as specified in CS02 of the standard MIL–STD–462. The lead between the capacitor and the AC line shall be as short as possible.

(E) The common-mode test shall be conducted as specified in paragraph (b)(3)(vi) of this section, except that two identical capacitors shall be used, one connected from the signal source to the

AC phase lead and one connected from the signal source to AC neutral.

(4) *Magnetic fields*. The monitor shall operate in compliance with this standard during and after exposure to magnetic fields as specified in RS01 and RS02 of the standard MIL–STD–461C. The standard MIL–STD–462 also shall apply with the exception that the pulse repetition frequency for RS02 shall not exceed 30 per minute.

(5) *Quasi-static electric fields*. The monitor shall operate in compliance with this standard during and after exposure to a 0.5 hertz sinusoidal E-field with a peak field strength of 500, 1,000, and 2,000 volts per meter.

§ 896.37 Auxiliary output.

Where an auxiliary output is provided:

(a) The monitor shall meet all the requirements of this standard during and after application of a short circuit applied to the auxiliary output for 1 minute.

(b) The leakage current requirements of § 896.35 shall not be exceeded upon proper connection of an auxiliary device to the auxiliary output. This proper connection shall be described in the operator's manual as specified in § 896.50(b)(2)(iii).

Subpart D—Mechanical and Environmental Performance Requirements

§ 896.40 Controls protection.

The controls of monitors intended for home use shall be protected from inadvertent or unauthorized changes or adjustment. The means of protection shall be such as to preclude their defeat by patients, siblings, or other unauthorized persons.

§ 896.41 Connector protective incompatibility.

(a) Monitor connectors, including those on wires and tubing, shall be designed such that insertion into a receptacle other than the one into which they are intended to be inserted or into a receptacle using an improper orientation is not possible.

(b) Electrical connectors of a monitor (e.g., electrical lead wires) shall include a mechanism to prevent connection of the patient to a power source that may cause a current flow in excess of that specified in § 896.35.

§ 896.42 Mechanical safety.

Each monitor shall:

(a) Not have any exposed sharp edges.

(b) Be mechanically stable in the intended position(s) of use.

(c) Provide protection to the operator and patient from moving parts.

§ 896.43 Mechanical vibration and shock resistance.

The monitor shall remain in compliance with this standard following mechanical shock and vibration as follows:

(a) Shock test specifications shall be as follows:

(1) Peak acceleration: 100 g (1,000 meters per second^2) (g means acceleration of gravity),

(2) Duration: 6 milliseconds, and

(3) Pulse shape: half sine.

(b) Sinusoidal vibration test specifications shall be as follows:

(1) Frequency range: 10 to 500 hertz,

(2) Acceleration amplitude: 1 g (9.8 meters per second^2), and

(3) Duration: 10 sweep cycles in each axis.

(c) Wide band random vibration test specifications shall be as follows:

(1) Frequency range: 20 hertz to 500 hertz, and

(2) Acceleration spectral density: 0.02^2 per hertz, Duration: 9 minutes.

§ 896.44 Fluid spill resistance.

The monitor shall be so constructed that it will continue to operate in compliance with this standard even in the event that fluids are dripped on it. The monitor shall meet the requirements for drip proof equipment as specified in Clause 44.6 of the standards IEC 601–1 and IEC 529.

§ 896.45 Temperature and humidity.

(a) The monitor shall be in compliance with this standard when operating in the environmental temperature range of 5 °C to 40 °C, and in the environmental humidity range of 15 percent to 95 percent, noncondensing.

(b) The monitor shall not be damaged, and shall remain in compliance with this standard, after storage in the environmental temperature range of -40 °C to 70 °C at 95 percent humidity.

§ 896.46 Surface temperature.

The temperature of all surfaces of the monitor with which an operator might come into contact during operation shall not exceed 50 °C in an ambient of 35 °C. The temperature of surfaces with which the patient can come into contact shall not exceed 40 °C in an ambient of 35 °C. Electrochemical transcutaneous sensors are permitted for hospital use only with maximum temperatures up to 44 °C for less than 4 hours (at the same site) if adequate patient protection procedures are clearly described in the labeling.

§ 896.47 Toxic materials.

No toxic material from a monitor shall come in contact with the patient or operator during normal use as specified in § 896.50(b)(1).

§ 896.48 Strangulation.

Provision shall be made in routing, retention devices, or other means to minimize the risk of strangulation of the patient by wires or tubing.

Subpart E—Labeling Requirements

§ 896.49 General.

In addition to the labeling requirements for prescription devices in part 801 of this chapter, each infant apnea monitor shall comply with the labeling requirements of this section. The labeling for each monitor shall prominently state the intended uses and limitations of the device, provide clear instructions, describe potential device malfunctions, and contain adequate operation, maintenance, and service information.

§ 896.50 Operator information.

Manufacturers of infant apnea monitors intended for home use shall provide, with each monitor, an operator instruction manual for laypersons that has been prepared at the fifth-grade reading comprehension level and that includes numerous supporting illustrations. A means of determining the effectiveness of instruction shall also be provided. The manual shall contain:

(a) A statement of the purpose (indications for use) of the monitor and an explanation of how the monitor accomplishes that purpose, including:

(1) A discussion of the types of apnea that the device monitors as well as the parameters monitored by the secondary monitoring modality.

(2) An explanation of how the monitor accomplishes its purpose, including the type of sensors used.

(b) Information pertaining to operating conditions that may affect the efficacy or safety of the monitor, including the following:

(1) Monitor information, including:

(i) An explanation of the function and meaning of each alarm and indicator provided with the monitor,

(ii) A statement that the monitor may not be able to detect all episodes of inadequate breathing,

(iii) Recommended precautions to minimize the risk of strangulation,

(iv) A list of the toxic materials used in the manufacture of the monitor and protective means employed to prevent contact during normal use,

(v) A discussion of the hazards and risks associated with the monitor.

(2) Operator information, including: General operating information, adequate

instructions for monitor setup, check-out, operation, operator maintenance, and service, including:

(i) General operating information, including:

(A) A list of additional reference materials available to the layperson about apnea monitoring and the location where such materials can be obtained,

(B) Reprints of applicable FDA safety alerts,

(C) A statement of when it is advisable to contact the prescribing physician or health care professional,

(D) A recommendation that the operator be trained in cardiopulmonary resuscitation (e.g., Red Cross/American Heart Association Certification),

(ii) Setup shall include unpacking instructions, an accessory checklist, and a visual safety inspection of the monitor, including accessories,

(iii) A check-out of the monitor, including:

(A) A step-by-step procedure for checking proper functioning of all controls, indicators, and alarms,

(B) A troubleshooting guide for use when there are indications of a monitor malfunction during checkout and/or operation,

(iv) Simplified diagrams and illustrations of the fully assembled and ready to operate monitor. Information on device operation shall include:

(A) Each step that must be taken by the operator to achieve the clinical purpose of both the primary and secondary modality, as well as the steps required to prepare the monitor for operation,

(B) Proper connection of auxiliary devices,

(C) Any pre-use cleaning or disinfecting procedures for the monitor, including any accessories,

(D) A description of appropriate warm-up procedures and intervals,

(E) A discussion of the positioning of sensors or electrodes, alternate electrode placement, proper preparation of electrodes and patient for electrode attachment, and identification of loose sensors or electrodes,

(F) Diagrams and illustrations showing proper connection of the patient to the monitor and other equipment, if applicable, including alternate recommended electrode or sensor placement,

(G) Legible reproductions of all required labels and hazard warnings, and graphic representation of all controls, alarms, and indicators provided with the monitor. An explanation of the use of the controls, alarms, and indicators,

(H) A list of error messages from the monitor, if applicable, their meaning, and the corrective steps that can be taken by the operator,

(I) Clear warnings concerning the precautions necessary to avoid possible misoperation or unsafe use of the monitor,

(J) Recommended procedures to be followed in the event of a monitor alarm condition,

(K) A discussion of the proper use of remote alarm units, including recommended placement and the importance of the operator being able to access the patient within 1 minute of alarm activation.

(v) Operational maintenance information, including:

(A) Recommendations for methods and materials for cleaning and disinfecting the monitor,

(B) A schedule of operator initiated maintenance necessary to keep the monitor in compliance with this standard,

(C) Battery care and maintenance procedures, including instructions for recharging or replacement,

(D) A description of periodic visual safety inspections that should be performed by the operator,

(vi) Service information, including:

(A) The frequency of any calibration, repair, or periodic inspections of the monitor necessary to keep it in compliance with this standard,

(B) A list of facilities, and their locations, that may provide these services,

(3) Patient information, including:

(i) A description of any clinical circumstances which might require sensor adjustment or checking for proper operation.

(ii) A description of any circumstances in which there is a possibility of allergenic or chemical reactions and instructions for preventing such reactions, e.g., periodically repositioning electrodes.

(4) Facility information, including a description of what should be expected if electricity to the monitor is lost.

(5) Environmental information, discussing known or recognizable conditions of the infant's environment that may affect the safe and effective use or operation of the monitor, such as lint, dust, sun, light, heat, or humidity, including:

(i) A discussion of the effects and possible sources of electromagnetic interference, e.g., conducted and radiated,

(ii) A discussion of the effects and causes of electrostatic discharge,

(iii) A list of other devices that pose potential electrical problems,

(iv) A description of conditions of the sensors or electrodes, such as loosened electrodes, that can cause environmental effects to be more pronounced,

(v) A description of steps which can be taken by the operator to identify and resolve environmental interference with the safe and effective use of the monitor.

§ 896.51 Health care practitioner information.

Manufacturers of monitors shall provide a health care practitioner instruction manual with each monitor. The manual shall contain all of the information specified in § 896.50 in such detail as is sufficient for the needs of the practitioner, but the information need not be restricted to the fifth-grade reading comprehension level. In addition, the manual shall contain:

(a) A description of equipment required for monitor use and mechanical and/or electrical specifications for electrodes, sensors, leads, cables, tubing, batteries, and accessories with which the monitor will operate in compliance with this standard.

(b) Step-by-step procedures necessary to prepare the monitor for initial and subsequent use. If a manual sensitivity control is provided, instructions as to when to use manual sensitivity and how to adjust the control for optimal breath detection.

(c) Step-by-step procedures recommended for determining whether the monitor is susceptible to the levels of electromagnetic interference occurring at the intended-use site, a recommendation to repeat the testing periodically, and recommended action to be taken if the monitor fails the test. The preferred testing procedure for impedance monitors is as follows:

(1) Set the monitor apnea duration to 20 seconds.

(2) Connect the monitor to a patient simulator with all cables in extended rather than coiled configuration.

(3) Determine that the monitor detects normal respiration and heart beats.

(4) Place the simulator in the apnea mode for 2 minutes.

(5) Determine that the monitor continues to alarm for apnea at full volume beginning at 20 seconds. Alarming at reduced volume, false heart rate alarms, or self-silencing of the apnea alarm prior to the end of the simulated apnea constitute failure of this test.

(d) Precautions and a schedule of maintenance and calibrations necessary to keep the monitor in compliance with this standard.

(e) Complete equipment specifications, including signal processing functions, algorithms, and

averaging times for any monitor function applicable to the operation and use of the device; statements as to whether or not pacemaker pulse rejection and defibrillator protection are included.

(f) For monitors using heart rate as a secondary monitoring modality, a caution statement that low heart rate may not occur during apnea if the patient is receiving drugs or substances which could affect heart rate, e.g., such as theophylline.

(g) A discussion of the importance of evaluating for each patient the response to apnea of candidate secondary monitoring parameters; how this information should be used in the selection of an appropriate secondary monitoring modality and in setting the secondary parameter alarm limits; and the importance of reevaluating the appropriateness of the secondary monitoring parameter and its alarm limit settings as conditions change.

(h) For monitors intended for home use, a discussion of home apnea monitoring that includes:

(1) Instruction and education of the parent and other care givers in the normal operation and hazards of the device and its limitations.

(2) An explanation of the equipment used in home monitoring.

(i) A list of additional reference materials for the health care practitioner about apnea monitoring.

(j) The date of issuance and the date of any revision of the health care practitioner instruction manual provided.

(k) The results of clinical testing for the specific model of apnea monitor and the methods by which these results were obtained.

§ 896.52 Servicing information.

Manufacturers of monitors shall provide to servicing dealers and distributors adequate instructions for service adjustment and service procedures necessary to keep the device in compliance with this standard, including: Theory of operation, block diagrams, software flow charts, schematics, parts lists, and any necessary test procedures.

§ 896.53 Label specifications.

Labels or other equivalent markings required by this section shall be legible, clearly visible during operation, permanently affixed or inscribed on the exterior of the finished device, and shall resist removal or blurring from disinfectants or other normal use of the device.

§ 896.54 Controls, connectors, switches, and indicators.

All controls, switches, connectors, and indicators shall bear clear, concise labels identifying their functions.

§ 896.55 Standard compliance.

The monitor shall bear a label which states that it has been manufactured in compliance with this standard.

§ 896.56 Switched outlet warning.

Each monitor intended for use in the home that can recharge batteries or operate from the AC power line shall bear a label stating: ''DO NOT connect to an electrical outlet controlled by a wall switch''.

§ 896.57 Air mattress warning.

Air mattresses shall be permanently labeled with the warning: ''Inflate only with room air, do NOT use pure oxygen''.

§ 896.58 Monitors intended for hospital use only.

Monitors intended for hospital use only shall be permanently labeled on the front of any module intended to comprise an infant apnea monitor as follows: ''NOT FOR HOME USE''.

§ 896.59 General test methods.

Information concerning the design of, and rationale for, the tests used to meet this standard, together with analyses and results of these tests, shall be available to any person from the manufacturer upon request. In addition, this information shall be maintained in the manufacturer's device master file for a period of 5 years after production of the device has ceased.

(Information collection requirements in this section were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910–0073)

Dated: February 13, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–022–00001–2)	$5.00	Jan. 1, 1994
3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.00	[1] Jan. 1, 1994
4	(869–022–00003–9)	5.50	Jan. 1, 1994
5 Parts:			
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7 Parts:			
0–26	(869–022–00007–1)	21.00	Jan. 1, 1994
27–45	(869–022–00008–0)	14.00	Jan. 1, 1994
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1900–1910 (§§ 1901.1 to 1910.999)	(869–022–00111–6)	33.00	July 1, 1994
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CFR Index and Findings Aids	(869–022–00053–5)	38.00	Jan. 1, 1994

Title	Stock Number	Price	Revision Date
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.