3–30–95
Vol. 60 No. 61
Pages 16363–16564

federal register

Thursday
March 30, 1995

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Rules and Regulations

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG74

Prevailing Rate Systems; Abolishment of Clinton, NY, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to abolish the Clinton, NY, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and add Clinton County, NY, as an area of application to the Oneida, NY, NAF wage area for pay-setting purposes. No employee's wage rate will be reduced as a result of this change.

DATES: This interim rule becomes effective on March 30, 1995. Comments must be received by May 1, 1995. Employees paid rates from the Clinton, NY, NAF wage schedule will continue to be paid from the schedule until their conversion to the new Oneida, NY, NAF wage schedule on its effective date, May 4, 1995.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Human Resources Systems Service, U.S. Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Department of Defense recommended to the Office of Personnel Management that the Clinton, NY, NAF wage area be abolished and that Clinton County be added as an area of application to the Oneida, NY, NAF wage area. With the scheduled 1995 closing of the host installation, Plattsburgh Air Force Base (AFB), there will no longer be a local activity with the capability to do the Clinton, NY, survey. There will, however, still be about 23 NAF employees in Clinton County. Neither of the current area of application counties, Chittenden and Franklin, VT, has FWS NAF employees.

The provisions of 5 CFR 532.219 list the following criteria for consideration when two or more counties are to be combined to constitute a single wage area:

(1) Proximity of largest activity in each county;

(2) Transportation facilities and commuting patterns; and

(3) Similarities of the counties in:

(i) Overall population;

(ii) Private employment in major industry categories; and

(iii) Kinds and sizes of private industrial establishments.

There criteria are discussed in turn below.

Of the largest nearby activities with NAF employees, Plattsburgh AFB, Clinton County, NY, is closest to Griffiss Air Force Base, Oneida, NY. Slightly more distant are Portsmouth Naval Shipyard and the U.S. Military Academy. Distances from Plattsburgh Air Force Base to the host activities of the surrounding wage areas are as follows: Griffiss Air Force Base, Oneida County, 320 km (199 miles); Portsmouth Naval Ship Yard, York County, ME, 362 km (225 miles); and the United States Military Academy, Orange County, NY, 396 km (246 miles).

Considering transportation facilities, from Plattsburgh AFB, the largest installations in the three surrounding survey areas can all be reached easily by Interstate Highways and some primary undivided roads. An analysis of 1990 census commuting patterns data indicates that no workers commute between Clinton County, NY, and the three survey counties under consideration (Oneida, York, and Orange).

In terms of similarities of the counties in overall population, private employment, and kinds and sizes of private industrial establishments, Clinton County is most similar to York County.

In summary, the first criterion, proximity, favors Oneida County. Considering the second criterion, transportation facilities and commuting patterns, none of the three counties being considered is favored. The third criterion, similarities in population and industry, favors York County. On balance, evaluation under the criteria favors the definition of Clinton County to the Oneida, NY, NAF wage area.

The Federal Prevailing Rate Advisory Committee reviewed this recommendation and by consensus recommended approval.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because preparations for the March 1995 Clinton survey must otherwise begin immediately.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B of Part 532 [Amended]

2. In Appendix B to subpart B of part 532, the listing for the State of New York is amended by removing the entry for Clinton.

Appendix D to Subpart B of Part 532 [Amended]

3. Appendix D to subpart B of part 532 is amended by removing the entry

for Clinton, New York, and by revising the entry for Oneida, New York, to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

New York

* * * * *

Oneida

Survey area

New York:

Oneida

Area of application. Survey area plus:

New York:

Albany

Clinton (Effective date May 4, 1995)

Jefferson

Onondago

Ontario

Saratoga

Schenectady

Seneca

Steuben

* * * * *

[FR Doc. 95–7760 Filed 3–29–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 68

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

General Regulations and Standards for Certain Agricultural Commodities; Transfer of Regulations

ACTION: Final rule.

SUMMARY: This rule reflects the redesignation of 7 CFR Part 68 as 7 CFR Part 868. The transfer of Part 68 from 7 CFR Chapter I to 7 CFR Chapter VIII as Part 868 is being undertaken to consolidate into one chapter the regulations of the Federal Grain Inspection Service (FGIS), a program of the Grain Inspection, Packers and Stockyards Administration (GIPSA).

EFFECTIVE DATE: March 30, 1995.

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

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA), established by the Secretary of Agriculture, Secretary's Memorandum 1010–1, Reorganization of the Department of Agriculture, on October 20, 1994, is consolidating those regulations which the Federal Grain Inspection Service (FGIS), a program of GIPSA, is responsible for administering. The FGIS regulations are currently found in 7 CFR Chapter I part 68 and 7 CFR Chapter VIII. This rule reflects the transfer of Part 68 from Chapter I to Chapter VIII as Part 868, thus consolidating all FGIS regulations within Chapter VIII.

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

List of Subjects in Part 68

Administrative practice and procedures, Agricultural commodities.

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

PART 68—[REDESIGNATED AS PART 868]

1. Part 68 is transferred from Chapter I to Chapter VIII and redesignated as Part 868. The heading of redesignated Part 868 is revised to read as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

2. The authority citation for redesignated Part 868 continues to read as follows:

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

3. Internal paragraph references in newly redesignated part 868 are revised as follows:

Old section	Old reference	New section	New reference
68.20(a)	§§ 68.40 through 68.44	868.20(a)	§§ 868.40 through 868.44.
68.20(b)	§§ 68.50 through 68.52 and §§ 68.60 through 68.63.	868.20(b)	§§ 868.50 through 868.52 and §§ 868.60 through 868.63.
68.21(e)	§ 68.34	868.21(e)	§ 868.34.
68.21(f)	§ 68.24	868.21(f)	§ 868.24.
68.21(j)	§§ 68.90–68.92	868.21(j)	§§ 868.90–868.92.
68.22	§ 68.26	868.22	§ 868.26.
68.24(a)	§ 68.21	868.24(a)	§ 868.21.
68.26	§§ 68.22, 68.23, or 68.24	868.26	§§ 868.22, 868.23, or 868.24.
68.33(a)(2)	§ 68.35(e)	868.33(a)(2)	§ 868.35(e).
68.33(a)(3)	§ 68.35(e), § 68.61(b)	868.33(a)(3)	§ 868.35(e), § 868.61(b).
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68.43	§ 68.70	868.43	§ 868.70.
68.51(a)	§ 68.21 (twice)	868.51(a)	§ 868.21 (twice).
68.52(a)	§ 68.70	868.52(a)	§ 868.70.
68.52(b)	§ 68.71	868.52(b)	§ 868.71.
68.61(a)	§ 68.21 (twice)	868.61(a)	§ 868.21 (twice).
68.71(e)	§§ 68.70–68.75	868.71(e)	§§ 868.70–868.75.
68.74(f)	§ 68.70(b)	868.74(f)	§ 868.70(b).
68.75(c)	§ 68.70(b)	868.75(c)	§ 868.70(b).
68.81(d)	§ 68.84	868.81(d)	§ 868.84.

Old section	Old reference	New section	New reference
68.82	§ 68.81 (a) and (b)	868.82	§ 868.81 (a) and (b).
68.83	§ 68.81 (a) and (b)	868.83	§ 868.81 (a) and (b).
68.92(a)	§§ 68.90 and 68.91	868.92(a)	§§ 868.90 and 868.91.
68.92(a)(5)	§ 68.92(c)	868.92(a)(5)	§ 868.92(c).
68.92(f)	§ 68.92(c)	868.92(f)	§ 868.92(c).
68.103	§§ 68.133 through 68.142	868.103	§§ 868.133 through 868.142.
68.141	§ 68.142 (a) and (b); § 68.142 (c) and (d).	868.141	§ 868.142 (a) and (b); § 868.142 (c) and (d).
68.201	(see § 68.202(i))	868.201	(see § 868.202(i)).
68.205	(see § 68.202(f))	868.205	(see § 868.202(f)).
68.211(a)(5)	(see § 68.213)	868.211(a)(5)	(see § 868.213).
68.211(b)(5)	(see § 68.213)	868.211(b)(5)	(see § 868.213).
68.212	§ 68.210	868.212	§ 868.210.
68.212(b) note	§ 68.210	868.212(b) note	§ 868.210.
68.212(d) note	§ 68.210	868.212(d) note	§ 868.210.
68.256	(see § 68.252(g))	868.256	(see § 868.252(g)).
68.262(a)(5)	(see § 68.264)	868.262(a)(5)	(see § 868.264).
68.263	§ 68.262	868.263	§ 868.262.
68.263(c) note	§ 68.261	868.263(c) note	§ 868.261.
68.310 heading	(see also § 68.315)	868.310 heading	(see also § 868.315).
68.310:		868.310:	
Footnote 1	§ 68.315(c)	Footnote 1	§ 868.315(c).
Footnote 2	§ 68.315(e)	Footnote 2	§ 868.315(e).
Footnote 5	§ 68.315(d)	Footnote 5	§ 868.315(d).
68.311	(See also § 68.305.)	868.311	(See also § 868.305).
68.311:		868.311:.	
Footnote 1	§ 68.315(c)	Footnote 1	§ 868.315(c).
Footnote 2	§ 68.315(d)	Footnote 2	§ 868.315(d).
Footnote 3	§ 68.315(e)	Footnote 3	§ 868.315(e).
68.312	(See also § 68.315.)	868.312	(See also § 868.315).
68.312:		868.312:.	
Footnote 1	§ 68.315(c)	Footnote 1 § 868.315(c).	
Footnote 2	§ 68.315(d)	Footnote 2 § 868.315(d).	
Footnote 3	§ 68.315(e)	Footnote 3 § 868.315(e).	
68.313	(See also § 68.315.)	868.313	(See also § 868.315).
68.313:		868.313:.	
Footnote 1	§ 68.315(c)	Footnote 1	§ 868.315(c).
Footnote 2	§ 68.315(d)	Footnote 2	§ 868.315(d).
68.315	§ 68.314	868.315	§ 868.314.
68.315(c) note	§§ 68.310, 68.311, 68.312, and 68.313.	868.315(c) note	§§ 868.310, 868.311, 868.312, and 868.313.
68.315(d) note	§§ 68.310, 68.311, 68.312, and 68.313.	868.315(d) note	§§ 868.310, 868.311, 868.312, and 868.313..
68.315(e) note	§§ 68.310, 68.311, and 68.312	868.315(e) note	§§ 868.310, 868.311, and 868.312.
68.316	§ 68.314	868.316	§ 868.314.
68.403(b)	§ 68.402(d)	868.403(b)	§ 868.402(d).
68.406	(See also § 68.408.)	868.406	(See also § 868.408).
68.408	§ 68.406	868.408	§ 868.406.
68.409	§ 68.407	868.409	§ 868.407.
68.502(b)	§ 68.501(e)	868.502(b)	§ 868.501(e).
68.503	(see § 68.506)	868.503	(see § 868.506).
68.504	(see § 68.506)	868.503	(see § 868.506).
68.507	(See also § 68.509.)	868.507	(See also § 868.509).
68.601(d)	(see § 68.606)	868.601(d)	(see § 868.606).
68.602(b)	§ 68.601(c)	868.601(c)	§ 868.601(c).
68.603	(see § 68.606)	868.603	(see § 868.606).
68.604	(see § 68.606)	868.604	(see § 868.606).
68.607	(see also § 68.609)	868.607	(see also § 868.609).
68.611	(see § 68.606)	868.611	(see § 868.606).

Dated: March 14, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–6906 Filed 3–29–95; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–15–AD; Amendment 39–9184; AD 95–02–17]

Airworthiness Directives; Beech Aircraft Corporation Model 1900D 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) 95–02–17, which was sent previously to known U.S. owners and operators of certain Beech Aircraft Corporation Model 1900D airplanes. This AD requires inspecting (one-time) the elevator trim tab control cables at the top of the vertical stabilizer to ensure that cables (at the left, right, and crossover pulleys) are correctly routed around the pulleys, within the cable guide pins, and are not contacting any structure; and replacing any cable that is incorrectly routed or chafed. The actions specified by this AD are intended to prevent in-flight separation of the elevator trim tab control cable caused by misrouting, which could result in loss of control of the airplane.

DATES: Effective April 17, 1995, to all persons except those to whom it was made immediately effective by priority letter AD 95–02–17, issued January 25, 1995, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before June 16, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–15–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Information that relates to this AD may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4124; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: The FAA has received a report of an in-flight separation of the elevator trim tab control (''nose up'' and ''nose down'') cable on a Beech Model 1900D airplane. The reported cable separation prevented the airplane flight crew from using manual and electrical nose up trim, and the flight crew experienced high elevator ''nose down'' control forces. The flight crew was then able to land the airplane without further incident.

Investigation of this incident showed that the elevator trim tab control cable had separated in the vicinity of its guide pulley, which is located at the top of the vertical stabilizer. The cable had been routed outside the lower cable pulley guard pin instead of under the guard pin. The routing configuration caused the cable to rub against the stabilizer rib, resulting in cable separation.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech Model 1900D airplanes of the same type design, the FAA issued priority letter AD 95–02–17 on January 25, 1995, to prevent in-flight separation of the elevator trim tab control cable caused by misrouting, which could result in loss of control of the airplane. The AD requires inspecting (one-time) the elevator trim tab control cables at the top of the vertical stabilizer to ensure that cables (at the left, right, and crossover pulleys) are correctly routed around the pulleys, within the cable guide pins, and are not contacting any structure; and replacing any cable that is incorrectly routed or chafed. Accomplishment of the required actions is in accordance with the Beech 1900D Maintenance Manual, part number 129–590000–15A11, Chapters 5–20–07, page 203; 6–40–00, page 3; 6–50–00, page 16; and 27–30–04, pages 202 and 203.

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 AD 95–02–17 effective immediately by individual letters issued on January 25, 1995, to known U.S. operators of certain Beech Model 1900D 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 immediate flight safety and, thus, was not preceded by notice and opportunity to 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 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 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 notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–15–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 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 a new airworthiness directive to read as follows:

95–02–17 Beech Aircraft Corporation: Amendment 39–9184; Docket No. 95–CE–15–AD.

Applicability: Model 1900D airplanes, serial numbers UE–1 through UE–131, 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) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any aircraft from the applicability of this AD.

Compliance: Required prior to further flight after the effective date of this AD, unless already accomplished.

To prevent in-flight separation of the elevator trim tab control cable, which could lead to loss of control of the airplane, accomplish the following:

(a) In accordance with Beech 1900D Maintenance Manual, part number 129–590000–15A11, Chapters 5–20–07, page 203; 6–40–00, page 3; 6–50–00, page 16; and 27–30–04, pages 202 and 203:

(1) Remove access panel Number 333ATC, which is located on the top surface of the horizontal stabilizer, to gain access to the elevator trim tab cable, guides, and pulleys;

(2) Inspect the cable routing to ensure that cables (at the left, right, and crossover pulleys) are correctly routed around the pulleys, within the cable guide pins, and are not contacting any structure; and

(3) Replace any cable that is incorrectly routed (cable that does not meet the criteria above in paragraph (a)(2) of this AD) or is chafed.

Note 2: The procedures listed in Beech Communique 1900D–112, dated January 1995, ''Inspection of Elevator Trim Tab Control Cables'', are similar to those included in this priority letter AD. Complying with all procedures in Beech Communique 1900D–112 is considered equivalent to the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD, and is considered ''unless already accomplished'' for this portion of the AD.

Note 3: The compliance time specified in this AD takes precedence over that specified in Beech Communique 1900D–112, dated January 1995, ''Inspection of Elevator Trim Tab Control Cables''.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, 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 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) Information that relates to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment (39–9184) becomes effective on April 17, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 95–02–17, issued January 25, 1995, which contained the requirements of this amendment.

Issued in Kansas City, Missouri, on March 24, 1995.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–7784 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 94–ASO–17]

Establishment and Alteration of Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error to the final rule published in the **Federal Register** on February 7, 1995, which modified the airspace designation for Jet Route J–20, Airspace Docket No. 94–ASO–17. This action is necessary to revise a segment of the route to reflect ''Falcon, CO; Hugo, CO'' in lieu of the Denver, CO, Very High Frequency Omnidirectional Range, which no longer exists.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION: On February 7, 1995 the FAA published a final rule to modify several existing jet routes in the Miami, FL, area (60 FR 7116) with an effective date of March 30, 1995. The airspace designation for Jet Route J–20 was modified in the State of Florida to support the commissioning of the Virginia Key, Very High Frequency Omnidirectional Range and Distance Measuring Equipment (VOR/DME). However, in the interim, a clarification of the current airspace designation for Jet Route J–20 was published in the **Federal Register** on February 10, 1995, Airspace Docket No. 95–ANM–7 (60 FR 8166) with an effective date of February 28, 1995, due to the opening of the new Denver International Airport. This action corrects that segment of the jet route's designation, which should be revised to reflect ''Falcon, CO; Hugo, CO;'' in lieu of ''Denver, CO; Kiowa, CO;''.

Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the publication in the **Federal Register** on February 7, 1995 (60 FR 7116; **Federal Register** Document 95–2737) is corrected by substituting the designation for Jet Route J–20 with the following:

Paragraph 2004—Jet Routes

* * * * *

J–20 [Revised]

From Seattle, WA, via Yakima, WA; Pendleton, OR; Donnelly, ID; Pocatello, ID; Rock Springs, WY; Falcon, CO; Hugo, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Will Rogers, OK, 284° radials; Will Rogers; Belcher, LA; Jackson, MS; Montgomery, AL; Meridian, MS; Tallahassee, FL; INT Tallahassee 129° and Orlando, FL, 306° radials; Orlando; INT Orlando 140° and Virginia Key, FL, 344° radials; Virginia Key.

* * * * *

Issued in Washington, DC, on March 24, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–7830 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–13–P

RAILROAD RETIREMENT BOARD

20 CFR Parts 228 and 237

RIN: 3220–AA59

Computation of Survivor Annuities

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board amends its regulations by adding a new part dealing with the computation of survivor annuities as provided in the Railroad Retirement Act of 1974 (Act). This part replaces part 237 of the Board's regulations, which is removed. The Board's previous regulations regarding the computation of survivor annuities were promulgated under the Railroad Retirement Act of 1937 and no longer reflect the computational provisions contained in the Act.

EFFECTIVE DATE: March 30, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone 312–751–4513, (FTS 312–386–4513), TTD 312–751–4701, TTD (FTS 312–386–4701).

SUPPLEMENTARY INFORMATION: This regulation provides the rules for computing the amount of a survivor annuity under the Railroad Retirement Act of 1974. In general, the annuity consists of two components or tiers. The first tier (tier I) is a social security level benefit that is generally computed under social security rules based on the employee's earnings under both the railroad retirement and the social security systems. The second tier (tier II) is based solely on the employee's railroad earnings and is a set percentage of the employee's tier II annuity component.

The rule is divided into three subparts, A–C:

Subpart A is an introduction to the part. It provides a listing of other relevant regulations, part 225, Primary Insurance Amount Determinations, and part 216, Eligibility for an Annuity (§ 228.1) and sets forth a general explanation of tier I and tier II annuity components (§ 228.2).

Subpart B sets forth the computation of the tier I annuity component. Section 228.10 describes the tier I of the widow(er)'s annuity; § 228.11, the tier I of widow(er) with a child in care; § 228.12, the tier I of child's annuity; and § 228.13, the tier I of a parent's annuity.

Section 228.14 describes when and how the tier I annuity component is reduced for the family maximum, which is a provision in the Social Security Act that limits the total monthly benefits to which beneficiaries may be entitled.

Section 228.15 describes the age reduction applicable to the tier I annuity component if the survivor begins to receive benefits prior to the retirement age specified in the Social Security Act.

Section 228.16 describes the adjustment of the age reduction factor when the widow(er) attains retirement age.

Section 228.17 describes how the widow(er)'s annuity is adjusted if the employee died before he or she reached age 62.

Section 228.18 describes how the tier I is reduced due to receipt of a public pension.

Section 228.19 describes how the tier I component is reduced due to receipt of a social security benefit.

Sections 228.20–228.22 describe the reduction in a survivor annuity due to receipt of other types of railroad retirement annuities.

Section 228.23 describes the order in which the above-described reductions are made. Finally, § 228.40 describes the cost-of-living increases applicable to the tier I annuity component.

Subpart C describes the computation of the tier II annuity component. Section 228.50 describes the tier II annuity component for various types of survivor annuitants. It also describes the age reduction applicable to the tier II annuity component.

Section 228.51 describes the reduction to the tier II annuity component known as the takeback amount which was imposed by the 1983 amendments to the Railroad Retirement Act.

Section 228.52 describes the increase in the tier II annuity component when a widow(er) is entitled to a railroad retirement annuity which caused a reduction in the widow(er)'s tier I annuity component.

Section 228.53 describes the increase in the tier II annuity component to insure that a widow(er)'s annuity is no less than the spouse annuity the widow(er) was receiving before the employee died.

Finally, § 228.60 describes the cost-of-living increase applicable to the tier II annuity component.

The Board published this rule in proposed form on September 30, 1993 (58 FR 51024) inviting comment by November 1, 1993; no comments were received.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 228

Pensions, Railroad employees, Railroad retirement.

For the reasons set out in the preamble, chapter II of title 20 of the Code of Federal Regulations is amended as follows:

1. Part 228, Computation of Survivor Annuities, is added to read as follows:

PART 228—COMPUTATION OF SURVIVOR ANNUITIES

Subpart A—General

Sec.
228.1 Introduction.
228.2 Tier I and tier II annuity components.

Subpart B—The Tier I Annuity Component

228.10 Computation of the tier I annuity component for a widow(er), disabled widow(er), remarried widow(er), and a surviving divorced spouse.
228.11 Computation of the tier I annuity component of a widow(er) with a child in care, remarried widow(er) with a child in care, or a surviving divorced spouse with a child in care.
228.12 Computation of the tier I annuity component of a child's insurance annuity.
228.13 Computation of the tier I annuity component of a parent's insurance annuity.
228.14 Family maximum.
228.15 Reduction for age.
228.16 Adjustments in the age reduction factor (ARF).

228.17 Adjustments to the widow(er)'s, disabled widow(er)'s, surviving divorced spouse's, and remarried widow(er)'s tier I annuity amount.
228.18 Reduction for public pension.
228.19 Reduction for a social security benefit.
228.20 Reduction for an employee annuity.
228.21 Entitlement as a spouse or divorced spouse and as a survivor.
228.22 Entitlement to more than one survivor annuity.
228.23 Priority of reductions.
228.40 Cost of living increase applicable to the tier I annuity component.

Subpart C—The Tier II Annuity Component

228.50 Tier II annuity component for widow(er), child, or parent.
228.51 Takeback amount.
228.52 Restored amount.
228.53 Spouse minimum guarantee.
228.60 Cost of living increase.

Authority: 45 U.S.C. 231f.

PART 228—COMPUTATION OF SURVIVOR ANNUITIES

Subpart A—General

§ 228.1 Introduction.

(a) *What does this part include?* This part includes the computation of a widow(er)'s, disabled widow(er)'s, remarried widow(er)'s, surviving divorced spouse's, parent's, and child's insurance annuity under the Railroad Retirement Act. This part describes the two annuity components or tiers which are included in these annuities. The tier I annuity component, which may be payable in all of the above annuities, is described in subpart B of this part. Subpart C of this part describes the tier II annuity component which is only applicable to the widow(er)'s, disabled widow(er)'s, parent's, and child's annuity.

(b) *Other relevant parts.* (1) Part 225, Primary Insurance Amount Determinations, describes the various types of primary insurance amounts which form the basis of the computation of the tier I annuity component described in this part.

(2) Part 216, Eligibility for an Annuity, describes the eligibility requirements for receipt of the annuity computations described in this part.

§ 228.2 Tier I and tier II annuity components.

(a) *Tier I annuity component.* The Tier I annuity component is generally the amount that would have been payable under the Social Security Act if all of the employee's earnings after 1936 under both the railroad retirement system and the social security system had been creditable under the Social Security Act.

(b) *Tier II annuity component.* The tier II annuity component is the portion of the survivor's annuity which is based on an employee's railroad earnings only. The tier II component of an annuity described in this part is a specified percentage of the employee's actual or anticipated tier II annuity component.

Subpart B—The Tier I Annuity Component

§ 228.10 Computation of the tier I annuity component for a widow(er), disabled widow(er), remarried widow(er), and a surviving divorced spouse.

The tier I annuity component for these beneficiaries is generally based on the survivor tier I Primary Insurance Amount (PIA). The survivor tier I PIA is determined in accordance with section 215 of the Social Security Act using the deceased employee's combined railroad and social security earnings after 1950 (or after 1936 if a higher PIA would result) up to the maximum creditable amounts through the year of the employee's death. See part 225 of this chapter. This amount may be further adjusted for certain reductions or deductions as described in §§ 228.15–228.20 of this part and is subject to the family maximum. See § 228.14 of this part.

§ 228.11 Computation of the tier I annuity component of a widow(er) with a child in care, remarried widow(er) with a child in care, or a surviving divorced spouse with a child in care.

The tier I annuity component of a widow(er), remarried widow(er), or a surviving divorced spouse with a child of the employee in his or her care is 75 percent of the PIA computed under § 228.10 of this part. The amount may be adjusted for certain reductions and deductions described in §§ 228.15–228.20 of this part and is subject to the family maximum. See § 228.14 of this part.

§ 228.12 Computation of the tier I annuity component of a child's insurance annuity.

The tier I annuity component of a child's insurance annuity is 75 percent of the PIA computed under § 228.10 of this part. The amount may be adjusted for the family maximum. See § 228.14 of this part.

§ 228.13 Computation of the tier I annuity component of a parent's insurance annuity.

The tier I annuity component of a parent's insurance annuity is dependent on whether one or two parents are entitled.

(a) *One parent entitled.* A parent's tier I annuity component is equal to 82½ percent of the PIA computed under § 228.10 of this part.

(b) *More than one parent entitled.* A parent's tier I annuity component is equal to 75 percent of the PIA computed under § 228.10 of this part.

(c) The amounts computed under paragraph (a) or (b) of this section may be adjusted for the family maximum. See § 228.14 of this part.

§ 228.14 Family maximum.

(a) *Family maximum defined.* Under the Social Security Act, the amount of total monthly benefits that can be paid for any month on one person's earnings record is limited. This limited amount is called the family maximum. The family maximum is based on the survivor tier I PIA (see part 225 of this chapter). Generally, if three or more persons are entitled to benefits, their benefits will be adjusted for the family maximum.

(b) *Computation of the family maximum.*—(1) *The employee attains age 62, has a period of disability or dies prior to 1979.* The maximum is the amount appearing in column V of the applicable table published each year by the Secretary of Health and Human Services on the line on which appears in column IV the primary insurance amount of the insured individual whose compensation is the basis for the benefits payable. Where the total of the survivor benefits exceeds the maximum, the total tier I benefits for each month after 1964 are reduced to the amount appearing in column V. Each survivor's benefit is proportionately reduced, based on the percentage of the PIA used to compute the survivor benefits. However, when any of the persons entitled to benefits on the insured individual's compensation would, except for the limitation described in § 404.353(b) of title 20 (dealing with the entitlement to more than one child's benefit), be entitled to a child's annuity on the basis of the compensation of one or more other insured individuals, the total benefits payable may not be reduced to less than the smaller of—

(i) The sum of the maximum amounts of benefits payable on the basis of the compensation of all such insured individuals, or

(ii) The last figure in column V of the applicable table published each year by the Secretary of Health and Human Services. The ''applicable table'' refers to the table which is effective for the month the benefit is payable.

(2) *The employee attains age 62, has a period of disability or dies in 1979.* The maximum is computed as follows:

(i) 150 percent of the first $230 of the individual's primary insurance amount, plus

(ii) 272 percent of the primary insurance amount over $230 but not over $332, plus

(iii) 134 percent of the primary insurance amount over $332 but not over $433, plus

(iv) 175 percent of the primary insurance amount over $433.

If the total of this computation is not a multiple of $0.10, it will be rounded to the next lower multiple of $0.10.

(3) *The employee attains age 62, or has a period of disability or dies after 1979.* The maximum is computed as in paragraph (b)(2) of this section. However, the dollar amounts shown there will be updated each year after 1979 as average earnings rise. This updating is done by first dividing the average of the total wages for the second year before the individual dies or becomes eligible, by the average of the total wages for 1977. The result of that computation is then multiplied by each dollar amount in the formula in paragraph (b)(2) of this section. Each updated dollar amount will be rounded to the nearer dollar, if the amount is an exact multiple of $0.50 (but not of $1), it will be rounded to the next higher $1. Before November 2 of each calendar year after 1978, the Secretary of Health and Human Services will publish in the **Federal Register** the formula and updated dollar amounts to be used for determining the monthly maximum for the following year.

(c) *Special minimum PIA.* Regardless of the method used to compute the primary insurance amount, if the special minimum primary insurance amount described in § 404.261 to this title is higher, then the family maximum will be based upon the special minimum primary insurance amount.

§ 228.15 Reduction for age.

(a) *Widow(er), surviving divorced spouse, or remarried widow(er).* The tier I annuity component is reduced 19/40 of 1 percent multiplied by the number of months before the annuitant attains full retirement age (presently age 65) effective with the annuity beginning date for widow(ers) born before 1/2/40. (For widow(ers) born after 1/1/40, see section 216(l) of the Social Security Act.)

(b) *Disabled widow(er), disabled surviving divorced spouse, or disabled remarried widow(er).* The tier I annuity component is reduced for a maximum of 60 months even though the annuity may begin at age 50.

§ 228.16 Adjustments in the age reduction factor (ARF).

Upon the attainment of retirement age, the previously-computed age reduction factor is adjusted to remove those months for which a full annuity was not paid even though the individual was entitled.

§ 228.17 Adjustments to the widow(er)'s, disabled widow(er)'s, surviving divorced spouse's, and remarried widow(er)'s tier I annuity amount.

(a) If the employee died before attaining age 62 and after 1978 and the widow(er), disabled widow(er), remarried widow(er), or surviving divorced spouse is first eligible after 1984, the Board will compute the tier I annuity amount as if the employee had not died but had reached age 62 in the second year after the indexing year (see § 225.2 of this chapter); *provided, however,* that if the employee was entitled to a primary insurance amount based on average monthly wages this section is not applicable. The indexing year is never earlier than the second year before the year of the employee's death. Except for this limitation it is the earlier of——

(1) The year the employee attained age 60, or would have attained age 60 had the employee lived, and

(2) The second year before the year in which the widow(er), remarried widow(er), or surviving divorced spouse becomes eligible for such an annuity, has attained age 60, or is age 50–59 and disabled.

(b) The tier I annuity component is increased if the employee's annuity was increased or would have been increased based on delayed retirement credits (see § 225.36 of this chapter).

(c) The tier I annuity component is reduced if the employee had been entitled to an age reduced annuity, including an annuity based on 30 years of service, which is reduced for age because it began before the employee attained age 62. In this instance, the widow(er)'s, remarried widow(er)'s, or surviving divorced spouse's tier I annuity component after applying any reduction for age is further reduced to the larger of amount the employee would have received as a tier I annuity component if still alive or 82½ percent of his or her primary insurance amount.

§ 228.18 Reduction for public pension.

(a) The tier I annuity component of a widow(er), remarried widow(er), surviving divorced spouse, or disabled widow(er) annuity, as described in the preceding sections of this part, is reduced if the survivor is in receipt of a public pension.

(b) When reduction is required. Unless the survivor annuitant meets one of the exceptions in paragraph (d) of this section, the tier I annuity component is reduced each month the survivor annuitant is receiving a monthly pension from a Federal, State, or local government agency (Government pension) for which he or she was employed in work not covered by social security on the last day of such employment. For purposes of this section, Federal government employees are not considered to be covered by social security if they are covered for Medicare but are not otherwise covered by social security, or if they are covered under social security solely by an election to become subject to the Federal Employees and Retirement System made after December 31, 1987, and have not worked 60 months under that system.

(c) Payment in a lump sum. If the Government pension is not paid monthly or is paid in a lump-sum payment, the Board will determine how much the pension would be if it were paid monthly. If one of the alternatives to a lump-sum payment is a life annuity, and the amount of the monthly benefit for the life annuity can be determined, the reduction will be based on that monthly benefit amount. Where the period for the equivalent monthly pension benefit is not clear, it may be necessary for the Board to determine the reduction period on an individual case basis.

(d) Exceptions. The reduction does not apply:

(1) If the survivor is receiving a Government pension based on employment for an interstate instrumentality; or

(2) If the survivor receives or is eligible to receive a Government pension for one or more months in the period December 1977 through November 1982 and he or she meets the requirements for social security benefits that were applied in January 1977, assuming the employee's earnings had been covered under that Act (even though he or she did not actually claim such benefits or become entitled for such benefits until a later month). The January 1977 requirements are, for a man, a one-half support test (see paragraph (e) of this section), and, for a woman claiming benefits as a surviving divorced spouse, marriage for at least 20 years to the insured worker. A person is considered eligible for a Government pension for any month in which he or she meets all the requirements for payment except that he or she is working or has not applied; or

(3) If a survivor annuitant was receiving or eligible (as defined in paragraph (d)(2) of this section) to receive a Government pension for one or more months before July 1983, and he

or she meets the one-half support test (see paragraph (e) of this section). If a survivor annuitant meets the exception in this paragraph but he or she does not meet the exception in paragraph (d)(2) of this section, December 1982 is the earliest month for which the reduction will not affect his benefits; or

(4) If a survivor annuitant was eligible for a Government pension in a given month except for a requirement which delayed eligibility for such pension until the month following the month in which all other requirements were met, the Board will consider the annuitant to be eligible in that given month for the purpose of meeting one of the exceptions in paragraphs (d) (2) and (3) of this section. If an annuitant meets an exception solely because of this paragraph, his or her benefits will be unreduced for months after November 1984 only.

(e) The one-half support test. For a man to meet the January 1977 requirement as provided in the exception in paragraph (d)(2) of this section and for a man or a woman to meet the exception in paragraph (d)(3) of this section, he or she must meet a one-half support test. One-half support is defined in part 222 of this chapter. One-half support must be met at one of the following times:

(1) If the employee upon whose compensation the survivor annuity is based had a period of disability which did not end before he or she became entitled to an age and service or disability annuity, or died, the survivor annuitant must have been receiving at least one-half support from the employee—

(i) At the beginning of his or her period of disability; or

(ii) At the time he or she became entitled to an age and service or disability annuity; or

(iii) At the time of his or her death.

(2) If the employee upon whose compensation the survivor annuity is based did not have a period of disability at the time of his or her entitlement or death, the survivor annuitant must have been receiving at least one-half support from the employee—

(i) At the time he or she became entitled to an age and service annuity or disability annuity; or

(ii) At the time of his or her death.

(f) Amount of reduction. (1) If a survivor annuitant becomes eligible for a Government pension after June 1983, the Board will reduce (but not below zero) the tier I annuity component by two-thirds of the amount of the monthly pension. If the amount of the reduction is not a multiple of 10 cents, it will be rounded to the next higher multiple of 10 cents.

(2) If a survivor annuitant became eligible for a Government pension before July 1983 and he or she did not meet one of the exceptions in paragraph (d) of this section, the Board will reduce (but not below zero) the tier I component by the full amount of the pension for months before December 1984 and by two-thirds the amount of his or her monthly pension for months after November 1984. If the amount of the reduction is not a multiple of 10 cents, it will be rounded to the next higher multiple of 10 cents.

(g) Reduction not applicable. This reduction is not applied to claimants who both filed and were entitled to benefits prior to December 1977.

§ 228.19 Reduction for a social security benefit.

The tier I annuity component is reduced for the amount of any social security benefit to which the survivor annuitant is entitled.

§ 228.20 Reduction for an employee annuity.

(a) *General.* If an individual is entitled to an annuity as a survivor, and is also entitled to an employee annuity, then the survivor annuity must be reduced by the amount of the employee annuity. However, this reduction does not apply (except as provided in paragraph (b) of this section) if the survivor or the individual upon whose earnings record the survivor annuity is based worked for a railroad employer or as an employee representative before January 1, 1975.

(b) *Tier I reduction.* If an individual is entitled to an annuity as a survivor, then the tier I component of the survivor annuity must be reduced by the amount of the tier I component of the employee annuity after reduction for age. Where the survivor is entitled to a tier II component and either the survivor or the employee had railroad earnings before 1975, a portion of this reduction may be restored in the computation of the tier II component (see § 228.52 of this part).

§ 228.21 Entitlement as a spouse or divorced spouse and as a survivor.

If an individual is entitled to both a spouse or divorced spouse and survivor annuity, only the larger annuity will be paid. However, if the individual so chooses, he or she may receive the smaller annuity rather than the larger annuity.

§ 228.22 Entitlement to more than one survivor annuity.

If an individual is entitled to more than one survivor annuity, only the larger annuity will be paid. However, if the individual so chooses, he or she may receive the smaller annuity rather than the larger annuity.

§ 228.23 Priority of reductions.

The tier I component of the survivor annuity is first reduced by the family maximum, if applicable, then any applicable age reduction, then by any public pension offset, then by any social security benefit payable, then by the tier I component of any employee annuity payable to the survivor annuitant.

§ 228.40 Cost of living increase applicable to the tier I annuity component.

The tier I annuity component of a survivor annuity is increased at the same time and by the same percentage as the increase provided for under section 215(i) of the Social Security Act. The amount of the increase is published in the **Federal Register** annually. The cost-of-living increase is payable beginning with the benefit for the month of December of the year for which the increase is due. The increase is paid in the January payment.

Subpart C—The Tier II Annuity Component

§ 228.50 Tier II annuity component widow(er), child, or parent.

(a) *General.* The tier II annuity component is an additional amount payable to a widow(er), disabled widow(er), child, or parent, but not to a surviving divorced spouse or remarried widow(er), and a parent as provided in paragraph (b)(2) of this section, based on the railroad employee's earnings in the railroad industry. Unlike the tier I annuity component it is not reduced for any other social insurance benefit except a railroad retirement annuity. See §§ 228.20–228.23 of this part.

(b) *Amount of the tier II annuity component (1981 amendment).*—(1) *Widow(er) or disabled widow(er).* The amount of a widow(er)'s or disabled widow(er)'s tier II annuity component is 50 percent of the amount of the employee's tier II which would have been payable in the month in which the widow became entitled had the employee been alive and in receipt of an annuity under the Railroad Retirement Act at that time.

(2) *Parent.* The amount of a parent's tier II annuity component is 35 percent of the amount of the employee's tier II annuity component which would have been payable in the month in which the parent became entitled had the employee been alive and in receipt of an annuity under the Railroad Retirement Act at that time. However, if another

survivor is entitled, or potentially entitled, to a tier II annuity component, the parent tier II annuity component is zero.

(3) *Child.* The amount of each child's tier II annuity component is 15 percent of the employee's tier II annuity component which would have been payable in the month in which the child became entitled had the employee been alive and in receipt of an annuity under the Railroad Retirement Act at that time.

(c) *Minimum tier II survivor annuity components.* If the total tier II annuity components payable to survivors is less than 35 percent of the employee's tier II annuity component which would have been payable in the month the survivors became entitled had the employee been alive and in receipt of an annuity under the Railroad Retirement Act at that time, the individual tier II annuity components computed in paragraph (b) of this section shall be increased proportionally so that the total of all such tier II annuity components equals 35 percent of the employee's tier II annuity component.

(d) *Maximum tier II annuity components.* If the total tier II survivor annuity components payable to survivors exceeds 80 percent of the employee's tier II annuity component which would have been payable in the month the survivors became entitled had the employee been alive and entitled to an annuity under the Railroad Retirement Act at that time, the individual tier II annuity components computed in paragraph (b) of this section shall be reduced proportionally so that the total of all such tier II annuity components totals no more than 80 percent of the employee's tier II annuity component.

(e) *Age reduction.* The tier II annuity component of a widow(er) or disabled widow(er) is subject to reduction by the same age reduction factor as is applicable to the tier I annuity component. See § 228.15 of this part.

§ 228.51 Takeback amount.

(a) The 1983 amendments to the Railroad Retirement Act provided that a portion of the cost-of-living increases payable on the tier I annuity component be offset from the amount of the tier II annuity. This amount is the takeback amount. The amount of the takeback and its application depends on the employee and survivor's annuity beginning dates.

(b)(1) The tier II takeback amount for survivors whose annuity beginning date is January 1, 1984 or later is usually the amount of the employee's takeback amount. That amount is equal to 5 percent of the employee's primary insurance amount, less all applicable reductions (net tier I), on November 1, 1983. However, if the employee's annuity was reduced for a social security benefit but the survivor's annuity is not, the takeback amount is the amount the employee's annuity would have been reduced for the takeback if the employee's annuity had not been reduced for a social security benefit. If the employee's annuity had not been tiered or was being paid under the overall minimum, the Board will compute the amount of the tier II takeback that would have been applicable to the employee's annuity.

(2) The tier II takeback amount for survivors whose annuity beginning date is before January 1, 1984 is equal to 5 percent of the survivor's net tier I annuity component, before deduction on account of work, on November 1, 1983.

(3) The tier II takeback will be applied in accord with the above paragraphs in any case where the employee died or retired before January 1, 1984. If the employee died or retires after December 31, 1983, or the employee never retired and dies after December 31, 1993, no takeback will be applied to the survivor's annuity.

(c) No takeback is applied if the survivor tier II annuity amount before the takeback is applied is $10.00 or less and cost-of-living increases have not increased the tier II annuity amount to more than $10.00 (the takeback may never reduce the tier II to an amount less than $10.00).

§ 228.52 Restored amount.

(a) *General.* A restored amount is added to the tier II annuity component of a widow(er)'s annuity whose annuity is reduced for receipt of an employee annuity under the Railroad Retirement Act provided either the employee or the widow(er) had ten years of creditable railroad service prior to January 1, 1975.

(b) *Amount.* The amount of the tier II restored amount for a widow(er) is the difference between the amount payable as a widow(er) under the Railroad Retirement Act of 1937 as increased by all annual social security cost-of-living percentage increases from January 1, 1975, until the later of the annuity beginning date of either the employee's annuity or the widow(er)'s annuity and the amount payable to the widow(er) under the Railroad Retirement Act of 1974 under the rules set forth in this part.

(c) *Widower.* In order to qualify for an annuity under the 1937 Act and thus for a restored amount, a widower must have been dependent on his spouse for at least 50 percent of his support in the year prior to her death or at the time the spouse's annuity began.

§ 228.53 Spouse minimum guarantee.

The Railroad Retirement Act provides that a spouse should receive no less as a widow(er) than he or she received as a spouse. However, if the widow(er) becomes entitled to a social security benefit, thus reducing his or her annuity, the spouse minimum guarantee is payable only to the extent that it guarantees the amount that the widow(er) would have received as a spouse had he or she been entitled to a social security benefit in the month preceding the employee's death in an amount equal to the amount of the social security benefit payable at the time the widow(er) first became entitled to the social security benefit.

§ 228.60 Cost-of-living increase.

The tier II annuity component of a survivor annuity under the Railroad Retirement Act is increased by 32.5 percent of the percentage increase under section 215(i) of the Social Security Act at the same time that any such increase is payable. The amount of the increase is published in the **Federal Register** annually. The cost-of-living is payable beginning with the benefit payable for the month of December of the year for which the increase is due. The increase is paid in the January payment. In addition, in determining the amount of the tier II component at the time the survivor annuity begins, all cost-of-living increases that were applied or would have been applied after the employee's annuity beginning date or death and prior to the surviving annuity beginning date are taken into consideration.

PART 237—[REMOVED AND RESERVED]

2. Part 237 consisting of §§ 237.101–237.108 is hereby removed and reserved.

Dated: March 24, 1995.

By authority of the Board.

For the Board,

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–7778 Filed 3–29–95; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960–AC98

Supplemental Security Income for the Aged, Blind, and Disabled Elimination of Waiting Period for Termination of Couple Status

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule implements section 8012(a) of Pub. L. 101–239 which, effective October 1, 1990, changed the definition of the term ''eligible spouse'' as it is used in the supplemental security income (SSI) program. Under the former definition of ''eligible spouse,'' members of an SSI eligible couple who began living apart could not be treated as individuals for SSI eligibility and payment purposes during the first 6 months following the month in which they began living apart. The statutory change eliminated the 6-month waiting period. The final rule revises the definition of ''eligible spouse'' contained in the regulations as well as makes a number of other conforming changes. Finally, the rule eliminates provisions in the regulations pertaining to eligible couples living apart.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Regarding this document—Harry Short, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–6243; regarding eligibility or filing for benefits—our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: Section 1614(b) of the Social Security Act (the Act), as in effect until October 1, 1990, defined an eligible spouse as ''an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who has not been living apart from such other aged, blind, or disabled individual for more than six months.'' One effect of this definition was to create a 6-month waiting period before the members of an eligible couple, who begin living apart, could be treated as individuals for SSI purposes.

Section 8012 of Public Law 101–239 (the Omnibus Budget Reconciliation Act of 1989) eliminated the 6-month waiting period by revising the definition of an eligible spouse. Effective October 1, 1990, ''eligible spouse'' means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who is living with that eligible individual on the first day of the month, or, in any case in which either spouse files an application for benefits or requests restoration of eligibility under the SSI program during the month, at the time the application or request is filed.

This final rule revises the definition of ''eligible spouse'' in §§ 416.120(c)(14) and 416.1801(c) to reflect section 8012 of Public Law 101–239.

The legislative history does not indicate that Congress intended to treat couples who are temporarily separate as individuals. Therefore, the rule also provides in § 416.1801(c) that an individual is considered to be living with an eligible spouse during temporary absences as defined in § 416.1149 and while receiving continued benefits under section 1611(e)(1)(E) or (G) of the Act.

In addition to revising the definition of ''eligible spouse'' in §§ 416.120(c)(14) and 416.1801(c), a number of other sections in the regulations are revised to eliminate provisions which refer to the prior rule for terminating eligible couple status based on a 6-month period of living apart. These sections are as follows:

- Section 416.305(b)(1) is revised to remove language regarding the eligible spouse living apart from the eligible individual for a period of 6 months.
- Section 416.412 is amended by using more precise language in the first sentence when referring to a member of an eligible couple temporarily residing in a medical care facility. We also make a technical change for convenience in future updating by showing the payment amounts for such eligible couple in a table rather than as text and updating the table with the amounts published in the **Federal Register** at:

52 FR 41672 (10/29/87)
53 FR 43932 (10/31/88)
54 FR 45801 (10/31/89)
54 FR 53751 (12/29/89)
55 FR 45856 (10/31/90)
56 FR 55325 (10/25/91)
57 FR 48619 (10/27/92)
58 FR 58004 (10/28/93)
59 FR 54464 (10/31/94)

- Section 416.414 is revised to specify that the computations in paragraphs (b)(2) and (b)(3) are applicable only when one or both members of an eligible couple are temporarily absent from home per § 416.1149(c)(1). As their absence is temporary, they are not separated.
- Section 416.430, which deals with essential person increments, is revised by removing language regarding when the members of an eligible couple live apart and adding language to explain how to pay a couple when one member is temporarily absent and subject to the $30 payment limit while an inpatient at a medical facility where Medicaid is paying more than half the cost of care. The reference to § 416.531 is also changed to § 416.413.
- In § 416.432, a portion of the introductory language and paragraphs (a) and (b) are removed. The removed material concerns members of an eligible couple who have separated.
- Section 416.532(e), which provides for essential person increments when members of an eligible couple live apart, is removed.
- In § 416.554, the last sentence of the text and example three regarding separated members of an eligible couple are revised.
- In § 416.1130(c), the last sentence, which refers to members of an eligible couple who have different living arrangements, is removed.
- In § 416.1147, paragraphs (a) and (d) are removed and the remaining paragraphs are revised and redesignated (a), (b), (c), and (d) respectively. The deleted material deals with valuation of in-kind support and maintenance for a member of an eligible couple who is separated from his or her spouse.
- Section 416.1802(b) is revised to remove language referring to computation of benefits for separated members of an eligible couple.
- Section 416.1806 is revised to contain rules on who will be considered the individual's spouse, if more than one person would qualify.
- Section 416.1811 is removed as a result of the revision to § 416.1806. The cross-reference to § 416.1811 in § 416.1101 (definition of ''spouse'') is also removed.
- Section 416.1830(a)(1) is revised to provide that, if the members of an eligible couple begin living apart, they will be treated as individuals beginning with the month following the calendar month they stopped living together.
- In § 416.1832 (c) and (d), the cross-references to § 416.1806 (b) and (c) respectively are revised to refer to § 416.1806 (a)(2) and (a)(3) respectively. This change is necessitated by the revision we are making to § 416.1806.
- Section 416.1832(d) is revised to provide that, if a marital relationship has been found to exist solely because a man and woman are living together and leading others to believe that they are husband and wife, such marital relationship will be considered to end as of the date the man and woman stop living together.

Public Comments

This rule was published as a Notice of Proposed Rulemaking on March 8, 1994 (59 FR 10766). A 60-day comment period was provided. We did not receive any public comments. We are, therefore, adopting the rule essentially as proposed with the exception of some nonsubstantive technical revisions and the addition of the technical and update change being made to § 416.412 discussed above.

Obsolete Social Security Rulings

Enactment of Section 8012(a) of Public Law 101–239 has made the following Social Security Rulings (SSRs) obsolete: 76–28, 76–41, and 88–11c. Therefore, we are rescinding these SSRs simultaneously with the publication of this final rule.

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

We certify that this final regulation will not have a significant economic impact on a substantial number of small entities because it will affect only individuals and states. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act of 1980

This final regulation imposes no additional reporting and recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income.)

List of Subjects in 20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income

Dated: February 1, 1995.

Shirley Chater,

Commissioner of Social Security.

Approved: March 24, 1995

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 416 of chapter II of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED.

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

Authority: Secs. 1102 and 1601–1634 of the Social Security Act; 42 U.S.C. 1302 and 1381–1383c; sec. 212 of Pub. L. 93–66, 87 Stat. 155 and sec. 502(a) of Pub. L. 94–241, 90 Stat. 268.

2. In § 416.120, paragraph (c)(14) is revised to read as follows:

§ 416.120 General definitions and use of terms.

* * * * *

(c) *Miscellaneous.* * * *

(14) *Eligible spouse* means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who is living with that individual (see § 416.1801(c)).

* * * * *

3. The authority citation for subpart C continues to read as follows:

Authority: Secs. 1102, 1611 and 1631(a), (d), and (e) of the Social Security Act; 42 U.S.C. 1302, 1382, 1383(a), (d), and (e).

4. In § 416.305, paragraph (b)(1) is revised to read as follows:

§ 416.305 You must file an application to receive supplemental security income benefits.

* * * * *

(b) *Exceptions.* You need not file a new application if—

(1) You have been receiving benefits as an eligible spouse and are no longer living with your husband or wife;

* * * * *

5. The authority citation for subpart D continues to read as follows:

Authority: Sec. 1102, 1611 (a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382 (a), (b), (c), and (e), 1382a, 1382f, and 1383.

6. Section 416.412 is revised to read as follows:

§ 416.412 Amount of benefits; eligible couple.

The benefit under this part for an eligible couple, neither of whom is temporarily residing in a medical care facility as described in § 416.1149(c)(1) nor is a qualified individual (as defined in § 416.211), shall be payable at the following rate:

Effective date	Percentage increase	Rate per year	Rate per month
07/82	7.4	$5,116.80	$426.40
07/83	3.5	5,476.80	456.40
01/84	3.5	5,664.00	472.00
01/85	3.5	5,856.00	488.00
01/86	3.1	6,048.00	504.00
01/87	1.3	6,120.00	510.00
01/88	4.2	6,384.00	532.00
01/89	4.0	6,636.00	553.00
01/90	4.7	6,948.00	579.00
01/91	5.4	7,320.00	610.00
01/92	3.7	7,596.00	633.00
01/93	3.0	7,824.00	652.00
01/94	2.6	8,028.00	669.00
01/95	2.8	8,244.00	687.00

The monthly rate is reduced by the amount of the couple's income which is not excluded pursuant to subpart K of this part.

7. In § 416.414, the paragraph headings for paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 416.414 Amount of benefits; eligible individual or eligible couple in a medical care facility.

* * * * *

(b) * * *

(2) *Eligible couple both of whom are temporarily absent from home in medical care facilities as described in § 416.1149(c)(1).* * * *

(3) *Eligible couple with one spouse who is temporarily absent from home as described in § 416.1149(c)(1).* * * *

* * * * *

8. Section 416.430 is revised to read as follows:

§ 416.430 Eligible individual with eligible spouse; essential person(s) present.

(a) When an eligible individual with an eligible spouse has an essential person (§ 416.222) living in his or her home, or when both such persons each has an essential person, the increase in the rate of payment is determined in accordance with §§ 416.413 and 416.532. The income of the essential person(s) is included in the income of the couple and the payment due will be equally divided between each member of the eligible couple.

(b) When one member of an eligible couple is temporarily absent in accordance with § 416.1149(c)(1) and § 416.222(c) and either one or both individuals has an essential person, add the essential person increment to the benefit rate for the member of the couple who is actually residing with the essential person and include the income of the essential person in that member's income. See § 416.414(b)(3).

9. Section 416.432 is revised to read as follows:

§ 416.432 Change in status involving a couple; eligibility continues.

When there is a change in status which involves the formation or dissolution of an eligible couple (for example, marriage, divorce), a redetermination of the benefit amount shall be made for the months subsequent to the month of such formation or dissolution of the couple in accordance with the following rules:

(a) When there is a dissolution of an eligible couple and each member of the couple becomes an eligible individual, the benefit amount for each person shall be determined individually for each month beginning with the first month after the month in which the dissolution occurs. This shall be done by determining the applicable benefit rate for an eligible individual with no eligible spouse according to §§ 416.410 or 416.413 and 416.414 and applying § 416.420(a). See § 416.1147a for the applicable income rules when in-kind support and maintenance is involved.

(b) When two eligible individuals become an eligible couple, the benefit amount will be determined for the couple beginning with the first month following the month of the change. This shall be done by determining which benefit rate to use for an eligible couple according to §§ 416.412 or 416.413 and 416.414 and applying the requirements in § 416.420(a).

10. The authority citation for subpart E continues to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611(c), and 1631 (a)–(d) and (g) of the Social Security Act; 42 U.S.C. 1302, 1381, 1381a, 1382(c), and 1383 (a)–(d) and (g).

§ 416.532 [Amended]

11. In § 416.532, paragraph (e) is removed.

12. Section 416.554 is revised to read as follows:

§ 416.554 Waiver of adjustment or recovery—against equity and good conscience.

We will waive adjustment or recovery of an overpayment when an individual on whose behalf waiver is being considered is without fault (as defined in § 416.552) and adjustment or recovery would be *against equity and good conscience.* Adjustment or recovery is considered to be *against equity and good conscience* if an individual changed his or her position for the worse or relinquished a valuable right because of reliance upon a notice that payment would be made or because of the incorrect payment itself. In addition, adjustment or recovery is considered to be *against equity and good conscience* for an individual who is a member of an eligible couple that is legally separated and/or living apart for that part of an overpayment not received, but subject to recovery under § 416.570.

Example 1: Upon being notified that he was eligible for supplemental security income payments, an individual signed a lease on an apartment renting for $15 a month more than the room he had previously occupied. It was subsequently found that eligibility for the payment should not have been established. In such a case, recovery would be considered ''against equity and good conscience.''

Example 2: An individual fails to take advantage of a private or organization charity, relying instead on the award of supplemental security income payments to support himself. It was subsequently found that the money was improperly paid. Recovery would be considered ''against equity and good conscience.''

Example 3: Mr. and Mrs. Smith—members of an eligible couple—separate in July. Later in July, Mr. Smith receives earned income resulting in an overpayment to both. Mrs. Smith is found to be without fault in causing the overpayment. Recovery from Mrs. Smith of Mr. Smith's part of the couple's overpayment is waived as being *against equity and good conscience.* Whether recovery of Mr. Smith's portion of the couple's overpayment can be waived will be evaluated separately.

13. The authority citation for subpart K continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

§ 416.1101 [Amended]

14. In § 416.1101, the parenthetical reference in the definition of ''*Spouse*'' which reads ''(See §§ 416.1806 through 416.1811)'' is revised to read ''(See § 416.1806).''

15. In § 416.1130, paragraph (c) is revised to read as follows:

§ 416.1130 Introduction.

* * * * *

(c) *How we value in-kind support and maintenance.* Essentially, we have two rules for valuing the in-kind support and maintenance which we must count. The one-third reduction rule applies if you are living in the household of a person who provides you with both food and shelter (§§ 416.1131 through 416.1133). The presumed value rule applies in all other situations where you are receiving countable in-kind support and maintenance (§§ 416.1140 through 416.1145). If certain conditions exist, we do not count in-kind support and maintenance. These are discussed in §§ 416.1141 through 416.1145.

16. Section 416.1147 is revised to read as follows:

§ 416.1147 How we value in-kind support and maintenance for a couple.

(a) *Both members of a couple live in another person's household and receive food and shelter from that person.* When both of you live in another person's household throughout a month and receive food and shelter from that person, we apply the one-third reduction to the Federal benefit rate for a couple (§ 416.1131).

(b) *One member of a couple lives in another person's household and receives food and shelter from that person and the other is in a medical institution.* If one of you is living in the household of another person who provides you with both food and shelter and the other is temporarily absent from the household as provided in § 416.1149(c)(1) (in a medical institution that receives Medicaid payments for his or her care (§ 416.211(b)), we compute your benefits as if you were separately eligible individuals (see § 416.414(b)(3)). This begins with the first full calendar month one of you is in the medical institution. The one living in another person's household is eligible at an

eligible individual's Federal benefit rate and one-third of that rate is counted as income not subject to any income exclusions. The one in the medical institution cannot receive more than the rate described in § 416.414(b)(3)(i).

(c) *Both members of a couple are subject to the presumed value rule.* If the presumed value rule applies to both of you, we value any food, clothing, or shelter you and your spouse receive at one-third of the Federal benefit rate for a couple plus the amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that their value is less as described in § 416.1140(a)(2).

(d) *One member of a couple is subject to the presumed value rule and the other is in a medical institution.* If one of you is subject to the presumed value rule and the other is temporarily absent from the household as provided in § 416.1149(c)(1) (in a medical institution that receives Medicaid payments for his or her care (§ 416.211(b)), we compute your benefits as if you were separately eligible individuals (see § 416.414(b)(3)). This begins with the first full calendar month that one of you is in the medical institution (§ 416.211(b)). We value any food, clothing, or shelter received by the one outside of the medical institution at one-third of an eligible individual's Federal benefit rate, plus the amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that their value is less as described in § 416.1140(a)(2). The one in the medical institution cannot receive more than the rate described in § 416.414(b)(3)(i).

17. The authority citation for subpart R continues to read as follows:

Authority: Secs. 1102, 1614 (b) (c), and (d), and 1631 (d)(1) and (e) of the Social Security Act; 42 U.S.C. 1302, 1382c (b), (c), and (d), and 1383 (d)(1) and (e).

18. In § 416.1801(c), the definition of ''eligible spouse'' is revised to read as follows:

§ 416.1801 Introduction.

* * * * *

(c) * * *

Eligible spouse means a person—

(1) Who is eligible for SSI,

(2) Whom we consider the spouse of another person who is eligible for SSI, and

(3) Who was living in the same household with that person on—

(i) The date of filing an application for benefits (for the month of an application);

(ii) The date a request for reinstatement of eligibility is filed (for the month of such request); or

(iii) The first day of the month, for all other months. An individual is considered to be living with an eligible spouse during temporary absences as defined in § 416.1149 and while receiving continued benefits under section 1611(e)(1) (E) or (G) of the Act.

* * * * *

19. In § 416.1802, paragraph (b) is revised to read as follows:

§ 416.1802 Effects of marriage on eligibility and amount of benefits.

* * * * *

(b) *If you have an eligible spouse—*

(1) *Counting income.* If you apply for or receive SSI benefits and have an eligible spouse as defined in § 416.1801(c), we will count your combined income and calculated the benefit amount for you as a couple. Section 416.412 gives a detailed statement of the amount of benefits and subpart K of this part explains how we count income for an eligible couple.

(2) *Counting resources.* If you have an eligible spouse as defined in § 416.1801(c), we will count the value of your combined resources (money and property), minus certain exclusions, and use the couple's resource limit when we determine your eligibility. Section 416.1205(b) gives a detailed statement of the resource limit for an eligible couple.

* * * * *

20. Section 416.1806 is revised to read as follows:

§ 416.1806 Whether you are married and who is your spouse.

(a) We will consider someone to be your spouse (and therefore consider you to be married) for SSI purposes if—

(1) You are legally married under the laws of the State where your and his or her permanent home is (or was when you lived together);

(2) We have decided that either of you is entitled to husband's or wife's Social Security insurance benefits as the spouse of the other (this decision will not affect your SSI benefits for any month before it is made); or

(3) You and an unrelated person of the opposite sex are living together in the same household at or after the time you apply for SSI benefits, and you both lead people to believe that you are husband and wife.

(b) if more than one person would qualify as your husband or wife under paragraph (a) of this section, we will consider the person you are presently living with to be your spouse for SSI purposes.

§ 416.1811 [Removed]

21. Section 416.1811 is removed.

22. In § 416.1830, paragraph (a) is revised to read as follows:

§ 416.1830 When we stop considering you and your spouse an eligible couple.

* * * * *

(a) The calendar month after the month you stopped living with your eligible spouse, or

* * * * *

23. In § 416.1832, paragraphs (c) and (d) are revised to read as follows:

§ 416.1832 When we consider your marriage ended.

* * * * *

(c) We decide that either of you is not a spouse of the other for purposes of husband's or wife's social security insurance benefits, if we considered you married only because of § 416.1806(a)(2); or

(d) You and your spouse stop living together, if we considered you married only because of § 416.1806(a)(3).

[FR Doc. 95–7847 Filed 3–29–95; 8:45 am]

BILLING CODE 4190–29–M

Food and Drug Administration

21 CFR Part 450

[Docket No. 94N–0302]

Antibiotic Drugs; Bleomycin Sulfate; Withdrawal of Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; withdrawal of regulation.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing a regulation that established standards for an antibiotic drug, nonsterile bleomycin sulfate bulk drug substance. This action is taken to allow interested persons an opportunity to comment on the standards for nonsterile bleomycin sulfate bulk drug substance. In a future issue of the **Federal Register**, the agency will issue a proposed rule setting forth standards for bulk nonsterile bleomycin sulfate.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Tamar S. Nordenberg, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 4, 1994 (59 FR 50484), FDA published a new antibiotic regulation setting forth standards for a nonsterile bleomycin sulfate bulk drug substance (21 CFR 450.10). This was published as a final rule to become effective on November 3, 1994. This new regulation differed from

the monograph standards for sterile bleomycin sulfate bulk drug, set forth in 21 CFR 450.10a, in two respects: The new regulation did not require sterility at the bulk stage, and the new regulation did not require testing for pyrogens at the bulk stage.

Bristol-Myers Squibb Co., the sponsor of the innovator product, filed a petition for stay pursuant to 21 CFR 10.35, objecting to FDA's decision to promulgate the new regulation without notice and a prior opportunity for public comment. On November 9, 1994, FDA agreed to stay the effective date of the monograph for nonsterile bleomycin sulfate bulk drug substance to reconsider the manner in which the agency promulgated the new monograph. A copy of FDA's letter notifying Bristol-Myers Squibb Co. of the stay is on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. In the **Federal Register** of March 1, 1995 (60 FR 11026), FDA published a stay of the monograph for nonsterile bleomycin sulfate bulk drug substance.

Because of the issues that may arise based on the coexistence of alternative standards for nonsterile bleomycin sulfate bulk drug and sterile bleomycin sulfate bulk drug, and because several manufacturers have demonstrated an interest in manufacturing bulk bleomycin sulfate and finished dosage forms for the drug, FDA finds that it is appropriate to provide an opportunity for public comment on the standards. Therefore, FDA is withdrawing the regulation for nonsterile bleomycin sulfate bulk drug substance, and will propose a new regulation setting forth standards for nonsterile bleomycin sulfate bulk drug substance in a future issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 450 is amended as follows:

List of Subjects in 21 CFR Part 450

Antibiotics.

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 450 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 450.10 [Removed]

2. Section 450.10 *Bleomycin sulfate* is removed.

Dated: March 18, 1995.

Murray M. Lumpkin,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 95–7802 Filed 3–29–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Subtitle A, Appendices A and B, and Parts 91, 248, 570, 572, 582, 583, 882, 889 and 890

[Docket No. R–94–1731; FR–3611–F–08]

RIN 2501–AB72

Consolidated Plan for Community Planning and Development Programs: Conforming Changes to Program Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; technical amendment.

SUMMARY: This rule amends the Department's existing regulations for programs that refer to the Comprehensive Housing Affordability Strategy (CHAS) to replace references to the CHAS with references to the document that has replaced it—the Consolidated Plan. A final rule was published on January 5, 1995, that revised 24 CFR part 91 to replace the CHAS with the consolidated plan as the document that embodies a jurisdiction's determination of housing needs and planned use of HUD funds to meet those needs.

EFFECTIVE DATE: February 6, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph F. Smith, Director, Policy Coordination, Office of Community Planning and Development, 451 Seventh Street SW., Washington, DC 20410–7000, telephone (202) 708–1283 (voice) or (202) 708–2565 (TDD). (These are not toll-free telephone numbers.) Copies of this rule will be made available on tape or large print for those with impaired vision that request them. They may be obtained at the above address.

SUPPLEMENTARY INFORMATION:

I. Background

A final rule providing for a consolidated plan and a single performance report for all HUD community planning and development formula grant programs was published on January 5, 1995, effective February 6, 1995, which affects determinations of consistency of applications for funding for other programs, as described in 24 CFR 91.2(b). The programs affected, for which conforming changes are necessary to published program requirements, are HOPE for Public and Indian Housing Homeownership Program (''HOPE 1'') (program guidelines codified as Appendix A to Subtitle A of 24 CFR), HOPE for Homeownership of Multifamily Units Program (''HOPE 2'') (program guidelines codified as Appendix B to Subtitle A of 24 CFR), Lead-Based Paint Hazard Reduction Program (Part 35), Prepayment of Low Income Housing Mortgages (Part 248), HOPE for Homeownership of Single Family Homes Program (Part 572), Shelter Plus Care Program (Part 582), Supportive Housing Program (Part 583), Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals (Part 882, Subpart H), Supportive Housing for the Elderly Program (Part 889), and Supportive Housing for Persons With Disabilities Program (Part 890). The regulations (or guidelines, in the case of HOPE 1 and HOPE 2) for all of these programs are amended by this rule, except for the Lead-Based Paint Hazard Reduction Program, for which a separate rulemaking is underway.

In addition, the Community Development Block Grant (CDBG) program regulations are being amended in this rule to make the provision in the CDBG rule concerning the deadline for submitting the consolidated plan consistent with the provision in the consolidated plan rule. (Section 91.15 provides that a consolidated plan must be submitted no later than August 16 of the federal fiscal year for which funding is sought, whereas § 570.304(c)(1) states that the first working day of September is the deadline.)

Another technical correction being made in this rule is to remove from 24 CFR part 91 a provision that conflicts with a State CDBG program provision. (Section 570.483(d) prescribes the manner in which States meet the requirements for funding an activity under the ''urgent need'' national objective. Section 91.320(g)(1)(i) of the consolidated plan rule prescribes another method.) The Department wishes to preserve the method specified in the CDBG State program regulation, so this rule removes the provision from the consolidated plan rule.

II. Justification for Final Rule

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR

part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.'' (24 CFR 10.1) The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary. This rule is technical in nature, making amendments to program regulations to conform their terminology to the status of the current consolidated plan regulations at 24 CFR part 91. No purpose would be served by requesting comments on this technical change. In fact, this rule is effective retroactive to the effective date of the final consolidated plan rule, so that the references to the CHAS, which is superseded by the Consolidated Plan, can instead refer to the then operative document.

Findings and Certifications

Impact on the Environment

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332, in connection with the Consolidated Plan final rule. That Finding of No Significant Impact, applicable to this technical conforming rule, is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410–0500.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have significant impact on States or their political subdivisions since the requirements of the rule are limited to technical amendments necessary to carry out accurately the provisions of programs whose regulations were not amended in the original Consolidated Plan rule.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order since it is only a technical, conforming rule.

Impact on Small Entities

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 will not have a significant impact on a substantial number of small entities, because it imposes no new burdens on jurisdictions.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Regulatory Agenda published on November 14, 1994 (59 FR 57632, 57641), under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 248

Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, Grant programs—housing and community development, American Samoa, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Virgin Islands.

24 CFR Part 572

Condominiums, Cooperatives, Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 582

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 889

Aged, Capital advance programs, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 890

Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Reporting and recordkeeping requirements.

Accordingly, Appendices A and B to Subtitle A of title 24 Code of Federal Regulations and parts 91, 248, 570, 572, 582, 583, 882, 889, and 890 of title 24 of the Code of Federal Regulations are amended as follows:

Appendix A to Subtitle A of 24 CFR [Amended]

1. Appendix A is amended in the following way:

a. In Section II., Definitions, the definition of the term ''CHAS'' is removed and a definition of the term ''Consolidated Plan'' is added in its place, to read as follows:

Consolidated plan. The document that is submitted to HUD that serves as the planning document (comprehensive housing affordability strategy and community development plan) of the jurisdiction and an application for funding under Community Planning and Development formula grant programs, which is prepared in accordance with the process prescribed in 24 CFR part 91.

b. In Section III, under the heading of *Section 310. Applications for planning grants.*, in paragraph (b)(4), the term ''CHAS'' is removed wherever it appears, and the term ''Consolidated Plan'' is added in each of those places.

c. In Section IV, under the heading of *Section 415. Applications for implementation grants.*, in paragraph (b)(17), the term ''CHAS'' is removed wherever it appears, and the term ''Consolidated Plan'' is added in each of those places.

Appendix B to Subtitle A of 24 CFR [Amended]

2. Appendix B is amended in the following way:

a. In Section II., Definitions, the definition of the term ''CHAS'' is removed and a definition of the term ''Consolidated Plan'' is added in its place, to read as follows:

Consolidated plan. The document that is submitted to HUD that serves as the planning document (comprehensive housing affordability strategy and community development plan) of the jurisdiction and an application for funding under Community Planning and Development formula grant programs, which is prepared in accordance with the process prescribed in 24 CFR part 91.

b. In Section III, under the heading of *Section 310. Applications for planning grants.*, in paragraph (b)(4), the term ''CHAS'' is removed wherever it appears, and the term ''Consolidated Plan'' is added in each of those places.

c. In Section IV, under the heading of *Section 415. Applications for implementation grants.*, in paragraph (b)(17), the term ''CHAS'' is removed wherever it appears, and the term ''Consolidated Plan'' is added in each of those places.

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

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

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

§ 91.2 [Amended]

4. Section 91.2 is amended by removing from paragraph (b)(10) the phrase, ''subpart E'', and adding in its place the phrase, ''subpart F''.

§ 91.320 [Amended]

5. Section 91.320 is amended by removing paragraph (g)(1)(i) and by removing the paragraph designation (g)(1)(ii).

PART 248—PREPAYMENT OF LOW INCOME HOUSING MORTGAGES

6. The authority citation for part 248 continues to read as follows:

Authority: 12 U.S.C. 1715l note, 4101 note, and 4101–4124; 42 U.S.C. 3535(d).

7. In § 248.177, paragraph (b)(6) is revised to read as follows:

§ 248.177 Delegated responsibility to State agencies.

* * * * *

(b) * * *

(6) A certification by the public official responsible for submitting the consolidated plan under 24 CFR part 91 that the proposed activities are consistent with the approved consolidated plan of the State within which the eligible low income housing is located; and

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

8. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

9. In § 570.304, paragraph (c)(1) is revised to read as follows:

§ 570.304 Making of grants.

* * * * *

(c) * * *

(1) Either the consolidated plan is not received by August 16 of the federal fiscal year for which funds are appropriated or the consolidated plan is not approved under 24 CFR part 91, subpart F—in which case, the grantee will forfeit the entire entitlement amount; or

* * * * *

§ 570.509 [Amended]

10. Section 570.509 is amended by removing from paragraph (d) the word ''CHAS'' wherever it appears and adding in its place the words ''consolidated plan''.

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

11. The authority citation for part 572 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12891.

12. Section 572.400 is revised to read as follows:

§ 572.400 Consolidated plan.

(a) *Applicants that are States or units of general local government.* The applicant must have a HUD-approved complete or abbreviated consolidated plan, in accordance with 24 CFR part 91, and must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan. Funded applicants must certify in a grant agreement that they are following the HUD-approved consolidated plan.

(b) *Applicants that are not States or units of general local government.* The applicant must submit a certification by the jurisdiction in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with the consistency certification provisions of the consolidated plan regulations, 24 CFR part 91, subpart F.

(c) *Indian tribes and the Insular Areas of Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands.* These entities are not required to have a consolidated plan or to make consolidated plan certifications. An application by an Indian tribe or other applicant for a project that will be located on a reservation of an Indian tribe will not require a certification by the tribe or the State. However, where an Indian tribe is the applicant for a project that will not be located on a reservation, the requirement for a certification under paragraph (b) of this section will apply.

(d) *Timing of consolidated plan certification submissions.* Unless otherwise set forth in the NOFA, the required certification that the application for funding is consistent with the HUD-approved consolidated plan must be submitted by the funding application submission deadline announced in the NOFA.

PART 582—SHELTER PLUS CARE

13. The authority citation for part 582 is revised to read as follows:

Authority: 42 U.S.C. 11403 note and 3535(d).

14. Section 582.120 is revised to read as follows:

§ 582.120 Consolidated plan.

(a) *Applicants that are States or units of general local government.* The applicant must have a HUD-approved complete or abbreviated consolidated plan, in accordance with 24 CFR part 91, and must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan. Funded applicants must certify in a grant agreement that they are following the HUD-approved consolidated plan. If the applicant is a State, and the project will be located in a unit of general local government that is required to have, or has, a complete consolidated plan, or that is applying for Shelter Plus Care assistance under the same Notice of Fund Availability (NOFA) and will have an abbreviated consolidated plan with respect to that application, the State also must submit a certification by the unit of general local government that the State's application is consistent with the unit of general local government's HUD-approved consolidated plan.

(b) *Applicants that are not States or units of general local government.* The applicant must submit a certification by the jurisdiction in which the proposed project will be located that the

jurisdiction is following its HUD-approved consolidated plan and the applicant's application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with the consistency certification provisions of the consolidated plan regulations, 24 CFR part 91, subpart F.

(c) *Indian tribes and the Insular Areas of Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands.* These entities are not required to have a consolidated plan or to make consolidated plan certifications. An application by an Indian tribe or other applicant for a project that will be located on a reservation of an Indian tribe will not require a certification by the tribe or the State. However, where an Indian tribe is the applicant for a project that will not be located on a reservation, the requirement for a certification under paragraph (b) of this section will apply.

(d) *Timing of consolidated plan certification submissions.* Unless otherwise set forth in the NOFA, the required certification that the application for funding is consistent with the HUD-approved consolidated plan must be submitted by the funding application submission deadline announced in the NOFA.

PART 583—SUPPORTIVE HOUSING PROGRAM

15. The authority citation for part 583 is revised to read as follows:

Authority: 42 U.S.C. 11389 and 3535(d).

16. Section 583.155 is revised to read as follows:

§ 583.155 Consolidated plan.

(a) *Applicants that are States or units of general local government.* The applicant must have a HUD-approved complete or abbreviated consolidated plan, in accordance with 24 CFR part 91, and must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan. Funded applicants must certify in a grant agreement that they are following the HUD-approved consolidated plan.

(b) *Applicants that are not States or units of general local government.* The applicant must submit a certification by the jurisdiction in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with the consistency certification provisions of the consolidated plan regulations, 24 CFR part 91, subpart F.

(c) *Indian tribes and the Insular Areas of Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands.* These entities are not required to have a consolidated plan or to make consolidated plan certifications. An application by an Indian tribe or other applicant for a project that will be located on a reservation of an Indian tribe will not require a certification by the tribe or the State. However, where an Indian tribe is the applicant for a project that will not be located on a reservation, the requirement for a certification under paragraph (b) of this section will apply.

(d) *Timing of consolidated plan certification submissions.* Unless otherwise set forth in the NOFA, the required certification that the application for funding is consistent with the HUD-approved consolidated plan must be submitted by the funding application submission deadline announced in the NOFA.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR EXISTING HOUSING

17. The authority citation for part 882 continues to read as follows:
AUTHORITY: 12 U.S.C. 1701q, 42 U.S.C. 3535(d).

18. In § 882.805, paragraph (b)(2) is revised to read as follows:

§ 882.805 PHA application process, HUD review and selection, ACC execution, and pre-rehabilitation activities.

* * * * *

(b) * * *

(2) *Consolidated plan.* (i) *Certification of consistency.* Except as provided in paragraph (b)(2)(ii) of this section, the applicant must submit a certification by the jurisdiction in which the proposed project will be located that the jurisdiction is following, and the applicant's application for funding is consistent with, the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with the consolidated regulations at 24 CFR part 91, subpart F, and as may be further described in the NOFA.

(ii) *Exception.* The consolidated plan certification is not required where the proposed project will be located on a reservation of an Indian tribe or the Insular Area of Guam, the U.S. Virgin Islands, American Samoa, or the Northern Mariana Islands.

(iii) *Timing of consolidated plan certification submission.* Unless otherwise set forth in the NOFA, the required certification must be submitted by the funding application submission deadline announced in the NOFA. All certifications must be signed by the public official responsible for submitting the consolidated plan to HUD, and they must meet the consistency certification requirements of the consolidated plan regulations, 24 CFR part 91, subpart F.

* * * * *

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

19. The authority citation for part 889 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 8013.

20. In § 889.270, paragraph (b)(3) is revised to read as follows:

§ 889.270 Application contents.

* * * * *

(b) * * *

(3) The Sponsor must submit a certification by the jurisdiction in which the proposed project will be located that the Sponsor's application is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with the consistency certification requirements of 24 CFR part 91, subpart F, and as may be further described in the NOFA. This certification is not required where the proposed project will be located in the Insular Area of Guam, the U.S. Virgin Islands, American Samoa or the Northern Mariana Islands. Unless otherwise set forth in the NOFA, the required certification must be submitted by the application submission deadline announced in the NOFA. All certifications must be signed by the public official responsible for submitting the consolidated plan to HUD, and they must meet the consistency certification requirements of the consolidated plan regulations, 24 CFR part 91, subpart F.

* * * * *

PART 890—SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

21. The authority citation for part 890 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 8013.

22. In § 890.265, paragraph (b)(3) is revised to read as follows:

§ 890.265 Application contents.

* * * * *

(b) * * *

(3) The Sponsor must submit a certification by the jurisdiction in which the proposed project will be located that the Sponsor's application is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with the consistency certification requirements of 24 CFR part 91, subpart F, and as may be further described in the NOFA. This certification is not required where the proposed project will be located in the Insular Area of Guam, the U.S. Virgin Islands, American Samoa or the Northern Mariana Islands. Unless otherwise set forth in the NOFA, the required certification must be submitted by the application submission deadline announced in the NOFA. All certifications must be signed by the public official responsible for submitting the consolidated plan to HUD, and they must meet the consistency certification requirements of the consolidated plan regulations, 24 CFR part 91, subpart F.

* * * * *

Dated: March 21, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–7730 Filed 3–29–95; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8115]

Income Taxes; Unisex Annuity Tables; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final regulations (T.D. 8115), which were published Friday, December 19, 1986 (51 FR 45690), relating to the annuity tables used to compute the portion of the amount received as an annuity that is includible in gross income.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Brant Goldwyn (202) 622–6040, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction adopt the mortality assumptions used to develop the proposed annuity tables. Thus, the revised tables are based, as are Tables I through IV of § 1.72–9, on individual annuitant mortality.

Need for Correction

As published, T.D. 8115 contains an error which may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.72–9, Table VII, years 21 through 30, is amended by revising the entry for age 39 to read as follows:

§ 1.72–9 Tables.

* * * * *

TABLE VII—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT

Age	Years——									
	21	22	23	24	25	26	27	28	29	30
*	*	*	*	*	*	*	*	*	*	*
39	2	2	2	2	3	3	3	3	4	4
*	*	*	*	*	*	*	*	*	*	*

* * * * *

Cynthia E. Grigsby,

Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 95–7849 Filed 3–29–95; 8:45 am]

BILLING CODE 4830–01–P

26 CFR Part 1

[TD 8552]

RIN 1545–AL80

Intercompany Transfer Pricing Regulations Under Section 482; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 8552), which were published in the **Federal Register** for Friday, July 8, 1994, (59 FR 34971) relating to intercompany transfer pricing.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Sim Seo at (202) 622–3840, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections contains changes made to section 482 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8552), which are the subject of FR Doc. 94–16456, is corrected as follows:

§ 1.482–2 [Corrected]

1. On page 35002, column 2, § 1.482–2 (a)(1)(ii)(A), introductory text, line 2, the language ''*indebtedness.* Paragraph (e) of this'' is corrected to read ''*indebtedness.* Paragraph (a) of this''.

2. On page 35002, column 2, § 1.482–2 (a)(1)(ii)(B), line 2, the language ''paragraph (e) does not apply to so much'' is corrected to read ''paragraph (a) does not apply to so much''.

3. On page 35005, columns 2 and 3, the undesignated paragraph following § 1.482–2(a)(3)(iv) is removed and § 1.482–2 (a)(3)(iv) is corrected to read as follows:

§ 1.482–2 Determination of taxable income in specific situations.

(a) * * *

(3) * * *

(iv) Fourth, section 482 and paragraphs (b) through (d) of this section and §§ 1.482–3 through 1.482–7, if applicable, may be applied by the district director to make any appropriate allocations, other than an interest rate adjustment, to reflect an arm's length transaction based upon the principal amount of the loan or advance and the interest rate as adjusted under paragraph (a)(3) (i), (ii) or (iii) of this section. For example, assume that two commonly controlled taxpayers enter into a deferred payment sale of tangible property and no interest is provided, and assume also that section 483 is applied to treat a portion of the stated sales price as interest, thereby reducing the stated sales price. If after this recharacterization of a portion of the stated sales price as interest, the recomputed sales price does not reflect an arm's length sales price under the principles of § 1.482–3, the district director may make other appropriate allocations (other than an interest rate adjustment) to reflect an arm's length sales price.

* * * * *

4. On page 35008, column 2, § 1.482–2 (b)(7)(ii)(C), line 14 from the top of the column, the language ''subdivision (c). For purposes of this'' is corrected to read ''paragraph (b)(7)(ii)(C). For purposes of this''.

5. On page 35008, column 2, § 1.482–2 (b)(7)(iv), line 7, the language ''For purposes of this subdivision,'' is corrected to read ''For purposes of this paragraph (b)(7)(iv),''.

6. On page 35008, column 3, § 1.482–2 (b)(7)(v), *Example 1*, the last two lines, the language ''of X as described in subdivision (i) of this subparagraph.'' is corrected to read ''of X as described in paragraph (b)(7)(i) of this section.''.

7. On page 35008, column 3, § 1.482–2 (b)(7)(v), *Example 2*, the last two lines, the language ''activities within the meaning of subdivision (ii) of this subparagraph.'' is corrected to read ''activities within the meaning of paragraph (b)(7)(ii) of this section.''.

8. On page 35010, column 1, § 1.482–2 (b)(7)(v), *Example 13*, line 6, the language ''meaning of paragraph (d)(4) of this section).'' is corrected to read ''meaning of § 1.482–7T).''.

§ 1.482–3 [Corrected]

9. On page 35012, column 1, § 1.482–3 (b)(4), *Example 4*, lines 20 and 21, the language ''arms's length range pursuant to § 1.482–1(e)(iii)(A). If the effects of the geographic'' is corrected to read ''arm's length range pursuant to § 1.482–1(e)(2)(iii)(A). If the effects of the geographic''.

10. On page 35012, column 1, § 1.482–3 (b)(4), *Example 4*, last line, the language ''pursuant to § 1.482–1(e)(iii)(B).'' is corrected to read ''pursuant to § 1.482–1(e)(2)(iii)(B).''.

11. On page 35014, column 1, § 1.482–3 (c)(4), *Example 4*, line 1, the paragraph designation (i) is removed, and *Example 4*, line 15, the language ''to § 1.482–3(c)(iii)(B), must be made to'' is corrected to read ''to § 1.482–3(c)(3)(iii)(B), must be made to''.

12. On page 35015, column 1, § 1.482–3 (d)(3)(iii)(B), line 6, the language ''gross profit margin affects the reliability'' is corrected to read ''gross profit markup affects the reliability''.

§ 1.482–6 [Corrected]

13. On page 35027, column 2, § 1.482–6 (c)(3)(ii)(C)(*1*), line 3, the language ''paragraph (c)(2)(ii)(C)(*1*);'' is corrected to read ''paragraph (c)(2)(ii)(C)(*1*) of this section;''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–7858 Filed 3–29–95; 8:45 am]

BILLING CODE 4830–01–P

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26 CFR Part 25

[TD 8540]

RIN 1545–AM81

Valuation Tables; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations [TD 8540], which were published in the **Federal Register** for Friday, June 10, 1994 (59 FR 30100). The final regulations relate to the valuation of annuities, interests for life or terms of years, and remainder or reversionary interests.

EFFECTIVE DATE: June 10, 1994.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett, (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 170, 642, 664, 7520, 2031 and 2512 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors that are misleading and in need of correction.

Correction of Publication

Accordingly, the publication of the final regulations which are the subject of FR Doc. 94–12294, is corrected as follows:

§ 25.2523(a)–1 [Corrected]

On page 30103, references ''25.2523(a)–1(d)'' in column 1, lines 2 through 5 from the bottom of the table, are corrected as follows:

Section	Remove	Add
* *	* *	*
25.2523(a)–1(e) second sentence	* * *	* * *
25.2523(a)–1(e) third sentence	* * *	* * *
25.2523(a)–1(e) fourth sentence	* * *	* * *
25.2523(a)–1(e) fifth sentence .	* * *	* * *
* *	* *	*

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Domestic).

[FR Doc. 95–7856 Filed 3–29–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 825

RIN 1215–AA85

The Family and Medical Leave Act of 1993; Correction

AGENCY: Wage and Hour Division, Labor.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations implementing the Family and Medical Leave Act of 1993, 29 CFR part 825, which were published in the **Federal Register** Friday, January 6, 1995 (60 FR 2180).

EFFECTIVE DATE: This correction document is effective on March 30, 1995.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3506, 200 Constitution Avenue, NW.,

Washington, DC 20210; telephone (202) 219–8412. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

Final regulations implementing the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. 2601 *et seq.*, were published in the **Federal Register** on January 6, 1995. On February 3, 1995, the effective date of the final regulations was deferred from February 6, 1995, until April 6, 1995 (*see* 60 FR 6658). As published on January 6, the final regulations contain errors which may prove to be misleading and are in need of clarification. In some instances, cross-references and citations of sections of the regulations contain inadvertent errors and should be corrected as set forth below.

Correction

In rule document 94–32342 beginning on page 2180 in the issue of Friday, January 6, 1995, make the following corrections:

§ 825.100 [Corrected]

1. On page 2238, in the third column, in § 825.100(a), in the eighteenth line, the citation in the parentheses is corrected to read ''see § 825.306(b)(4)''.

§ 825.110 [Corrected]

2. On page 2242, in the second column, in § 825.110(c), in the thirty-second line, the reference to ''§ 825.500(e)'' is corrected to read ''§ 825.500(f).''

§ 825.111 [Corrected]

3. On page 2243, in the second column, in § 825.111(c), the last sentence of that section is corrected to read ''See § 825.105(c).''

§ 825.202 [Corrected]

4. On page 2247, in the first column, in § 825.202(c), in the sixteenth line, ''for a child or parent with'' is corrected to read ''for a child with''.

§ 825.207 [Corrected]

5. On page 2249, in the first column, in § 825.207(d)(2), the second sentence is corrected to read, ''If the employer designates the leave as FMLA leave in accordance with § 825.208, the employee's FMLA 12-week leave entitlement may run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition.''.

§ 825.208 [Corrected]

6. On page 2250, in the third column, in § 825.208(e)(1), the second sentence is corrected to read, ''If leave is taken for an FMLA reason but the employer was not aware of the reason, and the employee desires that the leave be counted as FMLA leave, the employee must notify the employer within two business days of returning to work of the reason for the leave.''.

§ 825.209 [Corrected]

7. On page 2251, in the second column, in § 825.209(e), the last sentence of that section is corrected to read ''See § 825.212(c).''

§ 825.210 [Corrected]

8. On page 2252, in the first column, in § 825.210(f), the last sentence of that section is corrected to read ''*See* paragraph (c) of this section and § 825.207(d)(2).''

§ 825.214 [Corrected]

9. On page 2253, in the second column, in § 825.214(a), the last sentence of that section is corrected to read ''See also § 825.106(e) for the obligations of joint employers.''

§ 825.301 [Corrected]

10. On page 2256, in the third column, in § 825.301(b)(1)(v), in the last sentence of that section, the citation in the parentheses is corrected to read ''(see § 825.310);''.

§ 825.307 [Corrected]

11. On page 2259, in the third column, in § 825.307(a)(2), the last sentence of that section is corrected to read ''See also paragraphs (e) and (f) of this section.''

§ 825.310 [Corrected]

12. On page 2261, in the first column, in § 825.310(f), in the sixth line, ''paragraph (c) of this section'' is corrected to read ''paragraph (e) of this section''.

§ 825.312 [Corrected]

13. On page 2261, in the second column, in § 825.312(b), in the eighth line, the citations in the parentheses are corrected to read ''§§ 825.305 and 825.311''.

§ 825.312 [Corrected]

14. On page 2261, in the third column, in § 825.312(c), the last sentence of that section in parentheses is corrected to read ''(See §§ 825.310 and 825.311.)''.

§ 825.312 [Corrected]

15. On page 2262, in the first column, in § 825.312(f), in the last sentence of that section, the citation in parentheses is corrected to read ''§ 825.219''.

§ 825.500 [Corrected]

16. On page 2263, in the first column, in § 825.500(c)(4), in the seventh line, the citation in parentheses is corrected to read ''§ 825.310(b)''.

§ 825.500 [Corrected]

17. On page 2263, in the second column, at the end of § 825.500(g)(3), add, ''(Approved by the Office of Management and Budget under control number 1215–0181.)''.

§ 825.702 [Corrected]

18. On page 2266, in the second column, in § 825.702(d)(2), in the twenty-sixth line, the citation is corrected to read ''§ 825.207(d)(2)''.

§ 825.800 [Corrected]

19. On page 2269, in the first column, in the second full paragraph numbered ''(3)'' in the definition of *Serious health condition,* in the ninth line, after ''stomach,'' insert ''minor''.

Appendix A to Part 825—[Corrected]

20. On page 2269, in the third column, in the ninth entry of that column in Appendix A entitled ''COBRA,'' the third citation is corrected to read ''825.213(e).''

Signed in Washington, DC, this 10th day of March, 1995.

Maria Echaveste,

Administrator, Wage and Hour Division.

[FR Doc. 95–7808 Filed 3–29–95; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7126

[CA–930–1430–01; CACA 29698]

Withdrawal of Public Land for the Coachella Division, All-American Canal System; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 359.19 acres of public land from surface entry and mining for a period of 20 years for the operation and maintenance of the Bureau of Reclamation's Coachella Division of the All-American Canal System. The land has been and will remain open to mineral leasing and the Materials Act of 1947.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825; 916–979–2858.

By virtue of the authority vested in the Secretary of the Interior by section

204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from the Materials Act of 1947 or leasing under the mineral leasing laws, for the operation and maintenance of the Bureau of Reclamation's Coachella Division of the All-American Canal System:

San Bernardino Meridian

T. 7 S., R. 10 E.,
Sec. 18, lots 1 and 2 of the NW¼, N½ lot 2 of the SW¼, and NE¼.

The area described contains 359.19 acres in Riverside County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: March 21, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–7812 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–40–P

43 CFR Public Land Order 7127

[UT–942–1430–01; UTU–71781]

Withdrawal of Public Land for Westwater Canyon of the Colorado River; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 4,710 acres of public land from surface entry and mining for a period of 50 years for the Bureau of Land Management to protect the recreational, scenic, geologic, cultural, and fish and wildlife values of the Westwater Canyon of the Colorado River. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155, 801–539–4119.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect a Bureau of Land Management recreation area:

Salt Lake Meridian

T. 21 S., R. 24 E.,
Sec. 24, lots 11 to 21, inclusive, and NE¼SE¼;
Sec. 25, lot 2 and N½NW¼NE¼.
T. 20 S., R. 25 E.,
Sec. 22, lots 1, 2, and 4 to 8, inclusive, and E½NW¼NE¼;
Sec. 23, lots 7 and 8, and SW¼NW¼;
Sec. 26, lots 1 to 5, inclusive, NW¼NW¼, W½SE¼NW¼, W½NE¼SW¼, and W½SE¼SW¼;
Sec. 27, lots 1 to 5, inclusive, and SW¼NE¼;
Sec. 33, lots 1 to 4, inclusive, NW¼NE¼, and E½NE¼NW¼;
Sec. 34, lots 1 to 8, inclusive, NW¼NE¼, W½NW¼NW¼, SW¼NW¼, SE¼SW¼, and N½NE¼SE¼;
Sec. 35, lots 1 and 2, W½NE¼NW¼, and SW¼NW¼.
T. 21 S., R. 25 E.,
Sec. 3, lots 1 to 4, inclusive, SW¼NE¼, N½NW¼, NE¼SW¼NW¼, SE¼NW¼, NE¼NE¼SW¼, W½SW¼, NW¼SE¼, E½SW¼SE¼, SW¼SW¼SE¼, and W½E½SE¼;
Sec. 4, lots 1 and 5;
Sec. 8, SE¼NE¼ and E½SE¼;
Sec. 9, lots 1 to 15, inclusive, SE¼SW¼, and N½SE¼SE¼;
Sec. 10, lots 1 to 6, inclusive, W½NE¼NE¼, NW¼SW¼NE¼, W½NE¼SW¼, and N½SW¼SW¼;
Sec. 16, lots 1 to 4, inclusive;
Sec. 17, lots 1, 2, 3, and 5 to 12, inclusive, and N½N½SE¼;
Sec. 18, SE¼SE¼;
Sec. 19, lots 1, 2, and 6 to 13, inclusive, NE¼SE¼, and SW¼SE¼;
Sec. 20, lots 1 to 3, inclusive, and W½NE¼NW¼;
Sec. 30, lot 1 and N½NE¼NW¼.

Unsurveyed lands in the Colorado River bed, in the area described above, are included in this order. The area described contains approximately 4,710 acres in Grand County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: March 21, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–7814 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–DQ–P

43 CFR Public Land Order 7128

[UT–942–1430–01; UTU–2036, UTU–4061, UTU–42919]

Partial Revocation of Executive Order No. 5327, Public Land Order No. 4522, and Secretarial Order of June 11, 1943; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order, a Secretarial order, and a public land order insofar as they affect 828.13 acres withdrawn for protection of oil shale resources (798.13 acres) and a first form reclamation withdrawal (30 acres). The lands are no longer needed for these purposes and the revocation is needed to permit disposal of the lands through public sale under Section 203 of the Federal Land Policy and Management Act of 1976. This action will open the lands to surface entry and mining unless closed by overlapping withdrawals or temporary segregations of record. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: May 1, 1995.

FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155, 801–539–4119.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Executive Order No. 5327 and Public Land Order No. 4522, which withdrew public land for protection of oil shale and associated values, are hereby revoked insofar as it affects the following described lands:

Salt Lake Meridian

T. 5 S., R. 19 E.,
Sec. 12, E½NE¼, S½N½SW¼NE¼, and S½SW¼NE¼.
T. 7 S., R. 19 E.,
Sec. 1, lots 2 to 4, inclusive, SW¼NE¼, SW¼NW¼, SE¼SW¼, and SW¼SE¼.
T. 7 S., R. 20 E.,

Sec. 5, lots 3 and 4, SW¼NW¼, and SW¼;
Sec. 6, lots 1 and 2;
Sec. 15, NW¼NE¼.

The areas described aggregate 798.13 acres in Uintah County.

2. Secretarial Order, dated June 11, 1943, which withdrew public land for the Jensen Unit of the Central Utah Project, for the Bureau of Reclamation, is hereby revoked insofar as it affects the following described land:

Salt Lake Meridian

T. 3 S., R. 22 E.,
Sec. 11, NW¼SW¼NE¼ and S½SW¼NE¼.

The area described contains 30 acres in Uintah County.

3. At 9 a.m. on May 1, 1995, the lands described in paragraphs 1 and 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on May 1, 1995 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on May 1, 1995, the lands described in paragraphs 1 and 2 will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: March 21, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–7813 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–DQ–P

Proposed Rules

Federal Register
Vol. 60, No. 61
Thursday, March 30, 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 JUSTICE

Immigration and Naturalization Service

8 CFR Part 242

[INS No. 1672–94; AG Order No. 1957–95]

RIN 1115–AD76

Administrative Deportation Procedures for Aliens Convicted of Aggravated Felonies Who Are Not Lawful Permanent Residents

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to establish alternative administrative deportation procedures for aliens not admitted for permanent residence and not eligible for any relief from deportation who have been convicted of aggravated felonies. This regulation is necessary to implement a recently enacted statutory measure eliminating the requirement for a hearing before an immigration judge and limiting judicial review. While incorporation procedural safeguards, it will expedite the deportation process in certain cases involving serious criminal offenses.

DATES: Written comments must be submitted on or before May 30, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, Room 5307, 425 I Street NW., Washington, DC 20536. Attention: Public Comment Clerk. To ensure proper handling, please reference INS No. 1672–94 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Leonard C. Loveless, Detention and Deportation Officer, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone (202) 514–2865.

SUPPLEMENTARY INFORMATION: This proposed rule establishes an expedited administrative deportation process. Section 130004 of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, amended section 242A of the Immigration and Nationality Act (Act), effective September 14, 1994, to authorize such a process. Amended section 242A(b) of the Act authorizes the Attorney General to implement a deportation procedure that eliminates hearings before immigration judges for certain aliens convicted of serious criminal offenses. Limited judicial review is authorized upon the filing of a petition for review within 30 days after the administrative deportation order is issued. Also, the Immigration and Nationality Technical Corrections Act of 1994, Public Law 103–416, enacted October 25, 1994, made minor technical changes to the statutory administrative deportation procedures.

Before enactment of Public Law 103–322, except in the case of certain Visa Waiver Pilot Program and crewman violators, deportation proceedings were required to be conducted before an immigration judge pursuant to section 242(b) of the Act. By enactment of Public Law 103–322, Congress provided for a more streamlined deportation process for an alien who is convicted of an aggravated felony and who is not a lawful permanent resident. The procedure is available only if the alien is not eligible for any form of relief from deportation under the Act. Section 242A(b)(4) requires the Attorney General to prescribe regulations to conduct proceedings under the section. This proposed rule authorizes a district director or chief patrol agent to issue a final administrative order of deportation in accordance with section 242A(b) of the Act.

The proposed rule would require the Service to perform certain functions to afford the alien procedural protection during the administrative process:

a. The alien would be given reasonable notice of the charge of deportability. The notice would set forth allegations of fact and conclusions of law establishing that the alien is not a lawful permanent resident, is deportable under section 241(a)(2)(A)(iii) of the Act (relating to conviction for an aggravated felony), and is ineligible for relief from deportation.

b. The charge of deportability would be supported by clear, convincing, and unequivocal evidence, and a record would be maintained for judicial review.

c. The alien would have an opportunity to be represented by counsel in the deportation proceedings at no expense to the government.

d. The alien would have a reasonable opportunity to inspect the evidence and rebut the allegations and/or charge within ten days, with an extension granted by the district director or chief patrol agent for good cause shown.

e. The person who renders the final decision would not be the same person who issues the notice of the Service's intention to issue a final order (i.e. the charge).

f. The alien would be able to seek review of the final order by filing a petition for judicial review within 30 days.

During the administrative deportation process, the district direct or chief patrol agent would determine the alien's custody status in accordance with applicable provisions of section 242 of the Act. The alien would be able to seek review of the custody determination in habeas corpus proceedings.

Section 242(b) of the Act does not apply when the alien is eligible for relief from deportation under the Act. If the Service finds that the alien's response presents a prima facie claim of statutory eligibility for relief, the rule proposes that the district director or chief patrol agent (or their designee) shall terminate proceedings under section 242A(b) of the Act, and shall, where appropriate, issue an order to show cause for the purpose of initiating an immigration judge proceeding under section 242(b) of the Act.

Limited judicial review of the final administrative deportation order may be obtained by filing a petition for review in accordance with section 106 of the Act. The review, however, is statutorily limited to: (1) Whether the person is in fact the alien described in the order; (2) whether the person was not lawfully admitted for permanent residence at the time at which deportation proceedings commenced; (3) whether the person is not eligible for any relief from deportation; (4) whether the alien has been convicted of an aggravated felony and such conviction has become final; and (5) whether the alien was afforded

the procedures required by section 242A(b)(4) of the Act.

Sections 242(a) (2)(A) and (2)(B) of the at require the Service to detain, until the order is executed, any aggravated felon who has not been ''lawfully admitted.'' An alien who has been lawfully admitted may be released from custody if the alien demonstrates to the satisfaction of the Attorney General that the alien is not a threat to the community and is likely to appear for any scheduled proceedings. An immigration judge is not authorized to consider (or redetermine) custody issues under the rule. The alien may seek review of the bond determination by filing a writ of habeas corpus with the district court.

Regulatory Flexibility Act

The Attorney General, in accordance with 5 U.S.C. 605(b), certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities because the affected parties are individual aliens who have been ordered deported from the United States.

Executive Order No. 12866

This rule is not considered to be a ''significant regulatory action'' within the meaning of section 3(f) of E.O. 12866, Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order No. 12612

This rule is not considered to have Federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of E.O. 12612.

Executive Order 12606

The Attorney General certifies that she has assessed this rule in light of the criteria in E.O. 12606 and has determined that this rule will not have an impact on family formation, maintenance, or general well-being.

List of Subjects in 8 CFR Part 242

Administrative practice and procedure, Aliens, Deportation.

Accordingly, part 242 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

1. The authority citation for part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252a, 1252b, 1254, 1362; 8 CFR part 2.

2. In part 242, a new § 242.25 is added to read as follows:

§ 242.25 Proceedings under section 242A(b) of the Act.

(a) *Definitions.* As used in this section—

Deciding Service officer means a district director, chief patrol agent, or his or her designated representative who is not the same person as the issuing Service officer.

Issuing Service officer means any Service officer listed in § 242.1(a) as authorized to issue orders to show cause.

Prima facie claim means a claim that, on its face and consistent with the evidence in the record of proceeding, demonstrates present statutory eligibility for a specific form of relief from deportation under the Immigration and Nationality Act (Act).

(b) *Preliminary consideration and notice of intent to issue a final administrative deportation order; commencement of proceedings.* (1) *Basis of Service charge.* An issuing Service officer shall cause to be served upon the alien a notice of intent to issue a final administrative deportation order (Notice of Intent, Form I–851) if he or she is satisfied that there is evidence sufficient to support a finding that the individual:

(i) Is an alien;

(ii) Has not been lawfully admitted for permanent residence;

(iii) Has been convicted (as demonstrated by one or more of the sources listed in § 3.41 of this chapter) of an aggravated felony and such conviction has become final;

(iv) Is deportable under section 241(a)(2)(A)(iii) of the Act; and

(v) Does not appear statutorily eligible for any relief from deportation under the Act.

(2) *Notice.* Deportation proceedings under section 242A(b) of the Act shall commence upon personal service of the Notice of Intent upon the alien, as prescribed by § 103.5a(a)(2), 103.5a(b), and 103.5a(c)(2) of this chapter. The Notice of Intent shall set forth the preliminary determinations and inform the alien of the Service's intention to issue a final administrative order of deportation (Final Administrative Deportation Order, Form I–851A) without a hearing before an immigration judge. This notice shall constitute the charging document. The Notice of Intent shall include allegations of fact and conclusions of law. It shall advise that the alien:

(i) Has the privilege of being represented by counsel of the alien's choosing, at no expense to the government, as long as counsel is authorized to practice in deportation proceedings;

(ii) May inspect the evidence supporting the Notice of Intent; and

(iii) May rebut the charges within ten calendar days after service of such notice (or thirteen (13) days if service of the Notice was by mail). The Notice of Intent shall also advise the alien that he or she may designate in writing, within ten calendar days of service of the Notice of Intent (or thirteen calendar days if service is by mail), the country to which he or she chooses to be deported in accordance with section 243 of the Act, in the event that a Final Administrative Deportation Order is issued, and that the Service will honor such designation only to the extent permitted under the terms, limitations, and conditions of section 243 of the Act.

(c) *Alien's response.* (1) *Time for response.* The alien will have ten calendar days from service of the Notice of Intent, or 13 calendar days if service is by mail,

(1) To designate his or her choice of country for deportation and

(ii) To submit a written response rebutting the allegations and/or charge and/or requesting the opportunity to review the government's evidence. The alien should send his or her designation of country for deportation, and his or her written response to the charge, to the deciding Service officer at the address provided in the Notice of Intent. If the final date for filing falls on a Saturday, Sunday, or legal holiday, the time shall be extended to the next business day. The time for response may be extended by the deciding Service officer for good cause shown in a written request for extension received within the time to submit a written response. The request must explain specifically why an extension is necessary. A request for extension of time for response will not automatically toll the prescribed period (e.g., ten days) for that response. The alien will be permitted to file a response outside the prescribed period only if the deciding Service officer permits it. The alien may, in writing, choose to accept immediate issuance of a Final Administrative Deportation Order.

(2) *Nature of response; request to review evidence.* The alien's written response must indicate which finding(s) are being challenged and must be accompanied by affidavit(s), documentary information, or other specific evidence supporting the challenge. if the written response

requests the opportunity to review the government's evidence, the alien will be served with a copy of the evidence in the record of proceeding relied on by the government to support the allegations and/or charge. The alien may, within ten days following service of the government's evidence (thirteen days if service is by mail), furnish a final response in accordance with paragraph (c)(1) of this section. Either the alien's initial written response or the alien's final response must be accompanied by an affidavit and a completed and signed application designed for any relief sought.

(d) *Determination by deciding Service officer.* (1) *No response; acceptance of Final Administrative Deportation Order.* If

(i) A timely response is not received by the deciding Service officer, or

(ii) The alien accepts immediate issuance of the Final Administrative Deportation Order, then the deciding Service officer shall issue and cause to be served upon the alien a Final Administrative Deportation Order. The determination of deportability must be supported by clear, convincing, and unequivocal evidence contained in the record of proceeding.

(2) *Response submitted.* (i) *Insufficient rebuttal; no prima facie claim or genuine issue of material fact.* If the deciding Service officer finds that the response fails to rebut the allegations and charge in the Notice of Intent, fails to present a prima facie claim of relief from deportation under the Act, and fails to raise a genuine issue of material fact, he or she shall issue and cause to be served upon the alien a Final Administrative Deportation Order. The determination of deportability must be supported by clear, convincing, and unequivocal evidence contained in the record of proceeding.

(ii) *Additional evidence required.* If the deciding Service officer finds that the alien's response raises a genuine issue of material fact regarding the preliminary findings, he or she

(A) May request additional information from any source, including the alien, as he or she may deem appropriate, or

(B) Issue an order to show cause to initiate deportation proceedings under section 242(b) of the Act. If the deciding Service officer considers additional information from a source other than the alien, that evidence shall be provided to the alien, and the alien may, within ten days of service thereof (thirteen days if service is by mail) furnish a response to the deciding Service officer. If, after considering all additional information, the deciding Service officer finds that deportation is supported by the requisite proof, he or she shall issue and cause to be served upon the alien a Final Administrative Deportation Order.

(iii) *Secretary eligibility for relief; conversion to proceedings under section 242(b) of the Act.* If the deciding Service officer finds that the alien has presented a prima facie claim of present statutory eligibility for a specific form of relief from deportation, the deciding Service officer shall terminate the expedited proceedings under section 242A(b) of the Act, and shall, where appropriate, issue an order to show cause for the purpose of initiating an immigration judge proceeding under section 242(b) of the Act.

(3) *Termination of proceedings by deciding Service officer.* Only the deciding Service officer may terminate proceedings under section 242A(b) of the Act, in the exercise of his or her discretion.

(e) *Proceedings commenced under section 242(b) of the Act.* In any proceeding commenced under section 242(b) of the Act, if it appears that the respondent's case falls under the provisions of section 242A(b) of the Act, the immigration judge may, upon the Service's request, terminate the case and, upon such termination, the Service may commence administrative proceedings under section 242A(b) of the Act. However, in the absence of any such request, the immigration judge shall complete the pending proceeding commenced under section 242(b) of the Act.

(f) *Executing final order of deciding Service officer—*

(1) *Thirty (30) calendar days.* Upon the issuance of a Final Administrative Deportation Order, the Service shall issue a warrant of deportation issued in accordance with 8 CFR part 243.2; such warrant shall be executed no sooner than 30 calendar days after the date the Final Administrative Deportation Order is issued, unless the 30-day period is waived in writing by the alien. The 72-hour provisions of § 243.3(b) of this chapter shall not apply.

(2) *Place to which deported.* The deciding Service officer shall designate the country of deportation, in the manner prescribed by section 243(a) of the Act.

(g) *Arrest and detention.* At the time of issuance of a Notice of Intent or at any time thereafter and up to the time the alien becomes the subject of a warrant of deportation, the alien may be arrested and taken into custody under the authority of a warrant of arrest issued by an officer listed in § 242.2(c)(1) of this chapter. Pursuant to section 242(a)(2)(A) of the Act, pending proceedings under section 242A(b) of the Act, the deciding Service officer shall not release an alien who has not been lawfully admitted. Pursuant to section 242(a)(2)(B) of the Act, the deciding Service officer may release an alien who has been lawfully admitted based upon factors considered under § 242.2(h) of this chapter. The decision of the deciding Service officer concerning custody or bond is not administratively appealable during proceedings initiated under section 242A(b) of the Act and this section.

(h) *Record of proceeding.* A record of proceeding shall be maintained by the Service for judicial review of the Final Administrative Deportation Order sought by any petition for review. The record of proceeding shall include, but not necessarily be limited to, the charging document (Notice of Intent); the Final Administrative Deportation Order; the alien's response, if any; all evidence in support of the charges; and any admissible evidence, briefs, or documents submitted by either party respecting deportability or relief from deportation.

Dated: March 16, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–7754 Filed 3–29–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–177–AD]

Airworthiness Directives; Boeing Model 727 and Model 737 Series Airplanes Equipped With J.C. Carter Company Fuel Valve Actuators

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 727 and Model 737 series airplanes, that would have required replacement of the actuator of the engine fuel shutoff valve and the fuel system crossfeed valve with an improved actuator. That proposal was prompted by reports indicating that, during ground acceptance tests on Model 737 series airplanes, the actuator clutch on the engine shutoff and

crossfeed valves slipped at cold temperatures due to improper functioning. This action revises the proposed rule by expanding the applicability to include an additional actuator. The actions specified by this proposed AD are intended to prevent improper functioning of these actuators, which could result in a fuel imbalance due to the inability of the flight crew to crossfeed fuel; improperly functioning actuators could also prevent the pilot from shutting off the fuel to the engine following an engine failure and/or fire.

DATES: Comments must be received by May 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–177–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: Stephen S. Bray, Aerospace Engineer, Propulsion Branch, ANM–141S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2681; 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–177–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–177–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 727 and Model 737 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 15, 1994 (59 FR 64628). That NPRM would have required replacement of the actuator of the engine fuel shutoff valve and the fuel system crossfeed valve with a new actuator. That NPRM was prompted by reports indicating that, during ground acceptance tests on Model 737 series airplanes, the actuator clutch on the engine shutoff and crossfeed valves slipped at cold temperatures when the engine shutoff valve was commanded to either the ''close'' or ''open'' position. Improper functioning of these actuators, if not corrected, could result in a fuel imbalance due to the inability of the flightcrew to crossfeed fuel, or could prevent the pilot from shutting off the fuel to the engine following an engine failure and/or fire.

Since the issuance of that NPRM, the FAA has received a report indicating that additional fuel valve actuators (Model EM487–2, serial numbers 0001 through 1443 inclusive) installed on certain Model 727 and Model 737 series airplanes are also subject to the same failure. The FAA has determined that these additional actuators are subject to the addressed unsafe condition.

The FAA has reviewed and approved a later version of J. C. Carter Company Service Bulletin 61163–28–08, dated December 2, 1994. J. C. Carter Company Service Bulletin 61163–28–08, dated September 1, 1994, was cited in the NPRM as the appropriate source of service information. The replacement procedures described in the later version of the service bulletin are identical to those described in the earlier version of the service bulletin. However, the later version expands the effectivity listing to include additional actuators. The applicability and paragraph (e) of the supplemental NPRM have been revised to reference the later version of the service bulletin.

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.

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 long standing requirement.

There are approximately 4,137 Model 727 and Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2,190 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by J.C. Carter Company at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $394,200, or $180 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:

Boeing: Docket 94–NM–177–AD.

Applicability: Model 727 and Model 737 series airplanes; equipped with J.C. Carter Company fuel valve actuators, as listed in J.C. Carter Company Service Bulletin 61163–28–08, dated December 2, 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 (b) 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 improper functioning of certain actuators, which could result in a fuel imbalance due to the inability of the flightcrew to crossfeed fuel, or which could prevent the pilot from shutting off the fuel to the engine following an engine failure and/or fire, accomplish the following:

(a) Within 24 months after the effective date of this AD, replace the actuator having part number (P/N) 40574–2 (Model EM487–2, serial numbers 0001 through 1443 inclusive; and Model EM487–3, serial numbers 0001 through 2711 inclusive), on the fuel system crossfeed valve and the engine shutoff valves with a new actuator having P/N 40574–4, in accordance with the Accomplishment Instructions of J.C. Carter Company Service Bulletin 61163–28–08, dated December 2, 1994.

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

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

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

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–7779 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–116–AD]

Airworthiness Directives; Fokker Model F28 Mk 0100 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 Fokker Model F28 Mk 0100 series airplanes. This proposal would require the installation of modified Passenger Service Unit (PSU) panel lenses. This proposal would also require a one-time post-installation inspection to detect corrosion or deterioration of the PSU connectors, and correction of discrepancies, and application of sealant. This proposal is prompted by reports that ''No Smoking'' and ''Fasten Seat Belt'' signs installed in certain overhead PSU's are not readable from passengers' and flight attendants' seats. This proposal is also prompted by reports of smoke in the passenger cabin caused by overheating of the PSU connectors. The actions specified by the proposed AD are intended to ensure that warning signs are readable to passengers and flight attendants, and to eliminate a potential fire hazard.

DATES: Comments must be received by May 8, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–116–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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

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–116–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–116–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mk 0100 series airplanes. The RLD advises that the ''No Smoking'' and ''Fasten Seat Belt'' signs installed in certain overhead Passenger Service Units (PSU) on these airplanes may not be readable to each seated passenger under all probable conditions of cabin illumination. Additionally, these ''No Smoking'' or ''Fasten Seat Belt'' signs are not visible at all from the flight attendants' seats in the aft cabin. The ability to clearly see these signs under all conditions of illumination in the cabin is necessary in order to ensure that passengers and flight attendants are notified when smoking is not permitted on an aircraft, and when seat belts must be fastened. If the ''No Smoking'' signs are not readable or visible, passengers and flight attendants may not be aware of situations when smoking on the airplane could present a fire hazard. If the ''Fasten Seat Belts'' signs are not readable or visible, passengers and flight attendants may not be aware of situations when it is necessary that they be properly restrained in their seats to prevent injury during turbulent or other flight conditions.

Additionally, the RLD advises that there have been two reports of smoke in the passenger aft compartment coming from a PSU. Investigation revealed that, in each case, the cause of the smoke was water ingress (condensation from the air duct) in the electrical connectors of the PSU. Water ingression in PSU connectors can result in corrosion of the contacts. Because there is a 115V (alternating) current present, the temperature inside the connector can rise subsequently and cause the connector to melt. This condition, if not corrected, can result in failure of the warning signs at the PSU to illuminate and could pose a fire hazard.

Fokker has issued Service Bulletin SBF100–25–061, dated March 8, 1994 (as corrected by Fokker Service Bulletin Change Notification SBF100–25–061/02, dated June 20, 1994), which describes procedures for installing modified PSU panel lenses. (This Fokker service bulletin refers to Grimes Aerospace Service Bulletins 10–1178–33–0036 and 10–1178–33–0039, Revision 1, dated October 31, 1993, for additional installation instructions.) Certain of the modified lenses are configured so that the readability of the warning signs from the passengers' seats is improved. Other modified lenses incorporate a tilted legend (prisma lens) that makes readability possible from the aft cabin flight attendants' seats. The RLD classified this service bulletin as mandatory and issued Netherlands airworthiness directive BLA 94–078(A), dated May 11, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

Fokker also has issued Service Bulletin SB100–25–068, dated March 31, 1994, which describes procedures for conducting a one-time inspection to detect corrosion or deterioration of the PSU connectors, correction of discrepancies identified, and application of sealant. Fokker recommends that this inspection be performed after the modified PSU panel lenses are installed in accordance with Service Bulletin SBF100–25–061. The RLD has classified this service bulletin as ''Recommended.''

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require the installation of modified PSU panel lenses. This action would be required to be accomplished in accordance with the Fokker Service Bulletin SBF100–25–061, described previously.

Additionally, this proposed AD would require a one-time post-installation inspection to detect corrosion or deterioration of the PSU connectors, correction of discrepancies identified, and application of sealant. These actions would be required to be accomplished in accordance with Fokker Service Bulletin SB100–25–068.

The proposed AD would be applicable only to Model F28 Mk 0100 series airplanes having serial numbers 11244 through 11437, inclusive. Beginning at serial number 11438, the modified PSU panel lenses were installed during production.

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 83 airplanes of U.S. registry would be affected by this proposed AD.

The proposed installation of the modified PSU's would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $248 per airplane. Based on these figures, the total cost impact of the proposed installation action on U.S. operators is estimated to be $30,544, or $368 per airplane.

The proposed one-time inspection of the PSU connectors would take approximately 5 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 the proposed inspection action on U.S. operators is estimated to be $24,900, or $300 per airplane.

Based on the figures discussed above, the total cost impact of the proposed AD is estimated to be $55,444, or $668 per airplane. This total cost impact figure 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:

Fokker: Docket 94–NM–116–AD.

Applicability: Model F28 Mk 0100 series airplanes having serial numbers 11244 through 11437, inclusive; and equipped with Grimes Aerospace Passenger Service Units having part number (P/N) 10–1178–( ) through P/N 10–1571–( ), 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 (d) 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 ensure that warning signs are readable to passengers and flight attendants, and to eliminate a potential fire hazard, accomplish the following:

(a) Within 9 months after the effective date of this AD, install modified Passenger Service Unit (PSU) panel lenses in accordance with Fokker Service Bulletin SBF100–25–061, dated March 8, 1994 (as corrected by Fokker Service Bulletin Change Notification SBF100–25–061/02, dated June 20, 1994).

(b) Prior to further flight after accomplishing the installation required by paragraph (a) of this AD, perform a one-time post-installation inspection to detect corrosion and/or deterioration of the PSU connector, in accordance with Fokker Service Bulletin SBF100–25–068, dated March 31, 1994. Prior to further flight, correct any discrepancies detected and apply sealant in accordance with the service bulletin.

(c) As of the effective date of this AD, no person shall install on any airplane a Grimes Aerospace Passenger Service Unit having part number (P/N) 10–1178–( ) through P/N 10–1571–( ), inclusive.

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

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

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

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–7780 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–06–AD]

Airworthiness Directives; Boeing Model 747 SP, SR, –100, –200, and –300 Series Airplanes Equipped With Pratt & Whitney Model JT9D Series Engines (Excluding Model JT9D–70 Engines)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 SP, SR, –100, –200, and –300 series airplanes. This proposal would require repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found. This proposal is prompted by the results of an investigation, which revealed that, in the event of thrust reverser deployment during high-speed climb or during cruise, these airplanes could experience control problems. The actions specified by the proposed AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Comments must be received by May 24, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–06–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: G. Michael Collins, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2689; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–06–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–06–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In May 1991, a Boeing Model 767 series airplane was involved in an accident in which a thrust reverser deployed inadvertently during flight. While the investigation of the accident has not revealed the cause of that deployment, it has identified a number of possible failure modes in the thrust reverser control system. Inadvertent deployment of a thrust reverser during flight could result in reduced controllability of the airplane.

The FAA and the aviation industry are conducting an in-depth investigation of the thrust reverser systems installed on various types of large transport airplanes. In particular, this investigation has focused on airplane controllability in the event of an in-flight deployment of a thrust reverser, and thrust reverser reliability in general. Based on the data gathered from this ongoing investigation, the FAA issued several airworthiness directives (AD) to require periodic inspections and tests of the thrust reverser systems on certain Boeing Model 757 and 767 series airplanes [for example, reference AD 91–20–09, amendment 39–8043 (56 FR 46725, September 16, 1991) for certain Model 757 series airplanes; and AD 92–24–03, amendment 39–8408 (57 FR 53258, November 9, 1992) for certain Model 767 series airplanes]. In addition, the FAA has issued or proposed several AD's to require an additional locking device on thrust reversers that are installed on Model 737–300/–400/–500, 757, and 767 series airplanes [for example, reference AD 94–14–02, amendment 39–8954 (59 FR 33646, June 30, 1994) for certain Model 757 series airplanes; and AD 94–16–03, amendment 39–8993 (59 FR 41229, August 11, 1994) for certain Model 767 series airplanes]. These actions were taken to enhance the level of reliability on airplane models that were determined to have unacceptable flight characteristics following an in-flight deployment of a thrust reverser.

Until now, the investigation of thrust reverser system reliability on Boeing Model 747 series airplanes has not been given as high a priority as the other Boeing models because Model 747 series airplanes have never experienced control problems as a result of an in-flight thrust reverser deployment. Based on this long safety record and the available evidence up to this time, it has been accepted generally that all Model 747 series airplanes would be shown to be controllable throughout the flight envelope following an in-flight thrust reverser deployment.

Boeing has responded to an FAA request for further investigation to determine the controllability of Model 747 series airplanes following an in-flight thrust reverser deployment. The investigation results indicate that Model 747 SP, SR, –100, –200, –300, and -400 series airplanes could experience certain control problems in the event of a thrust reverser deployment occurring during high-speed climb or during cruise.

In light of that information, the FAA determined that certain inspections and functional tests of the thrust reverser control and indication system on all Model 747 series airplanes, similar to those required previously for Model 757 and 767 series airplanes, are necessary as precautionary actions to provide an acceptable level of safety for Model 747 series airplanes. Subsequently, on July 13, 1994, the FAA issued AD 94–15–05, amendment 39–8976 (59 FR 37655, July 25, 1994), to require inspections and functional tests of the thrust reverser control and indication system on all Model 747–400 series airplanes.

In the preamble to the notice of AD 94–15–05, the FAA indicated that it was considering similar rulemaking action for other Model 747 series airplanes. The FAA now has determined that such rulemaking action is indeed necessary, and this proposed AD follows from that determination. The FAA has determined that inspections and functional tests of the thrust reverser control and indication system, similar to those currently required by AD 94–15–05 for Model 747–400 series airplanes, are necessary for Model 747 SP, SR, -100, -200, and -300 series airplanes in order to reduce the exposure of these airplanes to potential undetected single failures in the thrust reverser control system. The presence of an undetected failure in the thrust reverser control system, in some cases, can increase the likelihood of an uncommanded thrust reverser deployment in the event of an additional thrust reverser control system failure.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994, which describes procedures for repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found. The alert service bulletin recommends that these initial tests be accomplished no later than 1,300 flight hours after release of the alert service bulletin. The alert service bulletin also recommends a repetitive test interval of 2,000 flight hours.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found during the test. The actions would be required to be accomplished in accordance with the

alert service bulletin described previously.

In developing appropriate compliance times for the initial test contained in this proposed AD, the FAA considered the safety implications and normal maintenance schedules for timely accomplishment of the proposed actions. In consideration of these items, the FAA determined that 90 days (for the initial test of the PDU) represents the maximum interval of time allowable wherein that test can reasonably be accomplished and an acceptable level of safety can be maintained. Further, the FAA has determined that the proposed repetitive interval of 2,000 flight hours is appropriate, based on the service history of similar components and on an analysis of the system design to predict the reliability of the system during the service life of the aircraft.

The thrust reverser control and indication system on Model 747–400 series airplanes is similar to the system installed on the airplanes addressed in this proposed AD. The compliance time for the initial test proposed in this AD corresponds to that specified in AD 94–15–05 for Model 747–400 series airplanes. The repetitive test interval specified in this proposed AD should allow operators to perform the test during regularly scheduled maintenance.

This proposed AD also would require that operators submit a report of initial test results to the FAA.

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

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 long-standing requirement.

There are approximately 456 Model 747 SP, SR, –100, –200, and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 173 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $166,080, or $960 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:

Boeing: Docket 95–NM–06–AD.

Applicability: Model 747 SP, SR, –100, –200, and –300 series airplanes equipped with Pratt & Whitney Model JT9D series engines (excluding Model JT9D–70 engines), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) 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 ensure the integrity of the fail safe features of the thrust reverser system, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform an operational test of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, in accordance with Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994. Repeat the test thereafter at intervals not to exceed 2,000 flight hours.

(b) If any of the tests required by this AD cannot be successfully performed, or if any discrepancy is found during those tests, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

(c) Within 30 days after performing each initial test required by this AD, submit a report of the test results, both positive and negative, to the FAA, Seattle Aircraft Certification Office (ACO), ANM–100S, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (206) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

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

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

(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.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–7781 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–CE–32–AD]

Airworthiness Directives; Stemme S10 Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Stemme S10 gliders. The proposed action would require modifying the rudder control cable system. Rupture of a turnbuckle eye bolt in the rudder control cable system on one of the affected gliders prompted the proposed action. The actions specified by the proposed AD are intended to prevent rudder control cable system failure caused by rupture of the turnbuckle eye bolt, which, if not detected and corrected, could result in loss of rudder control.

DATES: Comments must be received on or before June 16, 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–32–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 Stemme GmbH & Co. KG, Flugplatz Gebaude 47, D–15344 Staussberg, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Herman C. Belderok, Project Officer, Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

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–32–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–32–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfarht-Bundesant (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on Stemme S10 gliders. The LBA reports that the rudder control cable turnbuckle eye bolt ruptured on one of the affected gliders, which resulted in loss of rudder control. Under the current configuration, the rudder control cables from the right and left pedals meet at the turnbuckle in the tailboom in a way that subjects the turnbuckle eye bolt to resistant forces (tensile and bending) that could pull the bolt from the rudder assembly. If not detected and corrected, rudder control cable turnbuckle eye bolt rupture could result in rudder control cable system failure and subsequent loss of rudder control.

Stemme has issued Service Bulletin (SB) A31–10–018, dated June 3, 1994, which specifies procedures for modifying the rudder control cable system on these S10 gliders. Pages 1–3 of this service bulletin are written in German and pages 4–6 are English translations. The LBA classified this service bulletin as mandatory and issued LBA AD 94–260, dated August 25, 1994, in order to assure the continued airworthiness of these gliders in Germany.

This glider model is manufactured in Germany 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 LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, 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 in other Stemme S10 gliders of the same type design, the proposed AD would require modifying the rudder control cable system. The proposed action would be accomplished in accordance with the instructions to Stemme SB A31–10–018 (pages 4–6), dated June 3, 1994.

The FAA estimates that 3 gliders in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per glider to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $56 per glider. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $888 ($296 per airplane). This figure is based on the assumption that no affected owner/operator of the affected gliders has incorporated the proposed modification.

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 adding a new AD to read as follows:

Stemme: Docket No. 94–CE–32–AD.

Applicability: S10 gliders (serial numbers 10–03 through 10–58), certificated in any category.

Note 1: This AD applies to each glider 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 gliders 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) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any glider from the applicability of this AD.

Compliance: Required upon the accumulation of 150 hours time-in-service (TIS) or within the next 20 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

To prevent rudder control cable system failure caused by rupture of the turnbuckle eye bolt, which, if not detected and corrected, could result in loss of rudder control, accomplish the following:

(a) Modify the rudder control cable system in accordance with the instructions in Stemme Service Bulletin A31–10–018 (pages 4–6), dated June 3, 1994.

(b) 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 glider to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Stemme GmbH & Co. KG, Flugplatz Gebaude 47, D–15344 Staussberg, Germany; 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.

Issued in Kansas City, Missouri, on March 24, 1995.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–7787 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–CE–36–AD]

Airworthiness Directives; HOAC AUSTRIA GmbH HK 36R ''Super Dimona'' Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain HOAC AUSTRIA GmbH (HOAC) HK 36R ''Super Dimona'' gliders. The proposed action would require inspecting the exhaust system for corrosion, replacing the exhaust system if corrosion is found, and installing a carbon monoxide detector. Reports received by the Federal Aviation Administration (FAA) of severe exhaust system corrosion on the affected gliders, including one of excessive corrosion (rusting through), prompted the proposed action. The actions specified by the proposed AD are intended to prevent carbon monoxide leakage caused by a corroded exhaust system, which, if not detected and corrected, could lead to passenger injuries.

DATES: Comments must be received on or before June 16, 1995.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–36–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 HOAC AUSTRIA GmbH, N.A. Otto Strasse 5, A–2700 Wiener Neustadt, Austria. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Herman C. Belderok, Project Officer, Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

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–36–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–36–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Austro Control GmbH (ACG), which is the airworthiness authority for Austria, recently notified the FAA that an unsafe condition may exist on certain HOAC HK 36R ''Super Dimona'' gliders. The ACG reports several incidents of severe exhaust system corrosion on the affected gliders, including one of excessive corrosion (rusting through). If not detected and corrected, excessive corrosion could result in high carbon monoxide levels in the cockpit and subsequent passenger injury.

HOAC has issued Service Bulletin (SB) 33, dated July 15, 1993, which specifies procedures for inspecting the exhaust system of these HK 36R ''Super Dimona'' gliders for corrosion, replacing the exhaust systems, and installing a carbon monoxide detector. The ACG classified this service bulletin as mandatory and issued ACG AD No. 74, in order to assure the continued airworthiness of these gliders in Austria.

This glider model is manufactured in Austria 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 ACG has kept the FAA informed of the situation described above. The FAA has examined the findings of the ACG, 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 in other HOAC HK 36R ''Super Dimona'' gliders of the same type design, the proposed AD would require inspecting the exhaust system for corrosion, replacing the exhaust system if corrosion is found, and installing a carbon monoxide detector. The proposed action would be accomplished in accordance with the Measures section of HOAC SB 33, dated July 15, 1993.

The FAA estimates that 4 gliders in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per glider to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $25 per glider. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $580 ($145 per glider). This figure is based on the assumption that no affected owner/operator of the affected gliders has incorporated the proposed installation or accomplished the proposed inspection.

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 adding a new AD to read as follows:

HOAC AUSTRIA GmbH: Docket No. 94–CE–36–AD.

Applicability: HK 36R ''Super Dimona'' gliders (serial numbers 36.302 through 36.324), certificated in any category.

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

Compliance: Required within the next 10 hours time-in- service after the effective date of this AD, unless already accomplished.

To prevent carbon monoxide leakage caused by a corroded exhaust system, which, if not detected and corrected, could lead to passenger injuries, accomplish the following:

(a) Inspect the exhaust system for corrosion in accordance with the Measures section of HOAC Service Bulletin (SB) 33, dated July 15, 1993. If corrosion if found, prior to further flight, replace the exhaust system in accordance with the Measurement section of HOAC SB 33, dated July 15, 1993.

(b) Install a carbon monoxide detector in accordance with the Measures section of HOAC SB 33, dated July 15, 1993.

(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 glider to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to HOAC AUSTRIA GmbH, N.A. Otto Strasse 5, A- 2700 Wiener Neustadt, Austria; 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.

Issued in Kansas City, Missouri, on March 24, 1995.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–7783 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–CE–35–AD]

Airworthiness Directives; Scheibe Flugzeugbau GmbH SF34 and SF34B Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Scheibe Flugzeugbau GmbH (Scheibe) SF34 and SF34B gliders. The proposed action would require adding armature (supportive covering) to both wings, modifying the root rib of the left wing, and incorporating changes and operating limitations to the flight manual. Failure of the left wing root rib on one of the affected gliders while in flight prompted the proposed action. The actions specified by the proposed AD are intended to prevent fatigue failure of the wing, which could result in loss of control of the glider.

DATES: Comments must be received on or before June 16, 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–35–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 Scheibe Flugzeugbau GmbH, August Pfaltz—Strasse 23, Dachau, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Herman C. Belderok, Project Officer, Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

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–35–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–35–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfarht-Bundesant (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Scheibe SF34 and SF34B gliders. The LBA reports that fatigue failure of the root rib occurred on one of these gliders while in flight, which resulted in an accident. The glider in the referenced accident was within 3,000 to 6,000 hours time-in-service (TIS). The life limit of the wing structure was recently extended from 3,000 hours TIS to 6,000 hours TIS.

Scheibe has issued Technical Note (TN) Number 336–2, dated March 10, 1995, which specifies procedures for adding armature (supportive covering) to both wings and modifying the root rib of the left wing. This TN also specifies changes and operating limitations to be incorporated into the flight manual. The LBA classified this service bulletin as mandatory and issued LBA AD 89–73, dated May 10, 1989, in order to assure the continued airworthiness of these gliders in Germany.

This glider model is manufactured in Germany 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 LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, 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 in other Scheibe SF34 and SF34B gliders of the same type design, the proposed AD would require adding armature (supportive covering) to both wings, modifying the root rib of the left wing, and incorporating changes and operating limitations to the flight manual. The proposed addition and modification would be accomplished in accordance with Scheibe TN Number 336–2, dated March 10, 1989. The operating limitations and flight manual changes are included in the TN.

The FAA estimates that 2 gliders in the U.S. registry would be affected by the proposed AD, that it would take approximately 20 workhours per glider to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $50 per glider. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,500 ($1,250 per glider). This figure is based on the assumption that no affected owner/operator of the affected gliders has incorporated the proposed addition, modification, or operating changes and limitations.

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 adding a new AD to read as follows:

Scheibe Flugzeugbau GmbH: Docket No. 94–CE–35–AD.

Applicability: SF34 and SF34B gliders (serial number 5102 through 5131), certificated in any category.

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

Compliance: Required within the next 50 hours TIS after the effective date of this AD, unless already accomplished.

To prevent fatigue failure of the wing, which could result in loss of control of the glider, accomplish the following:

(a) Add armature (supportive covering) to both wings in accordance with the job instructions section of Scheibe Technical Note (TN) No. 336–2, dated March 10, 1989.

(b) Modify the root rib of the left wing in accordance with the job instructions section of Scheibe TN No. 336–2, dated March 10, 1989.

(c) Accomplish the following flight manual changes:

(1) Replace pages 1 and 13 of the flight manual with the revised pages 1 and 13 included with Scheibe TN Number 336–1, dated March 10, 1989.

(2) Replace pages 1 and 11 in the Instructions for Continued Airworthiness with the revised pages 1 and 11 included with Scheibe TN Number 336–1, dated March 10, 1989.

(3) In page 8 of the flight manual, add 1 kg to the current empty weight of the glider and deduct 1kg from the current maximum load as specified in paragraph 3 of the Instructions section of Scheibe TN Number 336–1, dated March 10, 1989.

(4) Remove existing operating limitations and incorporate new operating limitations into the Limitations section of the flight manual as specified in paragraph 4 of the Instructions section of Scheibe TN Number 336–1, dated March 10, 1989.

(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 glider to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to Scheibe Flugzeugbau GmbH, Dachau, Aug. Pfaltz - Str. 23, Dachau, Germany; 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. Issued in Kansas City, Missouri, on March 24, 1995.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–7799 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 929 and 937

[Docket No. 941085–4285]

RIN 0648–AD85

Florida Keys National Marine Sanctuary Proposed Regulations

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

ACTION: Proposed rule; removal and revision of regulations; Summary of Draft Management Plan; Proposed Designation Document; Public Availability of Draft Management Plan and Draft Environmental Impact Statement.

SUMMARY: NOAA, as required by section 7(a) of the Florida Keys National Marine Sanctuary and Protection Act, is proposing a comprehensive management plan and implementing regulations to manage an approximately 2,800 square nautical mile area of coastal and ocean waters and the submerged lands thereunder, surrounding the Florida Keys in and adjacent to the State of Florida, designated by the Florida Keys National Marine Sanctuary and Protection Act as the Florida Keys National Marine Sanctuary (the ''Sanctuary''). This document publishes the Designation Document, and summarizes the draft comprehensive management plan, for the Sanctuary. The draft management plan details the proposed goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance, activities for the Sanctuary. The proposed regulations would implement the comprehensive management plan and govern the conduct of activities consistent with the provisions of the Designation Document. The intended effect of the Designation Document, proposed regulations, and DEIS/MP is to protect the conservation, recreational, ecological, historical, research,

educational, and aesthetic qualities of the Florida Keys coastal and ocean waters and the submerged lands thereunder.

DATES: Comments are invited and will be considered if submitted in writing to the address below by December 31, 1995.

ADDRESSES: Requests for the above described documents and comments should be submitted to the Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, Florida 33050.

FOR FURTHER INFORMATION CONTACT: Billy Causey, Sanctuary Superintendent, 305/743–2437 or Edward Lindelof, Atlantic, Great Lakes and Gulf Branch Chief, 301/713–3137 X 131.

SUPPLEMENTARY INFORMATION:

I. Introduction

Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.* (the ''MPRSA''), authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries to protect their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities.

The Florida Keys National Marine Sanctuary was designated by an act of Congress entitled the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA, Pub. L. 101–605) signed into law on November 16, 1990.

NOAA held six public scoping meetings during the months of April and May, 1991, to solicit public comments on the proposed management of the Sanctuary: Key Largo on April 10th, Miami on April 11th, Marathon on April 15th, and Key West on April 16th, Key Largo on April 17, and Washington, D.C. on May 6. Notice of the scoping meetings was published in local newspapers. NOAA invited all interested persons to attend, and asked those attending the meeting to comment on readily identifiable issues, suggest additional issues for examination, and provide information useful in managing the Sanctuary.

The authority of the Secretary to designate national marine sanctuaries was delegated to the Under Secretary of Commerce for Oceans and Atmosphere by the Department of Commerce, Organization Order 10–15, section 3.01(z) (Jan. 11, 1988). The authority to administer the other provisions of the Act was delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83–38, Directive 05–50 (Sept. 21, 1983, as amended).

Holders of, owners of, or future applicants for leases, permits, licenses, approvals, other authorizations, or rights of subsistence use of, or access to, Sanctuary resources, are specifically invited to comment on how they may be affected by the designation of the Sanctuary and particularly sections 929.14–929.16 of the proposed regulations.

Comments are also specifically sought on the adequacy of the regulatory regime to protect Sanctuary resources and qualities.

After the comments received during the comment period have been considered, a final environmental impact statement and management plan will be prepared, and final regulations implementing the comprehensive management plan will be published in the **Federal Register**. The designation document, management plan, and regulations will become final and take effect at the close of a 45-day Congressional review period unless a joint resolution disapproving any of the terms of designation is enacted, in which case only the terms not disapproved will take effect, or the Governor of the State of Florida certifies to the Secretary of Commerce that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable terms will not take effect in the area of the Sanctuary lying within the seaward boundary of the State. A document will be published in the **Federal Register** announcing the effective date.

II. Summary of Draft Environmental Impact Statement/Management Plan

The DEIS/MP for the Florida Keys National Marine Sanctuary sets forth the Sanctuary's location and provides details on the most important resources and uses of the Sanctuary. The DEIS/MP describes the resource protection, research, education and interpretive programs, and details the specific activities to be conducted in each program. The DEIS/MP includes a detailed discussion, by program area, of agency roles and responsibilities. The proposed goals and objectives for the Sanctuary are: (1) Enhance resource protection through comprehensive and coordinated conservation and ecosystem management that complements existing regulatory authorities; (2) support, promote, and coordinate scientific research on, and monitoring of, the site-specific marine resources to improve management decision-making in national marine sanctuaries; (3) enhance public awareness, understanding, and the wise use of the marine environment through public interpretive, educational, and recreational programs, and (4) facilitate, to the extent compatible with the primary objective of resource protection, multiple uses of the Sanctuary.

A. Resource Protection

The highest priority management goal is to protect the marine environment, resources, and qualities of the Sanctuary. The specific objectives of protection efforts are to: (1) Reduce threats to Sanctuary resources; (2) encourage participation by interested agencies and organizations in the development of procedures to address specific management concerns (*e.g.*, monitoring and emergency-response programs); (3) develop an effective and coordinated program for the enforcement of Sanctuary regulations in addition to other regulations already in place; (4) promote public awareness of, and voluntary compliance with, Sanctuary regulations and objectives through an educational/interpretive program stressing resource sensitivity and wise use; (5) ensure that the water quality of the Florida Keys is maintained at a level consistent with the purposes of Sanctuary designation; (6) establish cooperative agreements and other mechanisms for coordination among all the agencies participating in Sanctuary management; (7) ensure that the appropriate management agencies incorporate research results and scientific data into effective resource protection strategies; and (8) coordinate policies and procedures among the agencies sharing responsibility for protection and management of resources.

B. Research Program

Effective management of the Sanctuary requires the conduct of a Sanctuary research program. The purpose of Sanctuary research is to improve understanding of the Florida Keys' coastal and offshore environment, resources, and qualities, and to resolve specific management problems. Some of these management problems involve resources common to coastal and offshore waters, and nearby Federal, State, and local refuges and reserves. Research results will both support management efforts to protect Sanctuary resources and qualities, and be incorporated into interpretative programs for visitors and others interested in the Sanctuary.

Specific objectives for the research program are to: (1) establish a framework and procedures for administering research to ensure that

research projects are responsive to management concerns and that results contribute to improved management of the Sanctuary; (2) focus and coordinate data collection efforts on the physical, chemical, geological, and biological oceanography of the Sanctuary; (3) encourage studies that integrate research from the variety of coastal habitats with nearshore and open ocean processes; (4) initiate a monitoring program to assess environmental changes as they occur due to natural and human processes; (5) identify the range of effects on the environment that would result from predicted changes in human activity or natural phenomena; (6) encourage information exchange and cooperation among all the organizations and agencies undertaking management-related research in the Sanctuary to promote more informed management; and (7) incorporate research results into the interpretive/education program in a format useful for the general public.

C. Education

The goal for the Sanctuary education program is to improve public awareness and understanding of the significance of the Sanctuary and the need to protect its resources and qualities.

The management objectives designed to meet this goal are to: (1) Provide the public with information on the Sanctuary and its goals and objectives, with an emphasis on the need to use Sanctuary resources and qualities wisely to ensure their long-term viability; (2) broaden support for Sanctuary management by offering programs suited to visitors with a diverse range of interests; (3) provide for public involvement by encouraging feedback on the effectiveness of education programs, collaboration with Sanctuary management staff in extension and outreach programs, and participation in other volunteer programs; and (4) collaborate with other organizations to provide educational services complementary to the Sanctuary program.

D. Visitor Use

The Sanctuary goal for visitor use management is to facilitate, to the extent compatible with the primary objective of resource protection, public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities.

Specific management objectives are to: (1) Provide relevant information about Sanctuary regulations, use policies, and standards; (2) collaborate with public and private organizations in promoting compatible uses of the Sanctuary; (3) encourage the public who use the Sanctuary to respect sensitive Sanctuary resources and qualities; and (4) monitor and assess the levels of use to identify and control potential degradation of resources and qualities, and minimize potential user conflicts.

The Sanctuary would be managed from a headquarters facility located in the Florida Keys region.

III. Designation Document

Section 304(a)(4) of the MPRSA requires that the Terms of Designation include the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities that will be subject to regulation by the Secretary to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made. Thus the terms of designation serve as a constitution for the Sanctuary.

Designation Document for the Florida Keys National Marine Sanctuary

On November 16, 1990, the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA), Public Law 101–605, set out as a note to 16 U.S.C. 1433, was signed into law. The Florida Keys National Marine Sanctuary and Protection Act designated an area of waters and submerged lands, including the living and nonliving resources within those waters, as described in section 5 of the FKNMSPA, as the Florida Keys National Marine Sanctuary.

Article I. Effect of Designation

Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 as amended (the ''MPRSA''), 16 U.S.C. 1431 et seq., authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational and esthetic resources and qualities of the Florida Keys National Marine Sanctuary. Section 1 of Article IV of this Designation Document lists activities of the type that will be regulated initially, or may be subject to regulated subsequent regulation in order to protect Sanctuary resources and qualities. Such listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended to include the type of activity by the procedures outlined in section 304(a) of the MPRSA.

Article II. Description of the Area

The Florida Keys National Marine Sanctuary boundary encompasses approximately 2,800 square nautical miles (9,500 square kilometers) of coastal and oceanic waters, and the submerged lands thereunder, surrounding the Florida Keys in and adjacent to the State of Florida. The Sanctuary boundary extends from the northeasternmost point of Biscayne National Park out to the Dry Tortugas, a linear distance of approximately 320 kilometers. The boundary on the Atlantic Ocean side of the Florida Keys runs south from Biscayne National Park following approximately the 300-foot isobath, which curves in a southwesterly direction along the Florida Keys archipelago ending at the Dry Tortugas. The boundary on the Gulf of Mexico-side of the Florida Keys runs in an easterly direction from the Dry Tortugas paralleling the Florida Keys, approximately five miles to the north, and then follows the Everglades National Park boundary until Division Point at which time the boundary follows the western shore of Manatee Bay, Barnes Sound, and Card Sound. The boundary then follows the southern boundary of Biscayne National Park and up its eastern boundary until its northeasternmost point.

The shoreward boundary of the Sanctuary is the mean high-water mark. The Sanctuary boundary encompasses all of the Florida coral reef tract, all of the mangrove islands of the Florida Keys, and some of the seagrass meadows of Florida Bay. The precise boundary of the Sanctuary is set forth at the end of this Designation Document.

Article III. Characteristics of the Area that Give it Particular Value

The Florida Keys are a limestone island archipelago extending southwest over 320 kilometers from the southern tip of the Florida mainland. The Keys are located at the southern edge of the Floridian Plateau, a large carbonate platform made of a depth of up to 7,000 meters of marine sediments, which have been accumulating for 150 million years and have been structurally modified by subsidence and sea level fluctuation. The Keys region is generally divided into five distinct areas: the Florida reef tract, one of the world's largest coral reef tracts and the only barrier reef in the United States; Florida Bay, described as an active lime-mud factory because of the high carbonate content of the silts and muds; the Southwest

Continental Shelf; the Straits of Florida; and the Keys themselves.

The 2.4 million-acre Sanctuary contains one of North America's most diverse assemblages of estuarine and marine fauna and flora, including, in addition to the Florida reef tract, thousands of patch reefs, one of the world's largest seagrass communities covering 1.4 million acres, mangrove-fringed shorelines, mangrove islands, and various hardbottom habitats. These diverse habitats provide shelter and food for thousands of species of marine plants and animals, including over 50 species of animals identified by either Federal or State law as endangered or threatened. Federal, State, local, and private organizations currently protect, preserve and set regulations at 121 sites throughout the Keys, covering approximately 2.0 million acres.

The Keys were at one time a major seafaring center for European and American trade routes in the Caribbean, and submerged cultural and historic resources (i.e., shipwrecks) abound in the surrounding waters. In addition, the Sanctuary may contain substantial archaeological resources of pre-European cultures.

The uniqueness of the marine environment draws multitudes of visitors to the Keys. The major industry in the Florida Keys is tourism, including activities related to the Keys' marine resources, such as dive shops, charter fishing and dive boats and marinas, as well as hotels and restaurants. The abundance of the resources also supports a large commercial fishing employment sector.

The number of visitors to the Keys grows each year, with a concomitant increase in the number of residents, homes, jobs, and businesses. As population grows and the Keys accommodate ever-increasing resource-use pressures, the quality and quantity of Sanctuary resources are increasingly threatened. These pressures require coordinated and comprehensive management, monitoring and research of the Florida Keys' region.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation

In order to protect the characteristics and values of the Sanctuary described above, all activities adversely affecting the resources or property of the Sanctuary, whether individually or cumulatively, or that pose harm to users of the Sanctuary are subject to regulation, including regulation of method, location and times of conducting the activity, assessment of fees for conducting the activity, and prohibition of the activity, either throughout the entire Sanctuary (including both land and water areas), after public notice and an opportunity for comment, or within identified portions of the Sanctuary or in areas adjacent to the Sanctuary to the extent necessary and reasonable to ensure the protection and management of the conservation, recreational, ecological, historical, research, educational or esthetic resources and qualities of the area. Such activities include, but are not limited to:

a. Discharging or depositing, from within or from beyond the boundary of the Sanctuary, any material or other matter, including aerially-sprayed pesticides, that enters or could enter the Sanctuary; and reporting of discharges or deposits, from within or from beyond the boundary of the Sanctuary, any material or other matter, including aerially-sprayed pesticides, that enters or could enter the Sanctuary;

b. Exploring for, developing, or producing oil, gas or minerals (e.g., clay, stone, sand, gravel, metalliferous ores and nonmetalliferous ores or any other solid material or other matter of commercial value) in the Sanctuary;

c. Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary;

d. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of a marine mammal, marine reptile, seabird, historical resource or other Sanctuary resource;

e. Touching with any part of the body, climbing on, taking, removing, moving, catching, collecting, harvesting, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of living or dead coral;

f. Possessing within the Sanctuary a Sanctuary resource or any other resource, regardless of where taken, removed, moved, caught, collected or harvested, that, if it had been found within the Sanctuary, would be a Sanctuary resource;

g. Operation of a vessel (i.e., watercraft of any description), including but not limited to anchoring or otherwise mooring a vessel; and all activities necessary for vessel operation or maintenance, such as pump-out of sanitary wastes and refueling, in the Sanctuary or any part thereof or in marinas or at docks within or adjacent to the Sanctuary;

h. Removal of vessels grounded, lodged, stuck or otherwise perched on coral reefs or other Sanctuary resources; and removal from any location within the Sanctuary and disposal of derelict or abandoned vessels or other vessels for which ownership cannot be determined or for which owner takes no action for removal or disposal; and salvaging and towing of abandoned or disabled vessels or of vessels otherwise needing salvaging and towing;

i. Possessing or using within the Sanctuary or any part thereof, any fishing gear, trap, device, equipment or means, whether regulated based on method or based on quantity of fish present or quantity of fish caught in identified fisheries; and providing information to Federal, State, and local officials within the Sanctuary and adjacent to the Sanctuary about the quantity and type of fish and other living Sanctuary resources caught during any vessel travel;

j. Possessing or using explosives or air guns or releasing electrical charges or substances poisonous or toxic to fish and other living resources within the Sanctuary boundary or adjacent to the Sanctuary boundary;

k. Stocking or release of native or exotic species;

l. Harvesting or otherwise taking sponges;

m. Removal and disposal of lost or out-of-season gear discovered within the Sanctuary boundary;

n. Development or conduct in the Sanctuary of mariculture activities;

o. Flying a motorized aircraft above the Sanctuary;

p. Construction, alteration, repair or other work on docks and marinas;

q. Activities or situations on land that may result in water quality degradation, including but not limited to:

1. Dredging and filling, particularly of wetlands;

2. Construction activities;

3. Use and management of hazardous chemicals, including, but not limited to, pesticides, fertilizers, and motor oil;

4. Waste disposal and discharge on land; and

5. Water quality in basins and canals; and

r. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

Section 2. Emergencies

Where necessary to prevent or minimize the destruction of, loss of, or

injury to a Sanctuary resource or quality; or minimize the imminent risk of such destruction, loss or injury, any activity, including any not listed in section 1 of this article, is subject to immediate temporary regulation, including prohibition.

Article V. Effect on Leases, Permits, Licenses, and Rights

If any valid law or regulation issued by any Federal, State or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, or his or her designee to be more protective of Sanctuary resources and qualities shall govern.

Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce, or his or her designee, as a result of this designation, or as a result of any Sanctuary regulation, if such authorization or right was in existence on the effective date of Sanctuary designation (November 16, 1990). However, the Secretary of Commerce or designee may regulate the exercise (including, but not limited to, the imposition of terms and conditions) of such authorization or right consistent with the purposes for which the Sanctuary is designated.

In no event may the Secretary or designee issue a permit authorizing, or otherwise approving: (1) The exploration for, leasing of, development of, or production of minerals or hydrocarbons within the Sanctuary; or (2) the disposal of dredged material within the Sanctuary, or the discharge of untreated or primary treated sewage (except by a certification, pursuant to Section 940.10, of valid authorizations in existence on the effective date of Sanctuary designation). Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

Article VI. Alteration of this Designation

The terms of designation, as defined under Section 304(a) of the MPRSA, may be modified only by the procedures outlined in such section, including public hearings, consultation with interested Federal, State, and local agencies, review by the appropriate Congressional committees, and the Governor of the State of Florida, and approval by the Secretary of Commerce or designee.

Florida Keys National Marine Sanctuary Boundary Coordinates (based on North American datum of 1983.)

The boundary of the Florida Keys National Marine Sanctuary—

(a) Begins at the northeasternmost point of Biscayne National Park located at approximately 25 degrees 39 minutes north latitude, 80 degrees 5 minutes west longitude, then runs eastward to the 300-foot isobath located at approximately 25 degrees 39 minutes north latitude, 80 degrees 4 minutes west longitude;

(b) Then runs southward and connects in succession the points at the following coordinates:

(i) 25 degrees 34 minutes north latitude, 80 degrees 4 minutes west longitude,

(ii) 25 degrees 28 minutes north latitude, 80 degrees 5 minutes west longitude, and

(iii) 25 degrees 21 minutes north latitude, 80 degrees 7 minutes west longitude;

(iv) 25 degrees 16 minutes north latitude, 80 degrees 8 minutes west longitude;

(c) Then runs southwesterly approximating the 300-foot isobath and connects in succession the points at the following coordinates:

(i) 25 degrees 7 minutes north latitude, 80 degrees 13 minutes west longitude,

(ii) 24 degrees 57 minutes north latitude, 80 degrees 21 minutes west longitude,

(iii) 24 degrees 39 minutes north latitude, 80 degrees 52 minutes west longitude,

(iv) 24 degrees 30 minutes north latitude, 81 degrees 23 minutes west longitude,

(v) 24 degrees 25 minutes north latitude, 81 degrees 50 minutes west longitude,

(vi) 24 degrees 22 minutes north latitude, 82 degrees 48 minutes west longitude,

(vii) 24 degrees 37 minutes north latitude, 83 degrees 6 minutes west longitude,

(viii) 24 degrees 40 minutes north latitude, 83 degrees 6 minutes west longitude,

(ix) 24 degrees 46 minutes north latitude, 82 degrees 54 minutes west longitude,

(x) 24 degrees 44 minutes north latitude, 81 degrees 55 minutes west longitude,

(xi) 24 degrees 51 minutes north latitude, 81 degrees 26 minutes west longitude, and

(xii) 24 degrees 55 minutes north latitude, 80 degrees 56 minutes west longitude;

(d) Then follows the boundary of Everglades National Park in a southerly then northeasterly direction through Florida Bay, Buttonwood Sound, Tarpon Basin, and Blackwater Sound;

(e) After Division Point, then departs from the boundary of Everglades National Park and follows the western shoreline of Manatee Bay, Barnes Sound, and Card Sound;

(f) Then follows the southern boundary of Biscayne National Park to the southeasternmost point of Biscayne National Park; and

(g) Then follows the eastern boundary of Biscayne National Park to the beginning point specified in paragraph (a).

IV. Summary of Proposed Regulations

Two sets of existing regulations will be eliminated and replaced by the proposed rule. Specifically, parts 929 and 937 to title 15, Code of Federal Regulations, implementing the Key Largo and Looe Key sanctuaries, respectively, will be removed and replaced by the proposed revision to part 929. Pursuant to section 5 of the Florida Keys National Marine Sanctuary and Protection Act, the existing Key Largo and Looe Key National Marine Sanctuaries will be incorporated into the Florida Keys National Marine Sanctuary.

The proposed regulations set forth the boundary of the Sanctuary; prohibit a range of activities generally and within specific Sanctuary zones; establish procedures for applying for National Marine Sanctuary permits to conduct otherwise prohibited activities, establish procedures for applying for Special Use permits; establish certification procedures for existing leases, licenses, permits, approvals, other authorizations, or rights authorizing the conduct of a prohibited activity; establish notification procedures for applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity; set forth the maximum per-day penalties for violating Sanctuary regulations; and establish procedures for administrative appeals.

Section 929.1 sets forth as the purpose of the regulations to implement the designation and comprehensive management plan for the Florida Keys National Marine Sanctuary by regulating activities affecting the Sanctuary in order to protect, preserve and manage the conservation, ecological, recreational, research, educational,

historical and aesthetic resources and qualities of the area.

Section 929.2 and appendix I following § 929.16 describe the boundary of the Sanctuary as established by Section 5 of the Florida Keys National Marine Sanctuary and Protection Act.

Section 929.3 defines various terms used in the regulations. Other terms appearing in the regulations are defined at 15 CFR 922.2 and/or in the NMSA.

Section 929.4 allows all activities except those prohibited by § 929.5 or by § 929.6 to be conducted subject to all applicable access and use restrictions imposed within Sanctuary zones pursuant to § 929.6, subject to all prohibitions, restrictions and conditions validly imposed by any other Federal, State, or local authority of competent jurisdiction, subject to any emergency regulations promulgated pursuant to § 929.7, and subject to the liability established by Section 312 of the NMSA. This section is intended to assure that activities other than those prohibited or otherwise restricted or conditioned pursuant to this part, or pursuant to any other Federal, State, or local authority of competent jurisdiction, are allowed within the Sanctuary. Accordingly, such provision for allowed activities is not intended to preempt other, more protective, regulatory provisions imposed by any other Federal, State or local authority of competent jurisdiction.

Section 929.5 prohibits a variety of activities and thus makes it unlawful for any person to conduct them or cause them to be conducted. However, any of the prohibited activities except for: (1) The exploration for, leasing, development or production of minerals or hydrocarbons within the Sanctuary, or (2) the disposal of dredged material or primary (or untreated) sewage within the Sanctuary (except by a certification, pursuant to § 929.14, of valid authorizations in existence on the effective date of Sanctuary designation) could be conducted lawfully if one of the following three (3) situations applies:

(1) The activity is necessary to respond to an emergency threatening life or the environment.

(2) The activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of: a National Marine Sanctuary permit issued under § 929.10; or a National Marine Sanctuary Historical Resources permit issued under § 929.11.

(3) The activity is specifically authorized by a valid lease, permit, license, approval or other authorization issued by any Federal, State or local authority of competent jurisdiction in existence on (or conducted pursuant to any valid right of subsistent use or access in existence on) the effective date of the Sanctuary designation, provided that the Director of the Office of Ocean and Coastal Resource Management (hereinafter the Director) was notified of the existence of such authorization or right and the holder requests certification by the Director or designee pursuant to § 929.14, the holder complies with the requirements of § 929.14, and the holder complies with any terms and conditions on the exercise of such authorization the Director or designee imposes as a condition of certification to achieve the purposes for which the Sanctuary was designated.

(4) The activity is specifically authorized by a valid lease, permit, license or approval or other authorization issued after the effective date of the Sanctuary designation by any Federal, State or local authority of competent jurisdiction, provided that the Director or designee was notified of the application in accordance with the requirements of § 929.15, the applicant complies with the requirements of § 919.15, the Director or designee notifies the applicant or authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director or designee deems reasonably necessary to protect Sanctuary resources and qualities.

The first activity prohibited is exploring for, developing, or producing minerals or hydrocarbons within the Sanctuary. This prohibition is based on best available scientific information which establishes that the Sanctuary's significant natural resources and qualities are especially sensitive to potential impacts from outer continental shelf minerals or hydrocarbon activities and should be protected. Specifically, the corals, seagrasses, and mangroves of the Florida Keys and the Sanctuary's high water quality are especially vulnerable to oil and gas activities in the area. A prohibition on oil and gas activities within the Sanctuary boundary would help protect the Sanctuary's resources and qualities. A prohibition on mineral activities within the Sanctuary is necessary to protect Sanctuary resources and qualities, consistent with the prohibition on drilling into, dredging or otherwise altering the seabed discussed below.

The second activity prohibited is the removal of, injury to, or possession of coral or live rock. The intent of this prohibition is to conserve the coral reefs, to protect the biodiversity of the Sanctuary, to protect the habitats of commercially and ecologically important species, and to preserve the natural functional aspects of the ecosystem.

The third activity prohibited is the alteration of, or construction on the seabed. This prohibition includes the use of propeller wash deflectors. The intent of this prohibition is to protect the resources of the Sanctuary, such as seagrasses, from the harmful effects of activities such as, but not limited to, treasure hunting, drilling into the seabed, mining, ocean mineral extraction, and dumping of dredge spoils.

The fourth activity prohibited is the discharging or depositing of materials or other matter. The intent of this prohibition is to protect the Sanctuary resources and qualities against the harmful effects of land based and vessel source pollution, to reduce and prevent contamination by marine debris and related impacts associated with pollution of the marine environment of the Sanctuary.

The fifth activity prohibited is the operation of: (1) A tank vessel or a vessel greater than 50 meters in registered length in an area to be avoided (ATBA); or (2) any vessel in a manner that is either dangerous to people or harms Sanctuary resources. The boundary coordinates for the ATBAs are listed in Appendix VII to part 929. The prohibition is designed to prevent vessel groundings on the coral reef, and thus to minimize the risk of extensive physical damage, spills and associated, possibly irreparable, injury to Sanctuary resources likely to result from a grounding of a large vessel and tank vessel. This prohibition further is intended to prevent injury to Sanctuary resources, prevent injury to humans (e.g., divers and swimmers), and to reduce shoreline erosion.

The sixth activity prohibited is diving without a red and white ''divers down'' flag or a blue and white ''alpha'' flag in Federal waters. The intent of this prohibition is to prevent injury to humans and thereby facilitate safe, multiple use of the Sanctuary.

The seventh activity prohibited is the release of exotic species. Exotic species can permanently alter an ecosystem by out competing indigenous species, preying on indigenous species, etc. The intent of this prohibition is to prevent injury to Sanctuary resources, to protect the biodiversity of the Sanctuary, and to preserve the natural functional aspects of the ecosystem.

The eighth activity prohibited is the tampering with official signs or markers

or navigational aids. The intent of this prohibition is to prevent injury to Sanctuary resources, primarily corals and seagrasses, and to prevent injury to humans.

The ninth activity prohibited is the removing or injuring Sanctuary historical resources. Submerged historical resources constitute important, irreplaceable, public resources of the Sanctuary because they contain important information about human history and culture. This prohibition is designed to protect these resources so that they may be researched, and information about their contents and type made available for the benefit of the public. This prohibition does not apply to accidental moving, possession, or injury during normal fishing operations.

The tenth activity prohibited is taking or possessing protected wildlife. The Sanctuary is an important staging area, breeding area, and feeding area for a variety of wildlife, including a number of endangered and threatened species. The intent of this prohibition is to protect Sanctuary resources and endangered and/or threatened species.

The eleventh activity prohibited is the possession or use of explosives and electrical discharges. The intent of this prohibition is to prevent injury to Sanctuary resources or to humans.

The twelfth activity prohibited is interfering with law enforcement officers. The intent of this prohibition is to prevent the obstruction of justice.

Section 929.5(b) regulates the taking or landing of marine life species, in accordance with the Marine Life rule of the Florida Administrative Code reproduced in Appendix VIII to this part. The intent of this regulation is to protect Sanctuary resources and biodiversity by adopting relevant portions of the Florida Marine Life rule as a uniform regulation to be applied throughout the (federal and state) waters of the Sanctuary.

Section 929.6 establishes five types of water use zones within the Sanctuary, the prohibitions applicable to uses within such zones, and the regulations governing access to, and use of, the resources of such zones. The five zone types are: Existing Management Areas; Wildlife Management Areas; Sanctuary Preservation Areas; Replenishment Reserves and Special Use Areas. The proposed location of these zones is specified in Appendices II, III, IV, V and VI to this part, respectively, corresponding to the five zone types stated above. The intent of the zoning regulations is to protect Sanctuary resources and biodiversity, and provide for effective management and facilitation of multiple, compatible uses, consistent with the purposes of the Sanctuary designation.

Section 929.6(a) provides that the regulations applicable to the conduct of activities within any of the five types of Sanctuary zones are in addition to the general prohibitions set forth in paragraphs (a) and (b) of § 929.5. Activities conducted in those areas of the Sanctuary that are located in two or more overlapping zones shall be concurrently subject to the regulations applicable to each such overlapping zone.

Section 929.6 identifies certain Existing Management Areas which are listed in Appendix II to part 929. Existing Management Areas are existing Federal, State or local resource management areas subject to the continuing management and control of another agency, notwithstanding the exercise of concurrent authority by the Assistant Administrator in accordance with this part. To the extent possible, consistent with the purposes for which the Sanctuary was designated, the regulations applicable to Existing Management Areas shall be applied in a manner that is compatible with such existing management authorities. Identification of the Key Largo and Looe Key Existing Management Areas constitutes recognition of these areas as pre-existing National Marine Sanctuaries that were subject to the management and control of the Assistant Administrator prior to Sanctuary designation, and for which continuing regulation as Existing Management Areas will serve to maintain, to the extent possible, a level of management and control of uses in such areas that is at least as protective of Sanctuary resources and qualities as that provided by their former status as discrete National Marine Sanctuaries.

Section 929.6(b)(2) further prohibits the operation of personal watercraft, airboats or water skiing within the Great White Heron or Key West National Wildlife Existing Management Areas. The intent of this prohibition is to protect Sanctuary resources and qualities through coordination with the U.S. Fish and Wildlife Service in a manner that recognizes and complements the existing management of these areas as components of the National Wildlife Refuge System.

Section 929.6(c) sets forth the rules governing access to, and use of, the Wildlife Management Areas described in Appendix III to part 929. Specifically, access and use restrictions may include the designation of any such zones as an ''idle/no-wake speed'', a ''no motor'' or a ''no access buffer'' areas. The Director or designee, in cooperation with other Federal, State, or local resource management authorities, as appropriate, shall effect such designation by posting official signs conspicuously, using mounting posts, buoys, or other means according to location and purpose, at appropriate intervals and locations. The intent of these rules is to protect Sanctuary wildlife resources from injury or harmful disturbance within sensitive areas and habitats of the Sanctuary.

Section 929.6(d) sets forth prohibitions applicable to activities conducted within Sanctuary Preservation Areas and Replenishment Reserves. Specific prohibitions include possessing, harvesting or otherwise injuring any coral, marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism in such areas; fishing by any means; touching living or dead coral, including but not limited to standing on a living or dead coral formation; placing anchors so as to touch living or dead coral or any sessile organism. Vessels shall use mooring buoys or anchoring areas when such facilities or areas have been designated and are available.

Section 929.6(d) further provides that the Director or designee may impose a limited access designation, or temporary area closure, within any Sanctuary Preservation Area if the Director determines that such action is reasonably necessary to allow for recovery of the living resources of such area from the adverse, cumulative effects of concentrated use.

The intent of the establishment of, and regulation of uses within, the Sanctuary Preservation Areas is to avoid concentrations of uses that could result in significant declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. The intent of the establishment of, and iregulation of uses within, the Replenishment Reserves is to minimize human influences, to provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Sanctuary.

Section 929.6(e) establishes procedures and criteria pursuant to which the Director or designee may set aside discrete areas of the Sanctuary as Special Use Areas, and designate such areas as ''recovery areas'', ''restoration areas'', ''research only areas'' or

''facilitated use areas'', as appropriate, to protect the Sanctuary resources and qualities and allow for multiple, compatible uses within the Sanctuary. Section 929.6(e) further provides criteria pursuant to which the Director or designee may issue an emergency notice modifying the number, location or designation applicable to Special Use Areas if the Director of designee determines that such immediate action is reasonably necessary to prevent significant injury to Sanctuary resources or to initiate restoration or research activities where, due to emergency or unforseen circumstances, delay would impair the ability of such activities to succeed.

Section 929.7 authorizes the regulation, including prohibition, on an immediate, temporary basis of any activity where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury.

Section 929.8 sets forth the maximum statutory civil penalty for violating the NMSA, the regulations or any permit issued pursuant thereto—$100,000. Each such violation shall be subject to forfeiture of property or Sanctuary resources seized in accordance with section 307 of the NMSA. Each day of a continuing violation constitutes a separate violation.

Section 929.9 repeats the provision in Section 312 of the NMSA that any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs, damages and interest resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs, damages and interest resulting from destruction, loss or injury. The purpose of these sections is to notify the public of the liability for violating a Sanctuary regulation, a permit issued pursuant thereto or the NMSA.

Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

Section 929.10 sets forth the procedures for applying for a National Marine Sanctuary permit to conduct a prohibited activity and the criteria governing the issuance, denial, amendment, suspension and revocation of such permits. A permit may be issued by the Director or designee if he or she finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: further research or monitoring related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in managing the Sanctuary. For activities proposed to be conducted within Replenisment Reserves or Sanctuary Preservation Areas, the Director or designee shall further find that such activities will further and are consistent with the purposes for which such zone was established. In deciding whether to issue a permit, the Director or designee is required to consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the indirect, secondary or cumulative effects of the activity; and the end value of the activity. In addition, the Director or designee is authorized to consider any other factors she or he deems appropriate.

Section 929.11 sets forth the application procedures and issuance criteria for National Marine Sanctuary Historical Resources permits to conduct specific research activities involving the exploration for, recovery of, or transfer of historical Sanctuary resources specified under § 929.11 and otherwise prohibited by the regulations. A permit may be issued by the Director or designee at his or her discretion in accordance with the requirements of § 929.11 and consistent with the Programmatic Agreement Among NOAA, the Advisory Council on Historic Preservation, and the State of Florida on Submerged Cultural Resources (hereinafter SCR Agreement). Recovery of historical resources will only be permitted when developed in conjunction with research to preserve the historic information for public use. Intrusive research and/or recovery will be based upon a balancing of factors and criteria to determine whether the goals of preservation, research, education, and public access are better served by permitting this type of activity as opposed to leaving the historic resources in place.

Section 929.12 sets forth criteria governing the issuance of Special Use permits to conduct concession-type, commercial activities within the Sanctuary. In accordance with the provisions of Section 310 of the NMSA, the Director or designee may require a Special Use permit for any such activity if he or she determines such authorization is necessary to establish conditions of access to and use of any Sanctuary resource, or to promote public use and understanding of any Sanctuary resource. No special use permit may be issued unless the activity is compatible with the purposes for which the Sanctuary was designated and can be conducted in a manner that does not destroy, cause the loss of, or injure any Sanctuary resource.

Applicants for Special Use permits are required to follow the same procedures specified for National Marine Sanctuary permits in § 929.10 (d) through (g).

All National Marine Sanctuary, National Marine Sanctuary Historical Resources, or Special Use permits are subject to the general permit conditions specified in § 929.10(h). With respect to any such permit, the Director or designee, at his or her discretion, also may impose special permit conditions in accordance with § 929.10(i).

Section 929.13 provides that any person conducting research in the Sanctuary, including such research not involving prohibited activities, may voluntarily register with the appropriate Sanctuary field office. Upon registration, the Sanctuary office will issue a research flag to be used while conducting research within the Sanctuary. Copies of research results, abstracts, and reports may be submitted to the Sanctuary field office to be retained for Sanctuary management purposes, public observation, and peer review.

Section 929.14 sets forth procedures for requesting certification of leases, permits, licenses, approvals, other authorizations or rights in existence on the date of Sanctuary designation authorizing the conduct of an otherwise prohibited activity. Notwithstanding the prohibitions under paragraph (a) of § 929.5 or § 929.6, a person may conduct any activity specifically authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State, or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with the requirements of § 929.14 (*e.g.*, notifies the Director or designee of the

existence of, requests certification of, and provides requested information regarding such authorization or right) and complies with any terms and conditions on the exercise of such authorization or right imposed by the Director or designee as she or he deems reasonably necessary to achieve the purposes for which the Sanctuary was designated.

Section 929.14 allows the holder 90 days from the effective date of the proposed Sanctuary regulations in part 929 to request certification. The holder is allowed to conduct the activity without being in violation of paragraph (a) of § 929.5 or 929.6 pending final agency action on his or her certification request, provided the holder has complied with all requirements of § 929.14.

Section 929.14 also allows the Director or designee to request additional information from the holder and to seek the views of other persons.

As a condition of certification, the Director or designee will impose such terms and conditions on the exercise of such lease, permit, license, approval or other authorization or right as she or he deems reasonably necessary to achieve the purposes for which the Sanctuary was designated. This is consistent with the Secretary's authority under Section 304(c)(2) of the NMSA. (Section 929.14 has no application to mineral or hydrocarbon activities as there is no existing lease, permit, license, approval, other authorization or right for any of these activities within the Sanctuary).

The holder may appeal any action conditioning, amending, suspending or revoking any certification in accordance with the procedures set forth in § 929.16.

Any amendment, renewal or extension not in existence as of the date of Sanctuary designation of a lease, permit, license, approval, other authorization or right is subject to the provisions of § 929.15.

Section 929.15 provides, consistent with paragraph (f) of § 929.5, that notwithstanding the prohibitions under paragraph (a) of § 929.5 or § 929.6, a person may conduct any activity specifically authorized by any valid lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, provided that the applicant notifies the Director or designee of the application for such authorization within 15 days of the date of filing of the application or of the efffective date of the proposed Sanctuary regulations, whichever is later, that the applicant is in compliance with the other provisions in § 929.15, that the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and that the applicant complies with any terms and conditions the Director or designee deems reasonably necessary to protect Sanctuary resources and qualities.

Section 929.15 allows the Director or designee to request additional information from the applicant and to seek the views of other persons.

An application or an amendment to, an extension of, or a renewal of an authorization is also subject to the provisions of § 929.15.

The applicant may appeal any objection by, or terms or conditions imposed by, the Director or designee to the Assistant Administrator or designee in accordance with the procedures set forth in § 929.16.

Section 929.16 sets forth the procedures for appealing to the Assistant Administrator or designee actions of the Director or designee with respect to: (1) the granting, denial, conditioning, amendment, suspension or revocation of a National Marine Sanctuary permit under § 929.10, a National Marine Sanctuary Historical Resources permit under § 929.11, or a Special Use permit under § 929.12 or Section 310 of the NMSA; (2) the conditioning, amendment, suspension, or revocation of a certification under § 929.14; or (3) the objection to issuance or the imposition of terms and conditions under § 929.15.

Prior to conditioning the exercise of existing leases, permits, licenses, approvals, other authorizations or rights or conditioning or objecting to proposed authorizations NOAA intends to consult with relevant issuing agencies as well as owners, holders or applicants.

V. Miscellaneous Rulemaking Requirements

Marine Protection, Research, and Sanctuaries Act

Section 304 of the MPRSA requires the Secretary to submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, on the same day as this notice is published, the proposed terms of the designation, the proposed regulations, a draft environmental impact statement, and a draft management plan detailing the proposed goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement and surveillance activities, for the area. In accordance with Section 304, the required documents are being submitted to the specified Congressional Committees.

Executive Order 12866

Under Executive Order 12866, if the proposed regulations are ''significant'' as defined in section 3(f) (1), (2), (3) or (4) of the Order, an assessment of the potential costs and benefits of the regulatory action must be prepared and submitted to the Office of Information and Regulatory Affairs (OIRA) of OMB. The Administration of NOAA has determined that the proposed regulations are significant. The required assessment has been prepared and submitted to OIRA.

Regulatory Flexibility Act

The regulations proposed in this notice would allow all activities to be conducted in the Sanctuary other than those activities that are specifically prohibited. The procedures proposed in these regulations for applying for National Marine Sanctuary permits to conduct otherwise prohibited activities, for requesting certifications for pre-existing leases, licenses, permits, approvals, other authorizations or rights authorizing the conduct of a prohibited activity, and for notifying NOAA of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity would all act to lessen any adverse economic effect on small entities. The proposed regulations, in total, if adopted in final form as proposed, are not expected to have a significant economic impact on a substantial number of small entities, and the General Counsel of the Department of Commerce has so certified to the Chief Counsel for Advocacy of the Small Business Administration. As a result, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed rule contains a collection of information requirement subject to the requirements of the Paperwork Reduction Act (Pub. L. 96–511). The collection of information requirement applies to persons seeking permits to conduct otherwise prohibited activities and is necessary to determine whether the proposed activities are consistent with the management goals for the Sanctuary. The collection of information requirement contained in the proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the

Paperwork Reduction Act. The public reporting burden per respondent for the collection of information contained in this rule is estimated to average 1.65 hours annually. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments from the public on the collection of information requirement are specifically invited and should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: Desk Officer for NOAA); and to Richard Roberts, Room 724, 6010 Executive Boulevard, Rockville, MD 20852.

Executive Order 12612

A Federalism Assessment (FA) was prepared for the proposed designation document, draft management plan, and proposed implementing regulations. The FA concluded that all would be fully consistent with the principles, criteria, and requirements set forth in sections 2 through 5 of Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation (52 FR 41685). Copies of the FA are available upon request to the Office of Ocean and Coastal Resource Management at the address listed in the address section above.

National Environmental Policy Act

In accordance with Section 304(a)(2) of the Act (16 U.S.C. 1434(a)(2)), and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(a)), a Draft Environmental Impact Statement (DEIS) has been prepared for the designation and the proposed regulations. As required by Section 304(a)(2), the DEIS includes the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1433(b)(3)), maps depicting the boundaries of the designated area, and the existing and potential uses and resources of the area. Copies of the DEIS are available upon request to the Office of Ocean and Coastal Resource Management at the address listed in the address section above.

Executive Order 12630

This proposed rule, if issued in final form as proposed, would not have takings implications within the meaning of Executive Order 12630 because it would not appear to have an effect on private property sufficiently severe as effectively to deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation. While the prohibition on the exploration for, development, production of minerals and hydrocarbons from the Sanctuary might have a takings implication if it abrogated an existing lease for Outer Continental Shelf (OCS) tracts within the Sanctuary or an approval of an exploration or development and production plan, no OCS leases have been sold for tracts within the Sanctuary and no exploration or production and development plans have been filed or approved.

List of Subjects in 15 CFR Parts 929 and 937

Administrative practice and procedure, Coastal zone, Marine resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 13, 1995.

Frank W. Maloney,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR Chapter IX is proposed to be amended as follows:

SUBCHAPTER B—OCEAN AND COASTAL RESOURCE MANAGEMENT

1. Part 929 is revised to read as follows:

PART 929—-FLORIDA KEYS NATIONAL MARINE SANCTUARY

Sec.
929.1 Purpose.
929.2 Boundary.
929.3 Definitions.
929.4 Allowed activities.
929.5 Prohibited activities; Sanctuary wide.
929.6 Additional activity regulations by Sanctuary zone.
929.7 Emergency regulations.
929.8 Penalties.
929.9 Response costs and damages.
929.10 National Marine Sanctuary Permits; application procedures and issuance criteria.
929.11 National Marine Sanctuary Historical Resources Permits; exploration, research/recovery, research/recovery/transfer; application procedures and issuance criteria.
929.12 Special Use Permits.
929.13 Sanctuary registry; research notice.
929.14 Certification of pre-existing leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.
929.15 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.
929.16 Appeals of administrative action.
Appendix I to Part 929—Florida Keys National Marine Sanctuary boundary coordinates
Appendix II to Part 929—Existing Management Areas
Appendix III to Part 929—Wildlife Management Areas
Appendix IV to Part 929—Replenishment Reserves
Appendix V to Part 929—Sanctuary Preservation Areas
Appendix VI to Part 929—Special Use Areas
Appendix VII to Part 929—Coordinates for the Area to be Avoided
Appendix VIII to Part 929—Marine Life Rule

Authority: 16 U.S.C. 1431 *et seq.;* Pub. L. 101–605, 104 Stat. 3090–3093.

§ 929.1 Purpose.

The purpose of the regulations in this part is to implement the comprehensive management plan for the Florida Keys National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary is designated, in order to protect, preserve and manage the conservation, ecological, recreational, research, educational, historical, and aesthetic resources and qualities of the area. In particular, the regulations in this part are intended to protect, restore, and enhance the living resources of the Sanctuary, to contribute to the maintenance of natural assemblages of living resources for future generations, to provide places for species dependent on such living resources to survive and propagate, to facilitate to the extent compatible with the primary objective of resource protection all public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities, to reduce conflicts between such compatible uses, and to achieve the other policies and purposes of the Florida Keys National Marine Sanctuary and Protection Act and the National Marine Sanctuaries Act.

§ 929.2 Boundary.

The Sanctuary consists of all submerged lands and waters from the mean high water mark to the boundary described in Appendix I to this part, with the exception of areas within the Dry Tortugas National Park. Appendix I to this part sets forth the precise Sanctuary boundary established by the Florida Keys National Marine Sanctuary and Protection Act. (See FKNMSPA section 5 (b)(2)).

§ 929.3 Definitions.

(a) The following definitions apply to this part:

Acts means the Florida Keys National Marine Sanctuary and Protection Act, as amended, (FKNMSPA) (Pub. L. 101–605, 104 Stat. 3090–3093), and the

National Marine Sanctuaries Act (NMSA), also known as Title III of the Marine Protection, Research, and Sanctuaries Act, as amended, (MPRSA) (16 U.S.C. 1431 *et seq.*).

Adverse effect means any factor, force, or action that would independently or cumulatively damage, diminish, degrade, impair, destroy, or otherwise harm any Sanctuary resource, as defined in section 302(8) of the NMSA (16 U.S.C. 1432(8)) and in this § 929.3, or any of the qualities, values, or purposes for which the Sanctuary is designated.

Airboat means a vessel operated by means of a motor driven propeller that pushes air for momentum.

Area to be avoided means the area decribed in which vessel operations are prohibited pursuant to section 6(a)(1) of the FKNMSPA (see § 929.5(a)(1)). Appendix VII to this part sets forth the geographic coordinates of the area to be avoided, including any modifications thereto made in accordance with section 6(a)(3) of the FKNMSPA.

Assistant Administrator means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service.

Director means the Director of the Office of Ocean and Coastal Resource Management, National Ocean Service.

Existing Management Area means a portion of the Sanctuary that is within an existing resource management area established by NOAA or by another Federal, State, or local authority of competent jurisdiction within the Sanctuary and that is identified in Appendix II to this Part.

Exotic species means a species of plant, invertebrate, fish, amphibian, reptile or mammal whose natural zoogeographic range would not have included the waters of the Atlantic Ocean, Caribbean, or Gulf of Mexico without passive or active introduction to such area through anthropogenic means.

Federal Project means any water resources development project conducted by the U.S. Army Corps of Engineers or operating under a permit or other authorization issued by the Corps of Engineers and authorized by Federal law.

Fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, and birds.

Fishing means:

(1)(i) The catching, taking, or harvesting of fish;

(ii) The attempted catching, taking, or harvesting of fish;

(iii) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(iv) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1)(i) through (iii) of this definition.

(2) Such term does not include any scientific research activity which is conducted by a scientific research vessel.

Historical resource means any resource possessing historical, cultural, archaeological or paleontological significance, including sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, and human activities and events. Historical resources include ''submerged cultural resources'', and also include ''historical properties'', as defined in the National Historic Preservation Act, as amended, and implementing regulations, as amended.

Idle/no-wake speed means a speed at which a boat is operated that is no greater than 4 knots and does not produce a wake.

Injure means to change adversely, either in the long or short term, a chemical, biological, or physical attribute of, or the viability of. To ''injure'' therefore includes, but is not limited to, to cause the loss of and to destroy.

Live rock means any living marine organism or an assemblage thereof attached to a hard substrate (including dead coral or rock). For example, such living marine organisms associated with hard bottoms, banks, reefs, and live rock may include, but are not limited to: sea anemones (Phylum CNIDARIA: Class Anthozoa: Order Actinaria); sponges (Phylum PORIFERA); tube worms (Phylum ANNELIDA), including fan worms, feather duster worms, and christmas tree worms; bryozoans (Phylum BRYOZOA); sea squirts (Phylum CHORDATA); and marine algae, including Mermaid's fan and cups (*Udotea* spp.), corraline algae, green feather, green grape algae (*Caulerpa* spp.) and watercress (*Halimeda* spp.). Individual mollusk shells (scallops, clams, oysters, etc.) are not intended to be included in the definition as hard substrate.

Marine Life Species means any species of fish, invertebrate, or plant included in sections (2), (3), or (4) of Rule 46–42.001, Florida Administrative Code, set forth in Appendix VIII to this part.

Mineral means clay, stone, sand, gravel, metalliferous ore, nonmetalliferous ore, or any other non-living solid material or other non-living solid matter of commercial value.

Person means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency, or instrumentality of the Federal Government or of any State, regional, or local unit of government, or of any foreign government.

Personal watercraft means any jet and air-powered watercraft operated by standing, sitting, or kneeling on or behind the vessel, in contrast to a conventional boat, where the operator stands or sits inside the vessel, and that uses a two-cycle inboard engine to power a water jet pump for propulsion, instead of a propeller as in a conventional boat.

Prop-dredging means the use of a vessel's propulsion wash to dredge or otherwise alter the seabed of the Sanctuary, excluding disturbance to bottom sediments resulting from normal vessel propulsion. Prop-dredging includes, but is not limited to, the use of propulsion wash deflectors or similar means of dredging or otherwise altering the seabed of the Sanctuary.

Prop-scarring means the injury to seagrasses or other immobile organisms attached to the seabed of the Sanctuary caused by operation of a vessel in a manner that allows its propeller or other running gear, or any part thereof, to cause such injury, excluding minor disturbances to bottom sediments or seagrass blades resulting from normal vessel propulsion.

Replenishment Reserve means a Sanctuary zone encompassing an area of contiguous, diverse habitats, within which uses are subject to conditions, restrictions and prohibitions, including public access restrictions, intended to minimize human influences, to provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Sanctuary.

Sanctuary means the Florida Keys National Marine Sanctuary.

Sanctuary Preservation Area means a Sanctuary zone encompassing a discrete, biologically important area, within which uses are subject to conditions, restrictions and prohibitions, including public access restrictions, to avoid concentrations of uses that could result in significant declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research.

Sanctuary quality means any of those ambient conditions, physical-chemical

characteristics and natural processes, the maintenance of which is essential to the ecological health of the Sanctuary, including, but not limited to, water quality, sediment quality and air quality.

Sanctuary resource means any living or non-living resource that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the seabed and substratum, bottom formations, hard and soft corals and coralline structures, algae, phytoplankton, seagrasses, mangroves and other marine plants, zooplankton, marine invertebrates, fish, marine amphibians and reptiles, marine mammals, sea birds, and other marine wildlife and their habitats, and historical resources.

Sanctuary wildlife means any species of fauna, including avifauna, that occupy or utilize the submerged resources of the Sanctuary as nursery areas, feeding grounds, nesting sites, shelter, or other habitat during any portion of their life cycles.

Seagrass means any species of marine angiosperms (flowering plants) that inhabit portions of the seabed in the Sanctuary. Those species include, but are not limited to: *Thalassia testudinum* (turtle grass); *Syringodium filiforme* (manatee grass); *Halodule wrightii* (shoal grass); *Halophila decipiens, H. engelmannii, H. johnsonii;* and *Ruppia maritima.*

Taking means:

(1)(i) For any marine mammal, sea turtle or seabird listed as either endangered or threatened pursuant to the Endangered Species Act, to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct;

(ii) For any other marine mammal, sea turtle or seabird, to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct.

(2) For the purpose of both paragraphs (1)(i) and (ii) of this definition, the term includes, but is not limited to, collecting any dead or injured marine mammal, sea turtle or seabird, or any part thereof, no matter how temporarily; tagging any sea turtle, marine mammal or seabird; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any marine mammal, sea turtle or seabird.

Tank vessel means any vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(1) Is a United States flag vessel;

(2) Operates on the navigable waters of the United States; or

(3) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States (46 U.S.C. 2101).

Traditional fishing means those commercial or recreational fishing activities that were customarily conducted within the Sanctuary prior to its designation.

Tropical fish means any species, or part thereof, included in section (2) of Rule 46–42.001, Florida Administrative Code, (as set forth in Appendix VIII to this part).

Vessel means a watercraft of any description, including, but not limited to, motorized and non-motorized watercraft, personal watercraft, airboats, and float planes while manuevering on the water, capable of being used as a means of transportation in/on the waters of the Sanctuary. For purposes of this part, the terms ''vessel,'' ''watercraft,'' and ''boat'' are deemed to have the same meaning.

Wildlife Management Area means a Sanctuary zone established for the management, protection, and preservation of Sanctuary wildlife resources, including such a zone established for the protection and preservation of endangered or threatened species or their habitats, within which access is restricted or otherwise regulated to minimize disturbances to Sanctuary wildlife; to ensure protection and preservation consistent with the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary.

(b) Other terms appearing in the regulations in this part are defined at 15 CFR 922.2, and/or in the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 33 U.S.C. 1401 *et seq.* and 16 U.S.C. 1431 *et seq.*

§ 929.4 Allowed activities.

(a) All activities, except those prohibited pursuant to § 929.5 or § 929.6, may be conducted subject to all applicable access and use restrictions imposed within sanctuary zones pursuant to § 929.6, subject to the provisions of § 929.12, subject to all prohibitions, restrictions, and conditions validly imposed by any other Federal, State or local authority of competent jurisdiction, subject to any emergency regulations promulgated pursuant to § 929.7, and subject to the liability established by Section 312 of the NMSA (see § 929.9).

(b) Fishing activities may be conducted subject to all applicable regulations imposed by Federal and State fishery management authorities of competent jurisdiction within the Sanctuary, provided that the Assistant Administrator may regulate fishing activities within the Sanctuary, pursuant to the procedure set forth in Section 304(a)(5) of the NMSA, to the extent such Sanctuary fishing regulations are reasonably necessary to fulfill the purposes and policies of the NMSA and the goals and objectives of the Sanctuary designation.

§ 929.5 Prohibited activities; Sanctuary-wide.

(a) Except as specified in paragraph (c) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or cause to be conducted:

(1) *Mineral and hydrocarbon exploration, development and production.* Exploring for, developing, or producing minerals or hydrocarbons within the Sanctuary.

(2) *Removal of, injury to, or possession of coral or live rock.*

(i) Moving, removing, taking, harvesting, damaging, disturbing, breaking, cutting, or otherwise injuring, or possessing (regardless of where taken from) any living or dead coral, or coral formation, or attempting any of these activities, except as permitted under 50 CFR Part 638.

(ii) Harvesting, or attempting to harvest, any live rock from the Sanctuary, or possessing (regardless of where taken from) any live rock within the Sanctuary, except as authorized by a permit for the possession or harvest from aquaculture operations in the Exclusive Economic Zone, issued by the National Marine Fisheries Service pursuant to applicable regulations under the appropriate Fishery Management Plan, or as authorized by the applicable state authority of competent jurisdiction within the Sanctuary for live rock cultured on state submerged lands leased from the State of Florida, pursuant to applicable state law. See section 370.027, Florida Statutes and implementing regulations.

(3) *Alteration of, or construction on, the seabed.* Drilling into, dredging, or otherwise altering the seabed of the Sanctuary, or engaging in prop-dredging; or constructing, placing or abandoning any structure, material, or other matter on the seabed of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels in a manner not otherwise prohibited by this part (see paragraph (a)(3)(iii) of this section and § 929.6(d)(1)(iv));

(ii) Traditional fishing activities outside Replenishment Reserves or Sanctuary Preservation Areas;

(iii) Installation and maintenance of navigational aids by, or pursuant to valid authorization by, any Federal, State, or local authority of competent jurisdiction;

(iv) Harbor maintenance in areas necessarily associated with Federal Projects in existence on the effective date of Sanctuary designation, including maintenance dredging of entrance channels and repair, replacement, or rehabilitation of breakwaters or jetties;

(v) Construction, repair, replacement, or rehabilitation of docks, seawalls, breakwaters, or piers authorized by any valid lease, permit, license, approval, or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

(4) *Discharging or depositing materials or other matter.* (i) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter, except:

(A) Fish, fish parts, fish chum or bait that is produced, or used, and discarded while conducting a traditional fishing activity in the Sanctuary;

(B) Biodegradable effluent incidental to vessel use and generated by a marine sanitation device approved in accordance with Section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(C) Water generated by routine vessel operations (e.g., deck wash down and graywater as defined by section 312 of the FWPCA), excluding oily wastes from bilge pumping; or

(D) Cooling water from vessels or engine exhaust.

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraphs (a)(4)(i)(A) through (D) of this section.

(iii) Notwithstanding the exceptions contained in paragraphs (a)(4)(i)(A) through (D) of this section, discharging or depositing any material or other matter, except cooling water or engine exhaust into the waters of any Wildlife Management Area, Replenishment Reserve, Sanctuary Preservation Area, or Special Use Area.

(5) *Operation of vessels.* (i) Operating a tank vessel or a vessel greater than 50 meters in registered length in an area to be avoided. The prohibition in this subparagraph shall not apply to necessary operations of public vessels, defined as operations essential for national defense, law enforcement, or responses to emergencies that threaten life, property, or the environment.

(ii) Operating a vessel in such a manner as to strike or otherwise injure coral, seagrass, or any other immobile organism attached to the seabed, including, but not limited to, operating a vessel in such a manner as to cause prop-scarring.

(iii) Anchoring a vessel on coral, in depths less than 50 feet.

(iv) Operating a vessel at a speed greater than idle/no-wake speed within a residential canal, within 100 yards of the red and white ''divers down'' flag (or the blue and white ''alpha'' flag in Federal waters), or within 200 yards of:

(A) Residential shorelines;

(B) Mangrove fringed islands;

(C) Stationary vessels; or

(D) Signs indicating emergent or shallow reefs.

(v) Operating a vessel in such a manner as to injure or cause disturbance to wading or nesting birds or marine mammals.

(vi) The prohibitions contained in this paragraph shall not apply to law enforcement officials while in the performance of enforcement duties.

(6) *Diving without flag.* Diving or snorkeling without flying in a conspicuous manner the red and white ''divers down'' flag (or the blue and white ''alpha'' flag in Federal waters).

(7) *Release of exotic species.* Introducing or releasing an exotic species of plant, invertebrate, fish, amphibian, or reptile into the Sanctuary.

(8) *Tampering with markers.* Marking, defacing, or damaging in any way or displacing, removing, or tampering with any signs, notices, or placards, whether temporary or permanent, or with any navigational aids, monuments, stakes, posts, mooring buoys, boundary buoys, trap buoys, or scientific equipment.

(9) *Removing or injuring Sanctuary historical resources.* Moving, removing, injuring, or possessing, or attempting to move, remove, injure, or possess, a Sanctuary historical resource.

(10) *Taking or possessing protected wildlife.* Taking any marine mammal, sea turtle, or seabird in or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*

(11) *Possession or use of explosives or electrical charges.* Possessing, or using explosives, except powerheads, or releasing electrical charges within the Sanctuary.

(12) *Interfering with law enforcement.* Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Acts or any regulation or permit issued under the Acts.

(b) *Marine Life rule.* No person shall harvest, possess, or land any marine life species, or part thereof, within the Sanctuary, except in accordance with rules 46–42.001 through 46–42.003, 46–42.0035, and 46–42.005 through 46–42.007 of the Florida Administrative Code, (set forth in Appendix VIII to this part), and such rules shall apply *mutatis mutandis* (with necessary editorial changes) to all federal and state waters within the Sanctuary.

(c) Notwithstanding the prohibitions in this § 929.5 and § 929.6, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by, and conducted in accordance with the scope, purpose, terms, and conditions of, a National Marine Sanctuary permit issued pursuant to § 929.10, or a National Marine Sanctuary Historical Resources permit issued pursuant to § 929.11.

(d) Notwithstanding the prohibitions in this § 929.5 and § 929.6, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by a valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State, or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with § 929.14 and with any terms and conditions on the exercise of such authorization or right imposed by the Director or designee as a condition of certification as he or she deems reasonably necessary to achieve the purposes for which the Sanctuary was designated.

(e) Notwithstanding the prohibitions in this § 929.5 and § 929.6, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by any valid lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation and issued by any Federal, State, or local authority of competent jurisdiction, provided that the applicant complies with § 929.15, the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director or designee deems

reasonably necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(f) Notwithstanding paragraph (c) of this section and § 929.15(a), in no event may the Director or designee issue a permit under §§ 929.10, 929.11 or 929.12, or under Section 310 of the NMSA, authorizing, or otherwise approving, the exploration for, leasing, development, or production of minerals or hydrocarbons within the Sanctuary, the disposal of dredged material within the Sanctuary, or the discharge of untreated or primary treated sewage (except by a certification, pursuant to § 929.14, of a valid authorization in existence on the effective date of Sanctuary designation), and any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

(g)(1) All military activities shall be carried out in a manner that avoids to the maximum extent practical any adverse impacts on Sanctuary resources and qualities. Military activities are activities conducted by the Department of Defense with or without participation by foreign forces. The prohibitions in paragraphs (a) and (b) of this section and § 929.6 do not apply to existing classes of military activities, which were conducted prior to the effective date of the regulations in this part, as identified in the Environmental Impact Statement and Management Plan for the Florida Keys National Marine Sanctuary. New military activities in the Sanctuary are allowed and may be exempted from the prohibitions in paragraphs (a) and (b) of this section and § 929.6 by the Director or designee after consultation between the Director or designee and the Department of Defense pursuant to section 304(d) of the NMSA. When a military activity is modified such that it is likely to destroy, cause the loss of, or injure a Sanctuary resource in a manner significantly greater than was considered in a previous consultation under section 304(d) of the NMSA, or any Sanctuary resource or quality not previously considered in a previous consultation under section 304(d) of the NMSA, the activity will be treated as a new activity under this paragraph. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practical any adverse impact on Sanctuary resources and qualities. Civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers are excluded from the scope of this paragraph (g)(1).

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the cognizant component shall promptly coordinate with the Director or designee for the purpose of taking appropriate actions to prevent, respond to or mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

§ 929.6 Additional activity regulations by Sanctuary zone.

(a) In addition to the prohibitions set forth in § 929.5, which apply throughout the Sanctuary, the following requirements in this § 929.6 apply with respect to activities conducted within the Sanctuary zones described in this § 929.6 and in Appendices II through V to this part. Activities conducted in those areas of the Sanctuary that are located within two or more overlapping Sanctuary zones shall be concurrently subject to the regulations applicable to each such overlapping zone.

(b) *Existing Management Areas.*—(1) *Key Largo and Looe Key Management Areas.* The following activities are prohibited within the Key Largo and Looe Key Management Areas (the former Key Largo and Looe Key National Marine Sanctuaries as described in Appendix II to this part):

(i) Removing, taking, damaging, harmfully disturbing, breaking, cutting, spearing or similarly injuring any coral or other marine invertebrate, or any plant, soil, rock, or other material, except commercial taking of spiny lobster and stone crab by trap and recreational taking of spiny lobster by hand which is consistent with both the applicable regulations under the appropriate Fishery Management Plan and the regulations in this part is allowed.

(ii) Taking or collecting any tropical fish.

(iii) Using wire fish traps, bottom trawls, dredges, fish sleds, or similar vessel-towed or anchored bottom fishing gear or nets.

(iv) Using, carrying or possessing, except while passing without interruption through the zones or for law enforcement purposes, the following: Pole spears, air rifles, bows and arrows, slings, Hawaiian slings, rubber powered arbaletes, pneumatic and spring loaded guns or similar devices known as spearguns.

(2) *Great White Heron and Key West National Wildlife Refuge Management Areas.* Within the Great White Heron and Key West National Wildlife Refuge Management Areas (The Great White Heron and Key West National Wildlife Refuges as described in Appendix II to this part), operating a personal watercraft (PWC), operating an airboat, or water skiing, except within the following areas:

Township 66 South, Range 29 East, Sections 5, 11, 12 and 14;
Township 66 South, Range 28 East, Section 2;
Township 67 South, Range 26 East, Sections 16 and 20 all Tallahassee Meridian, is prohibited.

(c) *Wildlife Management Areas.* (1) Persons conducting activities within the Wildlife Management Areas described in Appendix III to this part shall comply with the regulations governing access to, and use of, such areas, also set forth in Appendix III to this part. The following activities are prohibited:

(i) Operating a vessel in a wildlife management area designated as an ''idle/no-wake speed'' zone, in accordance with paragraph (c)(2) of this section, at a speed greater than idle/no-wake speed as defined in § 929.3.

(ii) Operating a vessel in a Wildlife Management Area designated as a ''no motor'' zone, in accordance with paragraph (c)(2) of this section, using a boat motor powered by combustible fuel, except that vessels with such motors are permitted access to ''no motor'' zones only through the use of a push pole, paddle, electric motor or similar means of operation not involving the use of a gasoline or diesel powered boat motor.

(iii) Operating a vessel, by any means whatsoever, in a wildlife management area designated as a ''no access buffer zone'', in accordance with paragraph (c)(2) of this section.

(2) Access and use restrictions applicable to the Wildlife Management Areas listed in Appendix III to this part may include the designation of any such zone as an ''idle/no-wake speed'', a ''no motor'' or a ''no access buffer'' area. The Director or designee, in cooperation with other Federal, State, or local resource management authorities, as appropriate, shall effect such designation by posting official signs conspicuously, using mounting posts, buoys, or other means according to location and purpose, at appropriate intervals and locations. Official signs posted pursuant to this paragraph shall display the official logo of the Sanctuary. Each such sign shall clearly delineate such zone as an ''idle/no-wake speed'', a ''no motor'' or a ''no access

buffer'' zone, and shall allow instant, long-range recognition by boaters.

(3) The Director or designee shall coordinate with other Federal, State, or local resource management authorities, as appropriate, in the establishment, management, and enforcement of Wildlife Management Areas.

(4) The Director or designee may modify the number, location, or access and use restrictions applicable to Wildlife Management Areas if the Director or designee finds that such action is reasonably necessary to minimize disturbances to Sanctuary wildlife, or to ensure protection and preservation of Sanctuary wildlife consistent with the purposes of the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary. The Director or designee will effect such modification by:

(i) Publishing in the **Federal Register**, after notice and a request for public comments in accordance with the Administrative Procedure Act, an amendment to the list of such areas set forth in Appendix III to this part, and a notice regarding the time and place where maps depicting the precise locations of such areas will be made available for public inspection; and

(ii) Posting official signs designating such areas in accordance with paragraph (c)(2) of this section.

(d) *Sanctuary Preservation Areas and Replenishment Reserves.* (1) In addition to the prohibitions set forth in § 929.5, and the regulations applicable to any overlapping zones set forth in this section, the following activities are prohibited within the Replenishment Reserves described in Appendix IV to this part, and within the Sanctuary Preservation Areas, described in Appendix V to this part:

(i) Possessing (regardless of where taken from), moving, harvesting, removing, taking, damaging, disturbing, breaking, cutting, spearing, or otherwise injuring any coral, marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism, including shells, or attempting any of these activities.

(ii) Fishing by any means. However, possession of gear capable of harvesting fish aboard a vessel, provided such gear is stowed away prior to entering and during transit through the zone, shall not be deemed a violation of this prohibition, and no presumption of fishing activity shall be drawn therefrom.

(iii) Touching living or dead coral, including but not limited to, standing on a living or dead coral formation.

(iv) Placing any anchor in a way that allows the anchor or any portion of the anchor apparatus (including the anchor, chain or rope) to touch living or dead coral, or any sessile organism. When anchoring dive boats, the first diver down shall inspect the anchor to ensure that it is not touching living or dead coral, and will not shift in such a way as to touch such coral or other sessile organisms. No further diving is permitted until the anchor is placed in accordance with these requirements.

(2) Vessels shall use mooring buoys or anchoring areas when such facilities or areas have been designated and are available.

(3) Notwithstanding paragraph (d)(1) of this section, the following activities are allowed within the Key Largo Replenishment Reserve described in Appendix IV to this part:

(i) catch and release fishing from the shore to a depth of 12 feet; and

(ii) harvest of spiny lobster by trap from sand or seagrass bottom habitats.

(4) The Director or designee may impose a limited access designation, or temporary area closure, within any Sanctuary Preservation Area if the Director determines that such action is reasonably necessary to allow for recovery of the living resources of such area from the adverse, cumulative effects of concentrated use:

(i) Except for passage without interruption through the area, for law enforcement or for monitoring pursuant to paragraph (d)(4)(iii) of this section, no person shall:

(A) Enter a Sanctuary Preservation Area subject to a limited access designation, except by the use of such mooring buoys or anchoring areas as are designated and available for use within such area at the time of the entry; or

(B) Enter a Sanctuary Preservation Area subject to a temporary area closure, during the pendancy of the area closure.

(ii) In adopting any limited access designation or temporary area closure pursuant to this paragraph (d)(4), the Director or designee will determine, on the basis of the best available data, information and studies, that:

(A) A concentration of use appears to be causing or contributing to significant degradation of the living resources of the area;

(B) The access restriction or temporary area closure to be imposed is reasonably necessary to allow recovery of the living resources of the area.

(iii) The Director or designee will provide for continuous monitoring of the area during the pendancy of the limited access designation or temporary area closure.

(iv) The Director or designee will provide public notice of the limited access designation or temporary area closure through publishing notice in the **Federal Register**, and such other means as the Director or designee may deem appropriate. With respect to a temporary area closure, the Director or designee will specify the period of such closure.

(e) *Special Use Areas.* (1) The Director or designee may set aside discrete areas of the Sanctuary as Special Use Areas, and, by designation pursuant to this paragraph (e), impose the use restrictions specified in paragraph (e)(3) of this section. Special Use Areas are described in Appendix VI to this part, in accordance with the following designations and corresponding objectives:

(i) ''Recovery areas'' to provide for the recovery of Sanctuary resources from degradation or other injury attributable to human uses;

(ii) ''Restoration areas'' to provide for restoration of degraded or otherwise injured Sanctuary resources;

(iii) ''Research only areas'' to provide for scientific research or education relating to protection and management; and

(iv) ''Facilitated use areas'' to provide for the prevention of use or user conflicts or the facilitation of access and use, or to promote public use and understanding, of Sanctuary resources through the issuance of Special Use permits pursuant to § 929.12.

(2) The total restricted area shall not exceed a size the Director or designee deems reasonably necessary to accomplish these objectives.

(3) Persons conducting activities within any Special Use Area shall comply with the access and use restriction specified in this paragraph and made applicable to such an area by means of its designation as a ''recovery area'', ''restoration area'', ''research only area'' or ''facilitated use area.'' Except for passage without interruption through the area and for law enforcement, no person may enter into a Special Use Area except to conduct or cause to be conducted the following uses and activities:

(i) Habitat manipulation related to restoration of degraded or otherwise injured Sanctuary resources, or activities reasonably necessary to monitor recovery of degraded or otherwise injured Sanctuary resources within such an area designated as either a ''recovery area'' or a ''restoration area'';

(ii) Scientific research or educational use specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of

a valid Sanctuary permit issued pursuant to § 929.10 or § 929.11 within such an area designated as a ''research only area''; or

(iii) Uses and activities specified by the Director or designee or specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a valid special use permit issued pursuant to § 929.12 within such an area designated as a ''facilitated use area.''

(4) (i) The Director or designee may modify the number, location or designation applicable to Special Use Zones by publishing in the **Federal Register**, after notice and a request for public comments in accordance with the Administrative Procedure Act, an amendment to Appendix VI to this part, except that, with respect to such zones designated as ''recovery areas'', ''restoration areas,'' or ''research only areas,'' the Director or designee may modify the number, location or designation of such zones by publishing a notice of such action in the **Federal Register** if the Director determines that immediate action is reasonably necessary to:

(A) Prevent significant injury to Sanctuary resources where circumstances create an imminent risk to such resources;

(B) Initiate restoration activity where a delay in time would significantly impair the ability of such restoration activity to succeed;

(C) Initiate research activity where an unforseen natural event produces an opportunity for scientific research that may be lost if research is not initiated immediately.

(ii) If the Director or designee determines that a notice of modification must be promulgated immediately in accordance with paragraph (e)(4)(i) of this section, the Director or designee will, as part of the same notice, invite public comment and specify that comments will be received for 15 days after the effective date of the notice. As soon as practicable after the end of the comment period, the Director will either rescind, modify or allow the modification to remain unchanged through notice in the **Federal Register**.

§ 929.7 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition.

§ 929.8 Penalties.

(a) Each violation of the NMSA or FKNMSPA, any regulation in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than $100,000. Each such violation shall be subject to forfeiture of property or Sanctuary resources seized in accordance with section 307 of the NMSA. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR Part 904.

§ 929.9 Response costs and damages.

Under Section 312 of the NMSA, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs, damages, and interest resulting from such destruction, loss, or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs, damages, and interest resulting from such destruction, loss, or injury.

§ 929.10 National Marine Sanctuary Permits; application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by § 929.5 or § 929.6 if such activity is specifically authorized by, and provided such activity is conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under this § 929.10 or an Historical Resources permit issued under § 929.11.

(b)(1) The Director or designee, at his or her discretion, may issue a permit, in accordance with this section, and subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 929.5 or § 929.6 if the Director or designee finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will:

(i) Further research or monitoring related to Sanctuary resources and qualities;

(ii) Further the educational, natural or historical resource value of the Sanctuary;

(iii) Further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or

(iv) Assist in managing the Sanctuary.

(2) For activities proposed to be conducted within Replenishment Reserves or Sanctuary Preservation Areas, the Director or designee shall further find that such activities will further and are consistent with the purposes for which such zone was established.

(c) In deciding whether to issue a permit, the Director or designee may consider:

(1) The professional qualifications and financial ability of the applicant as related to the proposed activity;

(2) The duration of the activity and the duration of its effects;

(3) The appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity;

(4) The extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities;

(5) Any indirect, secondary or cumulative effects of the activity;

(6) The end value of the activity; and

(7) Such other factors as he or she deems appropriate depending on the type of activity proposed in the application.

(d) Applications for permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, FL 33050. All applications must include:

(1) A detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel and methodology to be employed;

(2) The qualifications and experience of all personnel;

(3) The potential effects of the activity, if any, on Sanctuary resources and qualities; and

(4) The benefit to be derived from the activity. Copies of all other required licenses, permits, approvals, or other authorizations must be attached to the application.

(e) Upon receipt of an application, the Director or designee may request such additional information from the applicant as he or she deems reasonably necessary to act on the application and may seek the views of any persons. The Director or designee may require a site visit as part of the permit evaluation. Unless otherwise specified, the information requested must be received by the Director or designee within 30 days of the postmark date of the request. Failure to provide such additional information on a timely basis may be deemed by the Director or designee to constitute abandonment or withdrawal of the permit application.

(f) A permit issued pursuant to this § 929.10 or § 929.11 is nontransferable.

(g) The Director or designee may amend, suspend, or revoke a permit for good cause. The Director or designee may deny a permit application, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms or conditions of a previous permit, of the regulations in this part, of the NMSA or FKNMSA, or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in 15 CFR Part 904, subpart D.

(h) Any permit issued pursuant to this § 929.10, § 929.11, § 929.12, or Section 310 of the NMSA shall be subject to the following general conditions:

(1) All permitted activities shall be conducted in a manner that does not destroy, cause the loss of, or injure Sanctuary resources, except that a permit issued under this § 929.10 or § 929.11 may authorize negligible short-term adverse effects on Sanctuary resources and qualities.

(2) The permittee shall agree to hold the United States harmless against any and all claims arising out of the conduct of the permitted activities.

(3) The permit shall be issued for a period not exceeding five years. However, the permittee may request permit renewal or a different permit pursuant to the same procedure as provided by this § 929.10. Upon the permittee's request for renewal, the Director or designee shall: review all annual reports submitted by the permittee pursuant to paragraph (h)(4) of this section. In order to renew the permit, the Director or designee must find that the activity will continue to further the purposes for which the Sanctuary was designated in accordance with the criteria applicable to the initial issuance of the permit; ascertain the permittee has at no time violated the permit, or these regulations; and ascertain the permittee has not destroyed, caused the loss of, or injured Sanctuary resources while conducting the permitted activities, except for any negligible short-term adverse effects on Sanctuary resources and qualities authorized by the permit pursuant to paragraph (h)(1) of this section.

(4) The permit or a copy thereof shall be displayed on board all vessels or aircraft used in the conduct of the permitted activity.

(i) In addition to the general conditions listed in paragraphs (h)(1) through (4) of this section, any permit issued pursuant to this § 929.10, § 929.11, § 929.12, or Section 310 of the NMSA may be subject to such specific terms and conditions, including conditions governing access to, or use of, Sanctuary resources, as the Director or designee deems reasonably necessary or appropriate and in furtherance of the purposes for which the Sanctuary is designated. Such conditions may include, without limitation, a condition that:

(1) Any data or information obtained under the permit shall be made available to the public;

(2) A NOAA official shall be allowed to observe any activity conducted under the permit;

(3) The permittee shall submit one or more reports on the status, progress, or results of any activity authorized by the permit;

(4) The permittee shall submit an annual report to the Director or designee not later than December 31 of each year on activities conducted pursuant to the permit. The report shall describe all activities conducted under the permit and all revenues derived from such activities during the term of the permit; and/or

(5) The permittee shall purchase and maintain general liability insurance against any and all claims arising out of the permitted activities. A copy of the insurance policy shall be submitted to the Director or designee.

(j) The applicant for or holder of a National Marine Sanctuary or a National Marine Sanctuary Historical Resources permit may appeal the denial, conditioning, amendment, suspension or revocation of the permit in accordance with the procedures set forth in § 929.16.

§ 929.11 National Marine Sanctuary Historical Resources Permits; exploration, research/recovery, research/recovery/transfer; application procedures and issuance criteria.

(a) The Director or designee, at his or her discretion, may issue a research/exploration, research/recovery, or research/recovery/transfer permit, in accordance with this § 929.11, and subject to such terms and conditions as he or she deems appropriate, to conduct an activity specified under this § 929.11 and prohibited by §§ 929.5 or 929.6. Activities conducted pursuant to a permit issued under this § 929.11 shall be consistent and conform with the [proposed] Procedures for Submerged Cultural Resources Agreement Among NOAA, The Advisory Council on Historic Preservation, and the State of Florida on Submerged Cultural Resources (hereinafter SCR Agreement). 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. The SCR Agreement is reproduced as an appendix to the ''Regulatory Action Plan'' set forth in Volume 1 of the [draft] Florida Keys National Marine Sanctuary Management Plan, dated March 1995. Copies of the SCR Agreement may be inspected at, and obtained from, the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 12th floor, Silver Spring, MD 20910 or from the Florida Keys National Marine Sanctuary Office, P.O. Box 500368, Marathon, FL 33050. The SCR Agreement is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. [1]

(b) Applications for research/recovery and research/recovery/transfer permits shall follow the procedures listed in § 929.10 (d) through (g).

(c) Any permit issued pursuant to this § 929.11 shall be subject to the general conditions listed in § 929.10(h) (1) through (4), and any special conditions that may be imposed by the Director or designee in accordance with § 929.10(i). In addition, the following general conditions shall apply to all research/recovery and research/recovery/transfer permits:

(1) The permittee shall post a performance bond commensurate with the scope of work to cover costs associated with the recovery. The bond shall be released only after the project is completed according to the agreed-upon terms, the artifacts are conserved, and a final report is delivered and approved by Director or designee in accordance with the SCR Agreement; and

(2) The permittee, at his or her own expense, shall provide secure storage of the artifacts recovered pursuant to research/recovery or research/recovery/transfer permit, and the permittee shall obtain insurance for the artifacts equivalent to the fair market value as determined by a qualified objective assessor. Such assessor shall be identified or approved by the Director or designee.

(d) *Survey and Inventory Permits.* (1) The Director or designee may issue a survey and inventory permit to conduct non-intrusive survey activities that will not include excavation, removal, or

[1] The incorporation by reference will be submitted to the Office of the Federal Register for approval.

recovery of historical resources, nor result in destruction of, loss of, or injury to Sanctuary resources.

(2) Survey and inventory reports and daily logs must be prepared describing the activities conducted pursuant and results obtained from the activities authorized in the exploration permit. Copies of the report and daily logs and any other data derived from the survey shall be delivered in a timely manner pursuant to a deadline proscribed in the permit and will be stored in a repository to be named in the permit.

(e) *Research/Recovery Permits.* (1) Recovery of historical resources will only be permitted when developed in conjunction with research to preserve the historic information for public use. Intrusive research and/or recovery will be permitted based upon a balancing of factors and criteria to determine whether the goals of preservation, research, education, and public access are better served by permitting this type of activity as opposed to leaving the historic resource in place.

(2) For sites where no prior federally adjudicated claim exists, and for federally adjudicated admiralty claim sites within the Sanctuary, the following minimum requirements apply as general permit conditions and may be subject to separate approval, as specified by the Director or designee:

(i) The applicant must have secured Federal, State, and local permits from all agencies with jurisdiction over the proposed activities;

(ii) A professional archaeologist must be in charge of planning, conducting, and supervising field operations, analysis;

(iii) A conservation laboratory must be in place before field operations are begun, and a professional nautical conservator must be in charge of planning, conducting, and supervising the conservation of any artifacts and other materials recovered;

(iv) A curation agreement with a museum or facility for curation, display, and maintenance of the recovered historical resources must be in place before field operations have begun;

(v) The site's archaeological information must be fully documented, including measured drawings, site maps drawn to professional standards, and a photographic record;

(vi) Final reports must be prepared describing research design, methodology, laboratory analyses, findings, and other items. These reports shall be delivered in a timely manner pursuant to a deadline proscribed in the permit;

(vii) Copies of all reports, site maps, field notes, and other data and records derived from the project will be stored in a repository to be named in the permit.

(f) *Research/Recovery/Transfer Permits.* (1) Agreements for the curation and display of recovered historical resources may provide for the release of public artifacts for private sale transfer if such sale transfer is consistent with preservation, research, education, or other purposes of the designation and management of the Sanctuary. Sale distribution of historical resources shall be executed pursuant to the SCR Agreement.

(2) All research/recovery/transfer permits shall be subject to the requirements in paragraph (e) of this section.

(3) All research/recovery/transfer permits shall be subject to the requirements for special use permits listed in § 929.12 (c) through (f).

§ 929.12 Special Use Permits.

(a)(1) The Director or designee may require a special use permit in order to conduct a concession-type, commercial activity within the Sanctuary if the Director or designee determines such authorization is reasonably necessary:

(i) To establish conditions of access to and use of any Sanctuary resource; or

(ii) To promote public use and understanding of any Sanctuary resource.

(2) No permit may be issued unless the activity is compatible with the purposes for which the Sanctuary was designated and can be conducted in a manner that does not destroy, cause the loss of, or injure any Sanctuary resource.

(b) Applications for such permits shall follow the procedures listed in § 929.10(d) through (g).

(c) Any special use permit issued pursuant to this § 929.12 shall be subject to the general conditions listed in § 929.10(h)(1) through (4), and any special conditions that may be imposed by the Director or designee in accordance with § 929.10(i).

(d) The Director or designee may assess and collect fees for the conduct of any activity authorized by a special use permit issued pursuant to this § 929.12. No special use permit shall be effective until all assessed fees are paid, unless otherwise provided by the Director or designee by a fee schedule set forth as a permit condition.

(e) In assessing a fee under paragraph (f) of this section, the Director or designee shall include:

(1) All costs incurred, or expected to be incurred, in reviewing and processing the permit application, including costs for:

(i) Number of personnel;

(ii) Personnel hours;

(iii) Equipment;

(iv) Biological assessments;

(v) Copying; and

(vi) Overhead directly related to reviewing and processing the permit application;

(2) All costs incurred, or expected to be incurred, by the Director or designee as a direct result of the conduct of the activity for which the special use permit was issued, including, but not limited to:

(i) The cost of monitoring the conduct both during and after the activity is completed in order to assess the impacts to Sanctuary resources;

(ii) The use of an official NOAA observer, including travel and expenses and personnel hours; and

(iii) Overhead costs directly related to the permitted activity; and

(3) An amount which represents the fair market value of the use of the Sanctuary resource and a reasonable return to the United States Government.

(f) Special-use permits may not be transferred, sold, or assigned except with the written approval of the Director or designee. The permittee shall provide the Director or designee with written notice of any such transfer, sale, or assignment no less than 30 days prior to its proposed consummation. Transfers, sales, or assignments consummated in violation of this requirement shall be considered a material breach of the special-use permit, and the permit shall be considered void as of the consummation of any such transfer, sale, or assignment.

(g) Nothing in this § 929.12 shall be considered to require a person to obtain a permit under this § 929.12 for the conduct of any fishing activities within the Sanctuary.

§ 929.13 Sanctuary registry; research notice.

Any person conducting research in the Sanctuary, including such research not involving activities prohibited by §§ 929.5 or 929.6, may voluntarily register with the appropriate Sanctuary field office. Such registration should include the type of research being conducted, location of research area, and name, addressee, and contact telephone numbers of the principal investigator or research expedition leader. Upon registration, the Sanctuary office will issue a research flag to be used while conducting research within the Sanctuary. The flag must be returned upon completion of all research activities. Copies of research results, abstracts, and reports may be submitted to the Sanctuary field office

to be retained for Sanctuary management purposes, public observation, and peer review.

§ 929.14 Certification of pre-existing leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by §§ 929.5 or § 929.6 if such activity is specifically authorized by a valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State, or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that:

(1) The holder of such authorization or right notifies the Director or designee, in writing, within 90 days of the effective date of the regulations in this part, of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of this § 929.14; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director or designee, to achieve the purposes for which the Sanctuary was designated.

(b) The holder of a valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or of any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, authorizing an activity prohibited by § 929.5 or § 929.6 may conduct the activity without being in violation of specified provisions of § 929.5 or § 929.6, pending final agency action on his or her certification request, provided the holder is in compliance with this § 929.14.

(c) Any holder of a valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State, or local authority of competent jurisdiction, or any holder of a valid right of subsistence use or access in existence on the effective date of Sanctuary designation, may request the Director or designee to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited under § 929.5 or § 929.6.

(d) Requests for findings or certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Silver Spring, Maryland 20910. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(e) The Director or designee may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the certification request.

(f) The Director or designee may amend any certification made under this § 929.14 whenever additional information becomes available justifying such an amendment.

(g) The Director or designee shall communicate any decision on a certification request or any action taken with respect to any certification made under this § 929.14, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(h) Any time limit prescribed in or established under this § 929.14 may be extended by the Director or designee for good cause.

(i) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 929.16.

(j) Any amendment, renewal, or extension not in existence on the effective date of Sanctuary designation of a lease, permit, license, approval, other authorization, or right is subject to the provisions of § 929.15.

§ 929.15 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by §§ 929.5 or 929.6 if such activity is specifically authorized by any valid lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, provided that:

(1) The applicant notifies the Director or designee, in writing, of the application for such authorization (and of any application for an amendment, renewal, or extension of such authorization) within fifteen (15) days of the date of filing of the application or of the effective date of the regulations in this part, whichever is later;

(2) The applicant complies with the other provisions of this § 929.15;

(3) The Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal, or extension); and

(4) The applicant complies with any terms and conditions the Director or designee deems reasonably necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for a lease, permit, license, approval, or other authorization from any Federal, State, or local authority (or for an amendment, renewal, or extension of such authorization) may request the Director or designee to issue a finding as to whether the activity for which an application is intended to be made is prohibited by §§ 929.5 or 929.6.

(c) Notification of filings of applications should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Silver Spring, Maryland 20910. A copy of the application must accompany the notification.

(d) The Director or designee may request additional information from the applicant as he or she deems reasonably necessary to determine whether to object to issuance of such lease, license, permit, approval, or other authorization (or to issuance of an amendment, extension, or renewal of such authorization), or what terms and conditions are reasonably necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the application.

(e) The Director or designee shall notify, in writing, the agency to which application has been made of his or her review of the application and possible objection to issuance. After review of the application and information received with respect thereto, the Director or designee shall notify both the agency and applicant, in writing,

whether he or she has an objection to issuance and what terms and conditions he or she deems reasonably necessary to protect Sanctuary resources and qualities. The Director or designee shall state the reason(s) for any objection or the reason(s) that any terms and conditions are deemed reasonably necessary to protect Sanctuary resources and qualities.

(f) The Director or designee may amend the terms and conditions deemed reasonably necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this § 929.15 may be extended by the Director or designee for good cause.

(h) The applicant may appeal any objection by, or terms or conditions imposed by, the Director or designee to the Assistant Administrator or designee in accordance with the provisions set forth in § 929.16.

§ 929.16 Appeals of administrative action.

(a) Except for permit actions taken for enforcement reasons (see 15 CFR part 904, subpart D, for applicable procedures), an applicant for, or a holder of, a § 929.10 Sanctuary permit, an applicant for, or a holder of, a § 929.11 Sanctuary Historical Resources Permit, an applicant for, or a holder of, a § 929.12 Special Use Permit, a § 929.14 certification requester, or a § 929.15 applicant (hereinafter appellant) may appeal to the Assistant Administrator or designee:

(1) The denial, conditioning, amendment, suspension, or revocation by the Director or designee of a National Marine Sanctuary, National Marine Sanctuary Historical Resources or Special Use Permit;

(2) The conditioning, amendment, suspension, or revocation of a certification under § 929.14; or

(3) The objection to issuance or the imposition of terms and conditions under § 929.15.

(b) An appeal under paragraph (a) of this section must be in writing, state the action(s) by the Director or designee appealed and the reason(s) for the appeal, and be received within 30 days of receipt of notice of the action by the Director or designee. Appeals should be addressed to the Assistant Administrator, Office of Ocean and Coastal Resource Management, ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Silver Spring, MD 20910.

(c) While the appeal is pending, appellants may not conduct their activities without being subject to the prohibitions in § § 929.5 and 929.6.

(d) The Assistant Administrator or designee may request the appellant to submit such information as the Assistant Administrator or designee deems reasonably necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator or designee within 45 days of the postmark date of the request. The Assistant Administrator may seek the views of any other persons. The Assistant Administrator or designee may hold an informal hearing on the appeal. If the Assistant Administrator or designee determines that an informal hearing should be held, the Assistant Administrator or designee may designate an officer before whom the hearing shall be held. The hearing officer shall give notice in the **Federal Register** of the time, place, and subject matter of the hearing. The appellant and the Director or designee may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record before the hearing officer closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator or designee.

(e) The Assistant Administrator or designee shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director or designee and any information submitted regarding the appeal, and if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator or designee shall notify the appellant of the final decision and the reason(s) therefor in writing. The Assistant Administrator or designee's decision shall constitute final agency action for purposes of the Administrative Procedure Act.

(f) Any time limit prescribed in or established under this section other than the 30 day limit for filing an appeal may be extended by the Assistant Administrator, designee, or hearing officer for good cause.

Appendix I to Part 929—Florida Keys National Marine Sanctuary Boundary Coordinates

(Appendix Based on North American Datum of 1983.)

The boundary of the Florida Keys National Marine Sanctuary—

(a) begins at the northeasternmost point of Biscayne National Park located at approximately 25 degrees 39 minutes north latitude, 80 degrees 5 minutes west longitude, then runs eastward to the 300-foot isobath located at approximately 25 degrees 39 minutes north latitude, 80 degrees 4 minutes west longitude;

(b) then runs southward and connects in succession the points at the following coordinates:

(i) 25 degrees 34 minutes north latitude, 80 degrees 4 minutes west longitude,

(ii) 25 degrees 28 minutes north latitude, 80 degrees 5 minutes west longitude, and

(iii) 25 degrees 21 minutes north latitude, 80 degrees 7 minutes west longitude;

(iv) 25 degrees 16 minutes north latitude, 80 degrees 8 minutes west longitude;

(c) then runs southwesterly approximating the 300-foot isobath and connects in succession the points at the following coordinates:

(i) 25 degrees 7 minutes north latitude, 80 degrees 13 minutes west longitude,

(ii) 24 degrees 57 minutes north latitude, 80 degrees 21 minutes west longitude,

(iii) 24 degrees 39 minutes north latitude, 80 degrees 52 minutes west longitude,

(iv) 24 degrees 30 minutes north latitude, 81 degrees 23 minutes west longitude,

(v) 24 degrees 25 minutes north latitude, 81 degrees 50 minutes west longitude,

(vi) 24 degrees 22 minutes north latitude, 82 degrees 48 minutes west longitude,

(vii) 24 degrees 37 minutes north latitude, 83 degrees 6 minutes west longitude,

(viii) 24 degrees 40 minutes north latitude, 83 degrees 6 minutes west longitude,

(ix) 24 degrees 46 minutes north latitude, 82 degrees 54 minutes west longitude,

(x) 24 degrees 44 minutes north latitude, 81 degrees 55 minutes west longitude,

(xi) 24 degrees 51 minutes north latitude, 81 degrees 26 minutes west longitude, and

(xii) 24 degrees 55 minutes north latitude, 80 degrees 56 minutes west longitude;

(d) then follows the boundary of Everglades National Park in a southerly then northeasterly direction through Florida Bay, Buttonwood Sound, Tarpon Basin, and Blackwater Sound;

(e) after Division Point, then departs from the boundary of Everglades National Park and follows the western shoreline of Manatee Bay, Barnes Sound, and Card Sound;

(f) then follows the southern boundary of Biscayne National Park to the southeasternmost point of Biscayne National Park; and

(g) then follows the eastern boundary of Biscayne National Park to the beginning point specified in paragraph (a) of this Appendix.

Appendix II to Part 929—-Existing Management Areas

The four (4) areas are identified as follows:

National Oceanic and Atmospheric Administration

Pre-existing National Marine Sanctuaries:

(1) Key Largo National Marine Sanctuary (see 15 CFR Part 929, as revised January 1, 1995).

(2) Looe Key National Marine Sanctuary (see 15 CFR Part 937, as revised January 1, 1995).

United States Fish and Wildlife Service

(3) Great White Heron National Wildlife Refuge

(4) Key West National Wildlife Refuge

Appendix III to Part 929—Wildlife Management Areas

The twenty-six (26) zones are described as follows:

Area	Measure
(1) Bay Keys	No motor zone (300 feet) around one island; Idle/no-wake speed in tidal creeks
(2) Boca Grande Key.	Close south one-half of the beach.
(3) Woman Key	Close east one-half of the beach and sand spit (southeast side).
(4) Cayo Agua Keys.	Idle/ no-wake speed zone in all tidal creeks.
(5) Cotton Key	No motor zone on tidal flat.
(6) Snake Creek	Do.
(7) Cottrell Key	No motor zone (300 feet) around entire island.
(8) Little Mullet Key	No access buffer zone (300 feet) around entire island.
(9) Big Mullet Key	No motor zone (300 feet) around entire island.
(10) Crocodile Lake	No access buffer zone (300 feet) along shoreline.
(11) East Harbor Key.	No access buffer zone (300 feet) around northernmost island.
(12) Lower Harbor Keys.	Idle/ no-wake speed zone in all tidal creeks.
(13) Horseshoe Key	No access buffer zone (300 feet) around main island.
(14) Marquesas Keys.	(i) No motor zones (300 feet) around 3 small islands on western side of chain; (ii) no access buffer zone (300 feet) around one island at western side of chain; (iii) idle/ no-wake speed zone through one tidal creek on southern side of chain.
(15) Tidal flat south of Marvin Key.	No access buffer zone.
(16) Mud Keys (i)	Idle/ no-wake speed zones in 2 main creeks; (ii) No access in 2 smaller creeks.
(17) Pelican Shoal	No landing and no access out to 50 feet from shore between April 1 and September 15.
(18) Rodriguez Key	No motor zone on tidal flat.
(19) Dove Key	No motor zone on tidal flat; No access zone around the two small islands.
(20) Tavernier Key	No motor zone on tidal flat.
(21) Sawyer Keys	Close tidal creeks on south side.
(22) Snipe Keys (tidal creeks north of Outer narrows).	(i) Idle no-wake speed zone in main tidal creek; (ii) No motor zone elsewhere.
(23) Upper Harbor Key.	No access buffer zone (300 feet) around entire island.
(24) East Content Keys.	Idle/ no-wake speed zones in tidal creeks between southwesternmost islands.
(25) West Content Keys.	Idle/ no-wake speed zones in tidal creeks; no access buffer zone in one cove.
(26) Little Crane Key.	No access buffer zone (300 feet) around entire island.

Appendix IV to Part 929—Replenishment Reserves

The three (3) zones consist of those portions of the Sanctuary which are located within the following geographic boundary coordinates based on North American Datum of 1983:

Point	Latitude	Longitude
KEY LARGO		
1	25°17.7′N	80°16.9′W
2	25°15.2′N	80°11.2′W
3	25°11.6′N	80°13.3′W
4	25°14.3′N	80°19.0′W
SAMBOS		
1	24°33.70′N	81°40.80′W
2	24°28.70′N	81°41.90′W
3	24°28.50′N	81°43.70′W
4	24°33.50′N	81°43.10′W
DRY TORTUGAS		
1	24°45.70′N	82°45.00′W
2	24°22.20′N	82°45.00′W
3	24°22.00′N	82°48.00′W
4	24°25.30′N	82°52.00′W
5	24°34.00′N	82°52.00′W
6	24°34.00′N	82°54.00′W
7	24°37.00′N	82°48.00′W
8	24°40.00′N	82°46.00′W
9	24°42.00′N	82°46.00′W
10	24°43.90′N	82°48.00′W
11	24°43.50′N	82°52.00′W
12	24°45.90′N	82°52.00′W

Appendix V to Part 929—Sanctuary Preservation Areas

The nineteen (19) zones consist of those portions of the Sanctuary which are located within the following geographic boundary coordinates based on North American Datum of 1983:

Point	Latitude	Longitude
ALLIGATOR REEF		
1	24°51.2′N	80°37.1′W
2	24°50.8′N	80°36.8′W
3	24°50.4′N	80°37.3′W
CARYSFORT/SOUTH CARYSFORT REEF		
1	25°14.1′N	80°12.6′W
2	25°13.7′N	80°12.2′W
3	25°12.2′N	80°13.4′W
4	25°12.5′N	80°13.8′W
CHEECA ROCKS		
1	24°54.5′N	80°37.6′W
2	24°54.3′N	80°37.5′W
3	24°54.2′N	80°37.7′W
4	24°54.5′N	80°37.8′W
COFFINS PATCH		
1	24°41.1′N	80°57.5′W
2	24°40.6′N	80°58.4′W
3	24°41.5′N	80°57.7′W
4	24°41.1′N	80°58.6′W
CONCH REEF		
1	24°57.5′N	80°27.4′W
2	24°57.4′N	80°27.3′W
3	24°57.0′N	80°27.7′W
4	24°56.9′N	80°27.6′W
DAVIS REEF		
1	24°55.6′N	80°30.3′W
2	24°55.3′N	80°30.0′W
3	24°55.1′N	80°30.4′W
4	24°55.4′N	80°30.7′W
DRY ROCKS		
1	25°7.6′N	80°17.9′W
2	25°7.4′N	80°17.7′W
3	25°7.3′N	80°17.8′W
4	25°7.4′N	80°18.1′W
GRECIAN ROCKS		
1	25°6.9′N	80°18.2′W
2	25°6.6′N	80°17.9′W
3	25°6.1′N	80°18.5′W
4	25°6.2′N	80°18.6′W
5	25°6.8′N	80°18.6′W
EASTERN DRY ROCKS		
1	24°27.9′N	81°50.5′W
2	24°27.7′N	81°50.4′W
3	24°27.5′N	81°50.6′W
4	24°27.7′N	81°50.8′W
THE ELBOW		
1	25°9.1′N	80°15.4′W
2	25°8.9′N	80°15.1′W
3	25°8.1′N	80°15.7′W
4	25°8.8′N	80°15.7′W
FRENCH REEF		
1	25°2.2′N	80°20.6′W
2	25°1.8′N	80°21.0′W
3	25°2.3′N	80°21.2′W
HEN AND CHICKENS		
1	24°56.4′N	80°32.9′W
2	24°56.2′N	80°32.7′W
3	24°55.7′N	80°33.1′W
4	24°55.9′N	80°33.3′W
LOOE KEY		
1	24°33.2′N	81°24.2′W

Point	Latitude	Longitude
2	24°32.6′N	81°24.1′W
3	24°32.4′N	81°24.7′W
4	24°33.1′N	81°24.8′W
MOLASSES REEF		
1	25°0.9′N	80°22.4′W
2	25°0.7′N	80°22.0′W
3	25°0.2′N	80°22.8′W
4	25°0.7′N	80°22.8′W
NEWFOUND HARBOR KEY		
1	24°37.1′N	81°23.3′W
2	24°36.7′N	81°23.8′W
3	24°36.8′N	81°23.3′W
4	24°36.9′N	81°23.9′W
ROCK KEY		
1	24°27.5′N	81°51.3′W
2	24°27.3′N	81°51.2′W
3	24°27.2′N	81°51.5′W
4	24°27.5′N	81°51.6′W
SAND KEY		
1	24°27.6′N	81°53.1′W
2	24°27.0′N	81°53.1′W
3	24°27.0′N	81°52.3′W
4	24°27.6′N	81°52.3′W
SOMBRERO KEY		
1	24°37.8′N	81°6.7′W
2	24°37.3′N	81°6.1′W
3	24°37.1′N	81°6.8′W
WESTERN SAMBO		
1	24°29.1′N	81°42.6′W
2	24°28.8′N	81°42.4′W
3	24°28.6′N	81°43.2′W
4	24°28.9′N	81°43.4′W

Appendix VI to Part 929—Special Use Areas

The four (4) zones consist of those portions of the Sanctuary which are located within the following geographic boundary coordinates based on North American Datum of 1983:

Point	Latitude	Longitude
CONCH REEF (RESEARCH ONLY)		
1	24°57.4′N	80°27.3′W
2	24°57.0′N	80°27.0′W
3	24°56.7′N	80°27.4′W
4	24°57.0′N	80°27.7′W
LOOE KEY (RESEARCH ONLY)		
1	24°34.1′N	81°23.3′W
2	24°34.0′N	81°23.2′W
3	24°33.8′N	81°23.8′W
4	24°34.0′N	81°23.9′W
PELICAN SHOAL (RESEARCH ONLY)		
1	24°30.3′N	81°37.7′W
2	24°30.0′N	81°37.7′W
3	24°30.0′N	81°38.0′W
4	24°30.2′N	81°38.0′W
TENNESSEE REEF (RESEARCH ONLY)		
1	24°45.9′N	80°45.6′W
2	24°45.7′N	80°45.4′W
3	24°46.0′N	80°44.9′W
4	24°46.2′N	80°45.1′W

Appendix VII to Part 929—Coordinates for the Area to be Avoided

In the Vicinity of the Florida Keys

(Reference Charts: United States 11466, 27th Edition—September 1, 1990 and United States 11450, 4th Edition—August 11, 1990.)

Point	Latitude	Longitude
1	25°45.00′N	80°06.10′W.
2	25°38.70′N	80°02.70′W.
3	25°22.00′N	80°03.00′W.
4	25°00.20′N	80°13.40′W.
5	24°37.90′N	80°47.30′W.
6	24°29.20′N	81°17.30′W.
7	24°22.30′N	81°43.17′W.
8	24°28.00′N	81°43.17′W.
9	24°28.70′N	81°43.50′W.
10	24°29.80′N	81°43.17′W.
11	24°33.10′N	81°35.15′W.
12	24°33.60′N	81°26.00′W.
13	24°38.20′N	81°07.00′W.
14	24°43.20′N	80°53.20′W.
15	24°46.10′N	80°46.15′W.
16	24°51.10′N	80°37.10′W.
17	24°57.50′N	80°27.50′W.
18	25°09.90′N	80°16.20′W.
19	25°24.00′N	80°09.10′W.
20	25°31.50′N	80°07.00′W.
21	25°39.70′N	80°06.85′W.
22	25°45.00′N	80°06.10′W.

In the Vicinity of Key West Harbor

(Reference Chart: United States 11434, 21st Edition—August 11, 1990.)

Point	Latitude	Longitude
23	24°27.95′N	81°48.65′W.
24	24°23.00′N	81°53.50′W.
25	24°26.60′N	81°58.50′W.
26	24°27.75′N	81°55.70′W.
27	24°29.35′N	81°53.40′W.
28	24°29.35′N	81°50.00′W.
29	24°27.95′N	81°48.65′W.

Area Surrounding the Marquesas Keys

(Reference Chart: United States 11434, 21st Edition—August 11, 1990.)

Point	Latitude	Longitude
30	24°26.60′N	81°59.55′W.
31	24°23.00′N	82°03.50′W.
32	24°23.60′N	82°27.80′W.
33	24°34.50′N	82°37.50′W.
34	24°43.00′N	82°26.50′W.
35	24°38.31′N	81°54.06′W.
36	24°37.91′N	81°53.40′W.
37	24°36.15′N	81°51.78′W.
38	24°34.40′N	81°50.60′W.
39	24°33.44′N	81°49.73′W.
40	24°31.20′N	81°52.10′W.
41	24°28.70′N	81°56.80′W.
42	24°26.60′N	81°59.55′W.

Area Surrounding the Dry Tortugas Islands

(Reference Chart: United States 11434, 21st Edition—August 11, 1990.)

Point	Latitude	Longitude
43	24°32.00′N	82°53.50′W.
44	24°32.00′N	83°00.05′W.
45	24°39.70′N	83°00.05′W.
46	24°45.60′N	82°54.40′W.
47	24°45.60′N	82°47.20′W.
48	24°42.80′N	82°43.90′W.
49	24°39.50′N	82°43.90′W.
50	24°35.60′N	82°46.40′W.
51	24°32.00′N	82°53.50′W.

Appendix VIII to Part 929—Marine Life Rule

[As excerpted from Chapter 46–42 of the Florida Administrative Code]

46–42.001 Purpose and Intent; Designation of Restricted Species; Definition of ''Marine Life Species.''

46–42.002 Definitions.

46–42.003 Prohibition of Harvest: Longspine Urchin, Bahama Starfish.

46–42.0035 Live Landing and Live Well Requirements.

46–42.0036 Harvest in Biscayne National Park.*
46–42.004 Size Limits.
46–42.005 Bag Limits.
46–42.006 Commercial Season, Harvest Limits.
46–42.007 Gear Specifications and Prohibited Gear.
46–42.008 Live Rock.**
46–42.001 Purpose and Intent; Designation of Restricted Species; Definition of ''Marine Life Species''.—

(1)(a) The purpose and intent of this chapter are to protect and conserve Florida's tropical marine life resources and assure the continuing health and abundance of these species. The further intent of this chapter is to assure that harvesters in this fishery use nonlethal methods of harvest and that the fish, invertebrates, and plants so harvested be maintained alive for the maximum possible conservation and economic benefits.

(b) It is the express intent of the Marine Fisheries Commission to phase out the landing of live rock harvested in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters. Such harvest is and will continue to be prohibited in Florida waters, except that landing of live rock propagated through aquaculture will be allowed pursuant to the provisions of this chapter.

(2) The following fish species, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:

(a) Moray eels—Any species of the Family Muraenidae.

(b) Snake eels—Any species of the Genera *Myrichthys* and *Myrophis* of the Family Ophichthidae.

(c) Toadfish—Any species of the Family Batrachoididae.

(d) Frogfish—Any species of the Family Antennariidae.

(e) Batfish—Any species of the Family Ogcocephalidae.

(f) Clingfish—Any species of the Family Gobiesocidae.

(g) Trumpetfish—Any species of the Family Aulostomidae.

(h) Cornetfish—Any species of the Family Fistulariidae.

(i) Pipefish/seahorses—Any species of the Family Syngnathidae.

(j) Hamlet/seabass—Any species of the Family Serranidae, except groupers of the genera *Epinephalus* and *Mycteroperca,* and seabass of the genus *Centropristis.*

(k) Basslets—Any species of the Family Grammistidae.

(l) Cardinalfish—Any species of the Family Apogonidae.

(m) High-hat, Jackknife-fish, Spotted drum, Cubbyu—Any species of the genus *Equetus* of the Family Sciaenidae.

(n) Reef Croakers—Any of the species *Odontocion dentex.*

(o) Sweepers—Any species of the Family Pempheridide.

(p) Butterflyfish—Any species of the Family Chaetodontidae.

(q) Angelfish—Any species of the Family Pomacanthidae.

(r) Damselfish—Any species of the Family Pomacentridae.

(s) Hawkfish—Any species of the Family Cirrhitidae.

(t) Wrasse/hogfish/razorfish—Any species of the Family Labridae, except hogfish, *Lachnolaimus maximus.*

(u) Parrotfish—Any species of the Family Scaridae.

(v) Jawfish—Any species of the Family Opistognathidae.

(w) Blennies—Any species of the Families Clinidae or Blenniidae.

(x) Sleepers—Any species of the Family Eleotrididae.

(y) Gobies—Any species of the Family Gobiidae.

(z) Tangs and surgeonfish—Any species of the Family Acanthuridae.

(aa) Filefish/triggerfish—Any species of the Family Balistes, except gray triggerfish, *Balistidae capriscus.*

(bb) Trunkfish/cowfish—Any species of the Family Ostraciidae.

(cc) Pufferfish/burrfish/balloonfish—Any of the following species:

1. Balloonfish—*Diodon holocanthus.*
2. Sharpnose puffer—*Canthigaster rostrata.*
3. Striped burrfish—*Chilomycterus schoepfi.*

(3) The following invertebrate species, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to § 370.01(20), Florida Statutes:

(a) Sponges—Any species of the Class Demospongia, except sheepswool, yellow, grass, glove, finger, wire, reef, and velvet sponges, Order Dictyoceratida.

(b) Upside-down jellyfish—Any species of the Genus Cassiopeia.

(c) Siphonophores/hydroids—Any species of the Class Hydrozoa, except fire corals, Order Milleporina.

(d) Soft corals—Any species of the Subclass Octocorallia, except sea fans Gorgonia flabellum and Gorgonia ventalina.

(e) Sea anemones—Any species of the Orders Actinaria, Zoanthidea, Corallimorpharia, and Ceriantharia.

(f) Featherduster worms/calcareous tubeworms—Any species of the Families Sabellidae and Serpulidae.

(g) Star-shells—Any of the species Astraea americana or Astraea phoebia.

(h) Nudibranchs/sea slugs—Any species of the Subclass Opisthobranchia.

(i) Fileclams—Any species of the Genus Lima.

(j) Octopods—Any species of the Order Octopoda, except the common octopus, Octopodus vulgaris.

(k) Shrimp—Any of the following species:

1. Cleaner shrimp and peppermint shrimp—Any species of the Genera Periclimenes or Lysmata.
2. Coral shrimp—Any species of the Genus Stenopus.
3. Snapping shrimp—Any species of the Genus Alpheus.

(l) Crabs—Any of the following species:

1. Yellowline arrow crab—Stenorhynchus seticornis.
2. Furcate spider or decorator crab—Stenocionops furcata.
3. Thinstripe hermit crab—Clibanarius vittatus.
4. Polkadotted hermit crab—Phimochirus operculatus.
5. Spotted porcelain crab—Porcellana sayana.
6. Nimble spray or urchin crab—Percnon gibbesi.
7. False arrow crab—Metoporhaphis calcarata.

(m) Starfish—Any species of the Class Asteroidea, except the Bahama starfish, Oreaster reticulatus.

(n) Brittlestars—Any species of the Class Ophiuroidea.

(o) Sea urchins—Any species of the Class Echinoidea, except longspine urchin, Diadema antillarum, and sand dollars and sea biscuits, Order Clypeasteroida.

(p) Sea cucumbers—Any species of the Class Holothuroidea.

(q) Sea lillies—Any species of the Class Crinoidea.

(4) The following species of plants, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:

(a) Caulerpa—Any species of the Family Caulerpaceae.

(b) Halimeda/mermaid's fan/mermaid's shaving brush—Any species of the Family Halimedaceae.

(c) Coralline red algae—Any species of the Family Corallinaceae.

(5) For the purposes of Section 370.06(2)(d), Florida Statutes, the term ''marine life species'' is defined to mean those species designated as restricted species in subsections (2), (3), and (4) of this rule.

Specific Authority 370.01(20), 370.027(2), 370.06(2)(d), F.S. Law Implemented 370.01(20), 370.025, 370.027, 370.06(2)(d), F.S. History—New 1–1–91, Amended 7–1–92.

46–42.002 Definitions.—As used in this rule chapter:

(1) ''Barrier net,'' also known as a ''fence net,'' means a seine used beneath the surface of the water by a diver to enclose and concentrate tropical fish and which may be made of either nylon or monofilament.

(2) ''Drop net'' means a small, usually circular, net with weights attached along the outer edge and a single float in the center, used by a diver to enclose and concentrate tropical fish.

(3) ''Gorgonian,'' except for purposes of Rule 46–42.001, means any member of any species of the Subclass Octocorallia, except the species Gorgonia flabellum and Gorgonia ventalina.

(4) ''Hand held net'' means a landing or dip net as defined in Rule 46–4.002(4), except that a portion of the bag may be constructed of clear plastic material, rather than mesh.

(5) ''Harvest'' means the catching or taking of a marine organism by any means whatsoever, followed by a reduction of such organism to possession. Marine organisms that are caught but immediately returned to

* Part 42.0036 is not set forth because it does not apply to the Sanctuary.

** Part 42.008 is not set forth because it is regulated pursuant to § 929.5(2)(ii).

the water free, alive, and unharmed are not harvested. In addition, temporary possession of a marine animal for the purpose of measuring it to determine compliance with the minimum or maximum size requirements of this chapter shall not constitute harvesting such animal, provided that it is measured immediately after taking, and immediately returned to the water free, alive, and unharmed if undersize or oversize.

(6) ''Harvest for commercial purposes'' means the taking or harvesting of any tropical ornamental marine life species or tropical ornamental marine plant for purposes of sale or with intent to sell. The harvest of tropical ornamental marine life species or tropical ornamental marine plants in excess of the bag limit shall constitute prima facie evidence of intent to sell.

(7) ''Land,'' when used in connection with the harvest of marine organisms, means the physical act of bringing the harvested organism ashore.

(8) ''Live rock''- see definition in section 929.3

(9) ''Slurp gun'' means a self-contained, handheld device that captures tropical fish by rapidly drawing seawater containing such fish into a closed chamber.

(10) ''Total length'' means the length of a fish as measured from the tip of the snout to the tip of the tail.

(11) ''Trawl'' means a net in the form of an elongated bag with the mouth kept open by various means and fished by being towed or dragged on the bottom. ''Roller frame trawl'' means a trawl with all of the following features and specifications:

(a) A rectangular rigid frame to keep the mouth of the trawl open while being towed.

(b) The lower horizontal beam of the frame has rollers to allow the trawl to roll over the bottom and any obstructions while being towed.

(c) The trawl opening is shielded by a grid of vertical bars spaced no more than 3 inches apart.

(d) The trawl is towed by attaching a line or towing cable to a tongue located above or at the center of the upper horizontal beam of the frame.

(e) The trawl has no doors attached to keep the mouth of the trawl open.

(12) ''Tropical fish'' means any species included in subsection (2) of Rule 46–42.001, or any part thereof.

(13) ''Tropical ornamental marine life species'' means any species included in subsections (2) or (3) of Rule 46–42.001, or any part thereof.

(14) ''Tropical ornamental marine plant'' means any species included in subsection (4) of Rule 46–42.001.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History: New 1–1–91, Amended 7–1–92.

46–42.003 Prohibition of Harvest: Longspine Urchin, Bahama Starfish.—No person shall harvest, possess while in or on the waters of the state, or land any of the following species:

(1) Longspine urchin, *Diadema antillarum*.

(2) Bahama starfish, *Oreaster reticulatus.*

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History: New 1–1–91, Amended 7–1–92.

46–42.0035 Live Landing and Live Well Requirements.—

(1) Each person harvesting any tropical ornamental marine life species or any tropical ornamental marine plant shall land such marine organism alive.

(2) Each person harvesting any tropical ornamental marine life species or any tropical ornamental marine plant shall have aboard the vessel being used for such harvest a continuously circulating live well or aeration or oxygenation system of adequate size and capacity to maintain such harvested marine organisms in a healthy condition.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History: New 7–1–92.

46–42.004 Size Limits.—

(1) Angelfishes.—

(a) No person harvesting for commercial purposes shall harvest, possess while in or on the waters of the state, or land any of the following species of angelfish, of total length less than that set forth below:

1. One-and-one-half (1 1/2) inches for:

a. Gray angelfish (*Pomacanthus arcuatus*).

b. French angelfish (*Pomacanthus paru*).

2. One-and-three-quarters (1 3/4) inches for:

a. Blue angelfish (*Holacanthus bermudensis*).

b. Queen angelfish (*Holacanthus ciliaris*).

3. Two (2) inches for rock beauty (*Holacanthus tricolor*).

(b) No person shall harvest, possess while in or on the waters of the state, or land any angelfish (Family Pomacanthidae), of total length greater than that specified below:

1. Ten (10) inches for angelfish, except rock beauty (*Holacanthus tricolor*).

2. Six (6) inches for rock beauty.

(c) Except as provided herein, no person shall purchase, sell, or exchange any angelfish smaller than the limits specified in paragraph (a) or larger than the limits specified in paragraph (b). This prohibition shall not apply to angelfish legally harvested outside of state waters or federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, which angelfish are entering Florida in interstate or international commerce. The burden shall be upon any person possessing such angelfish for sale or exchange to establish the chain of possession from the initial transaction after harvest, by appropriate receipt(s), bill(s) of sale, or bill(s) of lading, and any customs receipts, and to show that such angelfish originated from a point outside the waters of the State of Florida or federal Exclusive Economic Zone (EEZ) waters adjacent to Florida waters and entered the state in interstate or international commerce. Failure to maintain such documentation or to promptly produce same at the request of any duly authorized law enforcement officer shall constitute prima facie evidence that such angelfish were harvested from Florida waters or adjacent EEZ waters for purposes of this paragraph.

(2) Butterflyfishes.—

(a) No person harvesting for commercial purposes shall harvest, possess while in or on the waters of the state, or land any butterflyfish (Family Chaetodontidae) of total length less than one (1) inch.

(b) No person shall harvest, possess while in or on the waters of the state, or land any butterflyfish of total length greater than 4 inches.

(3) Gobies—No person shall harvest, possess while in or on the waters of the state, or land any gobie (Family Gobiidae) of total length greater than 2 inches.

(4) Jawfishes—No person shall harvest, possess while in or on the waters of the state, or land any jawfish (Family Opistognathidae) of total length greater than 4 inches.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History: New 1–1–91, Amended 7–1–92.

46–42.005 Bag limit.—

(1) Except as provided in Rule 46–42.006 or subsections (3) or (4) of this rule, no person shall harvest, possess while in or on the waters of the state, or land more than 20 individuals per day of tropical ornamental marine life species, in any combination.

(2) Except as provided in Rule 46–42.006, no person shall harvest, possess while in or on the waters of the state, or land more than one (1) gallon per day of tropical ornamental marine plants, in any combination of species.

(3) Except as provided in Rule 46–42.006, no person shall harvest, possess while in or on the waters of the state, or land more than 5 angelfishes (Family Pomacanthidae) per day. Each angelfish shall be counted for purposes of the 20 individual bag limit specified in subsection (1) of this rule.

(4)(a) Unless the season is closed pursuant to paragraph (b), no person shall harvest, possess while in or on the waters of the state, or land more than 6 colonies per day of gorgonians. Each colony of gorgonian or part thereof shall be considered an individual of the species for purposes of subsection (1) of this rule and shall be counted for purposes of the 20 individual bag limit specified therein.

(b) If the harvest of gorgonians in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters is closed to all harvesters prior to the end of any calendar year, the season for harvest of gorgonians in state waters shall also close until the following January 1, upon notice given by the Executive Director of the Department of Natural Resources, in the manner provided in s. 120.52(16)(d), Florida Statutes.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History: New 1–1–91.

46–42.006 Commercial Season, Harvest Limits.—

(1) Except as provided in Rule 46–42.008(7), no person shall harvest, possess while in or on the waters of the state, or land quantities of tropical ornamental marine life species or tropical ornamental marine plants in excess of the bag limits established in Rule 46–42.005 unless such person possesses a valid saltwater products license with both a marine life fishery endorsement and a restricted species endorsement issued by the Department of Natural Resources.

(2) Persons harvesting tropical ornamental marine life species or tropical ornamental marine plants for commercial purposes shall have a season that begins on January 1 of

each year and continues through December 31 of the same year. These persons shall not harvest, possess while in or on the waters of the state, or land tropical ornamental marine life species in excess of the following limits:

(a) A limit of 75 angelfish (Family Pomacanthidae) per person per day or 150 angelfish per vessel per day, whichever is less.

(b) A limit of 75 butterflyfishes (Family Chaetodontidae) per vessel per day.

(c) There shall be no limits on the harvest for commercial purposes of gorgonians unless and until the season for all harvest of gorgonians in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters is closed. At such time, the season for harvest of gorgonians in state waters shall also close until the following January 1, upon notice given by the Executive Director of the Department of Natural Resources, in the manner provided in Section 120.52(16)(d), Florida Statutes.

(d) A limit of 200 giant Caribbean or ''pink-tipped'' anemones (*Condylactus gigantea*) per vessel per day.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History: New 1–1–91, Amended 7–1–92.

46–42.007 Gear Specifications and Prohibited Gear.

(1) The following types of gear shall be the only types allowed for the harvest of any tropical fish, whether from state waters or from federal Exclusive Economic Zone (EEZ) waters adjacent to state waters:

(a) Hand held net.

(b) Barrier net, with a mesh size not exceeding 3/4 inch stretched mesh.

(c) Drop net, with a mesh size not exceeding 3/4 inch stretched mesh.

(d) Slurp gun.

(e) Quinaldine may be used for the harvest of tropical fish if the person using the chemical or possessing the chemical in or on the waters of the state meets each of the following conditions:

1. The person also possesses and maintains aboard any vessel used in the harvest of tropical fish with quinaldine a special activity license authorizing the use of quinaldine, issued by the Division of Marine Resources of the Department of Natural Resources pursuant to Section 370.08(8), Florida Statutes.

2. The quinaldine possessed or applied while in or on the waters of the state is in a diluted form of no more than 2% concentration in solution with seawater. Prior to dilution in seawater, quinaldine shall only be mixed with isopropyl alcohol or ethanol.

(f) A roller frame trawl operated by a person possessing a valid live bait shrimping license issued by the Department of Natural Resources pursuant to Section 370.15, Florida Statutes, if such tropical fish are taken as an incidental bycatch of shrimp lawfully harvested with such trawl.

(g) A trawl meeting the following specifications used to collect live specimens of the dwarf seahorse, *Hippocampus zosterae,* if towed by a vessel no greater than 15 feet in length at no greater than idle speed:

1. The trawl opening shall be no larger than 12 inches by 48 inches.

2. The trawl shall weigh no more than 5 pounds wet when weighed out of the water.

(2) This rule shall not be construed to prohibit the use of any bag or container used solely for storing collected specimens or the use of a single blunt rod in conjunction with any allowable gear, which rod meets each of the following specifications:

(a) The rod shall be made of nonferrous metal, fiberglass, or wood.

(b) The rod shall be no longer than 36 inches and have a diameter no greater than 3/4 inch at any point.

(3) No person shall harvest in or from state waters any tropical fish by or with the use of any gear other than those types specified in subsection (1); provided, however, that tropical fish harvested as an incidental bycatch of other species lawfully harvested for commercial purposes with other types of gear shall not be deemed to be harvested in violation of this rule, if the quantity of tropical fish so harvested does not exceed the bag limits established in Rule 46–42.005.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History: New 1–1–91, Amended 7–1–92.

PART 937—[REMOVED AND RESERVED]

2. Part 937 is removed and reserved.

[FR Doc. 95–7669 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Chapter I

46 CFR Chapter I

[CGD 95–022]

Presidential Regulation Review

AGENCY: Coast Guard, DOT.

ACTION: Public meeting; request for comments.

SUMMARY: The Coast Guard will conduct a public meeting to provide the public an opportunity to comment on Coast Guard regulations and the regulatory process. Comments are sought on changes to Coast Guard regulations that would make them less burdensome or more flexible, including use of negotiated rulemaking to effect changes, and on improvements that could be made to the enforcement process, while still ensuring a high level of safety and environmental protection.

DATES: The meeting will be held April 20, 1995, from 9 a.m. to 3 p.m. Written material must be received not later than May 1, 1995.

ADDRESSES: The meeting will be held in room 2415, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. Written comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

Comments will become part of this docket and will be available for inspection or copying at room 3406, Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce P. Novak, Regulations Coordinator, Oil Pollution Act (OPA 90) Staff, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–6819. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION: The President recently announced a Regulatory Reinvention initiative. Under this initiative agencies are directed to review their regulations; improve their enforcement efforts to focus on results, not punishment; meet with the people affected by their regulations; and substantially increase their efforts to promote consensual rulemaking.

In reviewing existing regulations the Coast Guard will be focussing on the following issues: (1) Identification of obsolete regulations; (2) suggestions for achieving the intended goal of regulations that would be more efficient and/or less intrusive; (3) identification of private sector alternatives to regulations such as market mechanisms, that can achieve the objectives of regulations; (4) could private business, setting its own standards and being subject to public accountability, do the job as well; and (5) could State or local government regulations be used in lieu of Coast Guard regulation?

The Coast Guard is interested in suggestions on areas where the goals of our regulatory and enforcement programs are not clear, and on recommendations for improvements that would focus on attaining defined safety and environmental protection results rather than mandating the use of specific methods or equipment.

The Coast Guard would also like to discuss techniques for developing consensus rules. Negotiated rulemaking is currently being offered as the primary way of achieving consensus rulemaking. The Coast Guard has used negotiated rulemaking and has explored its use for several rulemaking projects. While negotiated rulemaking has the ability to

bring together private parties with widely disparate views, not all rulemakings are appropriate for use of this process The report accompanying the National Performance Review identifies the following limits on use of the negotiated rulemaking process:

(1) The number of distinct interests concerned with the proposed rule, including any relevant government agencies, must be small enough so that they can be fairly represented by not more than 20 to 25 negotiators;

(2) There should be a number of diverse issues that participants can rank according to their own priorities, so that there will be room for compromise on some of the issues as an agreement is sought;

(3) It is essential that the issues to be negotiated not require compromise of principles so fundamental to the parties that productive negotiations are unrealistic;

(4) Parties must be willing to negotiate in good faith, and no single interest should be able to dominate the negotiations; and

(5) The parties cannot have an incentive to stall; therefore, they must believe that the agency itself will issue a rule if consensus is not reached. A statutory requirement that the agency issue some type of rule is often helpful.

The Coast Guard is interested in suggestions for use of negotiated rulemaking to make changes to existing regulations, or where regulations currently under development may be converted to negotiated rulemakings. The Coast Guard is also interested in suggestions of alternative techniques that may facilitate consensual rulemaking where a formal negotiated rulemaking is not appropriate.

The Coast Guard recently undertook a comprehensive review of its regulatory process and has now promulgated a new internal rulemaking instruction. The new instruction embodies certain reforms that are designed to make the Coast Guard's rulemaking process more responsive to public need and more timely.

The Coast Guard has been using expanded opportunities for early public participation before issuing a proposed rule. The Coast Guard has held numerous public meetings on issues of concern that might result in regulations. The purpose of the meetings is to solicit public participation on a wide range of issues such as: (1) Possible non-regulatory alternatives; (2) is a regulatory solution technologically feasible; (3) what regulatory alternatives are available; (4) what are the probable benefits; and (5) what are the probable costs?

The Coast Guard has also been making extensive use of its advisory committees early in the rulemaking process. The advisory committees have a particular expertise and are able to advise the Coast Guard on impacts to the industry and the environment, technological feasibility, alternatives, existence of industry standards, and so on.

Although the resulting rules are not precisely consensual, they result in broad public participation in the rulemaking process. Interested parties discuss concerns and issues with each other and the Coast Guard at informal meetings and workshops where there is considerable give and take among the participants. The Coast Guard has found that this early identification and discussion of issues results in a better crafted proposed rule that is subject to less adverse comment.

The Coast Guard is also being responsive to the public's demand for more timely rulemaking by increasing personnel accountability. Once timelines for major milestones have been approved by the Coast Guard's Marine Safety Council, progress on the rulemaking is closely monitored and delays must be explained. This justification and review process also keeps senior management informed concerning the progress of developing rules. Also, management must review existing resource commitments and agree to provide adequate resources to develop a rule before initiating one.

The public is invited to comment with regard to the use of the negotiated rulemaking process for current Coast Guard rulemaking projects. Comments are also invited on the Coast Guard's participatory rulemaking process.

Attendance at the April 20 meeting is open to the public. Members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed above under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted prior to, during, or after the meeting.

Dated: March 23, 1995.

A.E. Henn,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 95–7736 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

[WO–610–00–4110–2411]

RIN 1004–AC26

Promotion of Development, Reduction of Royalty on Heavy Oil

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) is issuing this proposed rule to amend the regulations relating to the waiver, suspension, or reduction of rental, royalty, or minimum royalty. This amendment would establish the conditions under which the operators of properties that produce ''heavy oil'' (crude oil with a gravity of less than 20 degrees) can obtain a reduction in the royalty rate. This action is being taken to encourage the operators of Federal heavy oil leases to place marginal or uneconomical shut-in oil wells back in production, provide an economic incentive to implement enhanced oil recovery projects, and delay the plugging of these wells until the maximum amount of economically recoverable oil can be obtained from the reservoir or field. The BLM believes that this amendment will result in substantial additional revenue for the States and Federal Government, increase the cumulative amount of domestic oil production from existing wells, increase the percentage of oil recovery from presently developed reservoirs, minimize the necessity of drilling new wells with their additional environmental impacts, assist in reducing the national balance of trade deficit, and help promote stability in the jobs and services related to the domestic oil industry.

DATES: Comments should be submitted by May 30, 1995. Comments postmarked after this date may not be considered as part of the decisionmaking process in issuance of a final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1849 C Street, N.W., Washington, D.C. 20240. Comments will be available for public review in Room 5555 at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. John W. Bebout, Bureau of Land Management, (202) 452–0340.

SUPPLEMENTARY INFORMATION: Existing section 3103.4–1 of Title 43, Code of Federal Regulations, provides two forms of Federal oil and gas royalty reduction: on a case-by-case basis upon application, and for stripper wells. In order to encourage the greatest ultimate recovery of oil or gas and in the interest of conservation, the Secretary, upon a determination that it is necessary to promote development, or that a lease cannot be successfully operated under the terms provided therein, may reduce the royalty on an entire leasehold or any portion thereof. The provision concerning stripper well properties allows royalty reduction for properties that produce an average of less than 15 barrels of oil per eligible well per well-day.

The Bureau of Land Management (BLM) has reason to believe that additional royalty relief for producers of heavy crude oil may be necessary to maintain current levels of development, promote investment in enhanced recovery efforts, and encourage maximum recovery of the resource, thus warranting royalty reduction under Section 39 of the Mineral Leasing Act (30 U.S.C. 209).

Fluctuating oil prices, combined with high production costs, have resulted in an uncertain economic future for producers of low gravity crude oil. As recently as last January, California producers of heavy crude were spending between $9 and $10 to produce a barrel of crude oil that was typically selling for between $8.50 and $9 per barrel (from data provided by the Conservation Commission of California Oil and Gas Producers). When depreciation, depletion, and amortization costs were considered, nearly 69% of the state's production was uneconomic and more than 13,000 industry and industry-related jobs were at risk (California Independent Petroleum Association).

Heavy crude oil prices have recently risen to the point that the immediate crisis in California has passed. Many of the heavy oil properties remain only marginally economic, however, and are vulnerable to future down-turns in oil prices. As many as two-thirds of the marginal properties could be lost during a period of sustained low oil prices (National Petroleum Council Committee on Marginal Wells/Executive Summary—Draft). The danger in losing these wells is that, although production from individual wells may be small, their collective loss would be significant. The United States would lose the opportunity to take advantage of new technologies being developed by the Department of Energy (DOE) and industry, and the remaining recoverable reserves would be lost.

This proposed rule would preserve the contribution of marginal producers of heavy crude oil to the national reserve base. As a result of this relief, more wells should stay on line (even in periods of depressed oil prices), fewer recoverable reserves should be lost, and there will be less adverse economic impact on States and local communities.

The DOE has modeled the BLM's proposed royalty rate reduction for heavy crude oil. It is DOE's conclusion that the proposal will benefit all producers of heavy oil while remaining revenue neutral to all oil producing States except California (California contains the majority of the nation's heavy oil reserves). Assuming a West Texas Intermediate Crude oil price of $20 per barrel—a price consistent with recent oil markets—the proposal can be expected to increase recoverable reserves in California by around 72 percent, from 132.8 million barrels to 228.5 million barrels. The increase in recoverable reserves will ultimately result in a 35 percent increase in Federal revenues (royalties and individual and corporate taxes) and a 49 percent increase in California State revenues.

A provision of the proposed rule provides for the termination of individual royalty reductions should the average price of West Texas Intermediate Crude oil rise to a level greater than $28 per barrel for a period of at least 6 consecutive months. This provision is intended to ensure that royalty relief is only provided during periods of low market prices.

The proposed rule establishes a sliding scale royalty rate for qualifying heavy-oil-producing properties. The sliding scale is intended to somewhat offset the reduced prices paid for oil as oil gravity decreases. The reduced royalty rate applies to qualifying heavy oil properties rather than individual wells, because production is normally not measured for individual oil wells, and is based on the average gravity of the oil weighted by the production of heavy oil from each well within the property. A weighted average gravity is used to prevent gravity manipulation by selectively producing wells on a property with heavier gravity crude. Using a weighted average of oil gravity encourages maximum recovery from all wells within a property by removing the economic advantage of selective production.

The rule provides that either the operator (as defined at 43 CFR 3100.0–5) or the payor (as defined at 30 CFR 208.2) must calculate the weighted average gravity of the oil—measured on the American Petroleum Institute (API) scale—produced from a property every 12 months to determine the appropriate royalty rate. The royalty rate for years subsequent to the initial 12 month period will be the lesser of the newly calculated royalty rate or the royalty rate determined for the initial year. This provision is necessary to avoid discouraging additional investment in enhanced recovery and workovers that may have the collateral effect of increasing the gravity of the oil produced from the property. In no case, however, would the royalty rate exceed the rate established by the terms of the lease.

The section amended by this proposed rule also provides for royalty rate reductions for stripper oil wells. Many provisions of this proposed rule are essentially the same as the provisions of the existing regulations that pertain to stripper wells, except that references to ''stripper well'' have been replaced with ''heavy oil well.'' The similarity between the existing provisions pertaining to stripper wells and the provisions of this proposed rule could allow for some restructuring of section 43 CFR 3103.4–1 to reduce the overall regulatory text and to increase clarity. The public is invited to comment on whether reorganizing 43 CFR 3103.4–1 should be considered in preparing the final heavy oil royalty reduction rule.

The principal author of this proposed rule is Dr. John W. Bebout, Senior Technical Specialist, Division of Fluid Minerals, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to Section 102 (2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

This rule has been reviewed under Executive Order 12866.

The BLM has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This is because the proposed royalty rate reduction is voluntary, requires no additional paperwork, and applies to all operators regardless of size. Additionally the BLM has determined, under Executive Order 12630, that the rulemaking will not cause a taking of private property.

The BLM has certified that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The information collection requirements of this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1010–0090 and 1004–0145.

List of Subjects for 43 CFR Part 3100

Land Management Bureau, Public Lands—mineral resources, Oil and gas production, Mineral royalties.

For the reasons stated in the preamble, and under the authorities cited below, Part 3100, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 3100—OIL AND GAS LEASING

1. The authority citation for part 3100 continues to read as follows:

Authority: 30 U.S.C. 181, *et seq.*, 30 U.S.C. 351–359.

Subpart 3103—Fees, Rentals and Royalty

2. Section 3103.4–1 is amended by revising paragraph (b)(1), redesignating paragraph (e) as paragraph (g), and adding new paragraphs (e) and (f) to read as follows:

§ 3103.4–1 Waiver, suspension, or reduction of rental, royalty or minimum royalty.

* * * * *

(b)(1) An application for the above benefits on other than stripper oil well leases or heavy oil properties must be filed by the operator/payor in the proper BLM office. It must contain the serial number of the leases, the names of the record title holders, operating rights owners (sublessees), and operators for each lease, the description of lands by legal subdivision and a description of the relief requested.

* * * * *

(e)(1) A heavy oil well property is any Federal lease or portion thereof segregated for royalty purposes, a communitization area, or a unit participating area, operated by the same operator, that produces crude oil with a weighted average gravity of less than 20 degrees as measured on the American Petroleum Institute (API) scale.

(2) An oil completion is a completion from which the energy equivalent of the oil produced exceeds the energy equivalent of the gas produced (including the entrained liquefiable hydrocarbons) or any completion producing oil and less than 60 MCF of gas per day.

(f) Heavy oil well property royalty rate reductions will be administered according to the following requirements and procedures.

(1) The Bureau of Land Management requires no specific application form for the benefits under paragraph (a) of this section for heavy oil well properties. However, the operator/payor must notify, in writing, the proper BLM office that it is seeking a heavy oil royalty rate reduction. The letter must contain the serial number of the affected leases (or, as appropriate, the communitization agreement number or the unit agreement name); the names of the operators for each lease; the calculated new royalty rate as determined under paragraph (f)(2) of this section; and copies of the Purchaser's Statements (sales receipts) to document the weighted average API gravity for a property.

(2) The operator must determine the weighted average API gravity for a property by averaging (adjusted to rate of production) the API gravities reported on the operator's Purchaser's Statement for the last 3 calendar months preceding the operator's written notice of intent to seek a royalty rate reduction, during each of which at least one sale was held. This is shown in the following 3 illustrations:

(i) If a property has oil sales every month prior to requesting the royalty rate reduction in October of 1994, the operator must submit Purchaser's Statements for July, August, and September of 1994;

(ii) If a property has sales only every 6 months, during the months of March and September, prior to requesting the rate reduction in October of 1994, the operator must submit Purchaser's Statements for the months of September 1993, and March and September 1994; and

(iii) If a property has multiple sales each month, the operator must submit Purchaser's Statements for every sale for the 3 entire calendar months immediately preceding the request for a rate reduction.

(3) The following equation must be used by the operator/ payor for calculating the weighted average API gravity for a heavy oil well property:

$$\frac{(V_1 \times G_1) + (V_2 \times G_2) + (V_n \times G_n)}{V_1 + V_2 + V_n} = \text{Weighted Average API gravity for a property}$$

Where:

V_1=Average Production (bbls) of Well #1 over the last 3 calendar months of sales

V_2=Average Production (bbls) of Well #2 over the last 3 calendar months of sales

V_n=Average Production (bbls) of each additional well (V_3, V_4, etc.) over the last 3 calendar months of sales

G_1=Average Gravity (degrees) of oil produced from Well #1 over the last 3 calendar months of sales

G_2=Average Gravity (degrees) of oil produced from Well #2 over the last 3 calendar months of sales

G_n=Average Gravity (degrees) of each additional well (G_3, G_4, etc.) over the last 3 calendar months of sales

Example: Lease ''A'' has 3 wells producing at the following average rates over 3 sales months with the following associated average gravities: Well #1, 4,000 bbls, 13° API; Well #2, 6000 bbls, 21° API; Well #3, 2,000 bbls, 14° API. Using the equation above—

$$\frac{(4{,}000 \times 13) + (6{,}000 \times 21) + (2{,}000 \times 14)}{(4{,}000 + 6{,}000 + 2{,}000)} = 17.2 \text{ Weighted Average API gravity for property}$$

(4) For those properties subject to a communitization agreement or a unit participating area, the weighted average API oil gravity for the lands dedicated to that specific communitization agreement or unit participating area must be determined in the manner prescribed in paragraph (f)(3) of this section and assigned to all property

subject to Federal royalties in the communitization agreement or unit participating area.

(5) The operator/payor must use the following procedures in order to obtain a royalty rate reduction under this section:

(i) *Qualifying royalty rate determination.*

(A) The operator/payor must calculate the weighted average API gravity for the property proposed for the royalty rate reduction in order to verify that the property qualifies as a heavy oil well property.

(B) Properties that have removed or sold oil less than 3 times in their productive life may still qualify for this royalty rate reduction. However, no further reductions will be granted until the property has a sales history of at least 3 production months (see paragraph (f)(5)(iii) of this section).

(ii) *Calculating the qualifying royalty rate.* If the Federal leases or portions thereof (e.g., communitization or unit agreements) qualify as heavy oil property, the operator/payor must use the weighted average API gravity rounded down to the nearest whole degree (e.g., 11.7 degrees API becomes 11 degrees), and determine the appropriate royalty rate from the following table:

ROYALTY RATE REDUCTION FOR HEAVY OIL

Weighted average API gravity (degrees)	Royalty rate (percent)
6	0.5
7	1.4
8	2.2
9	3.1
10	3.9
11	4.8
12	5.6
13	6.5
14	7.4
15	8.2
16	9.1
17	9.9
18	10.8
19	11.6
20	12.5

(iii) *New royalty rate effective date.* The new royalty rate will be effective on the first day of production 2 months after BLM receives notification by the operator/payor. The rate will apply to all oil production from the property for the next 12 months. If the API oil gravity is 20 degrees or greater, the royalty rate will be the rate in the lease terms.

(iv) *Royalty rate determinations in subsequent years.*

(A) At the end of each 12-month period, beginning on the first day of the calendar month the royalty rate reduction went into effect, the operator/payor must determine the weighted average API oil gravity for the property for that period. The operator/payor must then determine the royalty rate for the following year using the table in paragraph (f)(5)(ii) of this section.

(B) The operator/payor must compare the newly determined royalty rate to the initial qualifying royalty rate. The operator/payor must notify BLM of its determinations under this paragraph and paragraph (A) of this § 3103.1–4(f)(5)(iv). The lower of the two rates will be used for the new 12-month period. The new royalty rate will not become effective until the first day of the second month after BLM receives notification, and will remain effective for 12 calendar months. Notification must include copies of the Purchaser's Statements (sales receipts) and be mailed to the proper BLM office. If the operator does not notify the BLM of the new royalty rate within 60 days after the end of the subject 12-month period, the royalty rate for the heavy oil well property will remain at the previous royalty rate until the next 12-month anniversary.

(C) The royalty rate will never exceed the heavy oil property royalty rate calculated during the first qualifying period unless and until BLM terminates all heavy oil royalty rate reductions under paragraph (f)(6) (i) or (ii) of this section.

(v) *Prohibition.* Any heavy oil property reporting an API average oil gravity determined by BLM to have resulted from any manipulation of normal production or adulteration of oil sold from the property will not receive the benefit of a royalty rate reduction under this paragraph (f).

(vi) *Certification.* The operator/payor must use the applicable royalty rate when submitting the required royalty reports/payments to the Minerals Management Service (MMS). In submitting royalty reports/payments using a royalty rate reduction authorized by this paragraph (f), the operator/payor must certify that the API oil gravity for the initial and subsequent 12-month periods was not subject to manipulation or adulteration and the royalty rate was determined in accordance with the requirements and procedures of this paragraph (f).

(vii) *Agency action.* If an operator/payor incorrectly calculates the royalty rate, the BLM will determine the correct rate and notify the operator/payor in writing. Any additional royalties due are payable immediately upon receipt of this notice. The BLM will assess late payment or underpayment charges in accordance with 30 CFR 218.102. The BLM will terminate a royalty rate reduction for a property if BLM determines that the API oil gravity was manipulated or adulterated by the operator/payor. Terminations of royalty rate reductions for individual properties will be effective on the effective date of the royalty rate reduction resulting from a manipulated or adulterated API oil gravity so that the termination will be retroactive to the effective date of the improper reduction. The operator/payor must pay the difference in royalty resulting from the retroactive application of the non-manipulated rate. The BLM will assess late payment or underpayment charges in accordance with 30 CFR 218.102.

(6) The BLM may suspend or terminate all royalty reductions granted under this paragraph (f) upon 6 month's notice in the **Federal Register** when BLM determines that—

(i) The average oil price remains above $28 per barrel over a period of 6 consecutive months (based on the West Texas Intermediate Crude average posted prices and adjusted for inflation using the implicit price deflator for gross national product with 1991 as the base year), or

(ii) After September 10, 1997, the royalty rate reductions authorized by this paragraph (f) have not been not effective in reducing the loss of otherwise recoverable reserves resulting from wells being shut in or abandoned.

(7) The heavy oil well property royalty rate reduction applies to all Federal oil produced from a heavy oil property.

(8) If the lease royalty rate is lower than the benefits provided in this heavy oil well property royalty rate reduction program, the lease rate prevails.

(9) If the property qualifies for a stripper well property royalty rate reduction, as well as a heavy oil well property reduction, the lower of the two rates applies.

(10) The operator/payor must separately calculate the royalty for gas production (including condensate produced in association with gas) for oil completions using the lease royalty rate.

(11) The minimum royalty provisions of § 3103.3–2 will continue to apply.

* * * * *

Dated: October 11, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–7794 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–84–P

Notices

Federal Register
Vol. 60, No. 61
Thursday, March 30, 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

Agricultural Marketing Service

[Docket No. PY–95–001]

Tentative Voluntary Poultry Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing that it is approving the test marketing of USDA grade identified boneless/skinless poultry legs and drumsticks, based on tentative grade standards.

DATES: This test-market period begins March 30, 1995 and ends April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Larry W. Robinson, Chief, Grading Branch, Poultry Division, 202–720–3271.

SUPPLEMENTARY INFORMATION:

Background

Poultry grading is a voluntary program provided under the Agricultural Marketing Act of 1946, as amended, and is offered on a fee-for-service basis. It is designed to assist the orderly marketing of poultry products. Quality in practical terms refers to the usability, desirability, and value of a product, as well as its marketability. Poultry grade standards identify and measure degrees of quality in poultry products. They permit important quality attributes to be evaluated uniformly and accurately; they provide a way for buyers and sellers to negotiate using a common language.

Once poultry has been graded according to these standards, it may be identified with the USDA grademark. Over the years, processors have found it advantageous to market grade-identified poultry products and consumers have come to rely on the USDA grademark as assurance that they are getting the quality they want.

Poultry producers and processors are continually developing new, innovative products. Chicken and turkey, in particular, have been transformed into a myriad of boneless and/or skinless products, increasing poultry's share of the consumer's food dollar and responding to consumer demand for food with more built-in convenience and less fat. Current regulations (7 CFR Part 70) provide grade standards for boneless poultry breasts, thighs, and tenderloins (§ 70.231), as well as for skinless carcasses and parts (§ 70.232).

The Agency has received several industry requests to permit the grade identification of boneless/skinless poultry legs and drumsticks. These products are currently being marketed ungraded because there are no grade standards for them. The Agency has worked with members of the industry to develop tentative grade standards which will result in a high-quality product. The Agency is ready to move forward to a test marketing phase for boneless/skinless poultry legs and drumsticks.

The Agency recognizes that before new standards of quality can be established or current standards of quality can be amended, appropriate investigation is needed. This includes the test marketing of experimental packs of grade-identified poultry products to determine production requirements and consumer acceptance, and to permit the collection of other necessary data. Current regulations (§ 70.3) provide the Agency with the flexibility needed to permit such experimentation, so that new procedures and grading techniques may be tested.

The Agency is granting permission for the test marketing of grade-identified boneless/skinless poultry legs and drumsticks based on tentative standards for one year. At the expiration of this one-year period, the Agency will then evaluate the test results to determine if the current poultry grading regulations should be amended, through notice-and-comment rulemaking, to include the following tentative standards.

Tentative Poultry Grade Standards for Boneless/Skinless Poultry Legs and Drumsticks—A Quality

1. The leg or drum shall be cut as specified in § 70.210(e)(6).

2. The skin and bones shall be removed in a neat manner, without undue mutilation of adjacent muscle.

3. Boneless/skinless legs and drumsticks shall be free of tendons extending more than one-half inch beyond the meat tissue, cartilage, blood clots, bruises, and discolorations other than slight discolorations, provided they do not detract from the appearance of the product.

4. Minor flesh abrasions on the outer muscle surface due to preparation techniques and trimming are permitted provided the outer surface remains smooth with no angular cuts or tears. Holes resulting from the removal of the patella (knee cap) are permitted, provided the bulk of the thigh and drum remain intact and connected.

5. Trimming on the inner muscle surface is permitted, provided it results in a relatively smooth appearance.

6. Trimming is permitted around the outer edges of the muscle, provided the trimming results in a portion that approximates the same symmetrical appearance and meat yield of the original part.

7. Boneless/skinless drumsticks may be further separated by a single cut parallel to the tibiotarsus and labeled as boneless/skinless drumstick halves.

Dated: March 22, 1995.

Kenneth C. Clayton,
Acting Administrator.

[FR Doc. 95–7724 Filed 3–29–95; 8:45 am]
BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

[Docket No. 95–023–1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Cotton

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 the Monsanto Company seeking a determination of nonregulated status for cotton lines designated as 1445 and 1698 that have been genetically engineered for tolerance to

the herbicide glyphosate. 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 these cotton lines present a plant pest risk.

DATES: Written comments must be received on or before May 30, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–023–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1228. Please state that your comments refer to Docket No. 95–023–1. 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. Sivramiah Shantharam, Branch Chief, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1228; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7601.

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,'' 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 February 14, 1995, APHIS received a petition (APHIS Petition No. 95–045–01p) from the Monsanto Company of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for cotton lines designated as 1445 and 1698 that have been genetically engineered for tolerance to the herbicide glyphosate. As described in the petition, cotton (*Gossypium hirsutum* L.) lines 1445 and 1698 contain the gene for CP4 EPSPS (5-enolpyruvylshikimate-3-phosphate synthase) isolated from *Agrobacterium* sp. strain CP4, which encodes an enzyme conferring tolerance to glyphosate, the active ingredient in Roundup® herbicide. Cotton lines 1445 and 1698 also contain the *nptII* gene, which encodes the selectable marker neomycin phosphotransferase II, and the *aad* gene, which encodes the bacterial selectable marker 3''(9)-O-aminoglycoside adenylyltransferase. Expression of the *nptII* gene is driven by the 35S promoter derived from the plant pathogen cauliflower mosaic virus. The subject cotton lines were produced through the use of *Agrobacterium tumefaciens* transformation, a full description of which is provided in the petition.

The subject cotton lines are currently considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences (vectors, vector agents, promoters, and terminators) derived from plant pathogens. Cotton lines 1445 and 1698 were evaluated in field trials conducted under APHIS permits or notifications in 1992, 1993, and 1994. In the process of reviewing the applications for those field trials, APHIS determined that the vectors were disarmed, and that the trials did 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.

Cotton lines 1445 and 1698 are also currently subject to regulation by other agencies. The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 135 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by regulation. Plants that have been genetically modified for tolerance or resistance to herbicides are not regulated under FIFRA because the plants themselves are not considered pesticides.

In cases in which the genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. In conducting such an approval, EPA considers the possibility of adverse effects to human health and the environment from the use of this herbicide.

When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by the EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 201 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by the EPA under the FFDCA.

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's authority for ensuring food safety under the FFDCA, 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 available 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 the Monsanto Company's cotton lines 1445 and 1698 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 24th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–7835 Filed 3–29–95; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Newspaper Used for Publication of Legal Notice of Appealable Decisions for Intermountain Region, Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 36 CFR 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after April 1, 1995. The list of newspapers will remain in effect until October 1995 when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: K. Dale Torgerson, Regional Appeals and Litigation Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, phone (801) 625–5279.

SUPPLEMENTARY INFORMATION: The administrative appeal procedures 36 CFR part 215 and 36 CFR part 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho:
The Idaho Statesman, Boise, Idaho
For decisions made by the Regional Forester affecting National Forests in Nevada:
The Reno Gazette-Journal, Reno, Nevada
For decisions made by the Regional Forester affecting National Forests in Wyoming:
Casper Star-Tribune, Casper, Wyoming
For decisions made by the Regional Forester affecting National Forests in Utah:
Standard-Examiner, Ogden, Utah
If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in:
Standard-Examiner, Ogden, Utah

Ashley National Forest

Ashley Forest Supervisors decisions:
Vernal Express, Vernal, Utah
Vernal District Ranger decisions:
Vernal Express, Vernal, Utah
Flaming Gorge District Ranger for decisions affecting Wyoming:
Casper Star Tribune, Casper, Wyoming
Flaming Gorge District Ranger for decisions affecting Utah:
Vernal Express, Vernal, Utah
Roosevelt and Duchesne District Ranger decisions:
Uintah Basin Standard, Roosevelt, Utah

Boise National Forest

Boise Forest Supervisor decisions:
The Idaho Statesman, Boise, Idaho
Mountain Home District Ranger decisions:
Mountain Home News, Mountain Home, Idaho
Boise District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Idaho City District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Cascade District Ranger decisions:
The Advocate, Cascade, Idaho
Lowman District Ranger decisions:
The Idaho City World, Idaho City, Idaho
Emmett District Ranger decisions:
The Messenger-Index, Emmett, Idaho

Bridger-Teton Forest Supervisor decisions:

Bridger-Teton Forest Supervisor decisions:
Casper Star-Tribune, Casper, Wyoming
Jackson District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Buffalo District Ranger decisions:
Casper Star-Tribune, Jackson, Wyoming
Big Piney District Ranger decisions:
Casper Star-Tribune, Jackson, Wyoming
Pinedale District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Greys River District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Kemmerer District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming

Caribou National Forest

Caribou Forest Supervisor decisions:
Idaho State Journal, Pocatello, Idaho
Soda Springs District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Montpelier District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Malad District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Pocatello District Ranger decisions:
Idaho State Journal, Pocatello, Idaho

Challis National Forest

Challis Forest Supervisor decisions:
The Challis Messenger, Challis, Idaho
Middle Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho
Challis District Ranger decisions:
The Challis Messenger, Challis, Idaho
Yankee Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho
Lost River District Ranger decisions:
The Challis Messenger, Challis, Idaho

Dixie National Forest

Dixie Forest Supervisor decisions:
The Daily Spectrum, St. George, Utah
Pine Valley District Ranger decisions:
The Daily Spectrum, St. George, Utah
Cedar City District Ranger decisions:
The Daily Spectrum, St. George, Utah

Powell District Ranger decisions:
The Daily Spectrum, St. George, Utah
Escalante District Ranger Decisions:
The Daily Spectrum, St. George, Utah
Teasdale District Ranger decisions:
The Daily Spectrum, St. George, Utah

Fishlake National Forest

Fishlake Forest Supervisor decisions:
Richfield Reaper, Richfield, Utah
Loa District Ranger decisions:
Richfield Reaper, Richfield, Utah
Richfield District Ranger decisions:
Richfield Reaper, Richfield, Utah
Beaver District Ranger decisions:
Richfield Reaper, Beaver, Utah
Fillmore District Ranger decisions:
Richfield Reaper, Fillmore, Utah

Humboldt National Forest

Humboldt Forest Supervisor decisions:
Elko Daily Free Press, Elko, Nevada
Mountain City District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Jarbidge and Ruby Mountain District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Ely District Ranger decisions:
Ely Daily Times, Ely, Nevada
Santa Rosa District Ranger decisions:
Humboldt Sun, Winnemucca, Nevada
Jarbidge District Ranger decisions:
Twin Fall Times News, Twin Falls, Idaho

Manti-Lasal National Forest

Manti-Lasal Forest Supervisor decisions:
Sun Advocate, Price, Utah
Sanpete District Ranger decisions:
The Pyramid, Mt. Pleasant, Utah
Ferron District Ranger decisions:
Emery County Progress, Castle Dale, Utah
Price District Ranger decisions:
Sun Advocate, Price, Utah
Moab District Ranger decisions:
The Times Independent, Moab, Utah
Monticello District Ranger decisions:
The San Juan Record, Monticello, Utah

Payette National Forest

Payette Forest Supervisor decisions:
Idaho Statesman, Boise, Idaho
Weiser District Ranger decisions:
Signal American, Weiser, Idaho
Council District Ranger decisions:
Council Record, Council, Idaho
New Meadows, McCall, and Krassel District Ranger decisions:
Star News, McCall, Idaho

Salmon National Forest

Salmon Forest Supervisor decisions:
The Recorder-Herald, Salmon, Idaho
Cobalt District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
North Fork District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Leadore District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Salmon District Ranger decisions:
The Recorder-Herald, Salmon, Idaho

Sawtooth National Forest

Sawtooth Forest Supervisor decisions:
The Times News, Twin Falls, Idaho
Burley District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah, for those decisions on the Burley District involving the Raft River Unit.
South Idaho Press, Burley, Idaho, for decisions issued on the Idaho portions of the Burley District.
Twin Falls District Ranger decisions:
The Times News, Twin Falls, Idaho
Ketchum District Ranger decisions:
Wood River Journal, Hailey, Idaho
Sawtooth National Recreation Area:
Challis Messenger, Challis, Idaho
Fairfield District Ranger decisions:
The Times News, Twin Falls, Idaho

Targhee National Forest

Targhee Forest Supervisor decisions:
The Post Register, Idaho Falls, Idaho
Dubois District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Island Park District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Ashton District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Palisades District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Teton Basin District Ranger decisions:
The Post Register, Idaho Falls, Idaho

Toiyabe National Forest

Toiyabe Forest Supervisor decisions:
Reno Gazette-Journal, Reno, Nevada
Carson District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Austin District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Bridgeport District Ranger decisions:
The Review-Herald, Mammoth Lakes, California
Tonopah District Ranger decisions:
Tonopah Times Bonanza-Goldfield News, Tonopah, Nevada
Las Vegas District Ranger decisions:
Las Vegas Review Journal, Las Vegas, Nevada

Uinta National Forest

Uinta Forest Supervisor decisions:
The Daily Herald, Provo, Utah
Pleasant Grove District Ranger decisions:
The Daily Herald, Provo, Utah
Heber District Ranger decisions:
The Daily Herald, Provo, Utah
Spanish Fork District Ranger decisions:
The Daily Herald, Provo, Utah

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions:
Salt Lake Tribune, Salt Lake City, Utah
Salt Lake District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Kamas District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Evanston District Ranger decisions:
Uintah County Herald, Evanston, Wyoming
Mountain View District Ranger decisions:
Uintah County Herald, Evanston, Wyoming
Ogden District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah
Logan District Ranger decisions:
Logan Herald Journal, Logan, Utah.

Dated: March 17, 1995.

Jack A. Blackwell,

Deputy Regional Forester.

[FR Doc. 95–7820 Filed 3–29–95; 8:45 am]

BILLING CODE 3410–11–M

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet on April 13 & 14, 1995 at Rock Springs Guest Ranch, 10 miles north of Bend, Oregon off Highway 20. Times are 6 to 9 p.m. April 13, and 8 a.m. to 4 p.m. April 14. Agenda items include: (1) Context of the Advisory Committee and background on the President's Forest Plan; (2) introduction of members; (3) operating guidelines and ground rules; (4) mission and purpose of the Province Advisory Committee; (5) relationship to the PIEC; and (6) Open public forum. All Deschutes Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Harry Hoogesteger, Province Liaison, USDA, Fort Rock Ranger District, 1230 N.E. 3rd, Bend, Oregon 97701, 503–383–4704.

Dated: March 21, 1995.

Sally Collins,

Deschutes National Forest Supervisor.

[FR Doc. 95–7749 Filed 3–29–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–806]

Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch, Dorothy Tomaszewski or Erik Warga, 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) 482–3773, (202) 482–0631 or (202) 482–0922, respectively.

Final Determination

We determine that imports of pure magnesium from Ukraine are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination on October 27, 1994 (59 FR 55420, November 7, 1994), the following events have occurred:

In December 1994, we issued sections A and C of our antidumping questionnaire [1] to exporters Greenwich Metals and Hochschild Partners. These companies provided responses to these questionnaires in December 1994 and January 1995.

Verifications were conducted at the Chicago, Illinois, facilities of MG Metals from December 6 to December 7, 1994; at Gerald Metals' Lausanne, Switzerland, offices from December 13 to December 14, 1994, and at its Stamford, Conn., offices on January 24 and January 25, 1995; at Concern Oriana's (formerly Concern Chlorvinyl) facilities in Kalush, Ukraine; and at the Greenwich, Conn., facilities of Greenwich Metals from January 30 to January 31, 1995.

On January 31, 1995, we amended our preliminary determination to correct for certain ministerial errors (60 FR 7519, February 8, 1995).

Respondents Concern Oriana, Gerald Metals, Greenwich Metals, Hochschild Partners, as well as petitioners,[2] filed case and rebuttal briefs. A public hearing was held on February 24, 1995.

Scope of Investigation[3]

The product covered by this investigation is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses:

(1) products that contain at least 99.95% primary magnesium, by weight (generally referred to as ''ultra-pure'' magnesium);

(2) products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as ''pure'' magnesium); and

(3) products (generally referred to as ''off-specification pure'' magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

''Off-specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to all below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this investigation are alloy primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.11.00, 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Investigation

The period of investigation (''POI'') is October 1, 1993, through March 31, 1994.

Fair Value Comparisons

A. Participating Respondents

To determine whether sales of pure magnesium from Ukraine to the United States by Gerald Metals, Hochschild Partners, and MG Metals were made at less than fair value, we compared the United States price (''USP'') to the foreign market value (''FMV''), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice.

Verification revealed that, for its POI sales to U.S. companies, there were no instances where Greenwich Metals' role in the sales process was that of being the

[1] Section A requested general information on each company; and section C requested information on, and a listing of, U.S. sales made during the period of investigation (''POI'').

[2] Magnesium Corporation of America; Dow Chemical; International Union of Operating Engineers, Local 564; and United Steel Workers of America, Local 8319.

[3] The scope of this investigation has been modified since the preliminary determination in order to clarify the distinctions between pure magnesium and alloy magnesium. See Comment 5 in the ''Interested Party Comments'' section of this notice, below, for a discussion of the scope modification. For a detailed definition of alloy magnesium, see the ''Scope of Investigation'' section of the concurrent investigations of alloy magnesium from the People's Republic of China and the Russian Federation.

first company to sell Ukraine-produced pure magnesium to a U.S. customer. That is, all subject merchandise purchased by Greenwich was done so on terms that made Greenwich the U.S. customer of its supplier. Accordingly, Greenwich will be subject to the ''Ukraine-wide'' deposit rate.

B. All Other Companies

All companies to which a questionnaire was issued are considered mandatory respondents in this proceeding. Several companies in Ukraine either failed to respond to either our initial requests for information about U.S. sales, or failed to respond to our request for permission to verify. These companies include: Zaporozhye Titanium-Magnesium Plant, a Ukrainian producer; and Alex, Mages, and Intreid, Ukrainian exporters. Accordingly, we have based the ''Ukraine-wide'' duty deposit rate—applicable to all companies except those that (1) made POI U.S. sales of subject merchandise, and (2), participated in this investigation—on the best information available (''BIA'').

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to respondents that cooperated in an investigation and margins based on more adverse assumptions for those respondents, like the non-participating respondents in this investigation, which did not cooperate in an investigation. As outlined in *Coumarin,*[4] where, as here, a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (1) the highest calculated rate of any respondent in the investigation, (2) the highest margin alleged in the petition, or (3) the margin from the preliminary determination for that firm. Accordingly, we have set the Ukraine-wide deposit rate at 104.27 percent, *ad valorem*. This margin represents the highest margin in the petition, as recalculated by the Department for purposes of initiating this proceeding and as further adjusted to account for factors of production listed in the petition that were not valued at the time of initiation, but for which information is on the record upon which to base a surrogate value.

[4] Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China (59 FR 66895, December 28, 1994).

United States Price

We based USP for third-country exporters Gerald Metals and Hochschild on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the exporters to unrelated parties in the United States prior to importation into the United States and because exporter's sales price (''ESP'') methodology was not indicated by other circumstances.

For Gerald Metals and Hochschild, we calculated purchase price based on packed, CIF, delivered, or FOT warehouse prices to unrelated purchasers in the United States. For Gerald Metals, we made the following deductions (where appropriate): ocean freight; foreign brokerage; U.S. Brokerage and handling charges; U.S. duty; and U.S. inland freight. For Hochschild Partners, we made the following deductions (where appropriate) for foreign brokerage; ocean freight; marine insurance; and U.S. inland freight.

We based USP for MG Metals, a third-country exporter, on ESP, in accordance with section 772(c) of the Act, because the subject merchandise was sold to the first unrelated purchaser after importation into the United States.

We calculated ESP based on packed delivered prices. For MG Metals, we made the following deductions (where appropriate) for ocean freight; marine insurance; foreign brokerage; U.S. inland freight; U.S. inland insurance, U.S. duties; U.S. brokerage and handling; and additional packing costs.

From each exporter's U.S. price, we continued to deduct foreign inland freight between the factory and the reported intermediate destination (*e.g.*, Rotterdam) using the per-ton foreign inland freight figure reported in the petition in order to account for this movement charge from producer to the intermediate destination.

Minor adjustments were made to the reported U.S. sales of these exporters pursuant to our findings at verification (*see* Final Calculation Memorandum, on file in room B–099 of the Main Commerce Department Building, for details of adjustments).

Foreign Market Value

A. Surrogate Country Selection

Section 773(c) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the non-market-economy country and that are significant producers of comparable merchandise.

In our preliminary determination, we selected Indonesia as our primary surrogate country and resorted to Egypt for certain surrogate values where values in Indonesia were either unavailable or out of date. These countries are appropriate surrogate countries for the reasons set forth in our preliminary determination. Since we find no compelling reason to change this selection, we have continued to base FMV on the values of the appropriate factors of production as valued in Indonesia or Egypt.

B. Factors of Production

In accordance with section 773(c) of the Act, we calculated FMV, with regard to the exporters' U.S. sales of magnesium produced by Concern Oriana, based on factors of production cited in the preliminary determination, making adjustments based on verification findings (see Final Calculation Memorandum). With regard to the exporters' U.S. sales of magnesium produced by the other Ukraine manufacturer. Zaporozhye Titanium-Magnesium Plant (from which we did not receive factors of production data), we did not calculate FMV; instead, we assigned an uncooperative BIA margin which equalled the highest adjusted alleged margin cited in our initiation notice (as indicated in our amended preliminary determination).

The factors used to produce pure magnesium include materials, labor, and energy. To calculate FMV, the reported quantities were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of surrogate values, see our Final Calculation Memorandum.) An imputed factory overhead figure was also included in the FMV calculation based on a percentage of materials, labor and energy. We granted a by-product offset against the cost of manufacturing (*i.e.*, the sum of materials, labor, energy and factory overhead). We then added the statutory minimum imputed amounts for general expenses and profit. We followed the same methodology for packing costs used at the preliminary determination; however, adjusted the packing material cost so as not to double count certain materials. Additionally, we used the Indonesian unskilled labor rate for packing labor.

We have used the same surrogate values used in the preliminary determination with the exception of certain corrections made based on verification or interested party comments. Based on verification, we adjusted the values of magnesium

chloride and chlorine to reflect the actual purity used in the production (or yielded as a by-product) of subject merchandise. We recalculated certain reported inland freight distances between factory and input supplier based on verified distances. We used labor rates from Indonesia specific to skilled and unskilled labor. One material input, considered a direct material for the preliminary determination, has not been accounted for in our final determination because it was discovered at verification to be an indirect material.

Verification

As provided in Section 776(b) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

Comment 1: BIA for Refusal to Permit Verification

Petitioners argue that the Department should assign a margin based on total BIA to all companies that reported having made no POI sales of subject merchandise, but that did not indicate in their response to the Department's inquiry that they would permit verification of this information.

DOC Position

We agree with petitioners and have assigned a margin based on total BIA to those companies that either refused verification or did not respond to our request to verify a report of no sales.

Comment 2: Surrogate Value for Magnesium Chloride

Concern Oriana asserts that the surrogate value used for magnesium chloride in the preliminary determination was aberrational and unrealistic because: (1) The surrogate value is almost five times greater on a per-unit basis than the Brazil value of hydrated carnallite provided in the petition, of which magnesium chloride is but one cost component; (2) the UN Trade Commodity Statistics show an export value for Indonesia which is one third that of the import value; and (3) values for imports of magnesium chloride into other potential surrogate countries vary more than 500 percent, demonstrating that the value used for the preliminary determination is inherently unreliable.

Concern Oriana requests that the Department use the value of hydrated carnallite from the petition as a more realistic and accurate surrogate for the value of magnesium chloride used in the production of magnesium.

Petitioners counter that the Department should not use a surrogate value for hydrated carnallite, a completely different material, when a nonaberrational price is available for a commodity category containing the actual materials used in the production process. Specifically, petitioners contend that the Indonesian price for magnesium chloride and the petition's price for hydrated carnallite cannot be compared. Petitioners also contend that the range of import prices for magnesium chloride from other potential surrogate countries ($159 to $1,000/per metric ton) demonstrates that the price used in the preliminary determination ($152.89 per metric ton) is conservative rather than aberrational. Petitioners note as well that the Indonesian import price fits into the high preference category of the Department's hierarchy for surrogate values: it is publicly available information, it is non-export value, and it is contemporaneous to the POI, unlike the petition value for a totally different product suggested by respondents.

DOC Position

We agree with petitioners that the record does not support a finding that the surrogate value for magnesium chloride is aberrational or otherwise inappropriate. First, it is not accurate to characterize magnesium chloride as ''but one cost component'' of hydrated carnallite. The fact that hydrated carnallite is processed to obtain magnesium chloride (rather than vice versa) makes a higher price for magnesium chloride logical. Second, although import prices in other surrogate countries vary, Concern Oriana has not demonstrated that this variance should be construed as evidence that the value used here is unreliable. Third, we have specifically expressed a preference for import values over export values when both are available (*see PRC Pencils* [5]).

Comment 3: Basis for Greenwich Metals' Deposit Rate

Petitioners assert that verification revealed that Greenwich's reported U.S. sales of subject merchandise were entirely of merchandise that it had purchased from a European trader that was aware that the merchandise was destined for the United States. Consequently, petitioners request that the Department assign Greenwich the ''Ukraine-wide'' rate and assign the European trader the BIA rate for not participating in this investigation.

Greenwich counters that it properly reported the sales in question as its own U.S. sales. Greenwich argues that the European trader did not know the ultimate destination of the merchandise because Greenwich did not inform the European trader where to ship the merchandise until after the terms of sale were fixed. Greenwich also argues that the European trader did not know the ultimate destination of subject merchandise at the time the terms of the sale were fixed because Greenwich bought the merchandise on a ''duty-unpaid'' basis—leaving Greenwich the option of selling the merchandise in either the U.S. market or in a third country.

DOC Position

We agree with petitioners. First, the record does not support Greenwich's claim that it did not inform the European trader where to ship the merchandise until after the terms of sale were fixed. Rather, as verification revealed, the contract setting the terms of sale included as identification of the shipment destination. Second, the fact that sales terms are ''duty unpaid'' is far outweighed by the fact that the merchandise was shipped to the United States and the absence of any indication that the seller could legitimately expect such sales not to enter the U.S. market. Accordingly, we have not calculated a company-specific margin for Greenwich because we find that it did not make any U.S. sales of the subject merchandise during the POI. Instead, Greenwich and its European supplier will both be subject to the ''Ukraine-wide'' rate.

Comment 4: Completeness of Ukraine Magnesium Industry's Response

Petitioners argue that, as state owned entities, Zaporozhye and Concern Oriana comprise the consolidated magnesium industry in Ukraine. According to petitioners, total BIA should be assigned to this consolidated Ukrainian industry because the industry as a whole failed to report complete sales information (*i.e.*, Zaporozhye did not provide a complete response to the questionnaire). They also claim that total BIA should also be assigned to third-country exporters because of the Ukrainian industry's non-cooperation.

If the Department elects not to apply total BIA to all third-country exporters in this proceeding, then petitioners contend that the Department should base FMV for the exporters' U.S. sales (1) wholly on BIA, disregarding Concern

[5] Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China (60 FR 55625, November 8, 1994)

Oriana's factors of production, or (2) on a simple average of Concern Oriana's calculated FMV and a BIA-based FMV for Zaporozhye, or that the Department should link individual exporters' applicable deposit rate to the specific producer which supplies subject merchandise.

Gerald Metals counters that Concern Oriana's magnesium production process is similar to that of Zaporozhye and, therefore, the Department should use only verified information from Concern Oriana to calculate FMV in its LTFV analyses.

DOC Position

If an antidumping duty order is issued in this proceeding, any direct sales from Ukraine will be subject to a deposit rate based on total BIA. (*See* discussion of ''All Other Companies'' in the ''Fair Value Comparisons'' section of this notice, above).

As to the third-country exporters, we have continued to follow the approach set out in the preliminary determination. We have based FMV for those companies' reported U.S. sales of Concern-Oriana-produced merchandise on Concern Oriana's factors of production; we have not calculated FMV for reported sales of Zaporozhye-produced merchandise, but instead have assigned an uncooperative BIA margin. This approach is consistent with the approach that we have taken in other NME cases, such as *Coumarin, Pencils,* and *PRC Sulfur Dyes* [6], where the Department based FMV for an exporter not controlled by the central government only on the factors of production of the producer or producers which supplied subject merchandise to that exporter. Under this approach, individual transaction margins are then weight averaged to arrive at a single, exporter-specific deposit rate. Further, in a situation like that created here by Zaporozhye's failure to respond, where FMV information needed to calculate a margin is not available, the Department has, as here, resorted to partial BIA and plugged into the weighted-average calculations BIA margins for individual transactions. (See, *e.t., Pencils.*)

Comment 5: Scope

Petitioners contend that the Department should clarify the scope in this proceeding. Petitioners argue that ''off-specification'' pure magnesium (*i.e.,* magnesium that is *less* than 99.8% pure magnesium but that otherwise can be and is considered pure magnesium by consumers) should be considered as within the scope. Petitioners propose a revised scope to achieve this end.

Greenwich argues that the proposed revised scope is flawed because it appears to include secondary magnesium (*i.e.,* magnesium that has been remelted and recast) as subject merchandise.

DOC Position

We agree with petitioners that some magnesium is produced which, despite not meeting the normal definition (based on magnesium content) of pure magnesium, nevertheless may be used in applications that normally require pure magnesium. In fact, the records in the concurrent antidumping investigations of pure and alloy magnesium from the People's Republic of China show sales of such magnesium were supplied to fulfill an order for pure magnesium.

We therefore have revised the scope to include this off-specification pure magnesium within the definition of pure magnesium. Off-specification pure magnesium is described as any product (1) that is 50 percent or more primary magnesium, and (2) that does not meet any ASTM definition of alloy magnesium (based on specific percentages of one or more alloying agents).

We note that our consultations with the Bureau of Mines established that the industry standards for alloy magnesium are ASTM standards. (See Final Calculation Memorandum). Consequently, we have not adopted scope language proposed by petitioners that refers to alloy magnesium defined by ''other industry standards'' in illustrating products that are not off-specification pure magnesium. Although ASTM standards define pure magnesium as not less than 99.8 percent magnesium, we believe that metal with a primary magnesium content below that level should be captured in the scope if it cannot legitimately be defined as a specific ASTM alloy magnesium.

The fact that the scope encompasses only merchandise with primary magnesium content of 50 percent or greater means that merchandise composed of 50 percent or more secondary magnesium is excluded.

Comment 6: By-Product Offset Methodology

Petitioners contend that the Department's decision to permit an offset to material surrogate values to account for the chlorine by-product of the magnesium production process was erroneous for the following reasons: (1) the producers were unable to demonstrate for the record that any economic benefit accrued to the firm and that such benefit was linked to the production of the subject merchandise; (2) the surrogate value used was incorrect in that it did not correspond to the actual purity level of the by-product produced and was not calculated net of transportation and processing costs; and (3) any adjustment determined to be appropriate should have been made to the cost of manufacture rather than cost of materials so as not to understate factory overhead, general expenses, and profit.

Concern Oriana argues that the cost of manufacturing magnesium should be reduced by the value of chlorine by-product.

DOC Position

We agree with petitioners in part. First, because the by-product results from the production process and is either used by the magnesium producer or sold for use by some other company in the NME country, it is a factor whose value must be taken into account in our calculation of the fair value against which to test U.S. prices. Second, we have adjusted the by-product's surrogate CIF import value to reflect concentration differences. However, no adjustment to value for transportation costs is appropriate; for by-products, as for material factors of production consumed in the production process, we consider the import values used to be surrogates for ex-factory, freight-exclusive prices from suppliers to consumers. Third, we agree with petitioners that the proper adjustment is a reduction in the cost of manufacture. This adjustment increases overhead amount commensurately with the value of the by-product, thereby eliminating the need for valuing any additional processing-related elements. Additionally, an adjustment to cost of manufacture is consistent with Department practice in other NME investigations (see, *e.g., Coumarin*).

Comment 7: Surrogate General Expenses and Profit

Petitioners argue that an amount should be included in FMV calculations in order to reflect general expenses incurred and profit realized by each reseller involved in the sales process. Petitioners argue that, because the responding resellers failed to provide their selling expenses (despite a Departmental request to do so in the questionnaire), the Department should add an amount based on financial statements submitted by resellers.

[6] Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the People's Republic of China (58 FR 7543, February 8, 1993)

Greenwich, Hochschild, and Gerald Metals, assert that petitioners have provided no convincing rebuttal to the Department's recent rejection of such a request in *Coumarin*, and note that the questionnaires they received did not contain section D, the section dealing with general expenses.

DOC Response

We agree with respondents that an addition to FMV of actual reseller general expenses and profit would be inappropriate. Given that Ukraine is an NME and the Ukrainian magnesium industry has not been found to be market oriented, section 773(c) of the Act requires that the Department measure U.S. prices against the factors of production (materials, labor, energy, and overhead) used in producing the merchandise, valued in an appropriate surrogate country, plus general expenses, profit and containers. The Act's only specific guidance as to the valuation of general expenses, profit and containers is to establish minima for the first two. Our regulations, meanwhile, instruct us to ''include in this calculation of constructed value an amount for general expenses and profit, as required by section 773(e)(1)(B) of the Act. (19 CFR 353.52(c)) The Department has not interpreted the Act and the regulations as requiring use of actual expenses and profit for these FMV components when FMV is based on factors of production; the Department has also explicitly rejected such adjustments in prior NME proceedings (see, *e.g.*, *Coumarin* and *Sparklers*[7]). Moreover, to do so simply does not make sense because it amounts to a comparison of apples and oranges. In NME proceedings, the FMV is normally based completely on factors valued in a surrogate country (without regard to, for example, actual selling expenses) on the premise that the actual experience cannot be meaningfully considered. Were the question simply one of ''traditional'' dumping by trading companies, the market-economy price-to-price or price-to-CV methodology would appropriately be employed; actual selling expenses would have been accounted for on both U.S. prices and foreign market prices (or, if appropriate, constructed value, in which case other general expenses and profit would also have been taken into account). Accordingly, we have continued to value general expenses and profit by simply applying to the surrogate-based cost of manufacture the greater of either appropriate surrogate percentages or the statutory minima.

Command 8: Surrogate Value of Labor

Petitioners challenge the Department's use of an unskilled labor value in the preliminary determination to account for both skilled and unskilled labor. Petitioners assert that, if the Department cannot locate specific skilled and unskilled labor values from the chosen surrogate countries, the Department should employ labor rates from the petition as BIA.

DOC Position

We have obtained and used Indonesian wage data for 1992 for skilled and unskilled labor (see *PRC Lighters*[8]). Because Indonesia is our primary surrogate country, we do not need to address the question of an appropriate alternative source of values for these factors.

Comment 9: Unreported Material.

Petitions assert that the Department should include in Concern Oriana's FMV the value for a material which was not included in the preliminary determination. In its questionnaire response, Concern Oriana did not provide usage information for this material, claiming that its value was not significant. Petitioners contend that the value in Ukraine is not relevant since the input would be valued in a surrogate country. Therefore, as BIA, petitioners advocate use of an average of all other direct input values as the value for this input.

DOC Position

We disagree. Verification confirmed that this factor was properly omitted since it was a waste product of the magnesium production process for which only a very small fraction was recycled into the production process. Therefore, it is appropriate not to value this input in the FMV calculation.

Comment 10: Concentration/Purity Levels of Material Inputs

Petitioners contend that appropriate adjustments should be made for differences in concentration or purity between surrogate values on the one hand and materials used in production on the other hand. However, petitioners also argue that the Department should not assume that surrogate values represent 100 percent concentration and therefore should make no adjustment where the concentration applicable to a surrogate value cannot be determined.

DOC Position

Where we have been able to determine the purity or concentration applicable to a surrogate value, we have adjusted for differences, if any, between the surrogate and the actual material. Otherwise, we have attempted no adjustment for purity or concentration.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of pure magnesium from Ukraine that are entered, or withdrawn from warehouse, for consumption on or after November 7, 1994, which is the date of publication our notice of preliminary determination in the **Federal Register.** The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

Consistent with our practice in investigations involving imports from NME countries, we have calculated a single, ''Ukraine-wide'' deposit rate applicable to all exporters in Ukraine, as well as any exporters in third countries that have not been assigned a company-specific margin. As is discussed under ''All Other Companies'' in the ''Fair Value Comparisons'' section of this notice, the record in this investigation indicates that Ukraine exporters of magnesium may not have responded to our questionnaire; therefore, the ''Ukraine-wide'' deposit rate has been calculated based on total BIA.

The weighted-average dumping margins are as follows:

Manufacturer/producer exporter	Weighted-average margin percentage
Gerald Metals	103.27
MG Metals	79.87
Hochschild Partners	92.21
Ukraine-Wide Rate	104.27

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will within 45 days determine whether imports the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist,

[7] *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991)

[8] Preliminary Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China (59 FR 64191, December 13, 1994)

the investigation will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on all after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: March 22, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–7775 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–832 and A–570–833]

Notice of Final Determinations of sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–1769, respectively.

Final Determinations

The Department of Commerce (the Department) determines that pure magnesium and alloy magnesium from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the Department announced its preliminary determinations on October 27, 1994, (59 FR 55424, November 7, 1994) the following events have occurred:

On October 19, 1994, Min He Magnesium (Min He), a producer and exporter of the subject merchandise, and Xiamen Xing Xia Co. Ltd (Xing Xia), an exporter of the subject merchandise, requested that we postpone our final determinations by 60 days pursuant to 19 CFR 353.20(b)(1). On November 7, 1994, we published a notice postponing the final determinations (59 FR 55424).

In January, 1995, we conducted verification of the questionnaire responses at Min He and Xing Xia. On February 10, 1995, petitioner filed a case brief. On February 17, 1995, respondents filed a rebuttal brief and petitioner withdrew its request for a public hearing.

Scopes of Investigations

The scopes of these investigations have been modified since the preliminary determination in order to clarify the distinctions between pure magnesium and alloy magnesium. See Comment 1 in the ''Interested Party Comments'' section of this notice, below.

A. Pure Magnesium

The product covered by this investigation is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as ''ultra-pure'' magnesium);

(2) Products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as ''pure'' magnesium); and

(3) Products (generally referred to as ''off-specification pure'' magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

''Off-specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this investigation are alloy primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1 mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.11.00, 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

B. Alloy Magnesium

The product covered by this investigation is alloy primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.

Alloy magnesium products are produced by adding alloying elements to pure magnesium in order to alter the mechanical and physical properties of the magnesium to make it suitable for use as a structural material. Alloy magnesium is used primarily for casting or in wrought form. It is harder and

stronger than pure magnesium and may possess a higher corrosion resistance.

This investigation covers alloy primary magnesium which contains 50% or greater, but less than 99.8%, primary magnesium, by weight, and one or more of the following: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths in amounts which, individually or in combination, constitute not less than 1.5% of the material, by weight. Products that meet the aforementioned description but do not conform to ASTM specifications for alloy magnesium are not included in the scope of this investigation. In addition to primary magnesium, alloy magnesium may contain magnesium scrap, secondary magnesium, or oxidized magnesium in amounts less than the primary magnesium itself.

Alloy primary magnesium is cast and sold in various physical forms and sizes, including ingots, slabs, rounds, billets and other shapes.

Excluded from the scope of this investigation are pure primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope include products having a maximum physical dimension (*i.e.*, length or diameter) or 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Periods of Investigation

The period of investigation (POI) for pure magnesium is April 1, 1993 through March 31, 1994. The POI for alloy magnesium is September 1, 1992 through March 31, 1994.

Best Information Available (BIA)

The Department's antidumping questionnaire was sent to seven companies located in the PRC, in addition to the copy sent to the Ministry of Foreign Trade and Economic Cooperation. Of these seven companies, responses were received from only one, Min He. Two companies, Luoyang Copper Working Plant and Northeast Light Alloy Fabrication Plant, replied that they did not export the subject merchandise. Two companies, Harbin Non-Ferrous Metal Smelter and Fushun Aluminum Smelter, did not respond to the questionnaires at all and the questionnaires sent to the other two companies, Yingkou Magnesium Works and Tongling Copper Smelter, were returned as undeliverable. Another company, Xing Xia, was accepted by the Department as a voluntary respondent.

In investigations involving imports from non-market economy countries, unless respondents request and qualify for separate rates, we apply the same rate to all exports from that country and treat responses from individual companies as single consolidated response. Since none of the respondents requested a separate rate in either the pure magnesium or alloy magnesium investigation, all respondents are treated as one entity for the purposes of assigning an antidumping margin in each investigation.

At the time of the preliminary determination, it was unclear whether there were nonresponding potential exporters during the POI. Since the preliminary determination, we have identified nonresponding potential exporters. The required consolidated response in this case is incomplete because these companies failed to respond to the Department's questionnaire. Moreover, the portion of the response that was submitted, (*i.e.* Min He and Xing Xia) failed to verify. (*see* verification reports dated February 3, 1995)

Although the participating respondents, Min He and Xing Xia, did attempt to cooperate with the Department's requests for documentation during their respective verifications, they were not able to do so and the Department was unable to verify the accuracy and completeness of the information reported in their questionnaire responses. Therefore, the Department must assign an antidumping margin on the basis of BIA pursuant to section 776 (b) and (c) of the Act.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns less adverse margins to those respondents that cooperated in an investigation and more adverse margins to those respondents that did not cooperate in an investigation. The Department's two-tiered methodology for assigning BIA has been upheld by the U.S. Court of Appeals for the Federal Circuit. (*See* Allied Signal v. United States, 996 F.2d 1185 (Fed. Cir. 1993) (June 22, 1993)). In this case, the Department has determined that the respondent, a single entity as explained above, is uncooperative because known exporters did not respond to the Department's questionnaire. This fact impeded significantly the Department's investigation.

When a respondent is uncooperative, the Department normally uses as BIA the higher of 1) the highest margin in the petition; 2) the highest margin calculated for any other respondent within the same country for the same class or kind of merchandise; or 3) the estimated margin found for the affected firm in the preliminary determination. (*See* Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 1892, 19033 (1989)). In this investigation, the preliminary determination margins are higher than the petition margins, as revised in the initiation notice. (*See* Initiation of Antidumping Duty Investigations: Pure and Alloy Magnesium From the People's Republic of China, the Russian Federation, and Ukraine (59 FR 21748, April 26, 1994). Therefore, as BIA, we are assigning to all exporters of PRC pure magnesium and ally magnesium the rates calculated in the preliminary determinations. (see Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plated From Belgium (58 FR 37083, July 9, 1993). (For further discussion of BIA, see Comment 2)

Verification

As provided in section 776(b) of the Act, we attempted to verify all information submitted by respondents for use in our final determinations. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents. However, as noted above, we were not able to verify the accuracy and completeness of the respondents' submissions.

Interested Party Comments

Comment 1

Petitioners contend that the Department should clarify the scopes in these proceedings. Petitioners argue that ''off-specification'' pure magnesium (*i.e.*, magnesium that is less than 99.8% pure magnesium but that otherwise can be and is considered pure magnesium by consumers) should be considered within the scope of the pure magnesium proceeding instead of within the scope of the alloy magnesium proceeding. Petitioners propose revised scopes to achieve this end.

Respondents argued that petitioners' request for ''clarification'' of scope was untimely. They further argued that petitioners concerns about circumvention are merely speculative because no order yet exists as a result of this investigation. Furthermore, respondents stated that petitioners should have their concerns addressed in a request for scope review or an anticircumvention investigation.

DOC Position

We agree with petitioners that some magnesium, despite not meeting the normal definition (based on magnesium content) of pure magnesium, nevertheless may be used in applications that normally require pure magnesium. In fact, the record in this case show sales of such magnesium were supplied to fulfill orders for pure magnesium.

We therefore have revised the scopes of these investigations to include this off-specification pure magnesium within the definition of pure magnesium, described as any product (1) that is 50 percent or more primary magnesium, and (2) that does not meet any ASTM definition of alloy magnesium (based on specific percentages of one or more alloying agents).

We not that our consultations with the Bureau of Mines established that the industry standards for alloy magnesium are ASTM standards. (*See* Final Calculation Memorandum of the concurrent investigations of pure magnesium and alloy magnesium from the Russian Federation and ally magnesium from the Ukraine). Consequently, we have not adopted petitioner's proposed scope language that would describe off-specification pure magnesium as any product, *inter alia*, that does not meet ASTM standards or other industry standards.

Although ASTM standards define pure magnesium as not less than 99.8 percent magnesium, metal with a primary magnesium content below that level should be captured in the scope of the pure magnesium investigations if it cannot legitimately be defined as a specific ASTM alloy magnesium.

The fact that both scopes capture only merchandise with primary magnesium content of 50 percent or greater means that merchandise composed of 50 percent or more secondary magnesium would not fall within either scope.

Comment 2

Petitioners state that the Department should base the dumping margins for all producers and exporters of magnesium from the PRC on BIA, and argue that the BIA rate should be calculated using the factors data found at verification and the lowest United States price in the petition. At verification we found discrepancies in the factor usage data, the additional unreported factors, as well as, mis-reported data on labor and electricity. However, if the suggested methodology is not used, petitioners argue that the Department should not use as BIA a rate lower than the highest rate alleged in the petition.

Min He and Xing Xia argue that, although that they were unable to provide all of the information requested by the Department, they were cooperative and provided timely responses. In view of this cooperation, they argue the Department should not resort to the punitive first tier BIA. Instead, the Department should base its BIA rate on the margins alleged in the petition. They also argue that since the Department was unable to verify the information reported, it must revert to BIA from the petition and publicly available sources, and thus not use facts found at verification to calculate the foreign market value.

DOC Position

The Department does not agree that respondents should be granted cooperative BIA rates. As stated above, because no exporter is being granted a separate dumping margin, we are assigning one country-wide margin in each of the investigations. Given that certain exporters failed to respond to our questionnaire, we are assigning an uncooperative BIA rate, pursuant to our long-standing practice.

Petitioners have asked the Department to depart from its standard practice and adjust this BIA rate based on information discovered at verification. Petitioners are essentially asking the Department to adjust the BIA rate to make it more accurate. However, it is a generally accepted principle that BIA ''is not necessarily accurate information, * * * [but rather is] * * * information which becomes usable because respondent has failed to provide accurate information.'' (See *Association Columbiana de Exportadoras de Flores* v. *United States*, 704 F. Supp. 1114, 1126 (Ct. Int'l Trade 1989), *rev'd in part on remand*, 717 F. Supp. 834 (Ct. Int'l Trade 1989), *aff'd on other grounds*, 901 F.2d 1089 (Fed Cir. 1990) *cert. denied*, 111 S. Ct. 136 (1990)). The Department's practice is to apply, as BIA, the highest margin already calculated and not to engage in the exercise of attempting to calculate the highest possible margin. The purpose of resorting to BIA is not to be punitive but to encourage respondents to properly respond to the Department's requests for information. The Department believes that the 108.26% rate for pure magnesium and 79.38% rate for alloy magnesium accomplish this purpose.

Continuation of Suspension of Liquidation

In accordance with sections 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of pure magnesium and alloy magnesium from the PRC that are entered, or withdrawn from warehouse, from consumption on or after November 7, 1994, which is the date of publication of our notice of preliminary determination in the **Federal Register.** The Customs Service shall in each proceeding, require a cash deposit or posting of a bond equal to 108.26 percent *ad valorem* on all entries of certain pure magnesium from the PRC and 79.38 percent *ad valorem* on all entries of certain alloy magnesium from the PRC. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations. As our final determinations are affirmative, the ITC will within 45 days determine whether imports of either product are materially injuring, or threaten material injury to, the U.S. industry. In each proceeding, if the ITC determines that material injury, or threat of material injury does not

exist, that proceeding will be terminated and all securities posted will be refunded or cancelled. If, in either proceeding, the ITC determines that such injury does exist, the Department will issue an antidumping duty order for the appropriate proceeding directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

These determinations are published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: March 22, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–7776 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–DS–P

(A–821–805, A–821–806)

Notice of Final Determinations of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch, Dorothy Tomaszewski or Erik Warga, 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) 482–3773, (202) 482–0631 or (202) 482–0922, respectively.

Final Determination

We determine that imports of pure magnesium and alloy magnesium from the Russian Federation are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination on October 27, 1994 (59 FR 55420, November 7, 1994), the following events have occurred:

In December 1994, we issued sections A and C of our antidumping questionnaire [1] to respondent exporters Amalgamet Canada, Greenwich Metals, and Hochschild Partners. These companies provided responses to these questionnaires in December 1994 and January 1995.

All participating respondents' (in each proceeding) supplemental questionnaire responses were received and verifications were conducted as detailed in Appendix I.

On January 31, 1995, we amended our preliminary determinations to correct for certain ministerial errors (60 FR 7519, February 8, 1995).

Certain respondents (Amalgamet Canada, AVISMA, SMW, Gerald Metals, Greenwich Metals and Hochschild Partners) and petitioners filed case briefs. Rebuttal briefs were submitted by petitioners and the following respondents: Amalgamet Canada, AVISMA, SMW, Razno, Interlink, & AIOC, Gerald Metals, Greenwich Metals, and Hochschild Partners. A public hearing was held on February 28, 1995.

Scopes of Investigations

The scopes of these investigations have been modified since the preliminary determination in order to clarify the distinctions between pure magnesium and alloy magnesium. See Comment 9 in the ''Interested Party Comments'' section of this notice, below.

A. Pure Magnesium

The product covered by this investigation is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses:

(1) products that contain at least 99.95% primary magnesium, by weight (generally referred to as ''ultra-pure'' magnesium);

(2) products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as ''pure'' magnesium); and

(3) products (generally referred to as ''off-specification pure'' magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

''Off-specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this investigation are alloy primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.11.00, 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

B. Alloy Magnesium

The product covered by this investigation is alloy primary magnesium regardless of chemistry, form or size, unless expressly excluded

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[1] Section A requested general information on each company; and section C requested information on, and a listing of, U.S. sales made during the period of investigation (''POI'').

from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.

Alloy magnesium products are produced by adding alloying elements to pure magnesium in order to alter the mechanical and physical properties of the magnesium to make it suitable for use as a structural material. Alloy magnesium is used primarily for casting or in wrought form. It is harder and stronger than pure magnesium and may possess a higher corrosion resistance.

This investigation covers alloy primary magnesium which contains 50% or greater, but less than 99.8%, primary magnesium, by weight, and one or more of the following: Aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths in amounts which, individually or in combination, constitute not less than 1.5% of the material, by weight. Products that meet the aforementioned description but do not conform to ASTM specifications for alloy magnesium are not included in the scope of this investigation. In addition to primary magnesium, alloy magnesium may contain magnesium scrap, secondary magnesium, or oxidized magnesium in amounts less than the primary magnesium itself.

Alloy primary magnesium is cast and sold in various physical forms and sizes, including ingots, slabs, rounds, billets and other shapes.

Excluded from the scope of this investigation are pure primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope include products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Periods of Investigation

The POI in both proceedings is October 1, 1993, through March 31, 1994.

Fair Value Comparisons

A. Participating Respondents

To determine whether sales of pure magnesium to the United States by AIOC, Gerald Metals, Greenwich Metals, Hochschild Partners, HDM, Interlink, MG Metals, and Razno, and sales to the United States of alloy magnesium by Amalgamet, Gerald Metals, and SMW, were made at less than fair value, we compared the United States price (''USP'') to the foreign market value (''FMV''), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice.

Verification revealed that, for its POI sales to U.S. companies, there were no instances where Greenwich Metals' role in the sales process was that of being the first company to sell Russia-produced alloy magnesium to a U.S. customer. That is, all subject merchandise purchased by Greenwich was done so on terms that made Greenwich the U.S. customer of its supplier. Accordingly, Greenwich will be subject to the ''Russia-wide'' deposit rate for alloy magnesium.

Amalgamet Canada is closely related to W&O Bergmann in that a large percentage of each company's shares are owned by a common owner (Preussag). Bergmann was sent an antidumping questionnaire in August, but, despite its close relationship to Amalgamet, never apprised us of Amalgamet's POI U.S. sales of subject merchandise.[2]

The questionnaire sent to Bergmann clearly instructed Bergmann to report ''the names and addresses of all related companies in all countries dealing'' with the subject merchandise. Had Bergmann properly participated in these investigations, Amalgamet would have been identified in a timely fashion, and would have been instructed to respond to the questionnaire. Amalgamet and Bergmann should have known that Amalgamet's participation in these proceedings was mandatory based on Bergmann's receipt of the questionnaire. Accordingly, Amalgamet and Bergmann will be assigned a deposit rate based on the best information available (''BIA'') based on their failure to participate despite early notice of the investigations.

B. All Other Companies

In both proceedings, there is nothing on the record to indicate that any exporters within Russia failed to report U.S. sales of subject merchandise during the POI. The only Russian exporter to have sold either product to the United States during the POI is SMW. Because SMW's calculated margin in both proceedings is zero, we have based the ''Russia-wide'' deposit rate on a simple average of the rates applicable to all companies considered mandatory respondents, excluding calculated rates that are zero or *de minimis*. In these proceedings, because all such companies' margins are based on BIA, the ''Russia-wide'' rate is also based entirely on BIA.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to respondents that cooperated in an investigation and margins based on more adverse assumptions for those respondents, like the non-participating respondents in this investigation, which did not cooperate in an investigation. As outlined in Coumarin,[3] where, as here, a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (1) the highest calculated rate of any respondent in the investigation, (2) the

[2] Until just prior to our preliminary determinations, the record showed that Bergmann by itself was a mandatory respondent; this changed (albeit temporarily given Amalgamet's post-preliminary-determination revelation that it had made U.S. sales) when Bergmann stated in an October 1994 fax that earlier-disclosed sales of subject merchandise, although to a U.S. company, were sold ''fob Rotterdam, Antwerp or Zeebrugge'' without knowledge of destination on Bergmann's part.

[3] Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China (59 FR 66895, December 28, 1994).

highest margin alleged in the petition, or (3) the margin from the preliminary determination for that firm.

Accordingly, we have set the Russia-wide deposit rate at 100.25 percent and 153.65 percent, *ad valorem*, in the pure magnesium and alloy magnesium, respectively. These margins represent the highest margin in the petition, as recalculated by the Department for purposes of initiating this proceeding and as further adjusted to account for factors of production listed in the petition that were not valued at the time of initiation, but for which information is on the record upon which to base a surrogate value.

United States Price

As detailed below, we based USP on purchase price, in accordance with section 772(b) of the Act, when the subject merchandise was sold directly by the exporters to unrelated parties in the United States prior to importation into the United States and because exporter's sales price (''ESP'') methodology was not indicated by other circumstances.

We based USP on ESP, in accordance with section 772(c) of the Act, when the subject merchandise was sold to the first unrelated purchaser after importation into the United States.

Both purchase price and ESP were based on packed prices to unrelated purchasers in the United States, according to the applicable delivery terms, with appropriate price adjustments. The following is a summary of U.S. price calculations for each exporter, with an asterisk (''*'') designating price adjustments applicable to some but not all sales (see Final Calculation Memorandum, on file in room B–099 of the Main Commerce Department Building, for details of these adjustments).

Exporter	Terms of sale	Price adjustments
Pure Magnesium		
AIOC (PP, ESP)	CIF, FOB, Delivered	Foreign inland freight, storage charges, inspection charges*, sample costs charges*, document charges*, other foreign inland freight, dunnage, ocean freight, seaway tolls, U.S. duty, stevedoring, wharfage*, unloading charges*, warehousing*, U.S. inland freight.
Interlink (PP)	Delivered, In-Warehouse	Foreign insurance, ocean freight, marine insurance, procedure fees, harbor maintenance fees, U.S. inland freight, U.S. inland insurance*, U.S. brokerage.
Gerald (PP)	In-Warehouse, Delivered, FOT Warehouse.	Foreign brokerage, foreign inland freight*, ocean freight, U.S. inland freight*, U.S. brokerage, oxidation credits.*
Greenwich (PP, ESP)	Delivered, FOT, In-warehouse.	Discounts*, foreign brokerage, ocean freight, marine insurance, U.S. duty, U.S. inland freight*, U.S. inland insurance, U.S. brokerage, third party payments.*
Hochschild (PP)	Delivered	Foreign brokerage, ocean freight, marine insurance, U.S. duty*, U.S. inland freight*, U.S. brokerage*, third party payments.*
HDM (ESP)	Delivered	Ocean freight, U.S. duty*, U.S. inland freight, U.S. brokerage*, repacking*, U.S. containerization*, other containerization.
MG (PP, ESP)	Delivered	Foreign brokerage*, foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. inland insurance, U.S. brokerage, repacking.*
Razno (PP)	CIF, FOB	Foreign brokerage, foreign inland freight, oxidation credits.*
SMW (PP)	FOB	Foreign brokerage, foreign inland freight.
Alloy Magnesium		
SMW (PP)	FOB	Foreign brokerage, foreign inland freight.
Gerald (PP)	In-Warehouse, Delivered FOT Warehouse.	Foreign brokerage*, foreign inland freight*, ocean freight, U.S. duty*, U.S. inland freight, U.S. brokerage, third party payments.

From each exporter's U.S. price, we also deducted foreign inland freight between the factory and the reported intermediate destination (*e.g.*, Rotterdam) as follows: For SMW and Razno, we used reported distances and transport modes to calculate an appropriate surrogate factory-to-border freight amount on the basis of surrogate freight rates in Brazil; for all other exporters, we deducted the per-ton foreign inland freight amount reported in the petition as best information available because those exporters did not in their questionnaire responses information with respect to such charges. We made no deduction from USP to account for exporter-incurred selling expenses, nor did we deduct export taxes paid by Russian companies to the Russian government because the actual amounts paid are an internal expense within an NME country. We adjusted reported marine insurance and ocean freight charges for Razno as follows: a reported figure that was an extended value (*i.e.*, an amount applicable to the entire transaction) was adjusted to reflect a per-unit amount.

The following adjustments were made to the reported U.S. sales of these exporters pursuant to our findings at verification (*see* Final Calculation Memorandum, for details of these adjustments):

AIOC (Pure Magnesium): AIOC's final U.S. sales listing was adjusted to exclude certain sales that verification revealed had been improperly included. Based on verification findings, minor corrections to reported figures for inspection fees, sample costs, dunnage, ocean freight, seaway tolls, U.S. duties, unloading. Additionally, we deducted an amount for marine insurance based on verification.

Gerald Metals (Pure Magnesium and Alloy Magnesium): Minor corrections to reported figures for foreign brokerage, foreign inland freight, ocean freight, U.S. brokerage, third party payments, and oxidation credits were made based on verification findings.

Hochschild Partners (Pure Magnesium): Hochschild's final U.S. sales listing was adjusted to exclude certain sales that verification revealed had been improperly included. An additional unreported U.S. sale was discovered at verification and included in its final sales listing. For purposes of calculating a unit margin for this sale, we applied the highest reported charges for ocean freight, foreign brokerage and marine insurance, as well as the highest reported U.S. movement charges applicable to the delivery terms of this sale. Minor adjustments to reported figures for foreign brokerage, ocean freight, and marine insurance were also made based on verification findings. Finally, third party payment figures relating to certain sales were disclosed at verification.

Hunter Douglas (Pure Magnesium): Minor corrections to reported figures for ocean freight, U.S. duty, U.S. brokerage, and U.S. containerization charges were made based on verification findings.

Interlink (Pure Magnesium): Interlink's final U.S. sales listing was adjusted (a) to exclude certain sales that had been improperly included and (b) to include certain sales that had been improperly excluded. Additionally, minor corrections to reported figures for ocean freight and U.S. brokerage were made based on verification findings.

Razno Alloys (Pure Magnesium): Razno's final U.S. sales listing was adjusted (a) to exclude certain sales that had been improperly included and (b) to include certain sales that verification revealed had been improperly excluded. Additionally, although we considered Razno a Russian company for our preliminary determination because its sales office is in Moscow, we have determined that Razno would more properly be characterized as a Swiss company. It is registered in Switzerland, its accounts are kept in Switzerland, and its ownership is majority non-Russian. Finally, minor corrections were made to reported figures for foreign brokerage based on verification.

Foreign Market Value

For sales of magnesium produced by Avisma and SMW, we calculated FMV based on factors of production cited in the preliminary determination, making adjustments based on verification findings (see Final Calculation Memorandum). To calculate FMV, the verified factor amounts were multiplied by the appropriate surrogate values for the different inputs. We have used the same surrogate values used in the preliminary determination with the exception of certain corrections made based on verification or interested party comments.

Based on verification, we adjusted certain factors' value to reflect the actual purity used in the production of subject merchandise.

We recalculated certain inland freight distances between factory and input supplier based on verified distances.

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for the above-mentioned exporters. The factors used to produce pure and alloy magnesium include materials, labor, and energy. To calculate FMV, the reported quantities were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of surrogate values, see our Final Calculation Memorandum.) A factory overhead figure was also included in the FMV calculation based on a percentage of materials, labor and energy. We also granted certain by-product offsets against the cost of manufacturing (*i.e.*, the sum of materials, labor, energy and factory overhead). We then added the statutory minimum amounts for general expenses and profit, the cost of containers and coverings, and other expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

We used the same methodology as in the preliminary determination to value factors of production, with the following exceptions: (1) We used a publicly available, published Brazilian rate for unskilled labor; (2) we used a publicly available, published Brazilian unit price for natural gas; and (3) we applied a publicly available, published Brazilian industrial rate for electricity used by electricity-intensive industries with comparable levels of electricity consumption and capacity as magnesium producers.

A. Market Reforms in the Russian Federation

In accordance with section 773(c) of the Act, the Department normally uses a factor valuation methodology to calculate foreign market value when the country involved is an NME country and the Department determines that it cannot determine foreign market value based on the respondent's prices or costs. Alternatively, an NME-country respondent may argue that market-driven prices characterize its particular industry and, therefore, despite NME status, that foreign market value should be calculated by using actual home market prices or costs (a market-oriented industry or ''MOI'' claim).

In these investigations, the Russian manufacturers, Avisma and SMW, claim that economic conditions now prevalent throughout Russia warrant revocation of Russia's NME-country status, effective January 1, 1994. Alternatively, the two companies claim MOI for the magnesium industry in Russia.

Regarding the revocation of NME status, the Department's analysis centers around a government's role in economic activity. See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Poland (58 FR 37205, July 9, 1993). Consistent with the factors described in section 771(18), the Department considers the extent to which resources are allocated by the market or government, taking into account government involvement in currency and labor markets, pricing, and production and investment decisions. Where resources are not allocated by the market, it would be difficult to conclude that home market prices or costs should be used to calculate fair value.

Evidence provided in these proceedings indicates that Russia is in the process of implementing extensive reforms to achieve its goal of becoming a market economy. The freeing of most prices in December 1991 and the privatization of most enterprises formerly within the state-planning system are important steps in moving Russia towards a market economy.

We cannot conclude, however, based on the information in this record that Russia should be treated as a market economy for purposes of the antidumping duty law. The Russian economy, having emerged from a centrally-planned system, is in a state of transition. Many of the state controls have been abandoned, but that does not mean that functioning markets have replaced controls. Because the evidence does not demonstrate that prices and costs in Russia adequately reflect market considerations, we cannot at this time alter Russia's designation as a nonmarket economy.

Regarding the MOI claim, information on the record suggests that the government continues to be involved in the Russian magnesium sector. For example, the Russian Federal Committee on Metallurgy, a successor to the Ministry of Industry (Metallurgy Department), indicated in an official statement that it controls activity in the magnesium industry in Russia, noting particularly that it coordinates production, exports, and prices. Also, although the two producers under investigation have been privatized, this same statement indicates that the Committee may be using the remaining government interest in these companies to carry out its intentions with respect to pricing and production. For these reasons, as stated in the preliminary determination, we determine that the prices or costs of producing magnesium in Russia should not be used to calculate fair value. No new information has been presented since then to alter this conclusion.

B. Separate Rates

In each of these proceedings, SMW requested that the Department calculate a dumping margin and assign a deposit rate separate from other potential Russian exporters. For our preliminary determination, we decided that we did not need to address the issue because (1) SMW was the only Russian exporter of alloy magnesium; and (2) we decided that SMW's pure magnesium exports were too small to consider in margin

calculations. However, we have now reconsidered our position that SMW's status as the only Russian company to sell to the United States obviates the need for a separate rates analysis when a separate rates claim has been put forward. SMW has claimed that government ownership and control are absent and, therefore, as a POI exporter, it is entitled to consideration of its claim.[4]

Further, we no longer consider SMW's pure magnesium sales insignificant because we have determined, as discussed above, that Razno Alloys, preliminarily found to be a Russian company, is actually a Swiss company. Razno's redefined status as a Swiss company renders SMW's pure magnesium exports significant in that SMW was the only company in Russia to have exported any pure magnesium directly to the United States. Thus, SMW is the only Russian company that exported either pure or alloy magnesium to the United States.

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department employs the criteria developed in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588, May 6, 1991) (Sparklers) and amplified in Silicon Carbide. Under this analysis, the Department assigns a separate rate only when an exporter can demonstrate the absence of both *de jure*[5] and *de facto*[6] governmental control over export activities.

Ownership

SMW is a joint-stock company (''JSC'') that was state-owned until 1992, when a transition to private and employee ownership was begun. At the end of the POI, the Perm Regional Fund of State Property (''Perm Fund'') owned 20 percent of SMW's shares, with the rest of shares owned by a workers collective—51 percent—or private companies (*e.g.*, investment funds). Verification supported SMW's account of its ownership status.

Control

Government control over SMW's export operations (both *de jure* and *de facto*) is absent. Specifically:

The July 1, 1992, Decree of the President of the Russian Federation: Measures for the Organization and Reconstruction of State Enterprises, and the Transferring of State Enterprises into Joint Stock Companies (''Decree 721''), establishes that JSCs are ''out of the control of Ministries, State and Local administrative organs and authorities.''

The July 3, 1991, law, ''On Privatization of State-Owned and Municipal Enterprises,'' is divided into three sections dealing with general principles, procedures and means, and concluding principles. It is also divided into 31 articles. Significant articles include:

Article 6, which establishes Russian Federal Property Fund to act as temporary ''possessor of RSFSR [Russian Federation] deeds to enterprises'' and to sell shares and deeds to enterprises. Limits Fund's voting rights to a maximum of 20 percent of shares. States that Fund may not ''interfere in the operations of enterprises except in cases stipulated by enterprises' founding documents and the legislation of the RSFSR * * *''; and

Article 9, which forbids buying of enterprises undergoing privatization by state entities or certain state-held companies/funds.

With respect to *de facto* aspects of government control over export activities, SMW sets its own prices[7] and ''has free access to'' the proceeds and profits of its export sales, would finance its own losses if they occurred, and could purchase foreign currency with rubles or otherwise dispose of assets (but has never actually had done so). Verification of sales transactions revealed no evidence of government involvement in the disposition of SMW's proceeds from export sales aside from the already-reported requirement that SMW convert half of foreign exchange earnings to rubles.

As a shareholder, the Perm Fund was able to appoint one of SMW's 15 Board members and votes in the appointment of the general director. The other 14 Board members are employees. In fact, minutes of SMW's 1993 Board meeting, examined at verification, did not appear to indicate participation by a representative associated with the Perm Fund or with any other government entity.

Although the Board of shareholders did not appoint SMW's general director, it did, based on the minutes of its 1993 meeting, reaffirm the basic terms of SMW's contract with the general director, who had been appointed before SMW became a JSC. This reaffirmation indicates that the Board controlled decisions regarding the appointment of management even though it did not choose to make a management change upon becoming a JSC.

In summary, the evidence favors a finding that government control is absent and, accordingly, we find that SMW should be considered a separate company for purposes of assigning a deposit rate.

C. Surrogate Country Selection

We selected Brazil as the appropriate surrogate country for the reasons set forth in our preliminary determinations. Since we find no compelling reason to change this selection, we have continued to base FMV on the values of the appropriate factors of production as valued in Brazil.

D. Factors of Production

For sales of magnesium produced by Avisma and SMW, we calculated FMV based on factors of production cited in the preliminary determination, making adjustments based on verification findings (see Final Calculation Memorandum). To calculate FMV, the verified factor amounts were multiplied by the appropriate surrogate values for the different inputs. We have used the same surrogate values used in the preliminary determination with the exception of certain corrections made based on verification or interested party comments.

Based on verification, we adjusted certain factors' value to reflect the actual purity used in the production of subject merchandise.

We have adjusted the surrogate inland freight charge for transporting factor inputs from supplier to factory to reflect the surrogate value for the actual quantity being transported. We

[4] Although Avisma also made a separate rates claim, it did not make any POI direct U.S. sales. It is, for good reason, unprecedented for the Department to entertain separate rates claims from companies that have not made direct sales to the United States: Analyzing and verifying separate rates claims from such companies would be a great burden, and government involvement in export sales operations could be hard to fully evaluate absent sales to the United States.

[5] Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies.

[6] The factors considered include: (1) whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (see *Silicon Carbide*).

[7] Although an export license was required in order to make export sales, and the nominal purpose was to allow the licensing authority to approve the export price, SMW characterized this procedure as pro forma. Verification revealed no indication that such control had ever been exercised: export licenses that had been issued, examined in the context of reviewing SMW's sales, appeared to reflect without exception prices negotiated between SMW and its customers. The price negotiation process did not appear to involve any government authorities.

recalculated inland freight distances between factory and input supplier based on verified distances.

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for the above-mentioned exporters. The factors used to produce pure and alloy magnesium include materials, labor, and energy. To calculate FMV, the reported quantities were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of surrogate values, see our final calculation memorandum.) We then added amounts for general expenses and profit, the cost of containers and coverings, and other expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

We used the same methodology as in the preliminary determination to value the raw materials, except where corrections were possible or necessary.

Verification

As provided in section 776(b) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Critical Circumstances

In accordance with section 735(a)(3) of the Act, we determine that critical circumstances exist with respect to imports of alloy magnesium from the Russian Federation. No new information has been placed on the record since our preliminary determination. Therefore, we continue to find that critical circumstances exist with respect to all imports of alloy magnesium except those of Gerald Metals and SMW.

Interested Party Comments

Comment 1: Russian Manufacturers' Knowledge of Destination

Petitioners contend that Avisma and SMW should be assigned BIA margins because they knew at the time of sale to third-country resellers that the merchandise was destined for the United States. Petitioners note that the producers completed GSP forms, sold to customers that had U.S. addresses, and were explicitly told by some customers of merchandise's destination. Because of this knowledge on Avisma's and SMW's part, petitioners argue, resellers claiming to be the first to sell to a U.S. customer in the sales process should be assigned the ''Russia-wide'' rate.

Avisma and SMW argue that they did not know at the time of sale that merchandise was destined for the United States. The companies assert that the GSP forms were filled out by the producers after the sales were made, indicating that at the time of sale the producers did not know the destination. Avisma and SMW argue that the customer's address is irrelevant because magnesium is a commodity product that can be sold anywhere in the world. Finally, the companies point out that verification confirmed that there was no indication that either Avisma or SMW failed to report any U.S. sales.

DOC Position

We agree with Avisma and SMW. Based on our examination of sales and export documents at verification, we found nothing to indicate any unreported instances of merchandise being sold with the knowledge at the time of sale that the ultimate destination was the United States. We verified that simply because a purchaser's address is in the United States does not mean that the merchandise is destined for the United States. In fact, magnesium sold to purchasers with U.S. addresses was frequently shipped to non-U.S. destinations. Although SMW did, as some exporters stated, eventually learn of some of its merchandise's sale to U.S. customers, this knowledge always came after SMW had sold the merchandise.

Comment 2: Completeness and Accuracy of Various Resellers' Reporting of U.S. Sales

Petitioners contend that total or partial BIA is warranted for AIOC, Razno, Interlink, Hochschild and Greenwich Metals because these companies made various errors in reporting U.S. sales that were not revealed until just prior to, or during, verification. Petitioners also advocate total BIA for each exporter for which any verification revealed that the exporter failed to report sales of the subject merchandise, as well as for all companies that refused verification.

The companies argue that BIA is not warranted because the errors made were not serious and were corrected.

DOC Position

We agree with petitioners in part.

We determined that the errors cited by petitioners for AIOC, Razno, and Interlink were inadvertent and were, in the end, verified. There is nothing to indicate that the omission of these sales would have had any impact on these companies' margins. Further, we are satisfied that the record is now complete and accurate as to these companies' POI sales of subject merchandise. Accordingly, the reported information, as corrected based on verification, is the appropriate basis for our respective LTFV determinations for AIOC, Razno, and Interlink.

We disagree that BIA is warranted for Hochschild's failure to report a pre-POI contract discovered at verification; instead, we have included in Hochschild's sales listing information gathered at verification regarding this sale.

We agree with petitioners that Hochschild and Greenwich Metals incorrectly reported certain sales as U.S. sales. Verification demonstrated that the contracts setting terms of sale by these companies' suppliers included an identification of the shipment destination. This fact outweighs the contention that the companies had the option of transshipping the merchandise to another country. Accordingly, we determine that Greenwich did not make any U.S. sales of alloy magnesium during the POI and we have not calculated a company-specific alloy magnesium margin for Greenwich. Instead, Greenwich will be subject to the ''Russia-wide'' rate. We have also eliminated these improperly included sales from Hochschild's sales listing and have assigned the appropriate margin to Hochschild's European supplier.

Finally, with the exception of those participating exporters that have remedied reporting deficiencies, any exporter that improperly did not report POI sales is subject to suspension of liquidation at the ''Russia-wide'' rate (which is based entirely on BIA), as are all companies that reported having made no sales.

Comment 3: Scope

Petitioners contend that the Department should clarify the scopes in these proceedings. Petitioners argue that ''off-specification'' pure magnesium (*i.e.*, magnesium that is *less* than 99.8% pure magnesium but that otherwise can be and is considered pure magnesium by consumers) should be considered within the scope of the pure magnesium proceeding instead of within the scope of the alloy magnesium proceeding. Petitioners propose revised scopes to achieve this end.

Greenwich argues that the proposed revised scopes are flawed because they appear to include secondary magnesium (*i.e.*, magnesium that has been remelted and recast) as subject merchandise.

DOC Position

We agree with petitioners some magnesium, despite not meeting the normal definition (based on magnesium content) of pure magnesium, nevertheless may be used in

applications that normally require pure magnesium. In fact, the records in the concurrent antidumping investigations of pure and alloy magnesium from the People's Republic of China show sales of such magnesium were supplied to fulfill orders for pure magnesium.

We therefore have revised the scopes of these investigations to include this off-specification pure magnesium within the definition of pure magnesium, described as any product (1) that is 50 percent or more primary magnesium, and (2) that does not meet any ASTM definition of alloy magnesium (based on specific percentages of one or more alloying agents).

We note that our consultations with the Bureau of Mines established that the industry standards for alloy magnesium are ASTM standards. (See Final Calculation Memorandum.) Consequently, we have not adopted petitioner's proposed scope language that would describe off-specification pure magnesium as any product, *inter alia*, that does not meet ASTM standards or other industry standards.

Although ASTM standards define pure magnesium as not less than 99.8 percent magnesium, metal with a primary magnesium content below that level should be captured in the scope of the pure magnesium investigations if it cannot legitimately be defined as a specific ASTM alloy magnesium.

The fact that both scopes capture only merchandise with primary magnesium content of 50 percent or greater means that merchandise composed of 50 percent or more secondary magnesium would not fall within either scope.

Comment 4: Surrogate Value for Electricity

Avisma and SMW contend that published, public information indicates that large industrial users of electricity in Brazil receive a lower electricity rate (compared to other types of users). Respondents assert that information on the record indicates that Avisma and SMW are ''large industrial users'' of electricity and, as such, would receive a lower electricity rate if they bought electricity in Brazil. Therefore, respondents argue the appropriate value for electricity is $0.0235/Kwh.

Petitioners contend that the Department should continue to use the $0.055/Kwh rate for electricity value because the record does not show that the rate advocated by Avisma and SMW is the rate actually paid by the magnesium industry in Brazil. Petitioners charge that the record shows that the Brazil ''large industrial user'' rates are (1) below cost because they are subsidized, and (2) generally not applicable because they are established pursuant to individual negotiations. Even if the Department were to accept Brazil electricity rate schedules submitted by Avisma and SMW, petitioners contend, there would be no way to determine which rate would be appropriate for Avisma and SMW.

DOC Position

We agree with Avisma and SMW that the Brazil ''large industry user'' rate is the rate they would have received had they been electricity consumers in Brazil during the POI. For each company, the record contains verified figures on both POI magnesium production and the number of kilowatt hours needed to produce one metric ton. Dividing the total number of kilowatt hours used in POI magnesium production by the number of hours in the POI clearly shows that, at least during the POI, the kilowatt capacity of each user was significantly higher than the minimum necessary to receive the ''large industrial user'' rate in effect in Brazil during the POI. Although subsidization would not necessarily render a surrogate value inappropriate, petitioners have not in this instance presented evidence of subsidization (providing only a vague reference to possible subsidies in the Amazon region).

Comment 5: By-Product Offset Methodology

Petitioners contend that the Department's decision to permit an offset to material surrogate values to account for by-products of the magnesium production process was erroneous for the following reasons: (1) The producers were unable to demonstrate for the record that any economic benefit accrued to the firm and that the benefit was linked to the production of the subject merchandise; (2) the surrogate value used was incorrect in that it did not correspond to the actual purity level of the by-product produced and was not calculated net of transportation and processing costs; and (3) any adjustment determined to be appropriate should have been made to the cost of manufacture rather than cost of materials so as not to understate factory overhead, general expenses, and profit.

Avisma and SMW argue that there is nothing on the record indicating that they should not qualify for by-product offsets. With respect to valuation, the companies do not dispute that an appropriate purity level adjustment should be made, but contend that there are no processing costs associated with the by-products which are not captured in costs associated with primary product production. Finally, Avisma and SMW argue that an adjustment to cost of materials is the appropriate adjustment because the Department is using the factors-of-production methodology to calculate FMV.

DOC Position

We agree with petitioners in part and with Avisma and SMW in part. First, because the by-products result from the production process and are either used by the magnesium producer or sold for use by some other company in the NME country, we agree with Avisma and SMW that they are a factor whose value must be taken into account in our calculation of the fair value against which to test U.S. prices. Second, we have adjusted surrogate CIF import value of the by-products to reflect concentration differences. However, no adjustment to value for transportation costs is appropriate. For by-products, as for material factors of production consumed in the production process, we consider the import values used to be surrogates for ex-factory, freight-exclusive prices from suppliers to consumers. Third, we agree with petitioners that the proper adjustment is a reduction in the cost of manufacture. This adjustment increases the surrogate overhead amount commensurately with the value of the by-product, thereby eliminating the need for valuing any additional processing-related elements. Additionally, an adjustment to cost of manufacture is consistent with Department practice in other NME investigations (*see, e.g., Coumarin*[8]).

Comment 6: Surrogate Factory Overhead

Petitioners contend that the Department must account for costs associated with the rebuilding of electrolytic cells by adjusting upward the surrogate overhead percentage used in the preliminary determinations. Petitioners suggest using their own experience as to the cost of cell rebuilds expressed as a percentage of the sum of material, labor, and energy costs. Petitioners also suggest that the Department should, in calculating FMV, use an overhead ratio that includes energy in the numerator since verified energy amounts for the producers represent only energy directly related to production.

Avisma, SMW, Interlink, Razno, and AIOC argue that an adjustment to

[8] Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China (59 FR 66895, December 28, 1994)

overhead based upon petitioners' cell rebuild experience would be inconsistent with both the Act and Department practice and is, therefore, unwarranted. With respect to energy, these respondents argue that (1) inclusion in the denominator of the overhead ratio should be limited to indirect energy costs, and (2) only direct energy should be included in the base to which the overhead percentage is applied in calculating surrogate overhead.

DOC Position

We agree with respondents that the adjustment proposed by petitioners is not appropriate in this instance. Although we may take into account petitioners' experience in extraordinary circumstances, we generally do not consider petitioners' costs as an appropriate benchmark by which to test the accuracy of surrogate country values. Further, the fact that one element (*i.e*, cell rebuild) of factory overhead has significant cost associated with it does not invalidate the overhead percentage used. Factory overhead is a combination of elements, some of which may be more or less expensive depending on the product or even the company. The Department has rejected item-by-item evaluation of overhead components in the past (see the final determination of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the Socialist Republic of Romania, (52 FR 17433, 17436, May 8, 1987)), and we see no reason to alter this practice in this case.

Further, there is no contrary evidence which indicates that the overhead percentage used for the preliminary determinations is an inappropriate surrogate figure. In the absence of an actual overhead for Brazil's magnesium industry, the Department will continue to rely on the surrogate overhead percentage used in the preliminary determination.

Comment 7: Surrogate General Expenses and Profit

Petitioners argue that the percentage used to account for producers' general expenses in calculating FMV should be changed from the statutory minimum to 26.92 percent, which is the ratio of SG&A expenses to cost of goods sold based on figures reported in the 1992 financial statement of an aluminum manufacturer in Brazil. Petitioners also argue that an additional amount should be included in FMV calculations in order to reflect general expenses incurred and profit realized by each reseller involved in the sales process. Petitioners argue that, because the responding resellers failed to provide their selling expenses (despite a Departmental request to do so in the questionnaire), the Department should add an amount based on financial statements submitted by resellers.

With respect to surrogate SG&A for manufacturers, Avisma, SMW, Interlink, Razno and AIOC argue that the figures put forward by petitioner are bogus because they involve application to an inflation-adjusted base of a percentage that is based on figures that have not been adjusted for inflation. These respondents argue that their own submitted surrogate information is superior to petitioners' information because it is inflation-adjusted. With respect to the question of whether to include in FMV an amount for reseller general expenses, the five aforementioned respondents, along with Greenwich, Hochschild, and Gerald Metals, assert that petitioners have provided no convincing rebuttal to the Department's recent rejection of such a request in Coumarin.

DOC Response

With respect to the question of the appropriate surrogate for manufacturer general expenses, we agree with Avisma, SMW, Interlink, Razno and AIOC that use of inflation-adjusted figures is the most appropriate basis for calculating the SG&A ratio. Accordingly, we have used either an appropriate figure from the record or the statutory minimum (10%), whichever is greater.

We also agree with respondents that addition to FMV of actual reseller general expenses would be inappropriate. Given that Russia is an NME and the Russian magnesium industry has not been found to be market oriented, section 773(c) of the Act requires that the Department measure U.S prices against the factors of production (materials, labor, energy, and overhead) used in producing the merchandise, valued in an appropriate surrogate country, plus general expenses, profit and containers. The Act's only specific guidance as to the valuation of general expenses, profit and containers is to establish minima for the first two. Our regulations, meanwhile, instruct us to ''include in this calculation of constructed value an amount for general expenses and profit, as required by section 773(e)(1)(B) of the Act. (19 CFR 353.52(c)) The Department has not interpreted the Act and the regulations as requiring use of actual expenses and profit for these FMV components when FMV is based on factors of production; the Department has also explicitly rejected such adjustments in prior NME proceedings (see, *e.g.*, Coumarin and Sparklers [9]). Moreover, to do so simply does not make sense because it amounts to a comparison of apples and oranges. In NME proceedings, the FMV is normally based completely on factors valued in a surrogate country (without regard to, for example, actual selling expenses) on the premise that the actual experience cannot be meaningfully considered. Were the question simply one of ''traditional'' dumping by trading companies, the market-economy price-to-price or price-to-CV methodology would appropriately be employed; actual selling expenses would have been accounted for on both U.S. prices and foreign market prices (or, if appropriate, constructed value, in which case other general expenses and profit would also have been taken into account). Accordingly, we have continued to value general expenses and profit by simply applying to the surrogate-based cost of manufacture the greater of either appropriate surrogate percentages or the statutory minima.

Comment 8: Market Orientation (Russia and Magnesium Industry)

Avisma and SMW contend that, although they ''do not expect the magnesium investigation[s] to result in the revocation of Russia's NME status,'' consideration of whether to revoke Russia's NME status should hinge upon whether there are concrete indicators of market-driven activity rather than on the degree to which the market has moved toward ''an orderly Western-style brand of capitalism.'' The companies also state for the record that they demonstrated that the Russian magnesium industry is market oriented, but opted not to pursue this tack because they anticipated favorable outcomes using factors of production valued in a surrogate country.

Petitioners state that the records in these investigations offer no basis for determining that Russia is no longer an NME for purposes of these investigations, nor do the records support a finding that the magnesium industry is market oriented.

DOC Position

As discussed in the ''Foreign Market Value'' section, above, we have determined that it would be inappropriate to alter Russia's designation as an NME, and that the Russian magnesium sector is not a market-oriented industry. Should these

[9] Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588, May 6, 1991)

issues arise in future antidumping proceedings involving merchandise from the Russian Federation, the status of market reforms and market orientation of specific industries will be carefully evaluated if raised by parties in those proceedings.

Comment 9: Separate Rates

Petitioners argue that Avisma and SMW are subject to *de jure* and *de facto* government control and thus do not warrant separate rates.

SMW and Avisma counter that they are fully entitled to separate rates.

DOC Position

We agree with respondents in part. As is detailed above, we find that SMW has demonstrated the absence of *de jure* and *de facto* government control and thus is entitled to a separate rate in both proceedings. However, because Avisma did not make any POI U.S. sales of subject merchandise in either proceeding, it is not necessary to address the question of whether Avisma should be assigned a separate rate since such an action would result in no difference in the deposit rate that would apply to any future direct U.S. sales by Avisma.

Comment 10: Export Taxes

Petitioners argue that a tax imposed by the Russian government on magnesium exports must be accounted for in making LTFV comparisons because (1) section 772(d)(2)(B) requires deduction from U.S. price of export taxes, and (2) the tax imposition had the effect of reducing net receipts to the Russian producers selling their magnesium.

DOC Position

We disagree, and have not accounted for the export tax in our LTFV calculations. With respect to the reduction of net receipts to Russian producers, the premise in determining values in NME proceedings is that pecuniary aspects of internal transactions are considered meaningless and thus ignored. The export tax paid to an NME government is an intra-NME transfer of funds between a Russian producer and the Russian government. As such, it is inappropriate to account for such transfers in our LTFV analysis just as it is NME prices and costs.

The Department has interpreted section 772(e)(2), another paragraph dealing with the general question of reductions to U.S. price, as not requiring the deduction of selling expenses from ESP when FMV is based on factors of production. The issue of the export tax is analogous. Similarly, we interpret 772(d)(2)(B) as not requiring the deduction of an intra-NME transfer of funds, even if it is in the form of an export tax. Finally, we note that, in these proceedings, even if a reduction to USP to account for the export tax had been deemed appropriate, it would not have resulted in positive margins for any company receiving a calculated rate.

Comment 11: Surrogate Country Selection

Avisma and SMW contend that Poland, not Brazil, is the more appropriate surrogate country because Poland is the market economy country that most resembles the Russian Federation in economic terms and because Poland produces comparable merchandise. The companies assert that, in selecting a surrogate country, economic similarity should outweigh production of the investigated product.

Petitioners argue that Brazil is the appropriate surrogate country citing, among other factors weighing against selection of Poland, the fact that Poland produces an insignificant quantity of aluminum and no magnesium.

DOC Response

We agree with petitioners. Selection of a proper surrogate country must be made on case-by-case basis, in consideration of the Department's judgment of how to weigh facts on the record within the parameters prescribed by statute and regulations, as well as case precedent. Based on our experience in this case and previous proceedings involving magnesium, we judged electricity use to be a very important factor and thus gave it great weight under the rubric of product comparability. Given the economic comparability of Brazil to the Russian Federation, and since Brazil is a significant producer of electricity-intensive products such as magnesium and aluminum, we continue to find that Brazil is the most appropriate surrogate country in this case.

Comment 12: Quantity and Surrogate Value of Natural Gas, Liquid Petroleum Gas, and Heavy Oil

Petitioners contend that the Department should correct for a mathematical error made in converting a surrogate value for natural gas from a price per cubic meter to a price per metric ton. Petitioners also suggest a value of $290/MT to be the appropriate surrogate value for liquid petroleum gas. Petitioners claim that, for both Avisma and SMW, reported usage of heavy oil and natural gas appears to represent theoretical amounts that do not account for thermal losses (which petitioners suggest should be at least 30 percent).

Avisma, SMW, AIOC, Interlink and Razno argue that a value of $142.86/MT is correct because of an error in the source of petitioners' figure.

DOC Position

We agree with Avisma et al. as to the proper conversion of natural gas quantities. We do not need to address the question about the appropriate value for LPG because we are basing the value for this factor on natural gas. With respect to actual use of heavy oil and natural gas, we did not discover the error claimed by petitioners at verification and thus have not changed the reported quantities.

Comment 13: Quantity and Surrogate Value for Timber

Petitioners contend that the Department, in calculating FMV, should use the information on the record to value the timber used by Avisma and SMW and convert from cubic meters to kilograms.

Avisma, SMW, AIOC, Interlink and Razno advocate conversion of reported figures to board feet rather than kilograms, and use of the POI value of lumber per board foot in the United States.

DOC Position

We agree with petitioners and have valued timber based on their suggested methodology. With respect to the contention of Avisma et al., use of U.S. values for production factors is not appropriate in NME proceedings, particularly when surrogate-country values are available.

Comment 14: Surrogate Values of Carnallite Concentrate and Dehydrated Carnallite

Petitioners argue that the price of dolomite is not an appropriate surrogate for carnallite concentrate and dehydrated carnallite (which, unlike dolomite, are processed materials). Petitioners advocate increasing the dolomite value used in the preliminary determinations to account for processing associated with the manufacture from raw carnallite of either concentrated carnallite or dehydrated carnallite.

Avisma and SMW argue that the price of dolomite is a reasonable surrogate for the price of carnallite concentrate because the two materials have similar magnesium contents and the processing necessary to transform raw carnallite into carnallite concentrate is minimal. The companies contend that the value for calcinated dolomite is not a suitable

surrogate for carnallite concentrate because the two materials have completely different chemistries (chiefly, the absence of magnesium chloride in calcinated dolomite) and are used in substantially different magnesium production processes. The two companies advocate calculation of a value for dehydrated carnallite used by SMW based on Avisma's factors of production for that commodity.

DOC Position

We agree with Avisma and SMW. We used the price of dolomite in Brazil, as provided in the petition, as the surrogate for carnallite concentrate. Dolomite, with a comparable magnesium chloride content, is the most appropriate substitute available in the absence of an actual price in Brazil for carnallite concentrate. We have also calculated a value for dehydrated carnallite based on Avisma's factors of production.

Comment 15: Quantity and Surrogate Value of Labor

Petitioners advocate corrections to reported labor figures based on verification findings. Petitioners also argue that the Department should use as a surrogate 1993 wage rates in Brazil to value unskilled labor.

DOC Position

We agree with petitioners and have both corrected the reported labor figures and adopted the alternative value for unskilled labor.

Comment 16: Inflation Adjustments for Brazil Values

Petitioners contend that 1992 Brazil values used as surrogate values should be adjusted for inflation.

Avisma, SMW, AIOC, Interlink and Razno argue that no adjustment is appropriate since dollar-denominated prices of commodity chemicals cannot be assumed to have risen between 1992 and the POI.

DOC Position

We disagree with petitioners. Since we do not know the dates or exchange rates used to convert these values into dollars, an appropriate adjustment (if any) for dollar inflation cannot be determined. Further, the magnitude of any adjustment would likely be small since the data are nearly contemporaneous with the POI.

Comment 17: Concentration/Purity Levels of Material Inputs

Petitioners contend that appropriate adjustments should be made for differences in concentration or purity between surrogate values on the one hand and materials used in production on the other hand. However, petitioners also argue that the Department should not assume that surrogate values represent 100 percent concentration and therefore should make no adjustment where the concentration applicable to a surrogate value cannot be determined.

DOC Position

Where we have been able to determine the purity or concentration applicable to a surrogate value, we have adjusted for differences, if any, between the surrogate and the actual material. Otherwise, we have attempted no adjustment for purity or concentration.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of pure magnesium from the Russian Federation that are entered, or withdrawn from warehouse, for consumption on or after November 7, 1994, which is the date of publication of our notice of preliminary determination in the **Federal Register**. The following companies will be excepted from these instructions because their sales of pure magnesium were found not to have been sold below fair value: AIOC, Amalgamet, Gerald Metals, Greenwich Metals, Hochschild Partners, Hunter Douglas, Interlink, MG Metals, Razno Alloys, or SMW. These companies will be excluded from an antidumping duty order should one be issued.

We are also directing the Customs Service to suspend liquidation of all entries of alloy magnesium from the Russian Federation entered, or withdrawn from warehouse, for consumption on or after August 9, 1994 (*i.e.*, the date that is 90 days prior to the date of publication of this notice in the **Federal Register**). Gerald Metals and SMW will be excepted from these instructions because their sales of alloy magnesium were found not to have been sold below fair value. The Customs Service shall, in each proceeding, require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

A. PURE MAGNESIUM

Exporter/manufacturer/producer	Weighted-average margin percentages
AIOC*	0.00
AIOC/Other	100.25
Gerald Metals*	0.00
Gerald Metals/Other	100.25
Greenwich Metals*	0.00
Greenwich Metals/Other	100.25
Hochschild Partners*	0.00
Hochschild Partners/Other	100.25
Hunter Douglas*	0.00
Hunter Douglas/Other	100.25
Interlink*	0.00
Interlink/Other	100.25
MG Metals/Avisma	0.00
MG Metals/SMW	0.00
MG Metals/Other	100.25
Razno Alloys/SMW	0.00
Razno Alloys/Other	100.25
SMW/SMW	0.00

A. PURE MAGNESIUM—Continued

Exporter/manufacturer/producer	Weighted-average margin percentages
SMW/Other	100.25
Russia-wide	100.25

*This company has not disclosed for the public record the identity of its supplier or suppliers in Russia. Upon public disclosure of this information to the Department, we will notify the Customs Service that sales through certain supply channels have an LTFV margin of zero and thus an exclusion from any order resulting from this investigation. Until and unless such disclosure is made, all entries will be subject to the ''Russia-wide'' deposit rate.

B. ALLOY MAGNESIUM

Manufacturer/producer/exporter	Weighted average margin percentages	Critical circumst.
Gerald Metals*	0.00	No.
Gerald Metals/Other	153.65	Yes.
SMW/SMW	0.00	No.
SMW/Other	153.65	Yes.
Russia-wide	153.65	Yes.

*This company has not disclosed for the public record the identity of its supplier or suppliers in Russia. Upon public disclosure of this information to the Department, we will notify the Customs Service that sales through certain supply channels have an LTFV margin of zero and thus an exclusion from any order resulting from this investigation. Until and unless such disclosure is made, all entries will be subject to the ''Russia-wide'' deposit rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations. As our final determinations are affirmative, the ITC will within 45 days determine whether imports of either product are materially injuring, or threaten material injury to, the U.S. industry. In each proceeding, if the ITC determines that material injury, or threat of material injury does not exist, that proceeding will be terminated and all securities posted will be refunded or cancelled. If, in either proceeding, the ITC determines that such injury does exist, the Department will issue an antidumping duty order for the appropriate proceeding directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

These determinations are published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Susan G. Esserman,

Assistant Secretary for Import Administration.

APPENDIX I

Company	Rus. pure	CASE rus. alloy	Supp. QR filing date	Verif. start date	Verif. end date	Location
Hunter Douglas	X			12/8	12/8	Chicago.
MG Metals	X			12/6	12/7	Chicago.
Gerald Metals	X	X	11/1, 30	12/13	1/25	Lausanne and Stamford CT.
Interlink	X		11/8	12/15	1/10	Fribourg and NYC.
SMW	X	X		1/18	1/19	Solikamsk, Russia.
AVISMA	X			1/16	1/17	Berezniki, Russia.
Razno	X			1/23	1/24	Zurich.
Hochschild Partners	X			1/26	1/27	NYC.
Greenwich Metals	X	X		1/30	1/31	Greenwich, CT.
Amalgamet	X	X	1/4	2/1	2/2	Toronto.
AIOC	X		11/21	12/15	2/9	NYC.

[FR Doc. 95–7777 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–DS–P

U.S. DEPARTMENT OF COMMERCE

Minority Business Development Agency

Native American Business Development Center Applications: Minnesota

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications to organizations to operate its Minnesota Native American Business Development Center. The solicitation was originally published in the **Federal**

Register, Wednesday, January 25, 1995, Vol. 60, No.16; 4890.

11.801 Native American Program

(Catalog of Federal Domestic Assistance)

Dated: March 24, 1995

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–7772 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Native American Business Development Center Applications: Minnesota

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 from organizations to operate its 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 Minnesota Metropolitan Area. The award number of the NABDC will be 05–10–95006–01.

DATES: The closing date for applications is May 1, 1995. Applications must be received on or before May 1, 1995. Anticipated processing time of this award is 120 days. A pre-application conference will be held at 10:00 a.m., on April 11, 1995, at the Chicago Regional Office, 55 East Monroe Street, Suite 1406, Chicago, Illinois 60603.

ADDRESSES: Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D. C. 20230.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: David Vega, Regional Director at (312) 353–0182.

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 September 1, 1995 to September 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. If the recommended applicant is the current incumbent organization, the award will be for 12 months.

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, § 26.105) 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, § 26.605) 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, § 28.105) 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: March 24, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–7773 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–21–P

Native American Business Consultant Applications: Nationwide

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications to operate its Native American Business Consultant (NABC) Program. This solicitation was originally published in the **Federal Register**, Thursday, January 12, 1995, Vol. 60, No. 8, 2947.

11.801 Native American Program

(Catalog of Federal Domestic Assistance)

Dated: March 24, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–7771 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Cleveland, OH

AGENCY: Minority Business Development Agency.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under for its Minority Business Development Center (MBDC) Program to operate the Cleveland, Ohio MBDC. This solicitation was originally published in the **Federal Register**, Monday, October 17, 1994, Vol. 59, No. 199, 52288.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 24, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–7770 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Cincinnati

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 from organizations to operate its Cincinnati, Ohio 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 Cincinnati Metropolitan Area. The award number of the MBDC will be 05–10–95008–01.

DATES: The closing date for applications is May 1, 1995. Applications must be received in MBDA's Executive Secretariat on or before May 1, 1995. A pre-application conference will be held at 10:00 a.m., on April 11, 1995, at the Chicago Regional Office, 55 East Monroe Street, Suite 1406, Chicago, Illinois 60603.

ADDRESSES: Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: David Vega at (312) 353–0182.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from September 1, 1995 to September 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.

If the recommended applicant is the current incumbent organization, the award will be for 12 months. 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 budget 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. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

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: March 24, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–7774 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–21–P

Technology Administration

[Docket No. 950313072–5072–01]

RIN No.: 0693–AB37

Financial Assistance for Research and Development, U.S.-Israeli Science and Technology Program

AGENCY: Tecnology Administration, Commerce.

ACTION: Notice.

SUMMARY: The Under Secretary for Technology of the United States Department of Commerce invites proposals for financial assistance under the U.S.-Israeli Science and Technology Program (the ''Program''). The Program will assist U.S.-based industrial firms that have entered into U.S.-Israeli joint ventures (partnerships of United States and Israeli companies) to carry our research and development on long-term, medium- to high-risk technologies. This Program is separate from the existing Bi-national Industrial R&D Foundation (BIRD), which continues to offer support for commercial joint ventures. Inquiries about BIRD assistance should be addressed directly to the BIRD Foundation, Tel Aviv, Israel.

Such projects should focus on research, development and commercialization of technologies that are not appropriately funded by other U.S. or Israeli government-funded research and development efforts. This assistance will take place through the use of cooperative agreements with U.S.-based industrial firms pursuant to this Notice.

Funding will be made directly to the U.S. firms that are partners in the U.S.-Israeli joint ventures. Funding from the U.S. Department of commerce for the Program is limited to the U.S. partner(s) to a U.S.-Israeli joint venture, with funding for the Israeli partner(s) to be provided by the Israeli Government. On December 21, 1994, the Technology Administration published a notice in the **Federal Register** to announce this Program (FR 65756), including the availability of funds for a first round of awards. Funding recipients for this first round were announced on February 6, 1995, referenced in more detail below.

DATES: Applications must be received on or before Close of Business May 19, 1995. It is expected that the review and selection process will take approximately thirty (30) days.

ADDRESSES: Applications must be submitted to: U.S.-Israel Science and Technology Commission, Room 7068, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lee Bailey, Executive Director, U.S./Israel Science and Technology Commission, telephone number (202) 482–6351.

SUPPLEMENTARY INFORMATION: In March, 1993, President Clinton and Israeli Prime Minister Yitzhak Rabin announced their intention to create the U.S.-Israeli Science and Technology Commission (the ''Commission'') to promote U.S.-Israeli cooperative science and technology activities that could benefit the two nations' civilian high technology commercial sectors, and create jobs and economic growth. The Commission was established by an agreement of January 18, 1994 between the U.S. and Israeli governments, and plans to implement certain of its objectives through a U.S. non-profit corporation (hereinafter ''USNPC'').

The Commerce Department expects that the USNPC itself will award future financial assistance agreements under the Program, and may also be in a position to award the agreements contemplated by this notice. Should this occur, applicants that have submitted proposals that remain under review will be asked to transfer their proposals to the USNPC, and will receive further information about the requirements that apply to the USNPC's financial assistance agreements. Applicants should take note that the USNPC's requirements will differ in certain respects from those announced in this notice, including modification with respect to accounting, reporting, and intellectual property requirements, and the adoption of award recovery policies that would apply in cases where the USNPC-sponsored projects result in commercially successful products. Applicants that enter into agreements with the Commerce Department may also be asked to consent to the Department assigning their agreements to the USNPC at a later point, and to negotiate any modifications to the agreement that may be necessary to satisfy the USNPC's financial assistance requirements. For additional information, applicants may contact the Information Contact Person listed above. Funding is intended for projects (1) That will have significant economic benefits for both the United States and Israel and (2) that in general are in the areas of the environment, energy, health, biotechnology, information processing/telecommunications or agriculture, or in the commercialization of defense technologies.

This program announcement has been determined to be not significant for purposes of Executive Order 12866.

Authority

The Under Secretary for Technology, pursuant to the authority delegated to her by section 3706 of Title 15 of the U.S. Code, as well as sections 2.02 and 4.03(d) of Department Organization Order 10–17, dated July 14, 1992, is implementing this activity.

Program Description

The Program will assist eligible U.S.-based industrial firms that have entered into U.S.-Israeli joint ventures (partnerships of United States-based and Israeli-based companies) to carry out research and development of long-term, medium- to high-risk technologies that offer significant economic benefits, that are focused on commercialization and that are not appropriately funded by other U.S. and Israeli government-funded research and development efforts. This assistance will take place through the use of cooperative agreements. U.S. Commerce Department assistance is offered to promote the economy of the U.S. via the creation of new technologies and the commercialization of new and existing technologies.

Funding Availability

The implementation and conduct of this Program is contingent upon the availability of all funding anticipated for its operation. The Commerce Department reserves the right to discontinue this Program in the event all funding is not made available or is otherwise not secured. It is anticipated that funds will be available subject to reprogramming notifications to Congress.

The U.S. Government and the Government of Israel are each making available up to $5 million in the current fiscal year for this Program for qualified projects. The governments of both nations intend to fund this Program at

the same level during 1996 and 1997. Two awards and one feasibility study totalling $5,721,000, to be paid over four fiscal years, were announced on February 6, 1995. Within the limits of available funding, there is no predetermined minimum or maximum award. The funds may be spent toward research and development activities consistent with the goals set forth in this Notice.

Matching Funding Requirements—Federal financial assistance must be accompanied by at least an equal matching investment by the U.S.-based firm(s) party to each U.S.-Israeli joint venture. In the event there are multiple U.S.-based firms in a given U.S.-Israeli venture, the aggregate investment of the U.S. partners must at least equally match the Federal investment in that project.

Eligibility Requirements

The Program will accept proposals only from U.S.-Israeli joint ventures led by one U.S.-based industrial partner and one Israeli-based industrial partner. In general, awards will not be made to a joint venture composed of affiliated U.S.- and Israeli-based partners. Concerns are considered to be affiliates of each other when either directly or indirectly (a) one concern controls or has the power to control the other, or (b) a third party or parties controls or has the power to control both, or (c) an identity of interest between or among parties exists such that affiliation may be found.

Federal financial assistance will be given only to U.S.-based industrial partner or to a consortia led by U.S.-based industrial partners. A U.S.-based industrial partner, or a consortia led by U.S.-based industrial partners, shall be eligible to receive assistance under this Program only if the U.S.-based industrial partner, or each member of the consortia, is incorporated in the United States and has its principal place of business in the United States.

Project Eligibility

Proposed projects must meet the following criteria:

- Must be in one of the following areas: The environment, energy, health, biotechnology, information processing/telecommunications, the commercialization of defense technologies, or agriculture. Further, the project must be for research and development activities in long term, medium- to high risk technologies, and which show a plan to commercialization within 48 months.
- Must include technical innovation, significant commercial potential, and economic benefit to both countries.

Award Period

The duration of Federal financial assistance to a U.S.-based industrial firm will not exceed four years.

Indirect Costs

Indirect costs will not be funded under this Program.

Application Forms and Kit

Applicants must submit one (1) signed original plus two copies of each application. Standard Forms 424 and 424A, Application for Federal Assistance (which have been approved under the Paperwork Reduction Act by OMB Control No. 0348–0043 and 0348–0044, respectively) shall be used in applying for financial assistance, plus such additional information as is needed to permit the evaluation of the applications on the criteria set forth below. Forms are available by request from the Information Contact Person listed above. The additional information shall include a business plan containing the following:

- Executive summary (maximum 3 pages);
- Description of the project and technology involved (See Evaluation Criteria No. 1);
- Commercialization objectives including economic benefits to U.S. & Israel and other regions (See Evaluation Criteria No. 2);
- Commercialization plan including project objectives target markets and strategy, technology transfer and intellectual property requirements and additional capital requirements (See Evaluation Criteria No. 3)
- Description of proposed project participant qualifications and time schedule (See Evaluation Criteria No. 4);
- Project management, organizational structure, equipment, facilities and support (See Evaluation Criteria No. 5); and,
- Proposed budget.

Proposals shall not exceed 40 pages (50 pages for joint proposals) exclusive of the Standard Forms. Proposals must be on 8½ by 11'' paper (copies double sided) no fold out inserts and no smaller than 12 point type. Additional information beyond the page limit will not be considered. In addition, each proposer is asked to submit a brief one paragraph project summary containing non-proprietary information which may be utilized by the Commission without regard to the Confidentiality Provisions applicable to this notice.

Evaluation Criteria—Factors within each criteria (labelled i, ii, iii, etc.) will be weighed equally. No project will be funded in the absence of a finding of technical and commercial merit by the reviewers. The evaluation criteria to be used in selecting any proposal for funding under this program, and their respective weights, are:

(1) Scientific and Technical Merit of the Proposal (30 percent).

(i) Quality and innovativeness of the proposed technical program (i.e. uniqueness with respect to current industry practice).

(ii) Technical feasibility of the project (i.e., are the technical objectives realistic?).

(iii) Coherency of technical plan and clarity of vision of technical objectives.

(iv) Breadth of impact of accomplishment of technical objectives.

(2) Commercial Benefits of the Proposal (20 percent).

(i) Commercial potential of the technology in the proposed venture.

(ii) Potential to improve U.S. and Israeli economic growth and the productivity of a broad spectrum of industrial sectors or businesses within an economically important single sector.

(iii) Timeliness of proposal (i.e. the project results will not occur too late to be competitively useful in the marketplace).

(3) Commercialization Plans for the Project (20 percent).

(i) Evidence that the participants will pursue commercial application of the technology including production and distribution plans.

(ii) Project plan adequately addresses technology transfer and ownership requirements to assure prompt and widespread use and protection of results by participants and, as appropriate, others;

(4) Qualifications of the Proposing Organization(s) (15 percent).

(i) Quality and appropriateness of proposer's commercial and managerial staffing, facilities, equipment, and other resources to accomplish the proposed program objectives.

(ii) Quality and appropriateness of the technical staff to carry out the proposed work program and to identify and overcome technical barriers to meeting project objectives.

(iii) For proposals involving laboratory prototype development, evidence of availability of adequate design and manufacturing tools appropriate to the prototype.

(5) Proposer's Level of Commitment and Organizational Structure (15 percent).

(i) Appropriateness of the structure of the proposed organization in terms of composition of participants (i.e. vertical and/or horizontal integration) and existing relationships among the parties.

(ii) Level of commitment of proposers as demonstrated by contribution of personnel, equipment, facilities, and matching funds.

(iii) Appropriate participation by U.S. small businesses.

(iv) Evidence of a strong commitment by applicants to complete and, if appropriate, provide support for continuation of the program beyond the period of funding.

Selection Procedures

The selection process for awards is a multi-step process based on the criteria listed above.

• In the first step, called the ''preliminary screening,'' representatives from both governments will review the applications and will eliminate those that do not meet the threshold Eligibility Requirements listed above. Further disqualifications will be made if the application is deemed to have serious deficiencies in the technical and/or business plan, if the application does not fall within the overall scope of the Program, or if the application is more appropriately funded by other U.S. or Israeli government-funded research and development efforts.

• In the second step, referred to as the ''technical and business review,'' applications are evaluated under the preceding Evaluation Criteria. Applications are rated as ''not recommended'' or ''recommended.'' Applications must have high scientific and technical merit to be recommended. Only those applications rated as ''recommended'' are considered further. Such applications are referred to as ''semifinalists.'' If a majority of either country's representatives rate an application as ''not recommended,'' that application will be disqualified.

• In the third step, referred to as ''selection of finalists,'' representatives from both governments (''the Joint Panel'') will prepare a final scoring and ranking of recommended semifinalist applications, based upon evaluative criteria. A list of ranked finalists is then submitted to each respective nation's Selection Official.

• In the final step, referred to as the ''selection of awardees,'' the Selection Officials select funding recipients from among the finalists, based upon the rank order of the applications on the basis of all Evaluation Criteria (see above), assuring appropriate distribution of funds among technologies, activities and recipients, the availability of funds, and upon a determination as to the responsibility of the applicant. The decision of the Selection Officials is final. Applicants not chosen will be notified.

• In the event that a U.S.-Israeli joint venture is ranked as a finalist, but is determined to contain weaknesses in its structure or cohesiveness that may substantially lessen the likelihood of the proposed project's success, the applicant may be informed of the deficiencies and negotiations may be entered into with the applicant in an effort to remedy the deficiencies. If appropriate, funding up to 10% of the amount originally requested by the applicant, but no more than $100,000, may be awarded by the Program to the applicant to conduct a feasibility study. If the Program determines within six months that the organizational deficiencies have been corrected, the Program may award over the life of the project the remaining funds requested by that applicant to that applicant.

• The Program reserves the right to negotiate with applicants selected to receive awards over the cost and scope of the proposed project, e.g., to add or delete a task in order to improve the probability of success.

Funding Logistics

Funding will be made directly to the U.S.-based firm(s) that is/are party to the U.S.-Israeli joint venture.

Rights to Inventions

The provisions of the Bayh-Dole Act (35 U.S.C. 201, et seq., concerning patent rights in inventions made with Federal assistance) and the Government Patent Policy set forth in President Reagan's memorandum to the heads of Executive Departments and Agencies, dated February 18, 1983, shall apply to all Federally-funded research and development activities performed under this Program.

Other Requirements

(1) *Federal Policies and Procedures*—Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

(2) *Past Performance*—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(3) *Preaward Activities*—If applicants incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the U.S. Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of the Department of Commerce to cover preaward costs.

(4) *No Obligation for Future Funding*—If an application is selected for funding under the Program, there is 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 the awarding entities. An annual review of each award will be conducted to determine the worthiness of continued or additional future funding.

(5) *Delinquent Federal Debts*—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

i. The delinquent account is paid in full,

ii. A negotiated repayment schedule is established and at least one payment is received, or

iii. Other arrangements satisfactory to the Department of Commerce are made.

(6) *Name Check Review.* All 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.

(7) *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,'' and the following explanations are hereby provided:

i. *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;

ii. *Drug-Free Workplace.* Funding recipients (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;

iii. *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; and

iv. *Anti-Lobbying Disclosures.* Any applicant or component entity thereof 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.

(8) *Lower Tier Certifications.* Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed 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 the Department of Commerce. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department of Commerce in accordance with the instructions contained in the award document.

(9) *False Statements.* A false statement on an application 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.

(10) *Intergovernmental Review*—Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

(11) *Purchase of American-Made Equipment and Products*—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, 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 103–317, sections 607(a)–(b).

Dated: March 27, 1995.

Mary Lowe Good,

Under Secretary of Commerce for Technology, Department of Commerce.

[FR Doc. 95–7800 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–18–M

DEPARTMENT OF DEFENSE

Office of the Secretary of the Army

Notice of Availability of the Draft Environmental Impact Statement for Disposal and Reuse of Hamilton Army Airfield, California

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act and the President's Council on Environmental Quality, the Army has prepared a Draft Environmental Impact Statement (DEIS) for disposal of certain excess property at Hamilton Army Airfield, California. The DEIS also analyzes impacts on a range of potential reuse alternatives.

Copies of the DEIS have been forwarded to various Federal, state, and local agencies, and certain other interested organizations and individuals.

DATES: Written public comments and suggestions received within 45 days of this Notice of Availability will be considered in preparing the Final Environmental Impact Statement and in preparing a Record of Decision for the Army action.

ADDRESSES: Copies of the Draft Environmental Impact Statement can be obtained by writing or calling Mr. Robert Koenigs, Sacramento District, U.S. Army Corps of Engineers, 1325 J Street, 13th Floor, Sacramento, CA 95814–2922 or by calling (916) 557–6712. Mr. Koenigs may also be reached by fax at (916) 557–7876. Questions about the DEIS and written comments may be sent to the same address

Dated 27, 1995.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 95–7850 Filed 3–29–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army

Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement for the Proposed Coos Bay-North Bend Water Supply Project, Coos County, Oregon

AGENCY: U.S. Army Corps of Engineers, Portland District, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed action is the issuance of a Department of the Army permit under Section 404 of the Clean Water Act of 1977, as amended, and Section 9 of the River and Harbor Act of 1899 for the construction of a dam and reservoir on Joe Ney Creek, and raising of an existing dam on Upper Pony Creek. Both projects would be located in Coos County, Oregon, The Coos Bay-North Bend Water Board is the permit applicant, and is proposing this action for the purpose of increasing the municipal and industrial water supply for its service area.

ADDRESSES: U.S. Army Corps of Engineers, Portland District, P.O. Box 2496, Portland, Oregon 97208–2946.

FOR FURTHER INFORMATION CONTACT: Mr. David Kurkoski, (503) 326–6094. Internet address: david_ kurkoski @smtplink.npp.usace. army.mil.

SUPPLEMENTARY INFORMATION: The Coos Bay-North Bend Water Board, Coos County, Oregon has applied to the Portland District, U.S. Army Corps of Engineers for a Department of the Army Permit under section 404 of the Clean Water Act of 1977, as amended, and Section 9 of the River and Harbor Act of 1899. The proposed action is to construct a new dam and reservoir on Joe Ney Creek, and raise an existing dam on Upper Pony Creek to increase the storage capacity of the reservoir. The purpose of the proposed action is to increase municipal and industrial water supply storage for the area serviced by the Water Board.

Pony Creek

The existing Upper Pony Creek Reservoir was created by a dam across Pony Creek near the headwaters at approximately River Mile (RM) 4.5). The dam was constructed in 1951 to provide water storage for the Water Board's service area. The proposed expansion would involve raising the existing 45-foot earthfill dam by 21.5 feet, to increase reservoir storage capacity from the existing 2,150 acre-feet to 6,250 acre-feet.

Joe Ney Creek

The existing reservoir on Joe Ney Creek was created by a 9-foot=high earthen dam constructed in 1947 at RM 1.5. The Water board proposes to build a larger dam approximately 800 feet upstream of the existing dam. the new dam, which would be built to an evaluation of 39 feet, would provide storage for 2,500 acre-feet.

Operations

Both reservoirs would be operated by the Water board for municipal and industrial water supply. Water would be pumped from Joe Ney Reservoir through

a pipeline across the ridge to the Pony Creek basin, discharging into a natural channel flowing into Upper Pony Creek Reservoir. As needed, water stored in Upper Pony Creek Reservoir would be released into lower Pony Creek where it is withdrawn and treated at the water treatment plant.

The alternatives to be considered in the DEIS area:

—the proposed project
—development of other water supplies to meet the project objectives
—no action.

The scoping process will commence in March 1995 with the issuance of a scoping letter. Federal, state and local agencies, Indian tribes, and interested organizations and individuals will be asked to comment on the significant issues relating to the potential effects of the alternatives. Potentially significant issues to be addressed in the DEIS include: effects of the project on wetlands, wildlife habitat and populations, and fisheries.

A formal scoping meeting has not been scheduled. The applicant has scheduled a public meeting to be held at 7:00 pm, on April 5, 1995, at the North Bend Public Library, North Bend, Oregon. the purpose of the public meeting is to provide more information on the project and the scope of studies to be accomplished for this DEIS, to assist interested parties in developing their scoping comments.

The DEIS is scheduled to be made available to the public in late 1995.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–7751 Filed 3–29–95; 8:45 am]

BILLING CODE 3710–AR–M

Corps of Engineers

Finding of No Significant Impact (FNSI) for a Draft Environmental Impact Statement (DEIS) for the Lower Santa Cruz River Flood Control Study, Pinal County, AZ

AGENCY: Corps of Engineers, Los Angeles District, DOD.

ACTION: Finding of no significant impact.

SUMMARY: The **Federal Register**, Volume 55, No. 105, dated May 31, 1990, contained a Notice of Intent to Prepare a Draft Environmental Impact Statement for the Lower Santa Cruz River Flood Control Study, Pinal County, AZ. No implementable flood control plan was developed, and the study has been terminated. No Draft Environmental Impact Statement was prepared.

ADDRESSES: U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 2711, Los Angeles, CA 90053–2325.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Burton, 894–4352.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–7750 Filed 3–29–95; 8:45 am]

BILLING CODE 3710–KF–M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Surface Coal Mining Operation in Saline County, Illinois

AGENCY: U.S. Army Corps of Engineers, Louisville District, DOD.

ACTION: Notice of Intent.

SUMMARY: The proposed project involves the surface mining of coal from 1,537 acres of a 1,935 acre site located 1 to 3 miles west of Harrisburg in Saline County, Illinois. The proposed surface mine includes approximately 400 acres of jurisdictional wetlands. The major impacts would be the permanent relocation of Bankston Fork, construction of a haul road to the coal extraction areas using a bridge over Bankston Fork, construction of 12,500 feet of levee along Bankston Fork to provide temporary flood protection for the mining site, and surface mining coal from 1,537 acres.

ADDRESSES: U.S. Army Corps of Engineers, Louisville District, P.O. Box 59, Louisville, Kentucky 40201–0059.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Turner, (502) 582–6015.

SUPPLEMENTARY INFORMATION: The wetland areas to be impacted consist of approximately 200 acres of palustrine forested wetlands with the remainder being open water, scrub/shrub, and emergent wetlands. The relocation of Bankston Fork would be accomplished by excavating 291,000 cubic yards of material. This material would be utilized in constructing a temporary flood control levee. The new stream channel would be 7,450 feet long, 450 feet longer than the existing stream channel. After relocating the stream and construction of a bridge, mining would consist of removing the overburden in 150 to 200 foot wide open pits of varying lengths using a large dragline. Mining would progress through the area protected by the levee over a period of 7 years commencing in 1996.

Proposed mitigation for the loss of wetlands will consist of the creation of nearly 700 acres of wetlands on-site and the restoration of same on another 200+ acres both on- and off-site. Open water, forested, scrub/shrub, and emergent wetlands are planned.

The Corps of Engineers will initiate a scoping process for the purpose of determining the range of issues to be addressed in the Draft Environmental Impact Statement (DEIS). A public scoping meeting is scheduled for Wednesday, April 26, 1995, beginning at 7:00 p.m., in the Pruett-Patton Building which is located on Church Street next to and behind the Mitchell-Carnegie Public Library in Harrisburg, Illinois.

A brief presentation will precede the request for public comment. Corps representatives will be available at this meeting to receive comments from the public regarding issues which should be addressed in the preparation of the DEIS. It is important that Federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns. In the interest of available time, each speaker will be asked to limit their oral comments to ten minutes.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the individual or agency believes the DEIS should address. Written statements should be mailed to the above address not later than May 8, 1995.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–7752 Filed 3–29–95; 8:45 am]

BILLING CODE 3710–JB–M

Department of the Navy

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Training Center, Orlando, FL—Main Station

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Training Center, Main Station, Orlando, FL, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new

procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474; or E.R. Nelson, Real Estate Division, Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, North Charleston, SC 29419–9010, telephone (803) 743–0494. For detailed information regarding particular properties identified in this Notice (i.e. acreage, floor plans, sanitary facilities, exact street address, etc.), contact Captain Harry Smith, Base Transition Office, Naval Training Center, Orlando, FL 32813–5005, telephone (407) 646–5301.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Training Center, Orlando, FL, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on April 29, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 13, 1994, the Naval Training Center Reuse Commission submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Training Center, Main Station, Orlando, FL, is published in the **Federal Register**:

Redevelopment Authority

The redevelopment authority for the Naval Training Center, Orlando, FL, purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Orlando Naval Training Center Reuse Commission. A cross section of community interests is represented on the Commission. Day to day operations of the Commission are handled by Mr. Herb Smetheram, Executive Director. The address of the Commission is 400 South Orange Avenue, Orlando, FL 32801–3302, telephone (407) 246–3093 and facsimile (407) 246–3164.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Training Center, Main Station, Orlando, FL, that were declared surplus to the federal government on April 29, 1994.

Land

Approximately 1,184 acres of improved and unimproved fee simple land at the Naval Training Center, Main Station, Orlando, FL.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the center closes in October, 1998, unless otherwise indicated. Property numbers are available on request.

—Barracks (72 structures). Comments: Approx. 2,703,400 square feet.

—Housing/Housing Support (5 structures). Comments: Approx. 11,290 square feet.

—Personnel/Community Support (75 structures). Comments: Approx. 581,000 square feet.

—Administration (22 structures). Comments: Approx. 227,700 square feet.

—Operational Training/Fuel (20 structures). Comments: Approx. 1,113,000 square feet.

—Maintenance (10 structures). Comments: Approx. 66,000 square feet.

—Storage/Medical (6 structures). Comments: Approx. 114,000 square feet.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Training Center, Main Station, Orlando, FL, shall submit to said Commission a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7 (C) and (D) of Section 2905(b), the Commission shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Orlando the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Commission elected to proceed under the new statute, i.e., December 13, 1994.

Dated: February 17, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–7821 Filed 3–29–95; 8:45 am]

BILLING CODE 3810–FF–P

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Training Center, Orlando, FL—Herndon Annex

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Training Center, Herndon Annex, Orlando, FL, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure

Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474; or E.R. Nelson Real Estate Division, Southern, Division, Naval Facilities Engineering Command, 2155 Eagle Drive, North Charleston, SC 29419–9010, telephone (803) 743–0494. For detailed information regarding particular properties identified in this Notice (i.e. acreage, floor plans, sanitary facilities, exact street address, etc.), contact Captain Harry Smith, Base Transition Office, Naval Training Center, Orlando, FL 32813–5005, telephone (407) 646–5301.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Training Center, Orlando, FL, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on April 29, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 13, 1994, the Naval Training Center Reuse Commission submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Training Center, Herndon Annex, Orlando, FL, is published in the **Federal Register**:

Redevelopment Authority

The redevelopment authority for the Naval Training Center, Orlando, FL, purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Orlando Naval Training Center Reuse Commission. A cross section of community interests is represented on the committee. Day to day operations of the Commission are handled by Mr. Herb Smetheram, Executive Director. The address of the Commission is 400 South Orange Avenue, Orlando, FL 32801–3302, telephone (407) 246–3093 and facsimile (407) 246–3164.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Training Center, Herndon Annex, Orlando, FL, that were declared surplus to the federal government on April 29, 1994.

Land

Approximately 54 acres of improved and unimproved fee simple land at the Naval Training Center, Herndon Annex, Orlando, FL.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the center closes in October, 1998, unless otherwise indicated. Property numbers are available on request.

—Warehouse/Administration (8 structures). Comments: Approx. 134,900 square feet.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Training Center, Herndon Annex, Orlando, FL, shall submit to said Commission a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7 (C) and (D) of Section 2905(b), the Commission shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Orlando the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Commission elected to proceed under the new statute, i.e., December 13, 1994.

Dated: February 17, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–7822 Filed 3–29–95; 8:45 am]

BILLING CODE 3810–FF–P

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Training Center, Orlando, FL—McCoy Annex

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Training Center, McCoy Annex, Orlando, FL, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474; or E.R. Nelson, Real Estate Division, Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, North Charleston, SC 29419–9010, telephone (803) 743–0494. For detailed information regarding particular properties identified in this Notice (i.e. acreage, floor plans, sanitary facilities, exact street address, etc.), contact Captain Harry Smith, Base Transition Office, Naval Training Center, Orlando, FL 32813–5005, telephone (407) 646–5301.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Training Center, Orlando, FL, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on April 29, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 13, 1994, the Naval Training Center Reuse Commission submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Training Center, McCoy Annex, Orlando, FL, is published in the **Federal Register**:

Redevelopment Authority

The redevelopment authority for the Naval Training Center, Orlando, FL, purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Orlando Naval Training Center Reuse Commission. A cross section of community interests is represented on the committee. Day to day operations of the Commission are handled by Mr. Herb Smetheram, Executive Director. The address of the Commission is 400 South Orange Avenue, Orlando, FL 32801–3302, telephone (407)-246–3093 and facsimile (407) 246–3164.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Training Center, McCoy Annex, Orlando, FL, that were declared surplus to the federal government on April 29, 1994.

Land

Approximately 838 acres of improved and unimproved fee simple land at the Naval Training Center, McCoy Annex, Orlando, FL.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the center closes in October, 1998, unless otherwise indicated. Property numbers are available on request.

—Barracks/Support (6 structures). Comments: Approx. 62,600 square feet.
—Family Housing/Multiplex (53 structures). Comments: Approx. 452,800 square feet.
—Medical/Community Support (34 structures). Comments: Approx. 358,350 square feet.
—Operational/Administration (10 structures). Comments: Approx. 65,200 square feet.
—Maintenance/Motor Pool (11 structures). Comments: Approx. 36,000 square feet.
—Capehart Duplex Housing (359 structures). Comments: 2,500 square feet per unit on average.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Training Center, McCoy Annex, Orlando, FL, shall submit to said Commission a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of Section 2905(b), the Commission shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Orlando the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Commission elected to proceed under the new statute, i.e., December 13, 1994.

Dated: February 17, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–7823 Filed 3–29–95; 8:45 am]

BILLING CODE 3810–FF–P

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Training Center, Orlando, FL—Area C

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Training Center, Area C, Orlando, FL, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474; or E. R. Nelson, Real Estate Division, Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, North Charleston, SC 29419–9010, telephone (803) 743–0494. For detailed information regarding particular properties identified in this Notice (i.e. acreage, floor plans, sanitary facilities, exact street address, etc.), contact Captain Harry Smith, Base Transition Office, Naval Training Center, Orlando, FL 32813–5005, telephone (407) 646–5301.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Training Center, Orlando, FL, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this

designation, the majority of the land and facilities at this installation were on April 29, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 13, 1994, the Naval Training Center Reuse Commission submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Training Center, Area C, Orlando, FL, is published in the **Federal Register**

Redevelopment Authority

The redevelopment authority for the Naval Training Center, Orlando, FL, purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Orlando Naval Training Center Reuse Commission. A cross section of community interests is represented on the committee. Day to day operations of the Commission are handled by Mr. Herb Smetheram, Executive Director. The address of the Commission is 400 South Orange Avenue, Orlando, FL 32801–3302, telephone (407) 246–3093 and facsimile (407) 246–3164.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Training Center, Area C, Orlando, FL, that were declared surplus to the federal government on April 29, 1994.

Land

Approximately 45 acres of improved and unimproved fee simple land at the Naval Training Center, Area C, Orlando, FL.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the center closes in October, 1998, unless otherwise indicated. Property numbers are available on request.

—Administration/Support (3 structures). Comments: Approx. 58,000 square feet.

—Warehouse/Storage (18 structures). Comments: Approx. 138,000 square feet.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Training Center, Area C, Orlando, FL, shall submit to said Commission a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of Section 2905(b), the Commission shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Orlando the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Commission elected to proceed under the new statute, i.e., December 13, 1994.

Dated: February 21, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–7824 Filed 3–29–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Education of Migratory Children

AGENCY: Department of Education.

ACTION: Notice of final criteria for FY 1995 consortium incentive grants under part C of title I of the Elementary and Secondary Education Act of 1965.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) establishes final criteria for awarding fiscal year (FY) 1995 Migrant Education Program (MEP) consortium incentive grants under section 1308(d) of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Improving America's Schools Act (IASA), to State educational agencies (SEAs) with approved consortium arrangements.

EFFECTIVE DATE: This notice takes effect on May 1, 1995.

FOR FURTHER INFORMATION CONTACT: James English, Office of Migrant Education, U.S. Department of Education, 600 Independence Avenue SW., Portals Building, Room 4100, Washington, DC 20202–6135. Telephone: (202) 260–1394. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The MEP, authorized in Title I, Part C of the ESEA, is a State-operated, formula grant program under which SEAs receive funds to improve the academic achievement and welfare of migratory children who reside in their States. Consistent with the emphasis that the reauthorized ESEA places upon removing barriers to coordination and integration of programs that serve migratory children, sections 1303(d) and 1308(d) of the ESEA encourage SEAs to consider whether consortium arrangements with other States or appropriate entities would result in a more effective and efficient delivery of MEP services.

In this regard, section 1303(d) directs the Secretary to consult with SEAs whose MEP allocations in any year will be $1 million or less about the desirability of forming consortia. This section also directs the Secretary to approve any SEA's consortium proposal that (1) reduces MEP administrative costs or program function costs, and (2) increases the amount of MEP funds available for direct services to migratory children that add substantially to the educational attainment or welfare of those children. While an SEA may form a consortium arrangement with any appropriate entity, in light of the strong interstate emphases in the MEP the Secretary anticipates that SEAs will consider the benefits of forming consortium arrangements on a multi-State basis. The Secretary also anticipates that SEAs will want to plan their consortium activities to be implemented on a multiyear basis. The Department already has begun discussions with SEA officials about the circumstances in which consortium arrangements might enhance their programs for migratory children.

To encourage SEAs to form consortium arrangements that meet the requirements of section 1303(d), section 1308(d) of the ESEA directs the Secretary to reserve up to $1.5 million of the funds appropriated for the MEP for competitive incentive awards to SEAs with consortium arrangements approved by the Secretary. Section 1308(d) also limits the size of each grant to no more than $250,000, and provides that not fewer than 10 grants shall be made to eligible SEAs with approved consortium arrangements whose MEP formula grant allocations are less than $1 million. While the provision offers all SEAs an incentive to participate in consortium arrangements, it was enacted particularly to benefit those SEAs that, because of the small size of their MEP allocations, may have particular difficulty in both administering the MEP and providing an adequate level of direct services to migratory children.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed rulemaking documents. However, in accordance with section 437(d)(1) of the General Education Provisions Act, the Assistant Secretary has determined that, in order that SEAs may use the incentive grant funds as quickly as possible to promote their programs of direct services for migratory children under the MEP formula-grant program, it is desirable to waive public comment for the first year of implementation of this new discretionary grant. This waiver will apply only to the criteria and process included in this notice for awarding FY 1995 consortium incentive grants. Any criteria and procedures that the Department establishes for the award of consortium incentive grants in future years will be based on experiences with this FY 1995 award process, and will be published in proposed form in the **Federal Register** with an opportunity for interested parties to comment.

Eligibility for Consortium Incentive Grants

The criteria and procedures announced in this notice govern only the award of consortium incentive grants for FY 1995. These criteria and procedures reflect consideration of comments on a preliminary proposal discussed with State MEP Directors in a meeting in McAllen, Texas on January 26–27, 1995. The Secretary will reserve $1.5 million to implement this consortium incentive grant program in FY 1995. Only SEAs with approved consortium arrangements will be eligible for incentive grants. Consistent with section 1303(d), a consortium arrangement will be approved if it (1) reduces the overall amount of MEP administrative or program function costs across the participating SEAs from the amount that would be incurred in the absence of the consortium, and (2) makes more funds available, overall across the participating SEAs, for direct educational or support services to migratory children so as to add substantially to their welfare or educational attainment than would have been available in the absence of the consortium.

For purposes of section 1303(d), ''administrative or program function costs'' include all costs that an SEA or its local operating agencies pay from MEP funds to support MEP activities other than direct educational or support services for migratory children. Administrative and program function costs would include the costs of general program administration paid from funds reserved under section 1603(c) of ESEA, as well as the costs of other, program-specific administrative activities, such as identification and recruitment, interstate, intrastate, and interagency coordination, and parent advisory councils. The term ''direct educational or support services'' means any instructional or support activities provided directly to migratory children, as well as training of instructional or support staff who provide instructional or support services directly to migratory children. For purposes of section 1303(d), the term ''other appropriate entity'' can mean any public or private agency or organization.

A single SEA may be part of more than one consortium arrangement. However, consistent with section 1303(d) of the ESEA, each consortium arrangement that the Secretary approves must separately decrease the total amount of MEP administrative or program function costs across the participating SEAs and, conversely, increase the total amount of MEP funds that are made available for direct services to migratory children across the participating SEAs. SEAs will submit the information that the Department needs to review and approve the SEA's consortium arrangement, and determine the size of the SEA's consortium incentive grant, through the FY 1995 MEP application or in conjunction with the optional consolidated State plan under section 14302 of the ESEA.

Amount of an SEA's Incentive Grants

Each SEA with one or more consortium arrangements that the Secretary determines meet the criteria in section 1303(d) of the ESEA, and whose consortium arrangements increase the amount of MEP funds available for direct services to migratory children in its State, will receive one incentive award. In determining the size of an SEA's award, the Secretary will rank SEAs seeking incentive grants on the basis of the total percentage increase in MEP funds that the SEA will make available for direct services to migratory children in its State as a result of the SEA's participation in the consortium arrangements, as compared to the level of direct services that would be made available to migratory children in the State in the absence of the consortia.

Example I: SEA A has one consortium arrangement that increases the amount of funds available for direct services in State A by 10 percent, while SEA B has two consortium arrangements that increase the total amount of funds available for direct services in State B by 8 percent. State A would be ranked higher than State B even if SEA B's consortium arrangements permit more total funds to be used for direct services.

Example II: SEA C and SEA D participate together in one consortium and this consortium is the only one in which each SEA participates. If the amount available for direct services increases in total across the two States due to participation in the consortium, but the amount available for direct services in State C does not increase, the

consortium arrangement will be approved, but only State D, and not State C, will receive an incentive grant.

From the information that an SEA submits, the Department will calculate, for each State, the total percentage increase in MEP funds available for direct services as a result of all the approved consortium arrangements in which an applicant SEA participates. The Department will then rank these percentages in descending order and divide the distribution into thirds (that is, by terciles). Each SEA ranked in the highest third of the distribution will receive an incentive grant that is three-times the size of the grant received by each SEA ranked in the lowest third, while each SEA ranked in the middle third will receive an incentive grant that is twice the size of that provided to each SEA ranked in the lowest third. Within each third, grant awards will be of equal size, except that adjustments will be made so that no consortium incentive grant will be greater than $250,000 or 100 percent of the amount of funds awarded to the SEA under its formula grant allocation, whichever is less.

An SEA may use incentive grant funds awarded under section 1308(d) of the ESEA only to provide direct services to migratory children. These funds are in addition to, and not in place of, the funds awarded under the MEP formula grant.

The Secretary implements section 1308(d) in this way in order to (1) reward all SEAs whose participation in consortium arrangements increases direct services to migratory children in their State, (2) provide larger awards to those SEAs whose consortium arrangements most enhance their capacity to deliver direct services, and (3) ensure that FY 1995 funds under this program are available to SEAs as soon as possible.

Because of the criteria and procedures announced in this notice for awarding FY 1995 consortium incentive grants, the regulations and selection criteria contained in 34 CFR Part 205 (Migrant Education Coordination Program) do not apply to this competition.

Applicability of the Education Department General Administrative Regulations (EDGAR)

In view of the process that the Department will use to obtain information on proposed SEA consortium arrangements, and the criteria it will use to determine, by formula, the amount of consortium incentive grant that each applicant SEA will receive, the regulations in 34 CFR Part 75 (Direct Grant Programs) of the Education Department General Administrative Regulations (EDGAR) do not apply. Instead, the incentive grant program is being administered, like the MEP itself, under the provisions of 34 CFR Parts 76, 77, 80, 81, 85, and 86 of EDGAR.

(Program Authority: 20 U.S.C. 6393(d), 6398(d))

(Catalog of Federal Domestic Assistance Number 84.011, Migratory Education Basic State Formula Grant Program)

Dated: March 10, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 95–7826 Filed 3–29–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

Name: Environmental Management Advisory Board.

Date and Times: Monday, April 17, 1995 from 4:30 a.m. to 6:30 p.m.; Tuesday, April 18, 1995 from 8:30 a.m. to 5:30 p.m.

Place: Willard Inter-Continental Washington, 1401 Pennsylvania Avenue, N.W., Washington, D.C. 20004, (202) 628–9100.

For Further Information Contact: James T. Melillo, Executive Secretary, Environmental Management Advisory Board, EM–5, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–4400. The Internet address is: James.Melillo@em.doe.gov

Supplementary Information: Purpose of the Board. The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management program and the Programmatic Environmental Management Impact Statement, from the perspectives of affected groups and State and local Governments. The Board will help to improve the Environmental Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous publics with opportunities to express their opinions regarding the Environmental Management Program.

Tentative Agenda

Monday, April 17, 1995

4:30 p.m. Co-chairs Open the Meeting
Presentation on Environmental Management Budget Challenges & Strategies—Assistant Secretary for Environmental Management
6:30 p.m. Meeting Adjourns

Tuesday, April 18, 1995

8:30 a.m. Co-chairs Resume the Meeting
Overview of Major Budget Issues Confronting the Environmental Management Program Offices—Program Deputy Assistant Secretaries
10:30 a.m. Breakout Sessions on Major Budget Issues Confronting Field Offices and Headquarters
12:00 p.m. Lunch
1:00 p.m. Board Business
1:15 p.m. Reports from Breakout Sessions
2:30 p.m. Board Committee Reports
4:30 p.m. BEMR/PEIS/FFCA Integrated Message Presentation
5:00 p.m. Public Comment Session
5:30 p.m. Meeting Adjourns

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James T. Melillo at the address or telephone number listed above. Individuals wishing to orally address the Board during the public comment session should call (800) 862–8860 and leave a message. Individuals may also register on April 17, 1995 at the meeting site. Every effort will be made to hear all those wishing to speak to the Board, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Board Co-chairs are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes: A meeting transcript and minutes will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on March 27, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee, Management Officer.

[FR Doc. 95–7852 Filed 3–29–95; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

American Statistical Association Committee on Energy Statistics

AGENCY: U. S. Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee.

Dates and Times: Thursday, April 20, 9:00 am–4:15 pm; Friday, April 21, 9:00 am–12:00 pm.

Place: Holiday Inn-Capitol, 550 C Street, S.W., Washington, DC.

Contact: Ms. Renee Miller, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI–72, Washington, DC 20585, Telephone: (202) 254–5507.

Supplementary Information:

Purpose of the Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda

Thursday, April 20, 1995

A. Opening Remarks
B. Major Topics
1. Effects of Structural Changes in Industry
2. How the NEMS Transportation Module Operates
3. Reconciliation of AEO and STEO Forecasts (Public Comment)

Friday, April 21, 1995

4. Review of RECS Survey Design
5. Estimates of State Level Natural Gas Consumption
6. Results and Overall Plans for Customer Surveys (Public Comment)

C. Topics for Future Meetings

Public Participation: The meeting is open to the public. The Chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Ms. Renee Miller, EIA Committee Liaison, at the address or telephone number listed above or Mrs. Antoinette Martin at (202) 254–5409.

Transcripts: Available for public review and copying at the Public Reading Room, (Room 1E–290), 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6025, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, DC on March 27, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee, Management Officer

[FR Doc. 95–7853 Filed 3–29–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER95–724–000, et al.]

Iowa-Illinois Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

March 23, 1995.

Take notice that the following filings have been made with the Commission:

1. Iowa-Illinois Gas and Electric Company

[Docket No. ER95–724–000]

Take notice that on March 10, 1995, Iowa-Illinois Gas and Electric Company (Iowa-Illinois), 206 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, tendered for filing pursuant to § 35.12 of the Regulations under the Federal Power Act an initial rate schedule consisting of a Transmission Service Agreement dated as of December 16, 1994 between Iowa-Illinois and Louis Dreyfus Electric Power Inc. (Dreyfus).

Iowa-Illinois states that the terms and conditions of this Agreement are identical in all respects to Iowa-Illinois Transmission Service Agreements with other power marketers which have been accepted for filing by the Commission in Docket Nos. ER95–334–000, ER95–426–000, and ER95–541–000. Iowa-Illinois further states that under the Agreement it will provide non-firm transmission service to Dreyfus on a monthly, weekly, daily or hourly basis to transmit power and associated energy from certain defined points to other defined points on Iowa-Illinois' interconnected electric system. Service will be provided upon request by Dreyfus on an as available basis as determined by Iowa-Illinois.

Iowa-Illinois requests a waiver of the Commission's 60-day notice requirement in order to permit the Agreement to become effective on or before April 18, 1995.

Copies of the filing were served upon the Iowa Utilities Board, the Illinois Commerce Commission and Dreyfus.

Comment date: April 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Louisiana Public Service Commission vs. Entergy Services, Inc.

[Docket No. EL95–33–000]

Take notice that on March 15, 1995, the Louisiana Public Service Commission filed a complaint under §§ 205 and 206 of the Federal Power Act, 16 U.S.C. §§ 824d and 824e against Entergy Services, Inc., as the representative of Entergy Corporation and its operating companies, Louisiana Power & Light Co. (LP&L), Arkansas Power & Light Co. (AP&L), Mississippi Power & Light Co. (MP&L), and New Orleans Public Service, Inc. (NOPSI). The complaint seeks a revision of the Entergy System Agreement based upon allegations that the terms of that agreement, under current circumstances, are unjust and unreasonable. Specifically, the complaint alleges that the absence of any provision in the System Agreement excluding curtailable load from the determination of a company's load responsibility under the System Agreement results in an unjust and unreasonable cost allocation to companies that do not cause these costs to be incurred, and results in cross-subsidation among the companies. Additionally, it is alleged that the absence of any provision in MSS–3 for allocating marginal energy costs to customers that purchase energy under Entergy's ''real time pricing'' rate schedules at the retail level discriminates against a company that offers real time pricing.

Comment date: April 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company

[Docket No. ER95–725–000]

Take notice that on March 10, 1995, New England Power Company, tendered for filing a transmission contract for service to the Massachusetts Municipal Wholesale Electric Company.

Comment date: April 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket Nos. ER95–267–002 and EL95–25–002]

Take notice that on March 13, 1995, New England Power Company (NEP), made a compliance filing in the above referenced, consolidated dockets. NEP's compliance filing conforms fully with the Commission's February 9 order (*New England Power Company*) 70 FERC ¶ 61,152 (1995) by revising NEP's proposed W–95 rate to compute decommissioning and depreciation expense and to amortize materials and supplies inventories and final nuclear fuel cores for NEP's entitlements in Seabrook Unit No. 1 and Millstone Unit No. 3 on the basis of their remaining Nuclear Regulatory Commission license lives of 36 and 39 years, respectively.

Comment date: April 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ER95–726–000]

Take notice that on March 10, 1995, Illinois Power Company (Illinois), tendered for filing an Interchange Agreement between Illinois and NorAm Energy Services, Inc. (NES). Illinois states that the purpose of this agreement is to provide for the buying and selling of capacity and energy between Illinois and NES.

Comment date: April 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp

[Docket No. ER95–727–000]

Take notice that on March 10, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Service Agreements with AES Power Inc. (AES), Engelhard Power Marketing, Inc. (Engelhard), InterCoast Power Marketing Company (InterCoast) and Gulfstream Energy, LLC (Gulfstream) under PacifiCorp's FERC Electric Tariff, Volume No. 3, Service Schedule PPL–3.

Copies of this filing were supplied to AES, Engelhard, InterCoast, Gulfstream, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: April 7, 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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7767 Filed 3–29–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–178–000]

Williams Natural Gas Co.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Wilson County Replacement Project and Request for Comments on Environmental Issues

March 24, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Wilson County Replacement Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Williams Natural Gas Company (Williams) wants to replace about 2,200 feet of 8-inch lateral pipeline with about 2,270 feet of 2-inch and 6-inch lateral pipeline in Wilson County, Kansas. The replacement would continue to provide service to the Neodesha, Kansas area. Williams requests Commission authorization to construct and operate the following facilities needed to continue service:

- abandon in place 1,300 feet of 8-inch lateral pipeline;
- abandon by removal 900 feet of 8-inch lateral pipeline;
- construct 2,144 feet of 6-inch lateral pipeline; and
- construct 130 feet of 2-inch lateral pipeline.

The general location of the project facilities and specific locations for facilities on new sites are shown in appendix 1.[2]

Land Requirements for Construction

Construction for the proposed facilities would require about 3.45 acres of land. Following construction, about 2.3 acres would be maintained as permanent right-of-way. The remaining 1.3 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands[3]
- vegetation and wlidlife
- 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

One issue that has arisen based on a preliminary review of the proposed facilities and the environmental information provided by Williams concerns the location of a residential area near the proposed pipeline. The proposed right-of-way has been routed to avoid impact to residences, however several new landowners would be affected by the location of the new pipeline right-of-way in Neodosha, Kansas.

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,

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[1] Williams Natural Gas Company'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, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] According to the applicant, the project will not affect any waters of the United States. We will report any potential impacts, or their absence, under this heading.

alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426.
- Reference Docket No. CP95–130–000.
- Send a copy of your letter to: Ms. Amy Olson, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before May 1, 1995.

If you wish to receive a copy of the EA, you should request one from Ms. Olson at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Amy Olson, EA Project Manager, at (202) 208–1199.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7765 Filed 3–29–95; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application

March 24, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major License.

b. *Project No.:* 11214–001.

c. *Date Filed:* February 22, 1995.

d. *Applicant*: Southwestern Electric Cooperative, Inc.

e. *Name of Project:* Carlyle Reservoir.

f. *Location:* On the Kaskaskia River near the City of Carlyle, Clinton County, Illinois.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)825(r).

h. *Applicant Contact:* Mr. Robert Weinberg, 1615 M Street, N.W. Suite 800, Washington, DC 20036, (202) 467–6370.

i. *FERC Contact:* Charles T. Raabe (dt) (202) 219–2811.

j. *Comment Date:* On or before April 24, 1995.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Carlyle Dam and Reservoir and would consist of: (1) An intake structure; (2) five 96-inch-diameter penstocks; (3) a power plant having five 800–Kw turbine/generator units; (4) a 1400-foot-long underground and a 3,000-foot-long overhead transmission line; and (5) appurtenant facilities.

l. With this notice, we are initiating consultation with the State Historic Preservation officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's Regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application of its merits, the resource agency, SHPO, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7762 Filed 3–29–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–262–000, et al.]

Phillips Gas Pipeline Company, et al.; Natural Gas Certificate Filings

March 23, 1995.

Take notice that the following filings have been made with the Commission:

1. Phillips Gas Pipeline Company

[Docket No. CP95–262–000]

Take notice that on March 13, 1995, Phillips Gas Pipeline Company (Phillips), P.O. Box 1967, Houston, Texas 77251–1967, filed an application pursuant to Section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of all of Phillips' interstate pipeline transmission facilities located in Oklahoma and Texas in order to convert the facilities to its former configuration for oil transportation, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Phillips requests permission and approval to abandon all of its interstate pipeline facilities consisting of approximately 153 miles of 30-inch pipeline that transports natural gas from Cushing, Oklahoma to approximately 1 mile across the northern Texas border, as well as related facilities and equipment. Phillips proposes to abandon these facilities so that Phillips would be able to perform its former function of transporting oil.

Phillips states that Phillips has not been able to transport any natural gas on a firm basis for almost two years, since May 1, 1993, which has significantly impaired Phillips' ability to recover its cost of service because Phillips' rates are based upon recovery of 100% of its fixed costs through its reservation fees. Phillips states that Phillips Gas Marketing Company (PGMC), an affiliate of Phillips and Phillips' primary interruptible customer, representing over 97% of Phillips' annual volumetric throughput during 1994, recently advised Phillips that PGMC would no longer require any transportation service on Phillips facilities in the near future. Phillips indicates that the imminent loss of over 97% of Phillips' volumetric throughput and Phillips' inability to acquire any firm transportation contracts compels Phillips to seek abandonment authorization for the facilities. Phillips states that Phillips has entered into a joint venture agreement with ARCO Pipeline Company (ARCO) regarding plans to convert the facilities into an oil pipeline to provide useful and necessary oil transportation services. ARCO would make all appropriate filings at the Commission prior to commencing operation of any new oil pipeline facility, it is stated.

Comment date: April 13, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Texas Eastern Transmission Corporation

[Docket No. CP95–267–000]

Take notice that on March 17, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–267–000 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 install an additional tap valve for existing Meter Station 2866 (M&R 2866) in DeSoto Parish, Louisiana under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 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.

Texas Eastern proposes to install an additional 2-inch tap valve (hot tap) on its 24-inch Line 11 near Mile Post 275.79 in DeSoto Parish, Louisiana for delivery of additional natural gas quantities to International Paper Co (IP). The proposed hot tap will increase the maximum delivery capacity at M&R 2866 by up to 6,000 Dth/d. Additional interruptible transportation service will be provided by Texas Eastern to IP pursuant to Rate Schedule IT–1. Texas Eastern will install, own, operate and maintain the hot tap. IP will continue to own and operate M&R 2866. IP will pay Texas Eastern $15,000 for incurred installation costs and expenses. Texas Eastern states that the delivery point installation will not effect its peak day or annual deliveries and that its other customers will not be effected.

Comment date: May 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP95–273–000]

Take notice that on March 20, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP95–273–000 a request pursuant to Sections 157.205 and 157.212(a) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212(a)) for authorization to establish a bi-directional point in Acadia Parish, Louisiana, in order to receive and deliver gas to a new storage facility operated by Egan Hub Partners, L.P. (Egan), under the blanket certificate issued in Docket No. CP82–413–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that Egan requested the construction of the bi-directional point to accommodate up to 300,000 Dth/d on Tennessee's system. Tennessee states that it is Egan's intent to market the storage space to Tennessee's existing local distribution customers. Tennessee asserts that under existing firm or interruptible transportation agreements gas will be moved to and from storage.

Tennessee proposes to install two 8-inch hot tap assemblies on its 16-inch 507G–100 Line and one 12-inch hot tap assembly on its 24-inch 500–1 Line, including two valve actuators, all of which will be on Tennessee's existing right-of-way in Acadia Parish, Louisiana. The electronic gas measurement (EGM) will be installed by Tennessee on a site approved by Egan. Egan proposes to install approximately 200 feet of interconnecting pipe and measurement facilities, located on a site provided by Egan. Tennessee will install, own, operate and maintain the hot tap assemblies, the two valve actuators and EGM, inspect the interconnecting pipe, and inspect and operate the meter. Egan will install, own, operate, and maintain the interconnecting pipe, and install, own, and maintain the meter. The estimated cost for the facilities proposed by Tennessee is $192,400, which Egan will reimburse Tennessee for 100 percent.

Tennessee states that at the present time, there is no anticipation of increasing the maximum daily contract quantities under Tennessee's customers' agreements, whether firm or interruptible; therefore, there is no impact anticipated on peak day and annual deliveries.

Comment date: May 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

4. NorAm Gas Transmission Company

[Docket No. CP95–276–000]

Take notice that on March 21, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–276–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon the Marion Compressor Station under NGT's blanket certificate issued in Docket No. CP82–384–000, et al., 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.

NGT proposes to abandon the inactive Marion Compressor Station. It consist of two 350 horsepower reciprocal engines and is located in Crittenden County, Arkansas. NGT states that no customers or services will be abandoned.

Comment date: May 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the

time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7766 Filed 3–29–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–279–000]

Questar Pipeline Company; Notice of Application

March 24, 1995.

Take notice that on March 22, 1995, Quester Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP95–279–000 an application pursuant to Section 7(b) of the Natural Gas Act for authorization to abandon by removal 17 meter runs and appurtenant facilities at Questar's Clay Basin Storage Field (Clay Basin) located in Daggett County, Utah, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar requests authority to abandon 17 previously certificated meter runs, located on various storage injection/withdrawal laterals, that have been utilized historically as flow-control metering facilities in association with storage field dehydration and withdrawal activities at Clay Basin. Questar explains that the metering facilities are located on the Clay Basin side of the primary custody-transfer metering facilities utilized to measure natural gas volumes delivered to and received from Clay Basin via Questar's transmission system. Further, Questar explains that the metering facilities to be abandoned have been replaced by updated equipment and that there will be no adverse impact on storage services provided by Questar at Clay Basin. It is stated that the gas plant investment associated with the Clay Basin metering facilities proposed to be abandoned is approximately $250,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 3, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Questar to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7763 Filed 3–29–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–148–004, RP95–62–000, RP95–63–000, RP95–64–000, RP95–88–000, RP95–90–000, RP95–112–000]

Tennessee Gas Pipeline Co.; Notice of Technical Conference

March 24, 1995.

Take notice that a technical conference concerning the above dockets will be convened on April 6, 1995, at 9:00 a.m., at the Crystal City Marriott (Crystal Forum), 1999 Jefferson Davis Highway Arlington, Virginia. The purpose of the technical conference is to continue discussions begun at the prior conference concerning Tennessee's operations.

All parties, as defined by 18 CFR 385.102(c), and all participants as defined in 18 CFR 385.102(b), are invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, please contact Jake Hiatt (713) 757–6855 at Tennessee or Chris Young (202) 208–0620 and Robert McLean (202) 208–1179 at the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7761 Filed 3–29–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–34–000, RP94–227–000, CP94–254–000, CP94–751–000, CP94–211–000, CP94–676–000, CP95–70–000, CP95–153–000, RS92–87–000, CP95–112–000]

Transwestern Pipeline and Transwestern Gathering Companies; Settlement Conference

March 24, 1995.

Take notice that a settlement conference will be convened in the above-docketed proceedings on Thursday, March 30, 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. for the purpose of exploring the possible settlement of the above-captioned Transwestern Pipeline Company proceedings. The conference may continue on Friday, March 31, 1995, at 10:00 a.m., for the purpose of discussing the settlement of the certificate proceedings.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party to any of the above-docketed proceedings must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Scott E. Koves at (202) 208–0492.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7764 Filed 3–29–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 95–05–NG]

Wasatch Oil & Gas Corporation; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Wasatch Oil & Gas Corporation authorization to import up to 5 Bcf of natural gas from Canada over a two-year term beginning on the date of the first import.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., March 16, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–7854 Filed 3–29–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–01–NG]

Pennsylvania Gas and Water Company; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Pennsylvania Gas and Water Company long-term authorization to import up to 14,703 Mcf of natural gas per day from Canada beginning May 1, 1995, through October 31, 2002. This order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on March 16, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–7855 Filed 3–29–95; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

West Travel, Inc. (d/b/a Alaska Sightseeing/Cruise West), 4th and Battery Bldg., Suite 700, Seattle, Washington 98121

Vessel: SPIRIT OF COLUMBIA

Dated: March 24, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–7790 Filed 3–29–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Carnival Corporation, 3655 N.W. 87th Avenue, Miami, Florida 33178–2428

Vessel: CARNIVAL DESTINY

Dated: March 24, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–7791 Filed 3–29–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Gilbert International, Inc., 330 S. Stiles Street, Linden, NJ 07036, Officers: Richard Gilbert, President, Ken Gross, Vice President

Worchel Transport Inc. d/b/a Prime Transport, 182–09 149th Road, Springfield Gardens, NY 11413, Officers: Sam Fischel, President, David Wortman, Vice President

King Yang Shipping, Inc., 222431 S. Vermont Avenue, Torrance, CA 90502, Officer: Arthur King, President

Quality Customs Broker, Inc. dba, Quality Freight Services International, 7071 South 13th Street, Suite 103, Oak Creek, WI 53154, Officer: Karin La Freniere, President

All-Cargo Express, 7800 North University Drive, #201, Tamarac, FL 33321, Alfred L. Cohen, Sole Proprietor

Dated: March 27, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–7789 Filed 3–29–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0867]

Internal Appeals Process

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final guidelines.

SUMMARY: The Board is issuing its final guidelines on an internal appeals process for institutions wishing to appeal an adverse material supervisory determination.

EFFECTIVE DATE: March 24, 1995.

FOR FURTHER INFORMATION CONTACT: Gregory A. Baer, Managing Senior Counsel, Legal Division (202/452–3236); Shawn McNulty, Assistant Director, Division of Consumer and Community Affairs (202/452–3946); or Ann Marie Kohlligian, Senior Counsel/Manager, Division of Banking Supervision and Regulation (202/452–3528), Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 (the Act), 12 U.S.C. 4806, requires the Board (as well as the other Federal banking agencies) to establish an independent, intra-agency appellate process that is available to institutions to seek review of material supervisory determinations. Section 309 specifies various requirements that the appellate process must meet.

On December 29, 1994, the Board published for public comment its proposed guidelines that would implement the intra-agency appellant

process required by section 309 of the Act. (59 FR 67297 (December 29, 1994)). In general, the proposed guidelines required that: (1) All appeals be in writing and approved by the institution's board of directors; (2) all appeals be heard and decided within specified timeframes; (3) the initial appeal be heard by a person or persons selected by the Reserve Bank (the review panel) who had not participated in, or reported to the persons who made, the material supervisory determination under review; (4) an adverse decision by the review panel be appealable to a Reserve Bank President; (5) an adverse decision by a Reserve Bank President be appealable to the Board; and (6) Reserve Banks establish safeguards to protect institutions that file appeals from examiner retaliation.

Although section 309 requires the Board to develop an internal appeals process only for state member banks, the proposed guidelines expanded the process and made it available to all institutions that are subject to Federal Reserve oversight, including bank holding companies, U.S. agencies and branches of foreign banks and Edge corporations.[1] The proposed guidelines also defined a ''material supervisory determination'' to include all material matters relating to the examination or inspection process, but exclude those matters, such as the imposition of a prompt corrective action directive or a cease and desist order, for which an alternative, independent right of appeal exists.

As noted in the proposed guidelines, the Board continues to believe that questions about or objections to supervisory determinations made during the course of an inspection or examination are most effectively handled through the longstanding Federal Reserve practice of resolving any problems informally during the course of the inspection or examination process.

Public Comments

The Board received 27 comments on its proposed guidelines from Federal Reserve Banks, financial institutions, trade associations, law firms and a consulting firm. While the comments were generally supportive of the proposed guidelines, most comments submitted suggested changes or raised concerns regarding the implementation of the internal appeals process. These proposed changes and concerns, which are discussed below, relate to five areas: (1) protection from examiner retaliation; (2) independence of the review panel; (3) who should decide the final appeal at the Board; (4) the need for additional, specific timeframes; and (5) procedural issues.

(1) Protection From Examiner Retaliation

Thirteen comments raised concerns about examiner retaliation. Several comments suggested that the Ombudsman, which the Board is required to establish under section 309 of the Act, should play a role in addressing this issue, such as serving as an independent contact for institutions that believe they have been subject to some form of retaliation or ensuring that different examiners conduct examinations that commence after an appeal has been filed. Some comments suggested that greater Board involvement in the appeals process would protect institutions against retaliation, while others suggested that the guidelines include specific sanctions and disciplinary actions for examiners found to have engaged in retaliation due to an appeal.

The Board acknowledges that some institutions may perceive that availing themselves of the appeals process may result in retaliatory action by examiners. As proposed, the guidelines require the Reserve Banks to establish safeguards to protect institutions that file appeals from retaliation. While the Board believes that this provides sufficient protection and meets the requirements of section 309, the Ombudsman is available to address such concerns and may be contacted by institutions who believe they may have suffered retaliation as a result of an appeal. The role of this official and his/her procedures for addressing these concerns will be outlined in the Board's Policy Statement for the Ombudsman.

(2) Independence of Review Panel

Six comments suggested modifications to the part of the guidelines that addressed the independence of the review panel. Several stated that the appeals process cannot be independent so long as it remains an internal procedure and suggested that outside parties, such as a peer review panel or a panel appointed by the Federal Financial Institutions Examination Council, hear and decide all appeals. Another comment suggested that the review panel exclude not only persons who participated in, or who directly or indirectly report to the person(s) who participated in, the material supervisory determination under appeal, but anyone who directly or indirectly supervises the person(s) who made such determination.

Section 309 of the Act reflects a Congressional conclusion that an intra-agency appeals process will provide institutions with an adequate means to redress adverse material supervisory determinations. The Board does not believe that it is necessary to expand the guidelines beyond what is required by the statute. Similarly, section 309 requires that the person hearing the appeal not directly or indirectly report to the person who initially made the supervisory decision under review. Consequently, the composition of the review panel has not been modified in the final guidelines.

(3) Who Decides the Final Appeal at the Board

The proposed guidelines provided for an appeal of an adverse decision by a Reserve Bank President to the appropriate Board division director, who would consult with the appropriate Governor of the Board's oversight committee for that division. Three comments suggested that it would be more suitable for a Governor to review a decision by a Reserve Bank President. The final guidelines have been modified so that an appeal of a Reserve Bank President's decision will be to the Governor who serves as chairman of the appropriate oversight committee, who will consult with that division's director.

(4) Need for Additional Timeframes

The proposed guidelines required institutions to file an appeal within 30 days of the material supervisory determination and the review panel to decide the appeal within 30 days of its receipt. The proposed guidelines also required Reserve Bank Presidents to make a decision on any matter appealed to them within 30 days of receipt. Several comments noted that the proposed guidelines did not contain timeframes for other actions, such as the time in which an appeal should be filed with a Reserve Bank President or the Board, or the time in which the Board would make a decision on an appeal.

The Board agrees with these comments on the need for additional timeframes. Consequently, the final guidelines require that an appeal to a Reserve Bank President or the Board to be filed within 30 days of receipt of an adverse decision by the review panel or the Reserve Bank President, respectively. The final guidelines also require that the Board decide any appeal within 60 days of its receipt.

[1] The final guidelines have been modified to state explicitly that third party EDP servicers subject to examination by the Federal Reserve may appeal any material supervisory determination.

(5) Procedural Issues

Several comments suggested that the Board's guidelines include some additional procedures in order to ensure that the internal appeal process works smoothly. One comment suggested that the guidelines explicitly provide that the material supervisory determination remain in effect while it is under appeal, while another comment suggested that the determination be stayed pending the completion of the appeal. The Board believes that it is appropriate for the determination to remain in effect while it is under appeal, and the final guidelines have been modified to state this explicitly. The Board does not believe that section 309 of the Act is intended to stay the Board's supervisory decisions, but rather is designed to provide institutions with a procedure by which to voice objections to supervisory determinations for which no other formal appeals procedures exist.

Another comment suggested that institutions that consent to the issuance of a formal enforcement action, such as a cease and desist order, be allowed to use the internal appeals process to challenge the material supervisory determinations that led to the enforcement action. This suggestion seems inconsistent with the intent of section 309 of the Act, which is to provide an avenue for the review of material supervisory determinations and not to contest enforcement actions for which an alterative appeals mechanism exists. Therefore, the Board has not adopted this suggestion. Another comment suggested that the record be expunged of any material supervisory decisions that have been modified or overturned on appeal. The Board believes that it is appropriate to maintain all records of its supervisory actions, including those relating to a decision that is modified or overturned as a result of an internal appeal. Nonetheless, the Reserve Banks are expected to maintain complete records of any appeal, including updating all files, both hard copy and electronic, to reflect the results of all appeals.

One comment suggested that the board of directors of an institution only be required to approve the initiation of an appeal, but that management be allowed to decide on any subsequent appeals to a Reserve Bank President or the Board. Another comment noted that getting approval of the board of directors of a foreign bank would be extremely difficult in order for its U.S. agency or branch to file timely appeals. The Board continues to believe that the board of directors should be involved in each step of the appeals process; therefore, the final guidelines still require board approval for each step in the appeals process. On the other hand, the final guidelines have been modified to allow the senior management person(s) with authority for U.S. operations of a foreign bank to approve appeals; however, he or she must approve each step of the appeal.

The Board has decided to adopt several other procedural suggestions. The final guidelines provide that any appeal filed must contain all of the facts and arguments that the institution would like to present to the review panel, the Reserve Bank President or the Board, as the case may be, and that the review panel, the Reserve Bank President or the Board may reject the appeal for lack of clarity or information. In such a case, an institution would have 30 days in which to refile a rejected appeal. Last, the final guidelines make explicit that the internal appeals process does not give the appealing institutions any discovery or other similar rights.

Guidelines for Appeals of Material Supervisory Determinations

Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4806, requires the Board and the other Federal banking agencies to establish an independent, intra-agency process to review appeals of material supervisory determinations.

The purpose of these guidelines is to allow each Reserve Bank to administer its own appellate process, but to establish procedures under which all Reserve Banks' appellate process must operate. Doing so will ensure that each Reserve Bank's process is consistent with section 309 and that institutions will be granted the same appellant rights regardless of the Federal Reserve district in which they reside.

Procedures for Appealing a Material Supervisory Determination. Any appeal of a material supervisory determination pursuant to section 309 shall be filed and considered pursuant to the following procedures.

(1) Any appeal shall be approved by the board of directors of the institution, or in the case of a U.S. agency or branch of a foreign bank, the senior management person(s) responsible for the bank's U.S. operations, and filed in writing with the Secretary of the Reserve Bank or other appropriate Reserve Bank official within 30 calendar days of receipt of the written material supervisory determination, unless the time for filing is extended by the Reserve Bank. The Reserve Bank shall promptly provide a copy of the appeal to the appropriate division director of the staff of the Board of Governors.

(2) Any appeal shall contain all the facts and arguments that the institution wishes to present. The appeal may be rejected for lack of clarity or information. In such case, the institution may refile the appeal within 30 calendar days of receipt of written notice of the rejection of any filing.

(3) The appeal shall be considered in the first instance by a person or persons selected by the Reserve Bank (the review panel) who——

(A) did not participate in the material supervisory determination;

(B) do not directly or indirectly report to the person who made the material supervisory determination under review; and

(C) are qualified to review the material supervisory determination.

(4) The appellant institution may appear before the review panel in order to present testimony and, with the consent of the review panel, witnesses. The review panel shall also solicit the views of the Reserve Bank staff involved in the determination under appeal, Board staff, and, where appropriate, the staff of other supervisory agencies (for example, in case of joint examinations or inspections). Nothing in this appeals process shall create any discovery or other such rights.

(5) Any appeal shall be decided, in writing, by the review panel within 30 calendar days of the filing of an informationally complete appeal, unless the appellant and the review panel jointly agree to extend the time for decision.

(6) Any appellant institution dissatisfied with the decision of the review panel may, with the consent of its board of directors of the institution, or in the case of a U.S. agency or branch of a foreign bank, the senior management person(s) responsible for the bank's U.S. operations, appeal that decision to the Reserve Bank President by filing a written appeal with the Secretary of the Reserve Bank or other appropriate Reserve Bank official within 30 calendar days of receipt of the review panel's written decision. The appeal shall contain all facts and arguments that the institution wishes to be considered. The appeal may be rejected for lack of clarity or information. In such case, the institution may refile the appeal within 30 calendar days of receipt of written notice of the rejection. The appeal shall be decided by the Reserve Bank President, in writing, within 30 calendar days of the filing of an informationally complete appeal.

(7) Any appellant institution dissatisfied with the decision of the Reserve Bank President may, with the consent of its board of directors of the institution, or in the case of a U.S. agency or branch of a foreign bank, the senior management person(s) responsible for the bank's U.S. operations, appeal that decision to the appropriate Governor by filing a written appeal with the Secretary of the Board within 30 calendar days of receipt of the Reserve Bank President's written decision. The appeal may be rejected for lack of clarity or information. In such case, the institution may refile the appeal within 30 calendar days of receipt of written notice of the rejection. The appeal shall be decided, in writing, by the appropriate Governor, who shall consult with the director of the appropriate division of the Board of Governors, within 60 calendar days of the filing of an informationally complete appeal.

Safeguards Against Retaliation. Each Reserve Bank shall establish appropriate safeguards to protect appellants from retaliation. The Board's Ombudsman will periodically contact institutions after their appeals have been decided in order to make certain that no retaliation has occurred. In addition, institutions who believe they have suffered retaliation as the result of an appeal may contact the Board's Ombudsman.

Availability of Procedures. Each Reserve Bank shall make these guidelines and the Reserve Bank's process for selecting a review panel available to each institution in its district, any institution appealing a material supervisory determination, and any member of the public who requests them.

Eligible Institutions. Any institution about which the Federal Reserve makes a material supervisory determination is eligible for the appeal process. This includes state member banks, bank holding companies and their nonbank subsidiaries, U.S. agencies and branches of foreign banks, Edge and agreement corporations, third party EDP servicers, and other entities examined or inspected by a Reserve Bank.

Material Supervisory Determination Defined. Whether an appealed action constitutes a ''material supervisory determination'' eligible for the appeals process shall be decided by the person or persons hearing the appeal, and a determination that the action is not appealable under these guidelines may be further appealed to the Reserve Bank President or the appropriate oversight Governor in the same manner as any other adverse decision.

The term ''material supervisory determination'' includes, but is not limited to, material determinations relating to examination or inspection composite ratings, the adequacy of loan loss reserves and significant loan classifications. The term does not include any supervisory determination for which an independent right of appeal exists. Such actions include prompt corrective action directives issued pursuant to section 38 of the Federal Deposit Insurance Act, as amended (the FDI Act), actions to impose administrative enforcement actions under the FDI Act and the Bank Holding Company Act of 1956, as amended (the BHC Act), capital directives, and orders issued pursuant to applications under the BHC Act.

Effect of Appeal on Material Supervisory Determinations. A material supervisory determination shall remain in effect while under appeal and until such time it is modified or overturned through the appeals process. The appeal of a material supervisory determination does not prevent the Federal Reserve from taking any supervisory or enforcement action—formal or informal—it deems appropriate to discharge the Federal Reserve's supervisory responsibilities.

Savings Provision. Section 309 expressly provides that it shall not affect the authority of the Board or any other agency to take enforcement or supervisory action against an institution. In such cases, the rights of appeal provided for in the statutes and regulations concerning these actions shall govern.

By order of the Board of Governors of the Federal Reserve System, March 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–7795 Filed 3–29–95; 8:45 am]

BILLING CODE 6210–01–P

Agency Forms Under Review; Bank Holding Company Reporting Requirements

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Final Board approval of revisions to bank holding company reporting requirements.

SUMMARY: 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). The Board has given final approval to the revision of the Consolidated Financial Statements for Bank Holding Companies (FR Y-9C; OMB No. 7100-0128); the extension, with revision, of the Quarterly Financial Statements of Nonbanking Subsidiaries of Bank Holding Companies (FR Y-11Q; OMB No. 7100-0244) and the Annual Financial Statements of Nonbanking Subsidiaries of Bank Holding Companies (FR Y-11I; OMB No. 7100-0244); and the elimination of the Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies, by Type of Nonbank Subsidiary (FR Y-11AS; OMB No. 7100-0244).

The proposal was granted initial approval by the Board on December 16, 1994. Subsequently, the proposal was published in the Federal Register with a thirty day public comment period that expired on January 26, 1995. Comment letters on the proposal were received from four bank holding companies. In general, the comment letters on the proposal were supportive of the changes to the various reports. However, some specific comments were not supportive. These comments noted the increase in burden from some aspects of the proposal and suggested modifications to the proposed revisions. The specific comments on the proposed revisions to the reports are addressed in the discussion of each individual report following later in this notice. After reviewing the comments, the Board has approved the proposed changes as originally issued for comment. In addition to those changes, the Board also has approved two further changes to the FR Y-9C—the elimination of two line items from Schedule HC-F.

The reporting changes, summarized in this notice, will be effective for the FR Y-9C and the FR Y-11Q with the March 31, 1995 reporting date and effective for the FR Y-11I and the FR Y-11AS for the December 31, 1995 reporting date. The FR Y-9C and the FR Y-11Q reports effective for March 31, 1995 reporting date are due to be filed May 15, 1995 and May 30, 1995, respectively.

BACKGROUND: Under the Bank Holding Company Act of 1956, as amended, the Board is responsible for the supervision and regulation of all bank holding companies. The FR Y-9 and FR Y-11 series of reports historically have been, and continue to be, the primary source of financial information on bank holding companies and their nonbanking activities between on-site inspections. Financial information, as well as ratios developed from the Y series reports, are used to detect emerging financial problems, to review performance for pre-inspection analysis, to evaluate bank holding company

mergers and acquisitions, and to analyze a holding company's overall financial condition and performance as part of the Federal Reserve System's overall analytical effort.

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)

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)

Final approval under OMB delegated authority of the revision of the following report:

1. Report title: Consolidated Financial Statements for Bank Holding Companies.

Agency form number: FR Y-9C.

OMB Docket number: 7100-0128.

Frequency: Quarterly.

Reporters: Bank Holding Companies.

Annual reporting hours: 172,720.

Estimated average hours per response: Range from 5 to 1,250 hours.

Number of respondents: 1,346. Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

The Board's Legal Division has also determined that on the FR Y-9C, Schedule HC-H, Column A, requiring information on ''assets past due 30 through 89 days and still accruing'' and memoranda item 2 are confidential pursuant to Section (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(8)).

Abstract: The FR Y-9C consolidated financial statements are currently filed by top-tier bank holding companies with total consolidated assets of $150 million or more and by lower-tier bank holding companies that have total consolidated assets of $1 billion or more. In addition, all multibank bank holding companies with debt outstanding to the general public or engaged in certain nonbank activities, regardless of size, must file the FR Y-9C.

The report includes a balance sheet, income statement, and statement of changes in equity capital with supporting schedules providing information on securities, loans, risk-based capital, deposits, interest sensitivity, average balances, off-balance sheet activities, past due loans, and loan charge-offs and recoveries.

The Board has approved the revisions to the FR Y-9C following public comment. Most of the new items are required to maintain consistency with comparable items recently incorporated into the commercial bank Reports of Condition and Income (Call Report) by the Federal Financial Institutions Examination Council (FFIEC).

Public Comments: Three bank holding companies addressed the revisions to the FR Y-9C. As previously discussed, the proposed changes to this report keep the reporting requirements consistent with those changes being incorporated in the ''Call Report'' to be filed by commercial banks as of March 31, 1995. In the past, bank holding companies have commented that reporting burden is minimized by keeping the changes in the Call Report and the FR Y-9C consistent and by implementing the changes as of the same date.

In their comment letters, two bank holding companies supported the proposed changes to the report. Another bank holding company commented that the proposal expanded the information collected and increased the reporting burden and recommended generally that the Board eliminate all requirements not essential for the performance of the Board's supervisory responsibilities. Specifically, the company recommended that the Board eliminate the proposed requirement for bank holding companies to report gross redemptions of mutual funds and annuities. This item is one of several items relating to the sale of mutual funds by banking organizations added to the report. The Call Report collects some data, but does not collect the amount of redemptions. The Board believes that reporting the amount of redemptions, in addition to the amount of sales, is essential to measure the flow of funds into these new products and, accordingly, has approved the collection of these data. The measurement of the flow of funds is important in assessing the growth of these products. The Board also plans to propose to the FFIEC that these data be collected on the Call Report.

The commenter also recommended that the Board delay implementation of the changes until June 30, 1995. The Board believes that the burden on the majority of companies is lessened by making the changes to the FR Y-9C at the same time as the changes are implemented in the Call Report and has approved the changes for the FR Y-9C as of the March 31, 1995, report. The reports are due forty-five days after March 31, 1995.

Following the review of the public comments, the revisions to the FR Y-9C approved by the Board include:

Schedule HC-A, Securities:

(1) Memoranda items to collect the amortized cost and fair (market) value of high-risk mortgage securities and structured notes have been added.

(2) The reporting instructions for the category labeled ''mortgage-backed securities'' have been revised to ensure that all such securities are reported. In addition, the line items for collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs) issued by the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC) have been modified to explicitly include REMICs issued by Government National Mortgage Association (GNMA).

Schedule HC-F, Off-Balance Sheet Items:

Part 2 of this schedule has been revised to collect additional information on derivative instruments, including breakdowns of notional contract amounts by instrument type, by risk exposure underlying the contract, and by whether the contract is traded on the exchange or over the counter. In addition, the total notional amount and gross positive and gross negative fair values of contracts held for trading purposes and for purposes other than trading have been included on the schedule.

Schedule HI, Income Statement:

Memoranda items have been included to collect trading revenue that reflects the combined revenues from cash and derivative instruments, with a breakdown by underlying risk exposure, and information on the effect on earnings of derivatives held for purposes other than trading.

Schedules HC-I and HC-J, Risk-Based Capital:

(1) An item has been included to collect the net credit exposure of all derivative contracts taking into consideration netting arrangements permissible under the risk-based capital standards.

(2) The risk-based capital ''notional principal value, maturity and replacement cost matrix'' for derivatives has been expanded to include an additional remaining maturity time band and four additional categories of derivative contracts (gold, other precious metals, other commodity and equity contracts).

Schedule HI-B, Charge-offs and Recoveries and Changes in Allowance for Loan and Lease Losses:

The reconciliation of the allocated transfer risk reserve on Memoranda, Part 2, Column B has been deleted.

Schedule Of Trading Account Assets and Liabilities:

A schedule for the reporting of trading account assets and liabilities in a manner consistent with the schedule included in the Call Report has been added to the report. This schedule is to be completed by bank holding companies with total consolidated assets of $1 billion or more, or with $2 billion or more in par/notional amounts of interest rate, foreign exchange rate and other commodity and equity contracts.

Mutual Funds and Annuities Information:

Line items to collect quarterly gross sales of mutual funds (by type of fund) and annuities, including sales of proprietary mutual funds and annuities, and the fee income generated from the sale and servicing of mutual funds and annuities in domestic offices have been added to the report. In addition, a line item to collect the total amount of gross redemptions of mutual funds and annuities during the quarter has been included.

Deletion of Line Items:

In addition to the above changes that were addressed in the Federal Register notice (59 **FR** 66540), the Board also has approved two further changes to the FR Y-9C—the elimination of two line items from Schedule HC-F. These two items are: Memorandum item 1, ''Mortgages sold with recourse that incur no capital charge,'' and Memorandum item 2, ''Mortgages sold with recourse prior to October 12, 1990.'' The Board noted that one item is no longer needed following the revisions to the Capital Guidelines required by the Riegle Community Development and Regulatory Improvement Act of 1994, and the second item related to recourse is also no longer necessary.

Final approval under OMB delegated authority of the extension, with revision, of the following reports:

1. Report title: Quarterly Financial Statements of Nonbanking Subsidiaries of Bank Holding Companies
Agency form number: FR Y-11Q.
OMB Docket number: 7100-0244.
Frequency: Quarterly.
Reporters: Bank Holding Companies.
Annual reporting hours: 6,696.
Estimated average hours per response: Range from 3.0 to 8.0 hours.
Number of respondents: 270.
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c) and 12 CFR 225.5(b). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract: The Board has approved the revision of the FR Y-11Q. As approved, the FR Y-11Q will:

(1) Expand the report to collect more detailed financial information, comparable to items collected on the FR Y-9C and

(2) Revise the reporting criteria for bank holding companies with assets of $150 million or more to collect information on an individual basis from each nonbank subsidiary viewed as having a significant effect on the condition of the bank holding company. The revised comprehensive financial statements include a balance sheet, off-balance sheet items, a memoranda section, an income statement, and a statement of changes in equity capital. All bank holding companies with total consolidated assets of $150 million or more would file a report for each individual nonbank subsidiary with total assets equal to 5 percent or more of the bank holding company's consolidated Tier 1 capital, or where the subsidiary's total operating revenue equals 5 percent or more of the bank holding company's consolidated total operating revenue.

Under the prior reporting requirements, the Board collected free-form financial data from each nonbank subsidiary on the FR Y-6, Annual Report of Bank Holding Companies. In addition, nonbank subsidiary data were collected on three automated forms. Large bank holding companies with significant nonbanking assets submitted the FR Y-11Q and the FR Y-11AS. The prior FR Y-11Q was submitted quarterly and collected data from all nonbank subsidiaries on a combined basis. The FR Y-11AS was submitted annually and collected nonbank data on a combined basis by the principal line of business of the nonbank subsidiaries. The third form, FR Y-11I, collected selected financial data from all bank holding companies on each of their nonbank subsidiaries on an annual basis. Under the proposal issued for public comment and now given final approval by the Board, the Board eliminated the collection of free-form nonbank financial data in the FR Y-6, Annual Report of Bank Holding Companies, to offset the increase in the burden of the collection of automated data on the revised FR Y-11Q and the revised FR Y-11I. The Board gave final approval to the deletion of the free-form nonbank financial data in the FR Y-6 on February 7, 1995 (60 **FR** 12215). The Board also proposed to delete the requirement to submit the FR Y-11AS, and all commenters favored the deletion of this report. Thus, the Board has eliminated the requirement for certain bank holding companies to submit the FR Y-11AS.

Public Comments: Comments on the proposed revisions to the reports collecting data from nonbank subsidiaries were received from four bank holding companies. In addition to those commenting on the FR Y-9C, one commenter only commented on the FR Y-11 series. This commenter supported the proposed revisions and stated that under the revised report that they would only have to file a report for one subsidiary on a quarterly basis rather than providing quarterly data on all subsidiaries on a combined basis. Another commenter welcomed the deletion of certain nonbanking data, but stated their opposition to the increased burden of the FR Y-11Q.

A third commenter proposed increasing the materiality test for completing the FR Y-11Q and suggested several options. These include: nonbank assets as a percentage of total consolidated assets; investment in nonbank subsidiaries as a percentage of Tier 1 capital; or increasing the test of nonbank assets as a percent of Tier 1 capital. The materiality test proposed and adopted by the Board is based on the criteria utilized by Federal Reserve examination staff in determining those nonbanking subsidiaries subject to on-site examinations. In general, this materiality test is used to define those material nonbanking subsidiaries that can have a significant impact on the financial condition of the bank holding company.

The fourth commenter agreed that a revision of the information reported by nonbank subsidiaries is warranted, but suggested that the reporting format follow that of the FR 2314, Report of Condition of Foreign Subsidiaries. However, since the proposed format of the FR Y-11Q and FR Y-11I is consistent with the format of other bank holding company reports and the Call Report filed by commercial banks, the Board approved the format as proposed. The Board believes that conforming the format to that of the Call Report and the other holding company reports should reduce the burden on most bank holding companies. The commenter also recommended that the criteria for determining material nonbank subsidiaries exclude intercompany transactions. The Board believes that intercompany transactions should be

included as these nonbank subsidiaries serve as funding vehicles for other credit extending nonbank subsidiaries and pose liquidity risks to the bank holding company. Finally, the commenter recommended that the proposed FR Y-11I be further summarized. The revised format is composed of significant asset and liability accounts. Additional schedules are required to be completed only if the nonbank subsidiary is engaged in extensions of credit. The Board believes that the revised report represents the minimum information that should be collected from nonbank subsidiaries to evaluate their financial position and to monitor their potential impact on the bank holding company.

2.Report title: Annual Financial Statements for Nonbanking Subsidiaries.
Agency form number: FR Y-11I.
OMB Docket number: 7100-0244.
Frequency: Annual.
Reporters: Bank Holding Companies.
Annual reporting hours: 13,216.
Estimated average hours per response: Range from 0.4 to 8.0 hours.
Number of respondents: 4130.

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)) and 12 CFR 225.5(b). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract and Public Comments: The prior FR Y-11I report was filed by a top-tier bank holding company for each of its nonbank subsidiaries, whether directly or indirectly owned. Combined and consolidated reporting was permitted in some instances. The report consisted of ten summary financial items and two items providing consolidation information.

The Federal Reserve has approved the following revisions to the FR Y-11I:

(1) Expand the report to collect more detailed financial information, comparable to items proposed for the FR Y-11Q but with certain detail reported only as summary items and

(2) Revise the reporting criteria to collect information on an individual basis annually from each nonbank subsidiary not required to file the proposed FR Y-11Q. The revised financial statements will include a balance sheet, income statement, off-balance sheet, and a statement on changes in equity capital. The FR Y-11I will also include a loan schedule to be submitted only by respondents engaged in credit extending activities. The public comments are discussed under the FR Y-11Q report.

Final approval under OMB delegated authority of the elimination of the following report:

1. Report title: Combined Financial Statements of Nonbank Subsidiaries of Holding Companies, by Type of Nonbank Subsidiary.
Agency form number: FR Y-11AS.
OMB Docket number: 7100-0244.
Frequency: Annual.
Reporters: Bank Holding Companies.
Annual reporting hours: 1,680.
Estimated average hours per response: Range from 1.0 to 17.0 hours.
Number of respondents: 271.
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c) and 12 CFR 225.5(b). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract: The FR Y-11AS was filed by all bank holding companies meeting the prior reporting criteria for the FR Y-11Q. The report collected the same report items as the FR Y-11Q by type of nonbank activity and consists of a balance sheet, income statement, and a memoranda section. The Board has eliminated this reporting requirement, and all commenters supported this action.

REGULATORY FLEXIBILITY ACT ANALYSIS

The Board certifies that the above bank holding company reporting requirements are not expected to have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The reporting requirements for the small companies require significantly fewer items of data to be submitted than the amount of information required of large bank holding companies.

The information that is collected on the reports is essential for the detection of emerging financial problems, the assessment of a holding company's financial condition and capital adequacy, the performance of pre-inspection reviews, and the evaluation of expansion activities through mergers and acquisitions. The imposition of the reporting requirements is essential for the Board's supervision of bank holding companies under the Bank Holding Company Act.

By order of the Board of Governors of the Federal Reserve System, March 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–7796 Filed 3–29–95; 8:45AM]

Billing Code 6210–01–F

First Community Corporation, 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 April 24, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Community Corporation, Columbia, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of First Community Bank, N.A., Lexington, South Carolina (in organization).

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Suburban Illinois Bancorp, Inc., Elmhurst, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Suburban Bank of Elmhurst, Elmhurst, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mountain View Bancshares, Inc., Mountain View, Arkansas; to become a

bank holding company by acquiring at least 80 percent of the voting shares of Bank of Mountain View, Mountain View, Arkansas.

Board of Governors of the Federal Reserve System, March 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–7797 Filed 3–29–95; 8:45 am]

BILLING CODE 6210–01–F

Helena Bancshares, 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 April 13, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Helena Bancshares, Inc., Helena, Arkansas; to engage *de novo* through its subsidiary Helena National Leasing Company, Inc., Memphis, Tennessee, in leasing tangible personal property, consisting primarily of business machines, pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–7798 Filed 3–29–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of a Regional Public Hearings of the Commission on Research Integrity

Pursuant to Pub. L. 92–463, notice is hereby given of two regional public hearings and meetings of the Commission on Research Integrity. All proceedings are open to the public.

The first meeting will be on Monday and Tuesday, April 10 and 11, 1995, at the Countway Library Auditorium, Harvard Medical Center, 25 Shattuck Street, Boston, MA. The Commission will meet from 8:30 a.m. until 5:00 p.m. on the first day to listen to testimony, and from 9:00 a.m. until 5:00 p.m. on the second day to deliberate Commission issues.

The second meeting will be on Thursday and Friday, May 4 and 5, 1995, at the University of Alabama, the Great Hall and Alumni Auditorium respectively, Hill University Center, 1400 University Boulevard, Birmingham, AL. The Commission will meet from 8:30 a.m. until 5:00 p.m. on the first day to deliberate Commission issues, and from 9:00 a.m. until 4:45 p.m. on the second day to listen to testimony.

Interested parties are advised to call the Executive Secretary shortly before the meeting to verify the date, place, and agenda.

The mandate of the Commission is to develop recommendations for the Secretary of Health and Human Services (DHHS) and the Congress on the administration of Section 493 of the Public Health Service Act, as amended by and added to by Section 161 of the NIH Revitalization Act of 1993.

In its deliberations, the Commission has confirmed that there are no quick and easy answers for fair, effective, and realistic administrative solutions to a number of issues in research integrity and scientific misconduct. An essential component of the Commission's information-gathering is to interact extensively with relevant constituencies of the scientific community—including junior and senior scientists, witnesses, respondents, academic administrators, as well as students—to understand their particular experiences and views and to explore possible improvements.

Four major areas are currently of great interest to the Commission:

1. *A New Definition of Research Misconduct.* The Commission believes that any definition needs to address the full extent of serious research misconduct, but must avoid a definition that is too broad, vague, and potentially unfair. In addition, a two-tiered approach for research integrity, or failures thereof, would be useful; it would emphasize institutional responsibility, and reserve an oversight role for the Federal Government.

2. *Assurance for Institutions and Accountability for Federally Funded Research.* The Commission is considering that each institution receiving Federal funds develop and submit for Federal review and approval assurances concerning the establishment and implementation of: (a) Good research practices and professional norms; (b) procedures for disseminating that information throughout its community; and (c) educational activities designed to foster practice of the highest ethical standards in the conduct of research for all researchers. Topics affecting good research practices that might be addressed in institutional assurances include: data recording and retention; supervisory responsibility; authorship practices; protection of witnesses; and other professional conduct bearing directly on the integrity of Federally supported research.

3. *Bill of Rights for Witnesses.* Testimony from witnesses (also called ''whistleblowers'') who have challenged perceived research misconduct reaffirms the Commission's mandate to propose effective whistleblower protection. Witnesses have stated that retaliation occurs with sufficient frequency and impact to have a chilling effect on potential witnesses throughout the research community. The Commission is considering a Witness Bill of Rights.

4. *Codes of Ethics.* Professional organizations have a unique role in the preservation of scientific integrity. The Commission endorses their existence, their continual use in teaching and standard checking, and their ongoing development to keep pace with the ethical issues of the times. The Commission is considering that, to reinforce and augment the influence of normative professional standards, professional organizations should

become more active in defining, promulgating, and promoting compliance with these standards.

The Commission will also continue discussion of other issues on which the Commission may make recommendations in its final report.

The Commission invites oral or written statements from interested parties. Lengthy statements exceeding 10 or 15 minutes of oral presentation should be submitted in writing or via internet to the Executive Secretary before the meeting. Written statements will be reviewed by Commission Members.

Henrietta D. Hyatt-Knorr, Executive Secretary, Commission on Research Integrity, at Rockwall II, Suite 700, 5515 Security Lane, Rockville MD 20852; (301) 443–5300 (phone); (301) 443–5351 (fax); and hhyatt@oasch.ssw.dhhs.gov (internet) will furnish a preliminary report of the Commission including the Committee charter and roster of the Committee members, and/or a meeting agenda upon request. Individuals wishing to make presentations should contact the Executive Secretary. Depending on the number of presentations and other considerations, the Executive Secretary will allocate a reasonable timeframe for each speaker.

Henrietta D. Hyatt-Knorr,

Executive Secretary, Commission on Research Integrity.

[FR Doc. 95–7782 Filed 3–29–95; 8:45 am]

BILLING CODE 4160–17–P

Agency for Toxic Substances and Disease Registry

[ATSDR–91]

Notice of Proposed Revised Publication Schedule for the Priority List of Hazardous Substances that will be the Subject of Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces a proposed change in the publication schedule for the ''Priority List of Hazardous Substances that will be the Subject of Toxicological Profiles.'' According to the proposal, the list would be shifted to a 2-year publication schedule with a yearly informal review and revision. Therefore, the next scheduled publication would be in late 1995 when the 1995 Priority List of Hazardous Substances is made publicly available from ATSDR. At that time, a **Federal Register** notice would be published announcing the availability of the list.

DATES: Comments concerning this notice must be received by May 1, 1995.

ADDRESSES: Comments on this notice should bear the docket control number ATSDR–91 and should be sent to the attention of Dr. Jim Holler, Emergency Response and Scientific Assessment Branch, Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–29, Atlanta, Georgia 30333.

Comments on this notice will be available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 4, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays. Because all public comments are available for public inspection, no confidential business information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: The Emergency Response and Scientific Assessment Branch, Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–29, Atlanta, Georgia 30333, telephone (404) 639–6308.

SUPPLEMENTARY INFORMATION: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), establishes certain requirements for ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL). Specifically, section 104(i)(2) of CERCLA, as amended by SARA (42 U.S.C. 9604(i)(2)), requires that the agencies maintain a list, in order of priority, of the hazardous substances found at NPL sites posing the most significant potential threat to human health. This listing is called the ''Priority List of Hazardous Substances that will be the Subject of Toxicological Profiles.'' Each substance on the Priority List is a candidate to become the subject of a toxicological profile prepared by ATSDR and the subsequent identification of priority data needs for that substance.

The history of the Priority List is as follows: The first 100 substances were published in 1987 (52 FR 12866); an additional 100 in 1988 (53 FR 41280); 25 more in 1989 (54 FR 43619); 25 more in 1990 (55 FR 42067); and a revision of the priority-list algorithm, including publication of the final target of 275 substances, was published in 1991 (56 FR 52166). The list of 275 has been reviewed annually, in 1992 (57 FR 48801) and 1993 (59 FR 9486), as called for by the legislation.

The 1991 revision of the algorithm represented a significant advance in the prioritization methodology. This listing now uses information from ATSDR's Hazardous Substance Release/Health Effects Database (HazDat), an active database of contaminants at NPL sites, as found in ATSDR's public health assessments. While the algorithm's use of current data keeps its conclusions contemporary, experience has shown that with this new approach, the Priority List has not changed substantially from year to year, particularly for high-priority substances. ATSDR believes that this stability reflects that the listing activity has fully developed. However, the amount of staff time needed to generate and publish the Priority List each year is not insignificant; substantial resources are still required for quality assurance and preparation and dissemination of results. ATSDR would like to shift some of these resources to implement promising new ideas to enhance the algorithm and data.

For these reasons, ATSDR and EPA would like to shift the Priority List activity to a 2-year publication schedule with a yearly informal review and revision. The informal review and revision would result in an interim list that would not be published or announced in the **Federal Register**, but would be made available on request. The agencies believe that the Priority List activity is mature enough that little is lost by reducing the frequency of publication and much is gained for other activities. This schedule will allow staffers to concentrate on enhancing the quality of the algorithm and its underlying data. It should also allow enough time for (1) the underlying data to change sufficiently so results will be more notably affected, and (2) adequate analysis, feedback, and insight to have occurred in order to enact more valuable revisions with each release.

The publicly announced list would be used to develop toxicological profiles. Placement on the priority list is one factor used to determine if a substance is to be considered for profile development in a given year. However, the interim list may also be reviewed to identify candidate substances that could be targeted for profile development.

ATSDR and EPA would retain the option to re-publish the Priority List in less than 2 years, if important new

developments, insights, or resources arise.

Dated: March 24, 1995.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 95–7785 Filed 3–29–95; 8:45 am]

BILLING CODE 4163–70–P

Administration for Children and Families

Office of Community Services; State Median Income Estimates for Four-Person Families (FY 1996); Notice of the Fiscal Year (FY) 1996 State Median Income Estimates for Use Under the Low Income Home Energy Assistance Program (LIHEAP) Administered by the Administration for Children and Families, Office of Community Services, Division of Energy Assistance

AGENCY: Administration for Children and Families (ACF), DHHS.

ACTION: Notice of estimated state median income for FY 1996.

SUMMARY: This notice announces the estimated median income for four-person families in each state and the District of Columbia for FY 1996 (October 1, 1995 to September 30, 1996). In the past, the date for adoption of the state median income estimates has been the first day of the fiscal year after their publication. The adoption date for the state median income estimates now has been changed to be consistent with the adoption date for the poverty income guidelines. Therefore, LIHEAP grantees may adopt the state median income estimates at any time between the date of this publication and the first day of FY 1996 at the LIHEAP grantee's option. This means that LIHEAP grantees could also choose to implement this notice during the period between the heating and cooling seasons. However, by October 1, 1995, or by the beginning of a grantee's fiscal year, whichever is later, LIHEAP grantees using state median income estimates must adjust their income eligibility criteria to be in accord with the FY 1996 state median income estimates.

This listing of estimated state median incomes concerns maximum income levels for households to which LIHEAP grantees may make payments under LIHEAP or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

EFFECTIVE DATE: The estimates are effective at any time between the date of this publication and October 1, 1995, or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

FOR FURTHER INFORMATION CONTACT: Leon Litow, Administration for Children and Families, HHS, Office of Community Services, Division of Energy Assistance, 5th Floor West, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Telephone: (202) 401–5304.

SUPPLEMENTARY INFORMATION: Under the provisions of section 2603(7) of Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, as amended), we are announcing the estimated median income of a four-person family for each state, the District of Columbia, and the United States for FY 1996 (the period of October 1, 1995, through September 30, 1996).

Section 2605(b)(2)(B)(ii) of the LIHEAP statute provides that 60 percent of the median income for each state, as annually established by the Secretary of Health and Human Services, is one of the income criteria that LIHEAP grantees can use in determining a household's eligibility for LIHEAP.

LIHEAP is currently authorized through the end of FY 1999 by the Human Services Amendments of 1994, Public Law 103–252, which was enacted on May 18, 1994.

Estimates of the median income of four-person families for each state and the District of Columbia for FY 1996 have been developed by the Bureau of the Census of the U.S. Department of Commerce, using the most recent available income data. In developing the median income estimates for FY 1996, the Bureau of the Census used the following three sources of data: (1) The March 1994 Current Population Survey; (2) the 1990 Decennial Census of Population; and (3) 1993 per capita personal income estimates, by state, from the Bureau of Economic Analysis of the U.S. Department of Commerce.

This is the first year in which income estimates from the March Current Population Survey are based on population controls from the 1990 Decennial Census of Population. Previous income estimates from the March Current Population Survey had been based on population controls from the 1980 Decennial Census of Population. Generally, the use of 1990 population controls results in somewhat lower estimates of income. This has resulted in several states having lower state median income estimates for FY 1996 than for FY 1995.

For further information on the estimating method and data sources, contact Edward Welniak, Chief of the Income Statistics Branch, Housing and Household Economic Statistics Division, at the Bureau of the Census (301–763–8576).

A state-by-state listing of median income, and 60 percent of median income, for a four-person family for FY 1996 follows. The listing describes the method for adjusting median income for families of different sizes as specified in 45 CFR 96.85(b), which was published in the **Federal Register** on March 3, 1988 at 53 FR 6824.

Dated: March 1, 1995.

Donald Sykes,

Director, Office of Community Services.

ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON FAMILIES, BY STATE, FISCAL YEAR 1996[1]

States	Estimated State median income 4-person families [2]	60 percent of estimated State median income 4-person families
Alabama	$37,975	$22,785
Alaska	51,181	30,709
Arizona	39,679	23,807
Arkansas	32,594	19,556
California	44,643	26,786
Colorado	47,112	28,267
Connecticut	59,288	35,573
Delaware	50,228	30,137
District of Col	46,943	28,166
Florida	40,405	24,243

ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON FAMILIES, BY STATE, FISCAL YEAR 1996[1]—Continued

States	Estimated State median income 4-person families [2]	60 percent of estimated State median income 4-person families
Georgia	44,120	26,472
Hawaii	54,856	32,914
Idaho	39,851	23,911
Illinois	47,975	28,785
Indiana	44,274	26,564
Iowa	42,772	25,663
Kansas	43,155	25,893
Kentucky	36,291	21,775
Louisiana	35,177	21,106
Maine	41,513	24,908
Maryland	53,717	32,230
Massachusetts	55,120	33,072
Michigan	46,633	27,980
Minnesota	48,817	29,290
Mississippi	34,001	20,401
Missouri	42,162	25,297
Montana	38,157	22,894
Nebraska	42,262	25,357
Nevada	46,137	27,682
New Hampshire	49,452	29,671
New Jersey	57,916	34,750
New Mexico	35,560	21,336
New York	47,570	28,542
North Carolina	42,691	25,615
North Dakota	41,084	24,650
Ohio	46,116	27,670
Oklahoma	35,133	21,080
Oregon	42,745	25,647
Pennsylvania	47,109	28,265
Rhode Island	47,908	28,745
South Carolina	40,163	24,098
South Dakota	38,067	22,840
Tennessee	38,341	23,005
Texas	40,688	24,413
Utah	42,630	25,578
Vermont	44,184	26,510
Virginia	47,732	28,639
Washington	50,557	30,334
West Virginia	34,189	20,513
Wisconsin	46,363	27,818
Wyoming	45,414	27,248

Note—FY 1996 covers the period of October 1, 1995 through September 30, 1996. The estimated median income for 4-person families living in the United States is $45,161 for FY 1996. The estimates are effective for the Low Income Home Energy Assistance Program (LIHEAP) at any time between the date of this publication and October 1, 1995, or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

[1] In accordance with 45 CFR 96.85, each state's estimated median income for a 4-person family is multiplied by the following percentages to adjust for family size: 52% for one person, 68% for two persons, 84% for three persons, 100% for four persons, 116% for five persons, and 132% for six persons. For family sizes greater than six persons, add 3% to 132% for each additional family member and multiply the new percentage by the state's estimated median income for a 4-person family.

[2] Prepared by the Bureau of the Census from the March 1994 Current Population Survey, 1990 Decennial Census of Population and Housing, and 1993 per capita personal income estimates, by state, from the Bureau of Economic Analysis.

[FR Doc. 95–7741 Filed 3–29–95; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 94M–0363]

Exogen™, Inc.; Premarket Approval of Sonic Accelerated Fracture Healing System (SAFHS®); Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of November 9, 1994 (59 FR 55847). The document announced the approval of the Exogen™, Inc., Sonic Accelerated Fracture Healing System (SAFHS®). Some information was inadvertently omitted and incorrect approval dates were used. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

In FR Doc. 94–27222, appearing on page 55847, in the **Federal Register** of November 9, 1994, the following corrections are made:

1. On page 55847, in the third column, the ''**SUMMARY**'' section, beginning in the 5th line, ''September 13, 1994'' should read ''October 5, 1994''; and in the ''**SUPPLEMENTARY**

INFORMATION'' section in, beginning in the 10th line, the words ''acceleration of the time to a healed fracture for fresh, closed, distal'' should read ''the treatment of fresh, closed, posteriorly displaced distal.''

2. On page 55848, in the first column, in the first paragraph, in the 31st line, after the word ''indication'', the following paragraph is added:

All other indications for the device will require additional data, and PMA supplements must be submitted for new indications. Furthermore, the applicant must conduct a study to gather additional information to validate some of the conclusions that were drawn from the PMA studies, based on a larger size.

3. On the same page, in the first column, in the 38th line, after the word ''review'', the following paragraph is added:

In accordance with the Panel's observation that differences exist in the rate of healing in different age groups, CDRH also directed the applicant to include a warning statement regarding the specific age range of the patients to be treated. CDRH concluded that based on the study's success criteria (e.g., both radiographically and clinically healed), the results of study did show a statistically significant difference in the time to a healed fracture in favor of the active device.

4. On the same page, in the first column, in the 43d line, after the word ''panel'' the following phrase is added:

''additional statistical analysis of the patient data stratified by age and gender,''.

5. On the same page, in the first full paragraph, in the first line, ''September 13, 1994'' should read ''October 5, 1994''.

Dated: March 17, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–7744 Filed 3–30–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[ORD–073–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: January 1995

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for demonstration projects submitted to the Department of Health and Human Services during the month of January 1995 under the authority of section 1115 of the Social Security Act. This notice also lists approved, disapproved and pending proposals.

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, 2230 Oak Meadows, 6325 Security Boulevard, Baltimore, MD 21207.

FOR FURTHER INFORMATION CONTACT: Susan Anderson, (410) 966–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

II. Listing of New and Pending Proposals for the Month of January 1995

As part of our procedures, we are publishing a monthly notice in the **Federal Register** of all new submissions, pending proposals, approvals, and disapprovals. Proposals submitted in response to a grant solicitation or other competitive process will be reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process. We have added a new category in this notice entitled ''Approved Grant Proposals'' to identify grant and cooperative agreement awards for development of demonstration projects that may involve section 1115 authority.

A. Comprehensive Health Reform Programs

1. New Proposals

Demonstration Title/State: Louisiana Health Access—Louisiana.

Description: Louisiana proposes to implement a fully capitated statewide managed care program. A basic benefit package and a behavioral health and pharmacy wrap-around would be administered through the managed care plans. The State intends to expand eligibility of persons with incomes up to 250 percent of the Federal poverty level (FPL), with persons with incomes above 133 percent of the FPL paying all or a portion of premiums. To fund the demonstration, the State is seeking a waiver of Federal Medical Assistance Payments (FMAP) requirements, which would effectively create a block grant whereby the Federal share of the demonstration would be fixed over the course of the demonstration and the State would assume the cost of increases as they occurred.

Date Received: January 3, 1995.

State Contact: Carolyn Maggio, Executive Director, Bureau of Research and Development, Louisiana Department of Health and Hospitals, Post Office 2870, Baton Rouge, Louisiana 70821–2871, (504) 342–2964.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: SoonerCare—Oklahoma.

Description: Oklahoma proposes to implement a 5-year statewide managed care demonstration using both fully and partially capitated delivery systems. The emphasis of the program is to address access problems in rural areas by encouraging the development of rural-based managed care initiatives. The State will employ traditional fully capitated managed care delivery models for urban areas and will introduce a series of partial capitation models in the rural areas of the State. All currently eligible, non-institutionalized individuals will be enrolled during the first two years of the project.

Date Received: January 6, 1995.

State Contact: Dr. Garth Splinter, Oklahoma Health Care Authority, Lincoln Plaza, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105.

Federal Project Officer: Helaine I. Fingold, Health Care Financing

Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

2. Pending Proposals:

Demonstration Title/State: The Diamond State Health Plan—Delaware.

Description: Delaware proposes to expand eligibility for Medicaid to persons with incomes up to 100 percent of the Federal poverty level and require that the Medicaid population enroll in managed care delivery systems. The State's current section 1115 demonstration project, the Delaware Health Care Partnership for Children, would be incorporated into the statewide program as an optional provider for eligible children.

Date Received: July 29, 1994.

State Contact: Kay Holmes, DSHP Coordinator, DHSS Medicaid Unit, Biggs Building, P.O. Box 906, New Castle, Delaware 19720, (302) 577–4900.

Federal Project Officer: Rosana Hernandez, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: MediPlan Plus—Illinois.

Description: Illinois seeks to develop a managed care delivery system using a series of networks, either local or statewide, to tailor its Medicaid delivery system to the needs of local urban neighborhoods or large rural areas.

Date Received: September 15, 1994.

State Contact: Tom Toberman, Manager, Federal/State Monitoring, 201 South Grand Avenue East, Springfield, Illinois 62763, (217) 782–2570.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: MassHealth—Massachusetts.

Description: Massachusetts proposes a range of strategies that would extend Medicaid coverage to its low-income and uninsured citizens, including the employed, the short-term unemployed, and the long-term unemployed. The proposed program would employ direct provision of health services as well as indirect strategies that would promote market forces to address the needs of the uninsured, by providing subsidies to employers and low-income employees with incomes up to 200 percent of the Federal poverty level.

Date Received: April 15, 1994.

State Contact: Laurie Burgess, Director, Managed Care Program Development, Division of Medical Assistance, 600 Washington Street, Boston, Massachusetts 02111, (617) 348–5695.

Federal Project Officer: Ed Hutton, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: MinnesotaCare—Minnesota.

Description: Minnesota proposes to expand its use of managed care service delivery and to extend Medicaid eligibility to families and children with incomes up to 275 percent of the Federal poverty level. The State would also integrate Medicaid with other public entities that deliver health services.

Date Received: July 28, 1994.

State Contact: Maria Gomez, Commissioner, Health Care Services Delivery, Minnesota Department of Human Services, 444 Lafayette Road N, St. Paul, Minnesota 55155, (612) 297–4113.

Federal Project Officer: Penny Pine, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Missouri.

Description: Missouri proposes to require that beneficiaries enroll in managed care delivery systems, and extend Medicaid eligibility to persons with incomes below 200 percent of the Federal poverty level. As part of the program, Missouri would create a fully capitated managed care pilot program to serve non-institutionalized persons with permanent disabilities on a voluntary basis.

Date Received: June 30, 1994.

State Contact: Donna Checkett, Director, Division of Medical Services, Missouri Department of Social Services, P.O. Box 6500, Jefferson City, Missouri 65102–6500, (314) 751–6922.

Federal Project Officer: Suzanne Rotwein, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: The Granite State Partnership for Access and Affordability in Health Care—New Hampshire.

Description: New Hampshire proposes to extend Medicaid eligibility to adults with incomes below the AFDC cash standard and to create a public insurance product for low income workers. The State also seeks to implement a number of pilot initiatives to help redesign its health care delivery system.

Date Received: June 14, 1994.

State Contact: Barry Bodell, New Hampshire Department of Health and Human Services, Office of the Commissioner, 6 Hazen Drive, Concord, New Hampshire 03301–6505, (603) 271–4332.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

3. Approved Conceptual Proposals (Award of Waivers Pending)

No conceptual proposals were approved during the month of January.

4. Approved Grant Proposals (Award of Waivers Pending)

No grant proposals were awarded in the month of January. The following are proposals awarded since January 1, 1993:

Demonstration Title/State: MAINE–NET: Medicaid and Medicare Managed Care for the Elderly and Physically Disabled in Maine—Maine.

Description: This project is designed to demonstrate integrated models for the financing and delivery of managed health care and social services for elderly and physically disabled persons on Medicare and/or Medicaid in Maine. The project seeks to promote the development of regional service delivery networks or health plans, particularly in rural areas of the State, that would be responsible for the management, coordination and integration of services, including multi-disciplinary approaches to care planning and service delivery. The demonstration will provide a comprehensive package of primary, acute, and long term care (institutional and noninstitutional) services as part of a prepaid capitated health plan for the target populations. The project is in the early developmental stage.

Date Received: March 25, 1994.

State Contact: Carreen Wright, State of Maine Department of Human Services, State House Station #11, Augusta, Maine 04333.

Federal Project Office: Kay Lewandowski, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, Baltimore, Maryland 21207.

Demonstration Title/State: Project Demonstrating and Evaluating Alternative Methods to Assure and Enhance the Quality of Long Term Care Services for Persons with Developmental Disabilities through Performance-Based Contracts with Service Providers—Minnesota

Description: The purpose of this project is to determine whether and how well the implementation of new approaches to quality assurance, with outcome-based definitions and measures of quality, will replace the input and process measures of quality, and in the process contribute to improving quality of life for persons with developmental disabilities. The Minnesota Department of Human Services will seek Federal authority to waive necessary provisions of intermediate care facilities for the mentally retarded (ICFs/MR) regulations to permit alternative quality assurance mechanisms in selected demonstration, residential, and support service programs. The Department will enter into performance-based contracts with counties, and participating ICF/MR providers. Desirable outcomes include, among others, the enhancement of consumer choice and autonomy, employment, and integration into the community. This project is in the developmental stage.

Date Received: March 25, 1994.

State Contact: Helen M. Yates, Minnesota Department of Human Services, Health Care Administration, 44 Lafayette Road, St. Paul, Minnesota 55155–3853.

Federal Project Officer: Samuel M. Brown, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

5. Approved Proposals

Demonstration Title/State: OhioCare—Ohio.

Description: Ohio will expand Medicaid eligibility to include uninsured persons with incomes up to 100 percent of the Federal poverty level. New and current eligibles in this statewide program will receive services through managed care. Certain special health related services, such as mental health and drug and alcohol addiction services, will also be provided through managed care.

Date Received: March 2, 1994.

Date Awarded: January 17, 1995.

Implementation Date: (Proposed) January 1, 1996.

State Contact: Kathi Glynn, Director, Ohio Medicaid, 30 East Broad Street, Columbus, Ohio 43266, (614) 644–0140.

Federal Project Officer: David Walsh, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

6. Disapproved Proposals

No comprehensive health reform proposals have been disapproved since January 1, 1993.

B. Other Section 1115 Demonstration Proposals

1. New Proposals

No new proposals were received during the month of January.

2. Pending Proposals

Demonstration Title/State: Georgia's Children's Benefit Plan.

Description: The State of Georgia submitted a Section 1115 proposal entitled ''Georgia Children's Benefit Plan'' that provides preventive and primary care services for children 1 through 5 years of age who are between 133 and 185 percent of the Federal poverty level. The duration of the waiver is 5 years with proposed project dates of July 1, 1995 to June 30, 2000.

Date Received: December 12, 1994.

State Contact: Jacquelyn Foster-Rice, Georgia Department of Medical Assistance, 2 Peachtree Street NW, 201 South Grand Avenue East, Atlanta, Georgia 30303–3159, (404) 651–5785.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: High Cost User Initiative—Maryland.

Description: Maryland proposes to implement an integrated case management system for high-cost, high-risk Medicaid recipients.

Date Received: July 8, 1994.

State Contact: John Folkemer, Maryland Department of Health and Mental Hygiene, Office of Medical Assistance Policy, 201 West Preston Street, Baltimore, Maryland 21201, (410) 225–5206.

Federal Project Officer: Rosana Hernandez, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Minnesota Long-Term Care Options Project—Minnesota.

Description: The State proposes to integrate long-term care and acute care services under combined Medicare and Medicaid capitation payments for elderly dual eligibles.

Date Received: April 18, 1994.

State Contact: Pamela Parker, Minnesota Department of Human Services, Human Services Building, 444 Lafayette Road North, St. Paul, Minnesota 55155, (612) 296–2140.

Federal Project Officer: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Family Planning Proposal—New Mexico.

Description: New Mexico proposes to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level.

Date Received: November 1, 1994.

State Contact: Bruce Weydemeyer, Director, Division of Medical Assistance, P.O. Box 2348, Santa Fe, New Mexico 87504–2348, (505) 827–3106.

Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Pay-in Spenddown Pilot—Ohio.

Description: Ohio proposes to implement a one-county pilot program to simplify Medicaid eligibility administration. It would allow the medically needy to pay in spenddown amounts in order to qualify for Medicaid.

Date Received: April 28, 1994.

State Contact: Jeanne Carroll, Ohio Department of Human Services, 30 East Broad Street, Columbus, Ohio 43266, (614) 466–6024.

Federal Project Officer: David Walsh, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: CHOICES—Citizenship, Health, Opportunities, Interdependence, Choices and Supports—Rhode Island.

Description: Rhode Island proposes to consolidate all current State and Federal funding streams for adults with developmental disabilities under one program using managed care/managed competition.

Date Received: April 5, 1994.

State Contact: Susan Babin, Department of Mental Health, Retardation, and Hospitals, Division of Developmental Disabilities, 600 New London Avenue, Cranston, Rhode Island 02920, (401) 464–3234.

Federal Project Officer: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Virginia.

Description: Virginia proposes to expand Medicaid eligibility to children in the State-funded KIDS CARE program, and provide them with a limited Medicaid benefit restricted to ambulatory services.

Date Received: May 18, 1994.

State Contact: Janet Kennedy, Suite 1300, 600 East Broad Street, Richmond, Virginia 23219, (804) 371–8855.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Family Planning Demonstration—Washington.

Description: The State proposes to provide family planning services to low-income women for an additional 10 months postpartum, which will extend total coverage for such services to one year.

Date Received: April 21, 1994.

State Contact: Claudia Lewis, Medical Assistance Administration, Division of Client Services, P.O. Box 45530, Olympia, Washington 98504–5530, (206) 586–2751.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Wisconsin.

Description: The State proposes to limit the amount of exempt funds that may be set aside as burial and related expenses for SSI-related Medicaid recipients.

Date Received: March 9, 1994.

State Contact: Jean Sheil, Division of Economic Support, Wisconsin Department of Health and Social Services, 1 West Wilson Street, Room 650, P.O. Box 7850, Madison, Wisconsin 53707, (608) 266–0613.

Federal Project Officer: J. Donald Sherwood, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

3. Approved Conceptual Proposals (Award of Waivers Pending)

No conceptual proposals were approved during the month of January.

4. Approved Proposals

The following projects were inadvertently omitted from the list of pending proposals published in the **Federal Register** on January 23, 1995 (60 FR 4418).

Demonstration Title/State: The Multistate Nursing Home Case-Mix and Quality Demonstration—Kansas.

Description: This demonstration tests a combined Medicare and Medicaid nursing home payment and quality monitoring system. The system significantly enhances the quality assurance process in SNFs. Data for measuring quality of care will come from an expanded version of the standardized resident assessment instrument currently used by States for all nursing home residents. The same tool that is used in care planning, which measures residents' needs, strengths, and preferences, will be used to determine Medicare and Medicaid payment. In the developmental phase of the demonstration, data from the assessment instruments were used to create 30 facility-level quality indicators. Under the demonstration, these indicators will help facilities benchmark their own performance and help Medicare and Medicaid target nursing home surveys.

Date Received: Winter 1989.

Date Awarded: January 1995.

Implementation Date: (Proposed) Summer 1995.

State Contact: Evelyn McCormick, R.N., Case Mix Demonstration Project Director, Department of Social And Rehabilitation Services Docking State Office Building, Room 628 South, 915 Southwest Harrison, Topeka, Kansas 66612–1570, (913) 296–4752.

Federal Project Officer: Elizabeth Cornelius, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: The Multistate Nursing Home Case-Mix and Quality Demonstration—Maine.

Description: This demonstration tests a combined Medicare and Medicaid nursing home payment and quality monitoring system. The system significantly enhances the quality assurance process in SNFs. Data for measuring quality of care will come from an expanded version of the standardized resident assessment instrument currently used by States for all nursing home residents. The same tool that is used in care planning, which measures residents' needs, strengths, and preferences, will be used to determine Medicare and Medicaid payment. In the developmental phase of the demonstration, data from the assessment instruments were used to create 30 facility-level quality indicators. Under the demonstration, these indicators will help facilities benchmark their own performance and help Medicare and Medicaid target nursing home surveys.

Date Received: Winter 1989.

Date Awarded: January 1995.

Implementation Date: (Proposed) Summer 1995.

State Contact: Alison Moore, R.N., M.B.A., Case Mix Demonstration Project Director, Bureau of Medical Services, Maine Department of Human Services, State House Station 11, Augusta, Maine 04333, (207) 287–3838.

Federal Project Officer: Elizabeth Cornelius, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: The Multistate Nursing Home Case-Mix and Quality Demonstration—Mississippi.

Description: This demonstration tests a combined Medicare and Medicaid nursing home payment and quality monitoring system. The system significantly enhances the quality assurance process in SNFs. Data for measuring quality of care will come from an expanded version of the standardized resident assessment instrument currently used by States for all nursing home residents. The same tool that is used in care planning, which measures residents' needs, strengths, and preferences, will be used to determine Medicare and Medicaid payment. In the developmental phase of the demonstration, data from the assessment instruments were used to create 30 facility-level quality indicators. Under the demonstration, these indicators will help facilities benchmark their own performance and help Medicare and Medicaid target nursing home surveys.

Date Received: Winter 1989.

Date Awarded: January 1995.

Implementation Date: (Proposed) Summer 1995.

State Contact: Jamie Collier, Case Mix Demonstration Project Director Division of Medicaid, Robert E. Lee Building, Suite 801, 239 North Lamar Street, Jackson, Mississippi, (601) 359–6081.

Federal Project Officer: Elizabeth Cornelius, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: The Multistate Nursing Home Case-Mix and Quality Demonstration—New York.

Description: This demonstration tests a combined Medicare and Medicaid nursing home payment and quality monitoring system. The system

significantly enhances the quality assurance process in SNFs. Data for measuring quality of care will come from an expanded version of the standardized resident assessment instrument currently used by States for all nursing home residents. The same tool that is used in care planning, which measures residents' needs, strengths, and preferences, will be used to determine Medicare and Medicaid payment. In the developmental phase of the demonstration, data from the assessment instruments were used to create 30 facility-level quality indicators. Under the demonstration, these indicators will help facilities benchmark their own performance and help Medicare and Medicaid target nursing home surveys.

Date Received: Winter 1989.

Date Awarded: January 1995.

Implementation Date: (Proposed) Summer 1995.

State Contact: David H. Wilcox, CPA, Case Mix Demonstration Project Director, Bureau of Health Economics, 1143 Corning Tower, Empire State Plaza, Albany, New York 12237–0722, (518) 474–2881.

Federal Project Officer: Elizabeth Cornelius, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: The Multistate Nursing Home Case-Mix and Quality Demonstration—South Dakota.

Description: This demonstration tests a combined Medicare and Medicaid nursing home payment and quality monitoring system. The system significantly enhances the quality assurance process in SNFs. Data for measuring quality of care will come from an expanded version of the standardized resident assessment instrument currently used by States for all nursing home residents. The same tool that is used in care planning, which measures residents' needs, strengths, and preferences, will be used to determine Medicare and Medicaid payment. In the developmental phase of the demonstration, data from the assessment instruments were used to create 30 facility-level quality indicators. Under the demonstration, these indicators will help facilities benchmark their own performance and help Medicare and Medicaid target nursing home surveys.

Date Received: Winter 1989.

Date Awarded: January 1995.

Implementation Date: (Proposed) Summer 1995.

State Contact: Carol Job, R.N., Case Mix Demonstration Project Director, Department of Social Services and Aging, 700 Governors Drive, Pierre, South Dakota 57501–2291, (605) 773–3656.

Federal Project Officer: Elizabeth Cornelius, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: The Multistate Nursing Home Case-Mix and Quality Demonstration—Texas.

Description: This demonstration tests a combined Medicare and Medicaid nursing home payment and quality monitoring system. The system significantly enhances the quality assurance process in SNFs. Data for measuring quality of care will come from an expanded version of the standardized resident assessment instrument currently used by States for all nursing home residents. The same tool that is used in care planning, which measures residents' needs, strengths, and preferences, will be used to determine Medicare and Medicaid payment. In the developmental phase of the demonstration, data from the assessment instruments were used to create 30 facility-level quality indicators. Under the demonstration, these indicators will help facilities benchmark their own performance and help Medicare and Medicaid target nursing home surveys.

Date Received: Winter 1989.

Date Awarded: January 1995.

Implementation Date: (Proposed) Summer 1995.

State Contact: Sue Wilson, Case Mix Demonstration Project Director Rate Analysis Department, Texas Department of Human Services P.O. Box 149030, Mailcode W–425, Austin, Texas 78714–9030 (512) 450–3744

Federal Project Officer: Elizabeth Cornelius, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

The following proposal was approved in January 1995.

Demonstration Title/State: Demonstration Project for Family Planning and Reproductive Services—Maryland.

Description: Maryland will extend Medicaid eligibility for family planning and preventive reproductive services for a 5-year period to women who are Medicaid eligible due to their pregnancy and remain Medicaid eligible 60-days post-partum.

Date Received: June 11, 1994.

Date Awarded: January 18, 1995.

Implementation Date: Not yet determined

State Contact: Jane Forman, Department of Health and Mental Hygiene Room 137, 201 West Preston Street, Baltimore, Maryland 21201, (410) 225–6538

Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

The following are projects approved since January 1, 1993, in addition to those published in the **Federal Register** on January 23, 1995 (60 FR 4418).

Demonstration Title/State: Medicaid Direct Purchase Vaccine Program (MDPVP)—Arkansas.

Description: The MDPVP streamlines the reimbursement process for vaccines, by allowing States to directly reimburse manufacturers for vaccines. Vaccine manufacturers send a shipment of vaccines on consignment at no cost to each private physician who treats children on Medicaid. Physicians then bill Medicaid for the office visit when they inoculate children, but not for the cost of the vaccine. The Medicaid program will reimburse the manufacturer directly at a discounted rate, according to the number of vaccines administered. The manufacturer will then send replacement quantities of the vaccines to the private physicians.

Date Received: March 1993.

Date Awarded: June 1993.

Implementation Date: Not Yet Determined.

State Contact: Judy Kerr, Arkansas Department of Human Services, Division of Economic and Medical Services, Donaghey Plaza South, P.O. Box 1437 Little Rock, Arkansas 72203–1437, (501) 682–8360.

Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Improving Access to Care for Pregnant Substance Abusers—Massachusetts.

Description: This demonstration seeks to increase the number of Medicaid-eligible pregnant substance abusers who receive coordinated perinatal care services, substance abuse treatment, and other relevant services to promote better health outcomes for themselves and their offspring.

Date Received: 1991.

Date Awarded: July 1, 1993.

Implementation Date: July 1993.

State Contact: Milton Argeriou, Ph.D. Project Director, MOTHERS Project, 200

Lincoln Street, Suite 303, Boston, Massachusetts 02111, (617) 426–5997.

Federal Project Officer: Debbie Van Hoven, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Improving Access to Care for Pregnant Substance Abusers—New York.

Description: This demonstration seeks to increase the number of Medicaid-eligible pregnant substance abusers who receive coordinated perinatal care services, substance abuse treatment, and other relevant services to promote better health outcomes for themselves and their offspring.

Date Received: 1991.

Date Awarded: July 1, 1993.

Implementation Date: July 1993.

State Contact: Mr. Stuart Lefkowich, Assistant Commissioner, Bureau of Primary Care, Division of Health and Long Term Care, New York State Department of Social Services, 40 North Pearl Street, Albany, New York 12243–0001, (518) 473–5875

Federal Project Officer: Sherrie Fried, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Health Access Plan—South Carolina.

Description: This project tests the effects on individuals' access to and cost of health care of eliminating categorical eligibility requirements and of raising the financial eligibility limits to 150 percent of the Federal poverty level.

Date Received: Spring 1991.

Date Awarded: February 1993.

Implementation Date: March 1993.

State Contact: Bruce Bondo, Health and Human Services Finance Commission, 1801 Main Street, Columbia, South Carolina 29201, (803) 253–6177.

Federal Project Officer: Jamie Hadley, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Improving Access to Care for Pregnant Substance Abusers—South Carolina.

Description: This demonstration seeks to increase the number of Medicaid-eligible pregnant substance abusers who receive coordinated perinatal care services, substance abuse treatment, and other relevant services to promote better health outcomes for themselves and their offspring.

Date Received: 1991.

Date Awarded: July 1, 1993.

Implementation Date: July 1993.

State Contact: Bunny W. Jones, State Health and Human Services Finance Commission, Department of High Risk and Maternal Care, P.O. Box 8206, Columbia, South Carolina 29202–8206, (803) 253–6374.

Federal Project Officer: Debbie Van Hoven, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Health Access Plan—Washington.

Description: This project tests the effects of eliminating categorical eligibility requirements and raising the financial eligibility limits to 200 percent of the Federal poverty level on individuals' access to and cost of health care.

Date Received: Spring 1991.

Date Awarded: February 1993.

Implementation Date: March 1993.

State Contact: Rochelle Salsman, Department of Health and Social Services, Medical Assistance Administration, Office of Recipient Services, 617 8th Avenue, SE., 4th Floor, P.O. Box 45530, Olympia, Washington 98504, (206) 753–7463.

Federal Project Officer: Jamie Hadley, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Improving Access to Care for Pregnant Substance Abusers—Washington.

Description: This demonstration seeks to increase the number of Medicaid-eligible pregnant substance abusers who receive coordinated perinatal care services, substance abuse treatment, and other relevant services to promote better health outcomes for themselves and their offspring.

Date Received: 1991.

Date Awarded: July 1, 1993.

Implementation Date: July 1993.

State Contact: Kathy L. Apodaca, First Steps Plus Project, Medical Assistance Administration, Washington State Department of Health, P.O. Box 45730, Olympia, Washington 98504, (509) 575–2227.

Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

5. Disapproved Proposals

No proposals were disapproved during the month of January.

III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments.)

Dated: March 21, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–7848 Filed 3–29–95; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

Division of Research Grants; 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: Chemistry and Related Sciences.

Date: April 7, 1995.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 322, Telephone Conference.

Contact Person: Dr. Edmund Copeland, Scientific Review Admin., 5333 Westbard Ave., Room 322, Bethesda, MD 20892, (301) 594–7154.

Name of SEP: Chemistry and Related Sciences.

Date: April 14, 1995.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 322, Telephone Conference.

Contact Person: Dr. Edmund Copeland, Scientific Review Admin., 5333 Westbard Ave., Room 322, Bethesda, MD 20892, (301) 594–7154.

Name of SEP: Behavioral and Neurosciences.

Date: April 21, 1995.

Time: 9:00 a.m.

Place: Rockefeller University, New York, NY.

Contact Person: Dr. Kenneth Newrock, Scientific Review Admin., 5333 Westbard Ave., Room 232, Bethesda, MD 20892, (301) 594–7123.

Name of SEP: Clinical Sciences.

Date: May 1, 1995.

Time: 2:00 p.m.

Place: NIH, Westwood Building, Room 349, Telephone Conference.

Contact Person: Ms. Jo Pelham, Scientific Review Administrator, 5333 Westbard Ave., Room 349, Bethesda, MD 20892, (301) 594–7254.

The meetings will be closed in accordance with the provisions set forth in section

552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–7759 Filed 3–29–95; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Rescission of Social Security Rulings on the Definition of ''Eligible Spouse'' as it is Used in the Supplemental Security Income (SSI) Program

AGENCY: Social Security Administration, HHS.

ACTION: Notice of rescission of Social Security Rulings (SSR) 76–28, 76–41, and 88–11c.

SUMMARY: The Commissioner of Social Security gives notice of the rescission of SSR 76–28, SSR 76–41, and SSR 88–11c.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

SSR 76–28 and SSR 76–41 were published in the 1976–1980 Cumulative Edition of the Rulings, and SSR 88–11c was published in the 1988 Cumulative Edition of the Rulings. These Rulings concern the definition the Social Security Administration used for the term ''eligible spouse'' in supplemental security income cases.

Section 8012 of Public Law (Pub. L.) 101–239 (the Omnibus Budget Reconciliation Act of 1989) changed the definition of the term ''eligible spouse'' by eliminating the 6-month waiting period for ending couple status after a separation. The definition of the term ''eligible spouse'' as used in these Rulings is no longer applicable because of the revised statutory definition. We are publishing final regulations to reflect section 8012 of Pub. L. 101–239 on this date.

(Catalog of Federal Domestic Assistance Program No. 93.807 Supplemental Security Income.)

Dated: February 1, 1995.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 95–7887 Filed 3–29–95; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Policy on Giant Panda Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of proposed policy for issuance of permits for giant panda imports; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a proposed policy for issuance of permits for the import of giant pandas under the Convention on International Trade in Endangered Species (CITES) and the U.S. Endangered Species Act (Act). Current policy regarding giant panda imports would be superseded by this policy, if adopted. Specifically, no import permits would typically be issued for animals intentionally removed from the wild. All imports would have to be part of a coordinated international panda conservation effort, and activities would need to benefit panda conservation by supplementing, and not interfering with, China's breeding and research programs. Any net profits raised as a result of a panda loan would need to primarily fund conservation projects, educational programs, and/or breeding efforts in China. The Service proposes two alternatives concerning exhibition. One alternative would allow for import of pandas for short-term exhibition loans only as an ancillary component of a captive-breeding and/or scientific research program, when the display would not interfere with the captive-breeding or research activities. In the other alternative, the Service proposes to retain short-term exhibition loans under certain limited circumstances. The basis for findings required by the CITES on ''primarily commercial purposes'' and the Act on ''enhancement of propagation or survival of the species'' are outlined in this proposed policy. The suspension of the review and processing of permit applications to import live giant pandas continues until a decision is made on this proposed policy.

DATES: The Service will consider comments received by May 30, 1995.

ADDRESSES: Comments may be submitted to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Materials received will be available for public inspection by appointment from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of Management Authority, Room 434.

FOR FURTHER INFORMATION CONTACT: Management Authority: Kenneth B. Stansell, Office of Management Authority, at the above address, telephone (703) 358–2093; fax number (703) 358–2280.

Scientific Authority: Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, telephone (703) 358–1708; fax number (703) 358–2276.

SUPPLEMENTARY INFORMATION:

Background

The survival and ultimately the increase in the population of the giant panda (*Ailuropoda melanoleuca*) in its natural habitat is the strong desire of the United States, the People's Republic of China (China), and the international conservation community. As such, the panda is subject to strict protection by its listing as an endangered species under the Act and its inclusion in Appendix I of CITES.

The Service is responsible for regulating panda loans in the United States by deciding whether to grant import, export, and re-export permits required by the Act and CITES, and interstate and foreign commerce permits under the Act. In making these decisions the Service, under the Act, must determine whether the proposed activities are not likely to jeopardize the continued existence of the giant panda and would enhance its existence in the wild, and under CITES, would be for purposes that are not detrimental to the survival of the species and that are not primarily commercial.

In the late 1980's the proposals for short-term exhibition loans of giant pandas became an increasingly controversial issue. During one period in 1988, the Service received reports that as many as 30 institutions may have been negotiating, or planning to negotiate, with various entities in China to arrange panda loans, potentially posing additional threats to the wild and captive populations of pandas. As a result the Service, through the public review process, published a policy on March 14, 1991 (56 FR 10809), for the issuance of import permits for short-term exhibition loans.

In 1992, after the Service had issued a permit to the Columbus Zoo to import a pair of giant pandas for a short-term exhibition loan, the CITES Secretariat requested the Service to reevaluate its policy on panda imports. The Service published a notice in the **Federal Register** on June 29, 1992 (57 FR 28825), requesting public comment on existing policy. Three written comments were received. The International Union of Directors of Zoological Gardens suggested that an international management program be developed, especially for the captive population, which should include: (1) The development of a comprehensive, accurate inventory of captive pandas; and (2) a carefully designed breeding program, engaging as many founders and contributors to the gene pool as possible. Although accepting that there may be pandas incapable of breeding that could be used for exhibition, they recommended a complete ban on exhibit loans until a panda management plan is in place.

The World Conservation Union (IUCN) stated there should be a moratorium on short-term non-breeding loans of pandas until there is sufficient evidence that such loans would contribute to a long-term conservation strategy in captivity and in the wild. They believed there is need for a strategy defining priority conservation activities for the species.

The New York Zoological Society viewed short-term exhibition loans as money-making commercial ventures that should not be considered as ''not for commercial purposes'', stating that any policy should meet the mandatory standards that the American Zoo and Aquarium Association (AZA) has proposed. In their view, poaching continues as a major problem, yet little is being done to stop it. They maintained there should be a complete moratorium on loans until: (1) There is an adequate and complete register and studbook of captive pandas; (2) a complete series of priorities and projects are agreed to by conservation organizations and China; and (3) agreements can be developed with IUCN to meet international conservation concerns, including increased efforts to stop poaching and preserve habitat.

Verbal comments were made by the World Wildlife Fund (WWF) within the comment period, expressing concern about commercial aspects of exhibition loans and the distinction that had been made by the Service in this regard, and that income to the parent city of a zoo should also be considered. They were concerned that exhibition loans could reduce breeding and induce taking from the wild. They thought the Service should provide a clear indication of how it will examine the educational aspect of any exhibits.

Before evaluation of the existing policy on short-term exhibition loans was completed, the Service received an application from the Zoological Society of San Diego (ZSSD) to import a pair of giant pandas for a long-term, captive-breeding loan. On April 20, 1993, the AZA announced the development of a Giant Panda Conservation Action Plan, which has since been formalized. The plan outlines a captive-breeding program with support from 29 zoological institutions in North America. In addition, in July 1993 China's Ministry of Construction (MOC) published the second giant panda studbook, listing all pandas currently in captivity.

With the possibility of receiving an increasing number of import permit applications for giant pandas for public exhibition, scientific research, and/or captive breeding purposes, the Service felt that a re-examination of the long-range implications of panda imports was necessary to ensure that such imports best serve the conservation needs of the species. Thus, on December 20, 1993, the Service announced in a news release the temporary suspension of the processing of any new permit applications for the import of live giant pandas during a reassessment of the current policy. On May 4, 1994, the Service requested public comments and announced a working public meeting to assist the Service in formulating the draft revised policy (59 FR 23077). The suspension of review and processing of any new live giant panda import permits remains in effect.

Public meetings were held by the Service on May 26 and August 23, 1994. For its review, the Service sought information on: Giant panda status and population trends; current information on habitat availability and continuing loss; the status of current breeding efforts; the need to augment breeding efforts outside of China; whether there is adequate genetic diversity within the captive population to maintain sufficient heterozygosity in future generations; whether there is a need for additional genetic material from the wild; the status of reintroduction; and the need for research priorities. The Service also sought information on the status of all existing or proposed conservation programs and management plans for the giant panda. Comments were sought on the current panda loan policy and on specific elements of the findings necessary for permit issuance, including ''primarily commercial purposes'' and ''enhancement''.

As a result of the public comment period in 1994, written information and comments were received from the AZA, Busch Gardens, the Humane Society of the United States (HSUS), WWF, and the ZSSD. The AZA commented that: (1) All importers of giant pandas must be required to participate in the giant panda studbook; (2) most of the funds contributed to China must be used for giant panda field conservation projects; (3) there must be a project selection and monitoring system established in China and overseen in North America for the use of funds generated by panda loans; (4) the permittee must show that the importation will not detract from the current panda captive-breeding program in China; (5) genetic and demographic criteria should be used to determine selection of pandas to be imported; (6) there should be no lower age limit for animals to be imported, and pre-reproductive animals should be allowed if the permittee can demonstrate their value within a holistic panda conservation program; (7) loans should be longer than 3 years; (8) animals to be imported must be individually identified; (9) importing facilities must follow recommended minimum housing guidelines, and facilities should be approved by the Chinese; (10) the permittee must show that the importation is part of the AZA Giant Panda Conservation Action Plan, or a similar plan; (11) all permittees must support research aimed at resolving husbandry and management problems of giant pandas and at increasing reproductive success; (12) import must be for a scientific purpose or survival of the species and not likely to jeopardize the continued existence of the species; (13) no animals are to be used in animal acts while in the United States; (14) there must be an education component; and (15) part of the program must be to assist the Chinese in technology transfer and training and collaborative efforts in

panda husbandry, management, and health care.

Busch Gardens commented that: (1) The Service should lift its moratorium on the importation of giant pandas and establish a new policy promptly; (2) since the current policy establishes guidelines for only short-term exhibition loans, the new policy should set specific guidelines for long-term captive-breeding loans; (3) the new policy should recognize that long-term breeding loans sponsored by the AZA under its conservation plan are inherently non-commercial and, therefore, meet the CITES requirement of being ''not for primarily commercial purposes'', and ''for-profit'' institutions that participate in the AZA program should be treated in the same way as ''not-for-profits''; (4) accounting or reporting obligations should not be imposed on the importer as a result of a long-term breeding loan as they are unnecessary, impracticable, and unprecedented; and (5) neither CITES nor the Act requires an ''in fact'' finding by the Service that a proposed activity will enhance propagation or survival of the panda, and participants in the AZA plan should automatically meet the enhancement standard of the Act.

The HSUS indicated that: (1) The previous exhibition of pandas in zoos in the United States has not resulted in the improvement of the status of pandas in captivity or in the wild, and experience has shown that large populations of animals in captivity are not an effective conservation tool; (2) they oppose the removal of an endangered animal from the wild for confinement and breeding in zoos unless preservation of the species' ecosystem is assured; (3) it would be desirable to duplicate the experience in Chinese breeding centers of maintaining a number of pandas clustered at one location for breeding; (4) the import of pandas to zoos will always serve a commercial purpose, and there has been little control or guarantee of what happens to funds going to China for panda conservation; and (5) funds, technical assistance, and other efforts should be directed toward protecting habitat and reintroductions. The WWF commented that: (1) Long-term breeding and research loans must be part of an integrated, international program designed to complement conservation efforts for the wild panda population; (2) research loans must be for research that is of high priority, is best conducted outside China, and will produce results that will contribute to the pool of knowledge about giant pandas; (3) standards for commercial vs. not-for-profit institutions need to be clarified—if import of a panda by a city-owned institution can result in the benefit to the local economy in the same manner that for-profit institutions operate to generate a profit, all institutions should be held to the same stringent standards; (4) the standards for ''primarily commercial'' need to be defined to consider the motivation for a giant panda loan; (5) the requirements on accounting and allowable expenses need to be strengthened—the Service should consider setting a ceiling on the associated expense that an exhibitor can deduct from revenues generated by the loan; (6) it should be clarified that education of the American public is not a criterion in making permit decisions, and education in China related to in-situ panda conservation should be considered as a component of an integrated conservation program; (7) better documentation should be required on the specific conservation projects in China that are to receive funding from an exhibitor, and China's approved and complete National Conservation Project Plan for the Giant Panda and its Habitat (National Plan) for pandas should be used as a guide; and (8) the Service must monitor performance of exhibitors on an annual basis to ensure they are complying with the provisions of the permit.

The ZSSD commented that: (1) There is a need to clarify existing regulations and guidelines; (2) there needs to be a framework that includes agreement on the role for captive breeding, coordinated and effective research with agreed-upon, but flexible, research objectives, effective habitat preservation and restoration with emphasis on management of human conflicts, sufficient funding to accomplish these tasks, with agreed-upon monitoring and sufficient accountability for revenues and expenditures, and agreement on the role of display; and (3) they feel strongly that captive breeding is central. They suggested an approach to the policy that includes a framework agreement between AZA and the Chinese government that would identify priority conservation projects and research priorities with integrated participation by U.S. institutions. Permits could be issued to institutions based on this agreement, and a monitoring and implementation process could be established involving key parties, such as the AZA, the permittee, the Service, and the WWF.

The Service considered these comments and comments given at the two public meetings, plus the experience it has gained since 1991 in applying the current policy, to draft a new proposed policy. The following summarizes information the Service received and gives a brief description of elements in this proposed policy.

Population Status

Precise data on the size of the wild population of giant pandas are not available. The most recent survey, performed from 1985 to 1988, concluded there were between 872 and 1,352 pandas in the wild. The most common current estimate is that there are fewer than 1,000 giant pandas left in the wild and that the population is continuing to decline. In less than 15 years, from 1975 to 1989, the total area of panda habitat declined by 53 percent. This decline was primarily due to logging, grazing, and conversion of forest habitat to agriculture and other uses, resulting in the fragmentation of habitat into small islands. The 1985–88 survey found the wild panda population to be fragmented into 24 isolated groups separated by mountain ranges, rivers, roads, forest clearings, and human settlements. Some of these groups contain fewer than 10 pandas, making them vulnerable demographically and genetically. Without genetic exchange among these populations, the persistence of such small islands of pandas over time is questionable. In addition, poaching continues to take its toll, despite the imposition of harsh penalties, including execution.

Status of Captive Breeding in China and the Need for Breeding Efforts Outside of China

The continued decline of the wild population of giant pandas and the increasing fragmentation of its habitat make it increasingly important to establish a self-sustaining captive population. The existence of a robust captive population could provide insurance against increasing threats to the wild population. The current captive population represents about 10 percent of the total panda population, captive and wild. As of June 1993, there were 113 giant pandas in captivity in 35 institutions—98 animals were in institutions in China and 15 pandas were in 8 institutions located outside of China. Three institutions had 14 to 21 pandas and 4 had 4 to 6 animals. The remaining 28 institutions had 1 or 2 animals. The Chinese recognize that these captive pandas need to be moved for better breeding opportunities and to ensure that all mature individuals participate in breeding. Of the 15 pandas currently held in 8 institutions outside China, 5 institutions hold only 1 panda. These data demonstrate the great need to coordinate the movement of captive-held pandas internationally.

The captive-breeding program in China is not currently self-sustaining. Between 1936 and 1988, 345 pandas held in captivity produced 67 litters of 106 cubs, with only 32 surviving more than a year. In recent years, improvement in management and joint efforts within China have enhanced breeding and survival rates and reduced the infant mortality rate of the captive population. However, a review of the International Studbook of the Giant Panda suggests that the current number of founders that have contributed to the captive population is inadequate. According to the studbook, the current captive population is descended from 30 founders. However, recent research suggests that fewer than 30 founders may exist because the paternity of some of the captive-born pandas is uncertain. The current captive population includes 57 wild-caught pandas that have not reproduced, but only 31 of these are currently of reproductive age. If these pandas could be encouraged to breed before their deaths, the captive population might not need additional genetic material from the wild population for several generations. If immediate action is not taken to enhance captive propagation efforts, additional genetic material might have to be taken from the wild to ensure sufficient genetic diversity in the captive population.

Reintroduction

In view of the information on the status of the panda in the wild and in captivity, the Service recognizes that reintroductions cannot occur until a self-sustaining population of captive-born animals is achieved and sufficient areas of panda habitat are available and secure. The reintroduction of giant pandas is a long-term goal that needs to be incorporated into coordinated international conservation efforts. Protocols for reintroduction must be developed so that they are available when opportunities for reintroduction arise. As used in this notice, a *coordinated international panda conservation effort* means an organized plan through which all panda imports support high priority projects in China's National Plan and are coordinated with China's captive-breeding plan and the AZA Species Survival Plan (SSP) for the panda or other applicable multi-national breeding plans.

Research Priorities

There needs to be a coordinated global effort to set priorities for panda research. China's National Plan (see following section) provides the following research priorities: (1) habitat improvement; (2) captive- breeding; (3) ecology, population status, and monitoring; (4) rearing and nutrition; (5) prevention of illness; and (6) reintroduction of captive pandas to the wild. The ''Giant Panda Breeding Plan'' developed in China (see following section) lists the following areas that need basic research: (1) artificial insemination biology and techniques; (2) breeding behavior; (3) disease prevention; (4) reproductive physiology; (5) diet; (6) mating ability; (7) reproductive longevity; and (8) fertility. Because of the precarious level of the panda population, it is important that research findings are shared quickly and that information and methodologies are transferred to China for use in the field and in the captive-breeding program.

Giant Panda Conservation Plans

In the past decade, there appear to have been advances in panda conservation as a result of international cooperation with the Chinese ministries. The WWF worked closely with the Ministry of Forestry (MOF) to develop a panda conservation plan, which was submitted to the Chinese government in 1989. China's National Plan evolved from this plan, and in 1993 it was approved by China's State Council, with the subsequent development of a priority list of the projects included in the plan. The National Plan proposes establishing 14 new panda reserves, improving 13 existing giant panda nature reserves, constructing 18 panda migration corridors, and setting up 32 habitat management stations. It would cover most of the currently occupied panda habitat, protecting 95 percent of pandas in the wild. With the adoption of the plan, the Chinese government made a major commitment to the conservation of pandas and the plan by appropriating $13 million for its implementation. However, the total required for completion is estimated at $77 million, leaving more than $64 million that must come from outside sources over the next 10 years.

To carry out the fund-raising activities effectively and to ensure that the funds raised would be used entirely for the conservation projects, China issued guidelines, ''Utilization and Management of Funds Generated for China's National Conservation Project for the Giant Panda and Its Habitat,'' which have also been approved by China's State Council. The guidelines indicate that the MOF is responsible for coordinating and organizing the raising of funds under the National Plan and any funds generated must be submitted to the China Protecting Giant Panda Project Office (Project Office), which will be responsible for assuring that specific funds will be used in specific areas. After deductions for some overhead costs, funds will be used entirely for projects in the National Plan, allocated on a priority basis and the Project Office is responsible for announcing the allocation and expenditure of funds generated for the National Plan.

Advances have been made in the captive-breeding efforts as well. In 1993, the second international studbook of giant pandas was published, listing all births, deaths, capture locations, and other valuable data. In September 1993 at the International Giant Panda Conference in Chengdu a document entitled, ''Giant Panda Captive Breeding Plan'' was presented. It references the Giant Panda Breeding Technical Committee, which coordinates captive-breeding. Although the Service does not know whether this document will become official, it is a clear indication of the increased cooperation between Chinese zoos and MOF panda-breeding facilities.

Recent events suggest that China is interested in working with entities outside of China in an integrated conservation effort that includes conservation in the wild and captive propagation. On January 14, 1994, an agreement was signed between AZA and Chinese officials, in which the Chinese support the long-term giant panda captive-breeding cooperative plan in North America as presented by AZA. The Chinese also indicated that giant pandas removed from the wild before March 1993 and captive-born specimens that do not detract from the breeding efforts in China would be made available for the North American captive population. As part of this agreement, AZA is developing procedures for verifying expenditures within China and for monitoring the progress of conservation projects. Furthermore, China has already agreed to allow AZA personnel to visit China to monitor projects.

The Giant Panda Conservation Action Plan developed by AZA is intended to supplement and support China's National Plan. It calls for 14 priority actions to be implemented by signatories in full collaboration with Chinese colleagues and other conservation organizations. One of the priority actions is to establish a giant panda SSP. The goals of the SSP would include preservation of the species' genetic diversity; research contributing to the survival of both wild and captive populations; public education and professional training, including technology transfer; and direct support

of habitat conservation, including financial support.

Purposes

The primary function of any import of giant pandas must be to enhance the ultimate conservation of the species in the wild. This will require a variety of activities and actions in China, including habitat protection, habitat restoration, creation of corridors linking isolated populations, elimination of poaching, development of compatible resource uses in giant panda habitat, educational programs in China that stress the importance of preserving giant pandas and their habitat, development of a self-sustaining captive population, and, eventually, reintroduction of captive-bred animals. This proposed policy would allow for the issuance of permits to import pandas for captive-breeding, scientific research, and/or exhibition purposes, when the activity is part of a coordinated international panda conservation effort. It proposes two alternatives for exhibition. In alternative 1, exhibition would only be allowed as an ancillary component to captive-breeding or scientific research, and such exhibition would be contingent on the absence of conflict between public display and the primary research or captive-breeding activities. Alternative 2 would allow the import of pre-breeding age male pandas for short-term exhibition under certain circumstances. The proposed policy emphasizes that, in addition to the specific purpose(s) of a loan, the permittee must typically fund conservation projects and/or captive-breeding in China, as well as the transfer of scientific and captive-breeding methodologies or conservation education programs to China. Since there are a number of pandas owned by entities outside of China, this proposed policy includes references not only to China but also to lending institutions in other countries. The proposed policy would continue to prohibit the use of pandas in animal acts or shows.

Wild-Taken Pandas

In the past it has been suggested that giant pandas have been recovered (i.e., ''rescued'') from the wild without sufficient justification, and that such removals were necessary for survival of the species in the wild. The increased international demand for captive giant pandas may have provided incentives that were misdirected in some instances. The bamboo die-offs of the early 1980's perhaps stimulated misguided and unnecessary removals of pandas from the wild.

In recent years, the Chinese government has taken a firm position on captures from the wild and the number of animals brought into captivity has declined. The August 1989 joint report of the MOF and WWF titled, The National Conservation Management Plan for the Giant Panda and its Habitat (WWF Plan), includes *Guidelines for Rescue Operations* in Section 3.8. These recommendations were apparently developed with the bamboo die-off of the early 1980's in mind, and they recommend, among other things, that: (1) No further panda emergency operations should be mounted until another major wave of bamboo flowering affects the panda range; (2) villagers should not receive any financial incentive to rescue pandas; (3) villagers who encounter starving pandas should report immediately to the local forestry officials or designated rangers, who must visit the site to decide whether rescue is necessary; and (4) rescue should only be attempted in terminal cases. It further states that ''some of these regulations are already accepted,'' we assume, by the MOF. The National Plan evolved from this 1989 plan.

A Sichuan Forestry Department document, with a February 20, 1993, date, titled, ''Procedure for the Conservation and Rescue of the Giant Panda'' (Rescue Procedures), outlines procedures for reporting the occurrence of ill or injured pandas, authorities responsible for rescue decisions, and options to be considered in a rescue. It also refers to a national protocol on panda rescue, and indicates that Sichuan had taken actions regarding possible panda rescues following the lead of the State Council and the MOF. Therefore, it would appear that national panda rescue regulations or policy similar to those used in Sichuan were in effect at least by February 20, 1993.

This policy proposes that pandas removed from the wild prior to December 31, 1986, would be considered for an import loan. This date approximately follows the peak of bamboo die-off in about 1983 by 3 years, allowing a period during which pandas might still have been affected by that event. It appears the Chinese have established even greater restrictions on the rescue of pandas since then. Therefore, the Service generally would not consider any import of pandas removed from the wild after December 31, 1986, unless the circumstances of the removal clearly indicate that the removal conformed to Chinese regulations and was in the best interest of the individual animal and the species.

Age and Other Parameters of Animals Available for Loans

No post-breeding age pandas would be considered for import. Since data now indicate that the reproductive age is higher than originally thought, the Service proposes that post-breeding pandas would be over 20 years of age. The Service feels that the risks from transport to animals over this age would not be acceptable.

For Alternative 1 in the ''Exhibition'' section, the Service proposes that pre-breeding age pandas will not be considered for an import permit, except for female pandas within an estimated 6 months of their first estrus. For Alternative 2, for short-term exhibition, only the import of pre-breeding male pandas would be considered.

Length of Loans

The Service believes that the length of giant panda loans should be determined by the purpose(s) of the loan and the length of time necessary to accomplish the goals of the import. The Service feels that internationally coordinated giant panda conservation efforts could incorporate various types of loan arrangements requiring varying lengths of time.

Conservation Benefits of Specific Projects

The Service continues to emphasize the need to relate giant panda imports to the enhancement of the species in the wild, especially through funding of *in situ* projects. It is expected that most imports would be for multiple purposes and funds would be generated.

The Service proposes that the allocation of net profits derived by the applicant during a loan period that can be attributed to the loan should be based on ownership of the panda, and should be used for specific areas of conservation. If the panda is owned by China, at least 80 percent of net profits must be used to fund *in-situ* conservation projects in China's National Plan. Remaining funds would be used for panda conservation, including additional *in-situ* conservation projects, education, and/or captive-breeding efforts in China. If the panda is owned by an entity other than China, at least 50 percent of the funds must be used to fund *in-situ* conservation projects in China's National Plan. Remaining funds would be used for panda conservation, including additional *in-situ* conservation projects, education, and/or captive-breeding efforts inside China, and/or captive-breeding efforts outside of China. Specific conservation projects

and/or activities to be funded must be high-priority projects included in China's National Plan or otherwise specifically and thoroughly justified. The applicant would be required to provide a complete monitoring plan to track disbursement of funds and progress of projects. Instead of outlining exact requirements, the Service proposes that monitoring plans contain components that would clearly show that the projects to be funded will be completed. This should include identification of specific projects with timeframes given for tasks to be completed, and a plan outlining how progress would be documented and how some site inspection would occur. China has recently agreed to these components when working with several groups in the United States. The Service would monitor the progress by requiring the permittee to submit at least an annual report of funds transferred and status of projects funded and implemented.

The Service also proposes that a summary of projects to be funded would be published in the **Federal Register** as part of the public review process when an application is received for a permit to import a giant panda.

Scientific Research

The Service proposes that import applications for scientific research outline how the research would contribute to the conservation of the panda in the wild and in captivity. The proposed policy requires that the applicant provide a research proposal that demonstrates that the research is properly designed and can be accomplished with the available expertise and resources. The Service will not categorize or identify acceptable kinds of research but will retain the option of judging the validity and/or current need of the proposal based on priorities given in a coordinated international panda conservation effort and in China's National Plan.

If the panda would also be on exhibition, the applicant must have a monitoring plan to ensure that the display does not interfere with the research or bias the data.

To the extent possible, the Service would expedite permit applications for biological samples under certain conditions. The researcher needs to keep in mind that under CITES export permits are only valid for 6 months and import permits for 1 year. Authorization under the Act may be granted for 4 years, but then would need to be published in the **Federal Register** for public comment before renewal.

Captive Breeding

The proposed policy would require permittees who import pandas for captive-breeding purposes to participate actively in a coordinated international panda conservation effort. Breeding loans need to benefit panda conservation by supplementing the breeding program in China to achieve a self-sustaining captive population. Since many of the pandas to be imported into the United States for breeding would have a history of not reproducing, it is anticipated that there will be a research component to the captive-breeding activities.

If the panda would also be on public display, the applicant must have a monitoring plan to ensure that the display does not interfere with the breeding program.

Exhibition

To date, almost all of the loans of giant pandas to the United States have been solely for short-term exhibition purposes and the generation of funds for conservation and captive-breeding activities in China. Funds from the loan of one captive panda from the United Kingdom were used to improve facilities for that animal while at Chapultepec Park Zoo in Mexico City.

The Service anticipates import applications that include public display would contain a component to educate the public in the United States about the ecological roles and conservation needs of the giant panda, but this in and of itself would not be considered to meet the requirement under the Act of enhancing the survival of the giant panda in the wild. If the applicant proposes to develop panda conservation education programs that would be transferred to China, the Service would consider this component as possibly meeting part of the enhancement requirement. The Service emphasizes support for education in China because there appears to be a need for educational programs in areas near giant panda habitat and reserves to enhance panda conservation.

The Service proposes two alternatives on exhibition and invites public comment.

Alternative 1—*Exhibition Solely as an Ancillary Component.* Under this alternative, which would be consistent with the AZA moratorium on short-term panda loans, import of pandas solely for exhibition loans would not be allowed. Educational display would only be allowed as an ancillary component of a captive-breeding and/or scientific research program, when the display would not interfere with the captive-breeding or research activities. Even temporary loans of pandas to another institution during the non-breeding season would not be allowed, as this could be disruptive to behavioral interactions, endocrine monitoring, and research designed to maximize breeding success.

With advances in coordinated international conservation efforts for the giant panda, the Service proposes that institutions in the United States focus their energies on activities with captive pandas that best ensure their recovery. The Service recognizes that the use of any of these animals for short-term exhibition could detract from the overall captive conservation efforts by stimulating institutions to use resources for short-term exhibition, rather than committing resources to needed captive breeding or research. Furthermore, the use of breeding age pandas for short-term exhibition loans could increase the stress and reduce acclimation of pandas to breeding surroundings while minimizing the opportunities for important research and captive-breeding activities. Thus, in this alternative the Service proposes to discontinue the issuance of permits for the import of pandas for solely exhibition purposes (even though such exhibits might raise substantial funds to go back to China); every panda loan would be required to have intrinsic conservation benefits in its own right, in addition to financial contributions to China.

Alternative 2—*Short-term Exhibition.* In this alternative, the Service would issue permits for the import of giant pandas not only for activities as described in alternative 1, but also solely for short-term exhibitions under specific conditions designed to raise funds to be returned to China. Exhibition loans could provide significant funding in support of conservation projects for pandas in the wild, but the Service is still considering whether such loans would in any way have a detrimental affect on pandas in the wild, or would detract from captive-breeding or research efforts.

Greater revenues for panda conservation might be likely from exhibition loans because of higher visitation rates for shorter periods of time, and because viewing opportunities might occur at facilities that might otherwise not be able to qualify for scientific research or captive-breeding purposes. Some concerns expressed in the past about exhibition loans, such as the lack of a studbook and the lack of project priorities, have been addressed, and other concerns about accountability and the lack of a master breeding plan are being addressed. Nevertheless, there

remain concerns that short-term loans could in some way affect breeding, stimulate take of additional pandas from the wild, and/or detract from efforts to support overall captive-breeding efforts. Such loans emphasize the purely financial benefits that may be gained from exhibition, rather than any intrinsic benefit from the loan itself.

While there is no available evidence that the import of pandas of pre-breeding ages, as allowed by the previous policy, had subsequently had a detrimental effect on their breeding, AZA has suggested that the loan of only male pandas would further minimize the effects of loans on breeding. The Service agrees with the AZA suggestion and proposes that if the final policy allows any short-term exhibition loans, they would be limited to young, pre-reproductive age male pandas.

With regard to the possible removal of pandas from the wild, projections have changed in that: (1) China in recent years has taken a firm position on capture of pandas from the wild, (2) the Service's proposed policy continues not to allow the import of any pandas that were removed from the wild after 1986, except in unusual yet justifiable circumstances, and (3) the studbook allows for a check on parentage of any captive-bred pandas.

Finally, with regard to possible disruption of efforts to maximize the breeding potential of the captive population, the Service notes: (1) That the Chinese have been developing a captive-breeding plan, (2) the Chinese are supportive of AZA's efforts to augment captive-breeding efforts through research and emphasis on non-reproductive pandas, and (3) the zoo community has shown increasing interest in supporting long-term captive-breeding efforts, although the expense of constructing suitable facilities might exclude some zoos from participating in such long-term loans.

If after reviewing the comments and information received from this notice, the Service concludes that short-term exhibition loans would not be allowed, the Service would likely review this aspect of the panda policy again after accumulating or four or five years' experience and data under the new policy.

Primarily Commercial Purposes

Giant panda loans must be for purposes that are not primarily commercial. This proposed policy does not reflect a significant change from the previous policy since the requirements of CITES have not changed, but there are a few additions. One of the proposed changes is a description of reasonable expenses that could be deducted to calculate net profit, and items that would not be considered reasonable expenses. Another is that the applicant would need to submit a certified statement from a reputable, independent accounting firm that the internal accounting system meets the requirements of Service policy for tracking funds.

Suitability of Facilities

CITES and the regulations under the Act require that the evaluation of an application for an import permit includes consideration of whether the applicant is suitably equipped to house and care for the animals to be imported. The proposed policy continues to require the applicant to demonstrate it has acquired available information on giant panda care and facilities, and training for involved keepers, as well as approval by the Chinese of the quality of the facilities. Although these requirements would enable an evaluation of the applicant's initial abilities to house and care for giant pandas, the Service now feels that additional assurances are needed regarding the long-term care and health of the animals. Therefore, under this proposed policy applicants would be required to develop a protocol for monitoring the continued health and behavior of giant pandas throughout the loan period, or to describe an existing protocol that will be used for this purpose.

Transfer of Pandas to Other Entities within the United States

Before a giant panda is transferred between facilities within the United States, the recipient must obtain an interstate commerce permit under the Act. The Service would, to the extent possible, facilitate the transfer of animals when it is part of a coordinated breeding program. The transfer of animals must also have the prior approval of China or the entity that owns the panda. The number of times an individual panda is transferred within the United States would be closely monitored to protect the overall health of the animal.

Response to the CITES Secretariat's Views on Giant Panda Loans

The text of the 1991 policy is not significantly changed in the proposed revised policy. The requirement of permits under the Act is clarified as the pre-Act exemption (Section 9(b) of the Act) does not apply to animals to be transferred under a lease-hold agreement.

Public Comments Solicited

The Service requests comments on this proposed policy. The final decision on this proposal will take into consideration the comments and any additional information received, and such consideration might lead to a final policy that differs from this proposal.

Required Determination

This document was not subject to Office of Management and Budget review under Executive Order 12866. The information collection requirements identified in this policy as part of the permit application have been approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0022.

The Service has determined that this proposed policy is categorically excluded under Departmental procedures from complying with the National Environmental Policy Act (NEPA) (516 Departmental Manual, Ch. 2, Appx. 1, paragraph 1.10). An Environmental Action Memorandum is on file at the Service's Office of Management Authority in Arlington, Virginia.

Proposed Revised Policy on Giant Panda Loans

Before any import permit will be issued, the application must be reviewed in terms of the applicable requirements of CITES and the Act by the Service's Offices of Management and Scientific Authority. Issuance of an import permit under CITES requires prior findings that: (1) The proposed import would not be for purposes detrimental to the survival of the species; (2) the import would not be for primarily commercial purposes; and (3) the permit applicant is suitably equipped to house and care for the animals. Issuance of a permit under the Act requires prior determinations that, among other things: (1) The import would be for scientific purposes or to enhance the propagation or survival of the species, in a manner consistent with the purposes and policies of the Act; and (2) issuance of the import permit would not be likely to jeopardize the continued existence of the species. These requirements are further implemented by application requirements and issuance criteria found in 50 CFR 13.12, 17.22, 23.14, and 23.15. In addition, Section 9(d) of the Lacey Act, with regulations at 50 CFR 14, Subpart J, requires that shipments of live wild mammals being shipped to the United States are done under humane and healthful conditions

such that the animals arrive alive, healthy, and uninjured. The policy requires the applicant to demonstrate that the animals will be shipped so as to satisfy this requirement.

Purposes

The primary goal of the policy is to ensure that all imports of giant pandas contribute toward the survival, and ultimately the increase to a self-sustaining level, of panda populations in the wild. All imports must be part of a *coordinated international panda conservation effort,* a term used in this policy to mean an organized plan through which all giant panda imports support high priority projects in China's National Plan and are coordinated with China's captive-breeding plan and AZA's SSP or other applicable multi-national breeding plans. The Service anticipates that most import permit applications will be for multiple purposes. Applicants must identify the primary purpose for the proposed import and all other intended purposes. No activities for additional purposes may be undertaken during the course of the loan without approval from the Service.

The ultimate objective of managing captive pandas should be for breeding and research purposes, and any training or use of pandas in animal acts would be considered as detracting from this objective. Therefore, use of pandas in animal acts or shows during the loan period would be prohibited by condition of the permit.

Wild-Taken Pandas

The following guidelines will be used to evaluate import applications involving pandas removed from the wild. These time constraints are based on information available to the Service suggesting that the removal of pandas from the wild has increasingly come under control by the Chinese, starting prior to the WWF Plan of August 1989.

In all cases, the Service will continue its policy of approving import permit applications only when it is sure that the loan did not, or will not, contribute to the removal of pandas from the wild.

1. Pandas removed from the wild prior to December 31, 1986, will be considered for an import permit.

2. The importation of pandas removed from the wild after December 31, 1986, will not be considered, unless information describing the circumstances of their removal clearly indicates that the Rescue Procedures were followed, that the animal(s) was malnourished, ill, or injured to a degree that justified its removal, and that circumstances of the animal's recovery, of habitat conditions, of population density, or other reasons provided clearly precluded reintroduction of the animal(s).

Age and Other Parameters of Animals Available for Loans

1. Pandas over 20 years of age will not be considered for an import permit because they are probably beyond breeding age, and the risks from the stresses of travel are not biologically acceptable.

2. For alternative 1 in the ''Exhibition'' Section, pre-breeding age pandas will not be considered for an import loan. This would include females under 4 years of age, and males under 5 years. Even though it is expected that captive-breeding loans will concentrate on the use of pandas that have not been successfully bred in China (or elsewhere), there may be situations in which females within 6 months of their first estrus would be considered to allow a pre-breeding period of acclimation of a pair.

3. In alternative 2, only pre-breeding age male pandas from the age of 2 to 5 will be allowed for short-term exhibition loans.

- Only male pandas that are independent of maternal care but are not yet of breeding age or approaching breeding age will be allowed to be imported. Specifically, this include males at least 2 years of age at the beginning of a loan period and under 5 years at the end of a loan period.
- No pre-reproductive female pandas or breeding age giant pandas of either sex will be considered for short-term loans, even during the non-breeding season.

Length of Loans

The Service will evaluate the length of time requested for the proposed loan to ensure it is appropriate to the proposed activity. For example, if the primary purpose of the import would be for captive breeding and/or research, the length of the loan should be of sufficient duration to accomplish the stated goals. Generally it is anticipated that such activities may require 3 to 5 years, or perhaps a longer time for the maximum benefit to captive-breeding activities in the United States.

Conservation Benefits of Specific Projects

All of the net profits resulting from the import are to be used for conservation of the giant panda and its habitat. Emphasis is on in-situ conservation projects as listed in China's National Plan.

1. Whenever funding is associated with the import of giant pandas, the following must be satisfied:

(a) Net profits are to be allocated as follows:

- If the animals are owned by China, at least 80 percent of the funds are to be used for *in-situ* conservation projects for the giant panda and its habitat in China as listed in China's National Plan. The remaining funds must be used to support conservation, including additional *in-situ* projects, education and/or breeding efforts for the giant panda in China. In the event that profits generated exceed the ability of the Chinese to apply the monies to priority projects or captive-breeding in China at any one point in time, then funds may be used to support breeding efforts for the giant panda outside China with approval from the Service.
- If the animals are owned by an entity other than China, at least 50 percent of the funds are to be used for *in-situ* conservation projects for the giant panda and its habitat in China as listed in China's National Plan. The remaining funds must be used for panda conservation, including additional *in-situ* conservation projects, education, or captive-breeding efforts in China, and/or captive-breeding efforts outside of China as part of a coordinated international panda conservation effort.

(b) Conservation projects to be funded must meet the following conditions:

- They must be included in a coordinated international panda conservation effort, or compelling reasons must be given for funding other projects. Preferably, any conservation or breeding plan cited as including projects to be funded should be formally approved by China's Project Office of MOF or the appropriate entity in another country, but plans or programs that have not been officially approved will be considered.
- They must be considered to be of high priority in the most recent coordinated international panda conservation effort.
- They must be described as specifically as possible, with funding allocations to specific tasks given in foreign currency (e.g., yuan) and in U.S. dollars, and projected timeframes given for use of the funds to initiate and complete specific projects or activities.

(c) The applicant must provide a plan to monitor the disbursement of funds for selected conservation projects or activities. The plan needs to be sufficiently complete so that the Service is satisfied of its effectiveness and that the projects to be funded will be completed. Such a monitoring plan

should include provisions equivalent to the following:

• Before funds are transferred to the appropriate office in China or the lending entity, the permittee and the appropriate foreign entity should agree on a detailed budget, work plan, and timetable for project completion. Specific, measurable objectives and a schedule for progress reporting should be identified for each project.

• Payments should be made in installments. Each payment needs to be linked to actions taken toward completion of the project(s).

• Subsequent payments should be contingent on approval of progress reports by the permittee.

• An independent audit should be conducted annually to verify disbursement of funds.

• The permittee, its authorized representative, and the Service must have permission from the implementing agency to examine records and to make site visits to funded projects at least annually.

2. Annual reports to the Service will be required, which should give an accounting and report of funds transferred and portions of the project completed (see section under ''Primarily Commercial Purposes'' for further reporting requirements). Copies of reports received by the applicant from the recipient of funding should be included, with English translations if reports are not in English.

3. As part of the notice of receipt of a permit application published in the **Federal Register** for public comment, the Service will describe the specific projects the applicant is proposing to fund.

Scientific Research

There is a great need for scientific research on the giant panda, both in the wild and in captivity. The research must contribute to the conservation of the panda and typically, when part of an import loan, must provide a source of funds for panda conservation in the wild, as described below.

(1) The applicant must provide information to show that the research is *bona fide*, meaning research that is properly designed and can be accomplished with the expertise and resources available:

• Objectives and goals must be clearly defined. Hypotheses and experimental designs, when applicable, intended to test them must be described.

• Investigative procedures and research protocols must be described in detail or referenced as published in a recognized journal.

• Estimated timeframes need to be given.

• Research must not be duplicative unless it is a collaborative effort, or if repetition can be justified.

• The results of the research would be expected to identify, evaluate, or resolve panda conservation problems or contribute to the basic knowledge of panda biology and ecology deemed important to the survival of the panda.

• The results would likely be published in a scientific journal.

(2) For research with live pandas, the applicant must have the expertise and resources to accomplish the stated objectives.

• Enhancement may be satisfied solely through scientific research if it can be convincingly shown that results will be used to study and/or manage giant pandas in a way that would contribute to their conservation in the wild. It is expected that requests to import live pandas for scientific research will also include other, additional enhancement activities, such as the generation of funds for panda conservation in the wild.

• Research must be recognized as a high priority activity by a coordinated international panda conservation effort.

• Proposals must describe how the study may contribute to the conservation of the giant panda in the wild. If *in situ*, the research must be a collaborative effort with Chinese scientists. If the research is *ex situ*, the applicant must describe why it is best conducted outside China, and how any information gained or methodologies developed will be transferred for use in China, including estimated timeframes of transfers, training, or collaborative efforts.

• Any physically invasive procedures to be used or any behavioral modifications anticipated as part of research activities must be described, together with a detailed plan describing how the applicant would respond to and minimize complications that might arise. Any subsequent procedural changes and/or additions must be pre-approved by the Service.

• The permittee must provide an annual report summarizing research activities associated with the purposes of the permit, including a brief description of each project, a copy of protocols developed and methodologies used, a summary of data collected with a discussion of results and copies of published papers resulting from the research. The report should also indicate any transfer of research protocols or methodologies to the Chinese and their use in China, in the wild or in captivity.

(3) If live pandas are going to be on exhibition at any time during the term of the research loan, the following must be satisfied:

• The applicant must provide protocols outlining how the research and exhibition will be monitored to ensure that having the pandas on exhibit is not interfering with the research or biasing data. The applicant must also provide the name, position, and qualifications of the individual who will be responsible for making the decision to take the pandas off of exhibit if the display is interfering with the research.

• The applicant must have adequate facilities to conduct the research and house the pandas separate and apart from the public exhibition areas in case it is found that exhibition interferes with the research.

• The funds generated by the exhibition must be used for conservation projects.

(4) For research involving biological samples, the applicant must have the expertise and resources to accomplish the stated objectives.

• Salvaged specimens (i.e., those obtained from animals that have died of natural causes; naturally shed hair) must be obtained without harassing any live animals, and collection must be authorized by the MOF, MOC, or the Project Office.

• The collection of samples from live captive giant pandas must be done by qualified personnel, preferably veterinarians, with appropriate training and experience in capture, restraint, and sample collection, so as not to result in death or injury of animals. Sampling must also be done in a manner that would not be disruptive to breeding activities. The collection and subsequent export of such samples to the United States must be done in cooperation with the authority responsible for managing the animals (e.g., MOC).

• Any collection of biological samples from live giant pandas in the wild must be authorized by the MOF. Generally, only samples that were collected incidental to the capture of animals for other purposes by MOF biologists will be considered for import. However, the import of samples taken from animals captured for the sole purpose of collecting samples for import will be considered if the samples are to be used in research that is expected to have a substantial benefit to giant panda conservation. In this case, import permits must be obtained prior to the collection of the samples. Samples from live wild giant pandas may only be collected by qualified personnel,

preferably veterinarians, who have appropriate training and experience in capture, restraint, and sampling methodologies appropriate to giant pandas, so that sampling is unlikely to expose live giant pandas to risk of death or injury, or to disrupt mating or parental care of young.

• The results of research conducted with imported specimens must be reported to the Service at least annually; a report should include copies of any scientific publications produced. The report must contain information on the number and type (e.g., blood, hair, skin biopsy) of samples imported, specific source/location from which each sample was collected (if more than one was authorized), and observations on the effects of sampling on the animals. The report must also state whether the research resulted in the development and transfer of research protocols or other methodologies to the Chinese and how these products have been/will be used in China for the conservation of giant pandas.

• The Service will consider the issuance of general permits for the import and export of biological samples when the applicant provides sufficient information to show the conditions outlined in this policy are met and as long as complete annual reports are submitted in a timely manner.

• The import or export of urine, feces, and synthetic DNA, when collected in a manner that does not involve the capture, detention, or killing of protected wildlife, does not require a permit from the Service. The CITES Management Authority of any exporting or importing country should be contacted to meet any requirements it may have.

Captive Breeding

Breeding loans need to benefit panda conservation by supplementing the breeding program in China to achieve a self-sustaining captive population, and typically also to provide a source of funds for panda conservation in the wild. There is a need to maximize the use of pandas currently held in captivity that are not essential to China's breeding program. It is anticipated many of the animals that may be requested to be imported into the United States will be ones that have not successfully bred in China, and the policy emphasizes the need to have a research component to identify how these individuals may best contribute to the breeding component in China.

(1) The applicant must provide sufficient information to demonstrate the importance and necessity of importing pandas for captive-breeding:

• Enhancement may be satisfied through captive-breeding if it can be convincingly shown that results will be used to study and/or manage giant pandas in a way that has promise of contributing to panda conservation. It will be expected to include a research component aimed at increasing reproductive success if the animals involved have a history of being non-breeding animals. It is expected that requests to import live giant pandas for captive breeding will also include other, additional enhancement activities, such as the generation of funds for panda conservation in the wild.

• If research is a component, the applicant must provide information to show that the research satisfies the requirements of this policy concerning scientific research. The research must be recognized as a high priority activity by a coordinated international panda conservation effort.

• The proposed captive-breeding must be part of a coordinated international panda conservation effort designed to complement conservation efforts for the wild panda population, with the applicant actively participating in the plan.

• The breeding loan must demonstrate how it will contribute to the preservation of the panda's gene pool (i.e., retention of maximum genetic diversity). The choice of individuals to be imported should be based on scientific management of the captive populations with genetic and demographic criteria used to determine mating pairs.

• Proposals must describe how the study would contribute to the conservation of the giant panda in the wild or in captivity, and how any information gained or methodologies developed will be transferred for use in China, including estimated timeframes of transfers, training, or collaborative efforts.

(2) The applicant must provide information to show that he/she has the expertise and resources to accomplish the stated objectives:

• The applicant must submit a detailed breeding protocol that outlines when male and females will be paired for breeding, how females and males will be visually and physically separated and/or managed together, with layout of facilities and protocols for rearing potential young.

• Imports of frozen sperm for use in captive breeding must be done in accordance with a coordinated international panda conservation effort.

• Artificial insemination or any other physically invasive procedures must be described, and any subsequent procedural changes and/or additions must be pre-approved by the Service.

• The permittee must provide at least an annual report summarizing breeding activities, and research activities, if pertinent, including a copy of protocols developed and methodologies used, a summary of data collected with a discussion of results, and copies of any published papers. The report should also indicate any transfer of protocols or methodologies to the Chinese and their use in China in the wild or in captivity.

(3) If pandas are going to be on exhibition at any time during the captive-breeding loan:

• The applicant must provide protocols outlining how the captive breeding, its research component, when applicable, and exhibition will be monitored to ensure that having the pandas on exhibit does not interfere with captive breeding and/or its research component. The applicant must also provide the name, position, and qualifications of the individual who will be responsible for making the decision to take the pandas off of exhibit if the display is interfering with the captive-breeding or its research.

• The applicant must have adequate facilities to conduct the captive breeding and its research component, when applicable, and to house the pandas separate and apart from public exhibition areas, in case it is found that the exhibition interferes with the captive breeding or its research.

• The funds generated by the exhibition must be used for conservation projects as previously described.

• The applicant must consent to the movement, substitution, or transfer of any panda to another approved institution if, in the judgment and at the request of China, such action is needed to maximize successful captive-breeding opportunities.

Exhibition

1. The import of giant pandas for the purpose of educational exhibition alone would not be sufficient to satisfy enhancement requirements. The Service encourages institutions importing giant pandas to educate the U.S. public about the ecological role and conservation needs of the giant panda, but will not consider this in reviewing applications. However, if an applicant is developing a panda conservation education program that would be transferable to China, or is developing a program specifically for use in China, particularly in localities near giant panda habitat and reserves, the Service will consider this project as part of a coordinated international conservation

effort in making its enhancement finding.

• Educational programs in China should be aimed at local people, school children, panda researchers (field and captive), reserve biologists, and managers.

• Educational activities or projects must be described in detail, including samples of the kinds of educational materials to be used, and a description of evaluation methods.

• The messages conveyed through the educational program should stress historical and contemporary impacts on the status of the giant panda in the wild, and conservation efforts that might be required to halt the species' decline and degradation of its habitat.

2. Alternative 1—Exhibition Solely as an Ancillary Component. Educational displays would only be allowed as an ancillary component of a captive-breeding and/or research program. Specifically, the import of pandas solely for exhibition loans of any length would not be allowed.

3. Alternative 2—Short-term Exhibition. For purposes of this policy, the import of pandas for short-term exhibition loans would be allowed under certain conditions:

• A panda can only be on loan for short-term exhibition for a maximum of 1 year.

• During a single 1-year loan period in the United States, up to 3 different institutions may receive and display the pandas for periods of at least 3 months, unless health considerations dictate otherwise.

• Each institution following the first in the sequence of exhibitions must have submitted complete application materials as well as written authorization from the exporting country's Management Authority and, if from China, from the Protecting Giant Panda Project Office.

Primarily Commercial Purposes

With regard to the determination of whether a loan of giant pandas is not to be used for primarily commercial purposes, the Service will utilize the following policy.

1. Resolution Conf. 5.10 of CITES provides that:

• The nature of the transfer of specimens between the owner in the country of export and the recipient in the country of import may be commercial. It is the intended use of the specimens in the country of import that must not be for primarily commercial purposes, and it is the responsibility of the recipient country's Management Authority to make this determination.

• There may be some commercial aspects of that use, but the non-commercial uses must predominate in order to be deemed primarily non-commercial.

2. Public, non-profit institutions, organizations and agencies will receive consideration for panda loans. The Service's general regulations at 50 CFR 10.12 define ''public'' institutions as those that ''* * * are open to the general public and are either established, maintained, and operated as a government service, or are privately endowed and organized but not operated for profit.'' Although commercial (profit-making) organizations may also choose to apply for such loans, the profit-making characteristics of such organizations will make it more difficult for the Service to find that the specimen(s) proposed for import is not to be used primarily for commercial purposes. As in all cases, the burden rests with the applicant to show that this CITES requirement is satisfied. Of necessity, the burden of proof will be higher for commercial enterprises than for non-profit entities.

3. It is the Service's policy that all funds or other valuable considerations raised directly or indirectly by a public institution or other organization that are obtained by the organization(s) or institution(s) involved (or any for-profit parent organization of the applicant, but not including unrelated private entities, such as hotels, not associated with the applicant) as a result of the panda loan are, to the extent that such funds or other valuable considerations exceed the reasonable expenses that are properly attributable to the exhibitions, to be used entirely for the non-commercial purposes outlined in the prior section, ''Conservation Benefits of Specific Projects''.

• Reasonable expenses include the following: Facility construction if amortized for the entire proposed length of the loan (but not for short-term exhibition loans), facility maintenance, direct labor and operating supplies needed for the care of the pandas (includes keeper and veterinary support), administrative support directly associated with the maintenance of the animals, security needed for the pandas, development of educational materials for use in China, development of educational signs for exhibits in the United States, and supplies or materials necessary to conduct research or captive-breeding activities that have been identified in the application.

• It is the intent of the policy to maximize funds going back to conservation projects in China and, as such, costs associated with ordinary operations, such as advertising, general personnel costs, general legal expenses (not directly related to the panda loan), will not be considered reasonable expenses.

• Collection of revenues generated by the panda loan by the importing institution (e.g., gate receipts, food and drink sales, tourist souvenirs), either for its own use or for the use of other organizations, for purposes other than those previously described, would be judged to be a primarily commercial activity, as would the use of revenues for profit-making purposes.

4. Each applicant for a panda loan, in satisfying the applicable requirements of 50 CFR subchapter B, should submit a detailed plan for the allocation of all funds raised in excess of expenses, as a result of the panda loan. The application must also include a certification statement from a reputable, independent accounting firm stating that the applicant's internal accounting system is sufficient to account for and track funds generated directly or indirectly by the panda loan, and for the subsequent disbursement of funds.

5. Each recipient of a permit to obtain a panda loan shall be required, in accordance with 50 CFR 13.45, to submit an annual report to the Service as a condition of the permit. The annual report must contain a full accounting of all funds raised directly or indirectly by the institution or organization, the portion of those funds that is in excess of expenses, and what portion of these funds are to be disbursed for giant panda conservation projects or activities as outlined in the prior section, ''Conservation Benefits of Specific Projects''.

• The report must include names of people involved, location of the activities, a brief description of each project, and the amount and use of money being provided the project. The report must also identify specific costs that were deducted as reasonable expenses.

• Conservation projects other than those projects presented in the application must receive approval from the Service's Office of Management Authority prior to allocating funds.

These policy considerations will be used by the Service only for determining whether panda imports are primarily commercial in nature. They are not intended to apply to Appendix I import permit applications for other species. All such applications must continue to demonstrate that the proposed import meets the general requirements of resolution Conf. 5.10 to

satisfy the ''not to be used for primarily commercial purposes'' test.

Suitability of Facilities and Care

Under CITES, the Service must be ''satisfied that the proposed recipient of a living specimen (to be imported) is suitably equipped to house and care for it''. Under the regulations implementing the Act, the Service must determine that the applicant has ''* * *the expertise, facilities, or other resources* * *to successfully accomplish the objectives* * *'' To aid in satisfying these requirements, applicants must provide the following information in addition to the information required in 50 CFR 17.22:

- Copies of protocols for monitoring general health and behavior. In lieu of new protocols, an applicant may submit copies of protocols recommended by a coordinated international panda conservation effort.
- Diagrams and photographs clearly depicting all enclosures where the panda may be housed, including any off-exhibit areas and panda holding area(s) in relation to other facilities, including roads adjacent to such areas.
- Information to demonstrate the applicant has consulted with at least two other facilities that have successfully held pandas in recent years, that the applicant has facility features that address the National Zoological Park's recommended measures for giant panda care and facilities, and that zoo staff, especially keepers and veterinarians, have had proper training and experience to care for pandas.
- Approval of facilities by the Chinese or appropriate authority in the lending country, if such a stipulation has been made in a contractual agreement. If approval has not been given prior to applying for the permit, there must be a statement from the applicant certifying that the agreement stipulation will be satisfied before animals are imported.

Transfer of Pandas to Other Entities Within the United States

Applicants proposing to import giant pandas and subsequently transfer them to another entity within the United States should indicate this in the initial import application. The proposed recipient of the panda will need to apply for and receive an interstate commerce permit under the Act prior to the transfer since the pandas are being held under a loan (e.g., lease-hold agreement) from China or other lending entity. The proposed recipient of the panda needs to provide all the information required by the Act, its regulations, and this policy. The Service will facilitate, to the extent possible, the transfer of animals within the United States when part of a coordinated breeding program. If the receiving institution has a panda permit on file with the Service, it can reference the permit number and information in this file, and provide any new information for the Service to review in consideration of an interstate commerce permit. These applications will be published in the **Federal Register**, and so the applicant will need to allow at least 90 days for processing. Such transfers must also have the prior approval of China or the entity that owns the animals. The number of times an individual panda is transferred within the United States will be closely monitored to protect the overall health and well-being of the animal.

Response to the CITES Secretariat's Views on Giant Panda Loans

The Service notes with approval the recommendation of the Secretariat that no exemptions be granted to the requirements of Article III of the Convention for the shipment of giant pandas, even for animals that might otherwise qualify for an exemption as ''pre-Convention'' animals under Article VII. However, the Service does not have authority under U.S. law to refuse to accept a valid pre-Convention certificate. If the Management Authority of the country of origin or of the country of re-export does not issue a pre-Convention certification, the Service will require a U.S. import permit and export permit or re-export certificate, as appropriate, from the exporting or re-exporting country in accordance with Article III of the Convention. In addition, even if a valid pre-Convention certificate is issued by the exporting country, an import permit would be required under the Act for all panda loans (and an export permit, if the pandas are to leave the United States), even for pandas acquired prior to January 23, 1984 (the date of the final **Federal Register** notice listing the giant panda under the Act), as the pre-Act exemption (Section 9(b)(1) of the Act) does not apply to animals that are subsequently held in the course of a commercial activity (e.g., lease-hold agreement).

The Service will also continue its policy of approving applications only if it is sure that the proposed loan did not, or will not, contribute to removal of pandas from the wild, and that the non-commercial purposes for the proposed loan predominate.

This notice was prepared under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 21, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–7851 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

Letters of Authorization to Take Marine Mammals

AGENCY: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with Section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations (50 CFR 18.27), notice is hereby given that Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry exploration activities have been issued to the following companies:

Company	Activity	Date issued
Western Geophysical	Exploration	Jan. 3, 1995.
Schlumberger Geco—Prakla.	Exploration	Jan. 3, 1995.
ARCO Alaska, Inc.	Exploration	Feb. 1, 1995.

BP Exploration (Alaska) Inc., (BPX) and ARCO Alaska, Inc., (ARCO) were re-issued reoccurring Letters of Authorization to incidentially take polar bears and walrus during development and production activities based upon receipt of an annual monitoring report. BPX is authorized to incidentally take polar bear and walrus in the Prudhoe

Bay, Endicott and Milne Units. ARCO is authorized to incidentially take polar bear and walrus in the Kuparuk River Oilfield. Monitoring reports have been received and are on file at the Marine Mammals Management Office.

FOR FURTHER INFORMATION CONTACT: Mr. David McGillivary or Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammal Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: All Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations ''Marine Mammals; Incidental Take During Specified Activities'' (58 FR 60402; November 16, 1993).

Dated: March 16, 1995.

Rowan W. Gould,

Acting Regional Director.

[FR Doc. 95–7807 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(AZ-050–05–1230–00; AZA 23275)

Arizona; Recreation Area Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure.

SUMMARY: Notice is hereby given that the Bureau of Land Management is closing an area, until further notice, of public land known as the Paradise Cove Boat Ramp Recreation Area, or Joe Henry Boat Ramp, located on the Colorado River in Yuma County, Arizona. The area affected by this closure contains 35 acres, more or less.

San Bernardino Meridian, Arizona

T. 16 S., R. 22 E.,
Sec. 28, lots 2, 5, and 6, portion of S½S½.

EFFECTIVE DATE: Upon first printing in **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ed Perault, Supervisory Outdoor Recreation Planner, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, (602) 726–6300.

SUPPLEMENTARY INFORMATION: The closure is in response to concerns of public health and safety, excessive illegal dumping, and uncontrollable resource degradation. Future public access at Paradise Cove Boat Ramp Recreation Area will be considered in comprehensive planning efforts at a later date. Violations to this closure are punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

Dated: March 24, 1995.

Maureen A. Merrell,

Assistant District Manager, Administration/ Acting District Manager.

[FR Doc. 95–7810 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–32–P

[USFS, R–6, 595053; GP5–089; OR–51080]

Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 106.70 acres of Federal land within the Winema National Forest to surface entry, mining, mineral leasing and geothermal, subject to the laws, rules, and regulations applicable to National Forest System lands. The land has been eliminated from a Forest Service exchange proposal.

EFFECTIVE DATE: April 28, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela Chappel, BLM Oregon/ Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–952–6170.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the General Exchange Act of March 20, 1922, (16 U.S.C. 485, 486), the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1716), and the Federal Land Exchange Facilitation Act of August 20, 1988, (43 U.S.C. 751), the following described Federal land has been eliminated from the initial exchange proposal between the Winema National Forest, 2819 Dahlia Street, Klamath Falls, Oregon 97601–7119, and the G Bar W Land & Cattle Company, Medford, Oregon:

Willamette Meridian

T. 38 S., R. 5 E.,
Sec. 11, lots 3 and 4, NW¼SW¼, and E½SW¼SW¼.

The area described contains 106.70 acres in Klamath County.

At 8:30 a.m., on April 28, 1995, the land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on April 28, 1995, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on April 28, 1995, the land will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on April 28, 1995, the land will be opened to applications and offers under the mineral leasing laws and the Geothermal Steam Act.

Dated: March 15, 1995.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95–7758 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–33–P

[CA–010–05–1430–01: CA–35288]

Notice of Realty Action; Land Use Lease of Public Lands, Amador County, California

AGENCY: Dept. of the Interior, Bureau of Land Management.

REALTY ACTION: Land Use Lease, Amador County, CA 35288.

SUMMARY: The following described public land is being considered for a non-competitive, 20-year, residential, land use lease pursuant to Section 302 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713):

Amador County, California

T. 6N., R. 12E., M.D.M.
Sec. 9: Portion of lot 35.
Comprising .011 acre, more or less.

The above parcel of public land would be leased to Roy and Karen Rhoades to resolve a trespass situation. The lease would be issued for a term of 20 years. The land will be leased at fair market value.

The parcel would be subject to any prior existing rights. The lease area will include only that area of public land which is occupied by a portion of the lessees' residence. The occupancy to be authorized by the proposed land use lease was formerly authorized by Small Tract Lease Sac 055095, issued in 1965. The proposal is consistent with the Bureau's land use plans that support the settlement of trespass by lease when an undue hardship case is present.

ADDRESSES: Interested parties may submit comments to the District Manager, c/o Folsom Resource Area Manager, 63 Natoma Street, Folsom, California 95630. Comments must be received by May 15, 1995, which is 45 days from date of publication of this notice in the **FEDERAL REGISTER.**

FOR ADDITIONAL INFORMATION: Contact Dean Decker at (916) 985–4474 or at the address above.

D.K. Swickard,

Area Manager.

[FR Doc. 95–7819 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–40–M

[UT–050–05–1430–01; U–68990]

Notice of Realty Action

AGENCY: Bureau of Land Management, Richfield District.

ACTION: Notice of realty action; direct sale of public lands in Millard County, Utah.

SUMMARY: The following described public lands have been examined, and through the development of local use planning decisions based upon public input, resource considerations, regulations and Bureau policies, have been found suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), and direct sale procedures (43 CFR 2711.3–3(a)(1). The sale will be at no less than the appraised fair market value of $3,540. The lands will not be offered for sale for at least 60 days after the date of publication of this notice.

Salt Lake Meridian, Utah

Parcel 1

T. 17 S., R. 6 W.,
Sec. 24, N1/2SE1/4 (Contains 80 acres).

Parcel 2

T. 22 S., R. 19 W.,
Sec. 5, Lot 5 ALL (Contains 21.13 acres).

Combined, parcels 1 and 2 contain 101.13 acres.

Publication of this notice segregates the public lands described above from appropriation under the public land laws and the mining laws. The segregation will end upon disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Millard County, Utah, for two solid waste disposal sites. Parcel 1 describes the Delta site and parcel 2 describes the Garrison site.

It has been determined that the subject parcel 1 is prospectively valuable for oil and gas and geothermal resources; and parcel 2 is prospectively valuable for oil and gas; therefore, the mineral estate of parcel 1, excluding oil and gas and geothermal resources; and the mineral estate of parcel 2, excluding oil and gas, will be conveyed simultaneously with the surface estate in accordance with Section 209 of FLPMA. Millard County filed an application along with the required $50.00 nonrefundable fee for the conveyance of the mineral interest specified above. The respective oil and gas and geothermal resource minerals will be reserved to the United States.

Parcel 1 is subject to the existing grazing use of Blaine Christensen, Dwain J. Finlinson, Reese E. Finlinson, Rich Finlinson, Joseph T. Finlinson, Clark B. Cox, Burton Lovell & Son, Sinks Land Company, Monte C. Nielson, Spence Butler, Oak City Ward, and Vance Finlinson, holders of grazing preference on the Oak City Allotment. The 80 acres proposed for sale produce 4 AUMs or less of the 1,207 AUMs presently produced on the allotment.

Therefore, approximately 4 AUMs of the 1,207 AUM grazing preference would be removed from grazing as a result of this sale.

Parcel 2 is subject to the existing grazing use of Wm. Earl and Sidney Hayward, and Mt. Moriah Ranches Inc c/o David Eldridge, holders of grazing preference on the Clay Springs Allotment. The 21.13 acres proposed for sale produce 2 AUMs or less of the 2,635 AUMs presently produced on the allotment. Therefore, approximately 2 AUMs of the 2,635 AUM grazing preference would be removed from grazing as a result of this sale. A certified letter was sent to each permittee which served as the 2-year notification of the reduction of their respective grazing privilege, pursuant to 43 CFR 2711.1–3. All grazing privileges on parcel 1 and parcel 2 will expire on May 4, 1995. The patent will not be issued on or before this date.

The patent, when issued, will contain the following reservations to the United States:

1. Parcel 1 and 2, a right-of-way reservation to the United States for ditches and canals constructed under the authority of the Act of August 30, 1890 (26 stat. 391; 43 U.S.C. 945 (1970)).

2. Parcel 1, the oil and gas and geothermal resources mineral estate would be reserved to the United States with the right to prospect for, mine, and remove the same under applicable law and such regulations as the Secretary of the Interior may prescribe, in accordance with public law 94–579, Section 209 of FLPMA (43 U.S.C. 1719).

3. Parcel 2, the oil and gas mineral estate would be reserved to the United States with the right to prospect for, mine, and remove the same under applicable law and such regulations as the Secretary of the Interior may prescribe, in accordance with public law 94–579, Section 209 of FLPMA (43 U.S.C. 1719). And will be subject to all valid existing rights and privileges of record and title restrictions including, but not limited to:

4. The issuance of these patents would be subject to the following indemnification statement signed by the Millard County Commission:

''Millard County, its successors or assigns, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or in the release of hazardous substances from T. 17 S., R. 6 W., Sec. 24, N½SE¼, or from T. 22 S., R. 19 W., Sec. 5, Lot 5 ALL, Salt Lake Meridian, Utah, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.''

Failure of Millard County to submit the full purchase price within the time allowed will result in cancellation of the sale and forfeiture of any deposits. The public lands would be withdrawn from sale and Millard County would be required to bring the existing 80 acre and 21.13 acre landfill sites into compliance with Environmental Protection Agency (EPA) landfill regulations. Otherwise, R&PP lease UTU–51862 may be terminated. If the lease is terminated the existing landfill site would be closed and Millard County would then be required to remove all facilities and rehabilitate the disturbed public lands in accordance with EPA and BLM rules and regulations. The R&PP classification would terminate. The public lands would then continue under the jurisdiction and management of the Bureau of Land Management and become subject to the public land laws and general mining laws. Detailed

information concerning these reservations as well as specific conditions of the sale are available for review at the House Range and Warm Springs Resource Areas, Bureau of Land Management, 35 East 500 North, Fillmore, Utah 84631.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, House Range and Warm Springs Resource Areas, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: March 20, 1995.

Samuel R. Rowley,

Associate District Manager.

[FR Doc. 95–7828 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–DQ-P

[UT–050–05–1430–01; U–68991]

Realty Action

AGENCY: Bureau of Land Management, Richfield District.

ACTION: Notice of realty action; direct sale of public lands in Juab County, Utah.

SUMMARY: The following described public lands have been found suitable for sale under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value $27,000. The lands will not be offered for sale for at least 60 days after the date of publication of this notice.

Salt Lake Meridian, Utah

T. 13 S., R. 1 W.

Sec. 15, W½NE¼NW¼, NW¼NW¼, S½NW1/4, SW1/4.

Contains 300 acres in Juab County.

Publication of this notice segregates the public lands described above from appropriation under the public land laws and the mining laws. The segregation will end upon disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Nephi City Corporation of Nephi, Utah, for a regional sanitary landfill. It has been determined that the subject parcel is prospectively valuable for oil and gas; therefore, the mineral estate, excluding oil and gas, will be conveyed simultaneously with the surface estate in accordance with Section 209 of FLPMA. Nephi City Corporation filed an application along with the required $50.00 nonrefundable fee for the conveyance of the mineral interest specified above. The oil and gas minerals in the lands shall be reserved to the United States. The described 300 acres are subject to the existing grazing use of Phillip E. Allred, holder of the grazing preference on the Stone Quarry Allotment. A certified letter was sent to the permittee which served as the 2-year notification of a reduction of his grazing privilege, pursuant to 43 CFR 2711.1–3. This grazing privilege will expire on May 4, 1995. The patent will not be issued on or before this date and will result in the loss of 17 of the 225 AUMs presently produced on this allotment. This will constitute an 8% downward adjustment in the grazing preference. The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, (26 Stat. 391; 43 U.S.C. 945 (1970)).

2. All oil and gas resources would be reserved to the United States with the right to prospect for, mine, and remove the same under applicable law and such regulations as the Secretary of the Interior may prescribe, in accordance with public law 94–579, Section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

And will be subject to all valid existing rights and privileges of record and title restrictions including, but not limited to:

1. The subject lands are located within the Hall Creek drainage and the Spring Canyon drainage and both involve base floodplains. Nephi City Corporation must demonstrate their ability to maintain, restore and protect the floodplains on a continuous basis in accordance with Section 3(d) Executive Order 11988 of May 24, 1977 (42 F.R. 26951) (Floodplain Management) and BLM Manual 7221.06D1. The conveyance document will (1) reference those uses that are restricted under Federal, State or local floodplain regulations; and (2) shall include other appropriate restrictions to the uses of properties by Nephi City Corporation and any successors.

2. The follwing indemnification statement signed by the Nephi City Mayor:

''The City of Nephi, its successors or assigns, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or in the release of hazardous substances from T. 13 S., R. 1 W., Sec. 15, W½NE¼NW¼, NW¼NW¼, S½NW¼, SW¼, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.''

Failure of Nephi City Corporation to submit the full purchase price within the time allowed will result in cancellation of the sale and forfeiture of any deposits. The public lands would be withdrawn from sale and the City of Nephi would be required to bring the existing 20 acre landfill site into compliance with Environmental Protection Agency (EPA) landfill regulations. Otherwise, R&PP lease UTU–51861 may be terminated. If the lease is terminated the existing landfill site would be closed and the City of Nephi would then be required to remove all facilities and rehabilitate the disturbed public land in accordance with EPA and BLM rules and regulations. The R&PP classification would terminate. The public lands would then continue under the jurisdiction and management of the Bureau of Land Management and become subject to the public land laws and general mining laws.

Detailed information concerning these reservations as well as specific terms and conditions of the sale are available for review at the House Range and Warm Springs Resource Areas, Bureau of Land Management, 35 East 500 North, Fillmore, Utah 84631.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, House Range and Warm Springs Resource Areas, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: March 20, 1995.

Samuel R. Rowley,

Associate District Manager.

[FR Doc. 95–7829 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–DQ–P

[OR–942–00–1420–00: G5–092]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 25 S., R. 3 W., accepted March 3, 1995
T. 29 S., R. 3 W., accepted March 1, 1995
T. 21 S., R. 7 W., accepted March 3, 1995

Washington

T. 23 N., R. 10 W., accepted February 22, 1995
T. 23 N., R. 11 W., accepted February 22, 1995
T. 23 N., R. 12 W., accepted February 22, 1995
T. 24 N., R. 12 W., accepted February 22, 1995
T. 24 N., R. 13 W., accepted February 22, 1995

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management (1515 SW 5th Avenue), P.O. Box 2965, Portland, Oregon 97208.

Dated: March 22, 1995.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95–7818 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–33–M

[NM–930–1430–01; KSNM 94549]

Notice of Proposed Modification of Public Land Order 5605; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In notice document 95–3171 on page 7785 in the issue of Thursday, February 9, 1995, make the following correction: Under the heading Supplementary Information, the legal description which reads T. 8 S., R. 23 E., should be changed to read T. 8 S., R. 22 E.

Dated: March 22, 1995.

Deputy State Director,

Resource Planning, Use, and Protection.

[FR Doc. 95–7811 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–FB–M

(WY–930–1430–01; NEW 135267)

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service proposes to withdraw approximately 145.87 acres of public land as an addition to the Crescent Lake National Wildlife Refuge, near Alliance, Nebraska. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by June 28, 1995.

ADDRESSES: Comments and meeting requests should be sent to the Wyoming State Director, BLM, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 307–775–6115.

SUPPLEMENTARY INFORMATION: On February 24, 1995, a petition was approved allowing the Fish and Wildlife Service to file an application to withdraw the following described public land for a period of 50 years, from settlement, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian, Nebraska

T. 22 N., R. 47 W.,
Sec. 1, lots 10–13, and 16;
Sec 12, lot 1.

The area described contains approximately 145.87 acres in Morrill County.

The purpose of the proposed withdrawal is to reserve the land as an addition to the Crescent Lake National Wildlife Refuge.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Wyoming State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, rights-of-way, cooperative agreements, or discretionary land use authorizations of a temporary nature which do not significantly disturb the surface of the land or impair the existing values of the area.

The temporary segregation of the land in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the Fish and Wildlife Service.

Dated: March 23, 1995.

Alan R. Pierson,

State Director, Wyoming.

[FR Doc. 95–7809 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–22–P

National Park Service

Bid Sale of Property; Cuyahoga Valley National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Correction to notice.

SUMMARY: This notice contains corrections to the notice published Friday, March 3, 1995. The notice announced the request for sealed bids for the sale of Cuyahoga Valley NRA tract 109–38, aka 1509 Boston Mills Road, Peninsula, Ohio.

EFFECTIVE DATE: March 24, 1995.

FOR FURTHER INFORMATION CONTACT: Superintendent John P. Debo, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, OH 44141 (216–526–5256).

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1995 the National Park Service (NPS) published in the **Federal Register** (60 FR 11994) a notice announcing the request for sealed bids for the sale of Cuyahoga Valley NRA tract 109–38, aka 1509 Boston Mills Road, Peninsula, Ohio. The correction to the notice advises potential bidders that the successful bidder shall have possession of property and title within sixty (60) days of the sealed bid opening date.

Need for Correction

As published, the notice did not inform potential bidders that possession of the property and title shall take place within sixty (60) days of the bid opening date.

Correction of Publication

Accordingly, the publication on March 3, 1995 of the notice announcing the request for sealed bids for the sale of Cuyahoga Valley NRA tract 109–38, aka 1509 Boston Mills Road, Peninsula, Ohio is corrected as follows:

Add the following sentence to the end of the **SUMMARY** section: The successful high bidder shall have possession of property and title within sixty (60) days of the sealed bid opening.

Dated: March 20, 1995.

John P. Debo,

Superintendent, Cuyahoga Valley NRA.

[FR Doc. 95–7511 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

Environmental Impact Statement/ Environmental Impact Report on Sutter, Placer, El Dorado, Sacramento, and San Joaquin Counties, American River Water Resources Investigation

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement/ environmental impact report.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended, and the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and the Sacramento Metropolitan Water Authority (SMWA) propose to prepare a joint environmental impact statement/ environmental impact report (EIS/EIR) on potential alternative solutions to meeting water-related needs in portions of Sutter, Placer, El Dorado, Sacramento, and San Joaquin Counties as identified through the American River Water Resources Investigation (ARWRI). Reclamation and SMWA will propose possible alternatives representing themes ranging from demand management to all new construction.

DATES: Four public scoping meetings will be held:

Tuesday, April 11, 1995, 7:00 p.m., Stockton, California
Wednesday, April 12, 1995, 1:00 p.m., Placerville, California
Wednesday, April 12, 1995, 7:00 p.m., Auburn, California
Thursday, April 13, 1995, 7:00 p.m., Sacramento, California

ADDRESSES: Meeting locations are:

Stockton Hilton, 2323 Grand Canal Boulevard, Stockton, California
Best Western Placerville Inn, 6850 Greenleaf Drive, Placerville, California
Auburn Inn, 1875 Auburn Ravine Road, Auburn, California
Expo Inn, 1413 Howe Avenue, Sacramento, California

Poster session to begin one half hour earlier.

Written comments should be sent to Mr. Alan R. Candlish, Study Manager, Bureau of Reclamation, North-Central California Area Office, 7794 Folsom Dam Road, Folsom, CA 95630; or Mr. Gene Robinson, Sacramento Metropolitan Water Authority, 5620 Birdcage Street, Suite 180, Citrus Heights, CA 95610–7632.

FOR FURTHER INFORMATION CONTACT: Mr. Alan R. Candlish, Study Manager, Bureau of Reclamation, telephone (916) 989–7255; or Mr. Gene Robinson, Sacramento Metropolitan Water Authority, telephone (916) 967–7692. Letters of inquiry may be sent to the addresses above.

SUPPLEMENTARY INFORMATION: The American River Water Resources Investigation began in 1992 and potential alternative solutions were developed. Three alternatives are being presented for further consideration: (1) Conjunctive use (between ground water and surface water sources); (2) conjunctive use with new storage (possible reservoir sites include Clay Station, Deer Creek, Duck Creek, Small Alder, South Gulch, Texas Hill, and the possible enlargement of the existing Farmington Reservoir); and (3) the construction of a full-size Auburn Reservoir. The investigation is now at the point where the preparation of the EIS/EIR is ready to begin.

Oral comments regarding the proposed alternatives are welcome at the public meetings. Written comments must be received at the above address by May 8, 1995, to ensure consideration in the development of the EIS/EIR.

Dated: March 24, 1995.

Dan M. Fults,

Acting Regional Director.

[FR Doc. 95–7788 Filed 3–29–95; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement

Notice is hereby given that a proposed Settlement Agreement in *In re Shenango Inc., et al.*, Case No. 92–25379/JLC (W.D. Pa.), entered into by the United States on behalf of U.S. EPA, the State of Ohio, and debtors Shenango Inc., Shenango Group, Inc., and The Hockensmith Corporation was lodged on March 16, 1994 with the United States Bankruptcy Court for the Western District of Pennsylvania. The proposed Settlement Agreement resolves certain claims of the United States and the State of Ohio under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* and state law relating to the Buckeye Reclamation Landfill Site in Belmont County, Ohio, and certain claims of the United States for pre-petition penalties under the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, and the Clean Air Act, 42 U.S.C. 7401 *et seq.* Under the Settlement Agreement, *inter alia*, the U.S. EPA will have an allowed general unsecured claim of $1,252,846.

The Department of Justice will receive comments relating to the proposed

Settlement Agreement for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *In re Shenango Inc., et al.,* D.J. Ref. No. 90–5–2–3–1099D. The proposed Settlement Agreement may be examined at the Office of the United States Attorney for the Western District of Pennsylvania, 633 U.S. Post Office and Courthouse, Pittsburgh, PA 15222; the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202–624–0892). A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $3.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–7806 Filed 3–29–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on February 17, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Advanced Lead-Acid Battery Consortium (''ALABC''), a discrete program of the International Lead Zinc Research Organization, Inc. (''ILZRO''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Whatman Paper, Ltd., has withdrawn its membership with the ALABC.

No other changes have been made in either the membership or planned activity of the group research project. Membership remains open and the ALABC intends to file additional written notification disclosing all changes in membership.

On June 15, 1992, the ALABC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 29, 1992, 57 Fr 33522. The last notification was filed with the Department on August 26, 1994.

This notice has not yet been published in the **Federal Register** pursuant to Section 6(b) of the Act.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–7805 Filed 3–29–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and production Act of 1993—High Performance Composites Cooperative Arrangement

Notice is hereby given that, on December 20, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), BDM Federal, Inc., acting on behalf of the High Performance Composites Cooperative Arrangement (''HPC''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the additional members are Hexcel Corporation, Pleasanton, CA; and the University of Virginia, Charlottesville, VA.

No other changes have been made in either the membership or planned activity of the HPC. Membership remains open, and the HPC intends to file additional written notification disclosing all changes in membership.

On April 6, 1994, BDM Federal, Inc., acting on behalf of the HPC, filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 3, 1994 (59 FR 28899).

The last notification was filed with the Department on November 17, 1995. This notice has not yet been published in the **Federal Register** pursuant to Section 6(b) of the Act.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–7804 Filed 3–29–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PERF Project 93–16, Dispersion Modeling Project

Notice is hereby given that, on December 8, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') Project 93–16, titled ''Dispersion Modeling Project'' has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Exxon Research and Engineering Company, Florham Park, NJ; Phillips Petroleum Company, Bartlesville, OK; Clark Oil & Refining Corporation, Blue Island, IL; CITGO Petroleum Corporation, Tulsa, OK; Allied-Signal, Inc., Morristown, NJ; Amoco Corporation, Chicago, IL; Chevron Research & Technology Company, Richmond, CA; Mobil Research & Development Company, Paulsboro, NJ; Shell Development Company, Houston, TX; Marathon Oil Company, Littleton, CO; Atmosphere Research and Exposure Assessment Laboratory (AREAL), Research Triangle Park, NC; and Western Research Institute, Laramie, NY.

The nature and objectives of the research program performed in accordance with Project 93–16 are to use more realistic modeling techniques in hazard assessments for hypothetical, accidental releases from industrial applications by demonstrating improved model performance using actual field scale data. Achievement of this objective will include the following activities: Data Analysis of previous experiments including data from the CHARR and the CEC major hazards programs; Laboratory scale wind tunnel experiments and performance evaluation; Field experiments and analysis; and Model modifications and performance evaluation.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–7803 Filed 3–29–95; 8:45 am]

BILLING CODE 4410–01–7

DEPARTMENT OF LABOR

Office of the Secretary

Delinquent Filer Voluntary Compliance Program

AGENCY: Office of the Secretary, Labor.

ACTION: Expedited review of the information collected pursuant to the Delinquent Filer Voluntary Compliance Program under the Paperwork Reduction Act.

SUMMARY: The Pension and Welfare Benefits Administration, Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR 1320 (53 FR 16618, May 10, 1988)), is submitting the information collection required under the Delinquent Filer Voluntary Compliance Program (Program) for review. The information collected is required to be reported by pension and welfare benefit plan administrators under Title I of the Employee Retirement Income Security Act of 1974. Plan administrators who choose to participate in this Program, which offers a substantial reduction in penalties, are required to submit minimal documentation along with payment to verify plan information and facilitate Federal record keeping.

DATES: Pension and Welfare Benefits Administration has requested an expedited review of this submission under the Paperwork Reduction Act due to the time-sensitive nature of the collection and the penalties that accumulate daily due to late filing or failure to file annual reports; this Office of Management and Budget (OMB) review has been requested to be completed by April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the Delinquent Filer Voluntary Compliance Program should be directed to Mr. Kenneth A. Mills, Departmental Clearance Officer, Office of Information Resource Management Policy, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N–1301, Washington, D.C. 20210, 202 219–5095. Comments should also be sent to OMB, Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, NEOB Room 10235, Washington, D.C. 20503, 202 395–7316.

Any member of the public who wants to comment on the information collection request which has been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Average Burden Hours/Minutes Per Response: 21 minutes
Frequency of Response: Annual
Number of Respondents: 10,000 (year 1); 7,000 in following years
Total Annual Burden Hours: 3,500
Total Annual Responses: 10,000
Affected Public: Business and other for-profit; Not-for-profit institutions
Respondents Obligation to Reply: Voluntary.

Signed at Washington, D.C. this 24th day of March 1995.

Kenneth A. Mills,

Departmental Clearance Officer.

Supporting Statement For Paperwork Reduction Act Submissions

Delinquent Filer Voluntary Compliance Program 1210–AA49

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

Attach a copy of the appropriate section of each statute and of each regulation mandating or authorizing the collection of information.

The Secretary of Labor has the authority, under section 502(c)(2) of ERISA, to assess civil penalties of up to $1,000 a day against plan administrators who fail or refuse to file complete and timely annual reports (Form 5500 Series Annual Return/Reports) as required under section 101(b)(4) of ERISA and the Secretary's regulations codified in 29 CFR part 2520. Pursuant to 29 CFR 2560.502c-2 and 2570.60 *et seq.* PWBA has maintained a program for the assessment of civil penalties for noncompliance with the annual reporting requirements. Under this program, plan administrators filing annual reports after the date on which the report was required to be filed may be assessed $40 per day for each day an annual report is filed after the date on which the annual report(s) was required to be filed, without regard to any extensions for filing. Plan administrators who fail to file an annual report may be assessed a penalty of $300 per day, up to $30,000 per year, until a compete annual report is filed. Penalties are applicable to each annual report required to be filed under Title I of ERISA. The Department may, in its discretion, waive all or part of a civil penalty assessed under section 502(c)(2) upon a showing by the administrator that there was reasonable cause for the failure to file a complete and timely annual report.

The Department has determined that the possible assessment of the above described civil penalties may deter certain delinquent filers from voluntarily complying with the annual reporting requirements under Title I of ERISA. In an effort to encourage annual reporting compliance, therefore, the Department has decided to implement the Delinquent Filer Voluntary Compliance (DFVC) Program, under which administrators otherwise subject to the assessment of higher civil penalties will be permitted to pay reduced civil penalties for voluntarily complying with the annual reporting requirements under Title I of ERISA, referred to as the ''Program.''

2. Indicate how, by whom, how frequently, and for what purpose the information is to be used. For revisions, extensions, and reinstatements of a currently approved collection, indicate the actual use the agency has made of the information received from the current collection.

Under Title I of ERISA, the administrator of each welfare and each pension plan, unless otherwise exempt, is required to file an annual report with the Secretary containing the information set forth in Section 103 of ERISA. The statutory annual reporting requirements under Title I of ERISA, Title IV of ERISA, and the Internal Revenue Code are satisfied generally by filing, in accordance with the instructions to the forms and related regulations, the appropriate annual return/report (the Form 5500 Series). The Form 5500 Series collection has been given OMB control number 1210–AA16. The Form 5500 Series collection has been approved under the Paperwork Reduction Act on October 28, 1994.

The DFVC Program is intended to afford eligible plan administrators the opportunity to avoid the assessment of civil penalties otherwise applicable to administrators who fail to file timely annual reports for plan years beginning on or after January 1, 1988. Eligible administrators may avail themselves of the DFVC Program by complying with the filing requirements and paying the specified civil penalties, set out in the Federal Register Notice.

The DFVC Program is available only to a plan administrator who complies with each of the requirements the Notice prior to the date on which the administrator:

(a) is notified in writing, pursuant to 29 CFR 2560.502c-2, of the Department's intention to assess a civil penalty under section 502(c)(2) of ERISA for failure to file a timely annual report; or

(b) is otherwise notified in writing by the Department of a failure to file a timely annual report under Title I of ERISA.

It is anticipated that the administrator of an employee welfare or benefit plan would make use of the DFVC Program no more than once per year, and would avoid use of the Program entirely if the statutory filing obligation were met in a timely manner.

The only information collection requirement in the Notice is the requirement of providing data necessary to identify the plan along with the penalty payment. This data is the only means by which each penalty payment will be associated with the relevant plan. With respect to most pension plans and welfare plans, the requirement is satisfied by sending, along with the penalty payment, a copy of the first page of the delinquent annual report, which under current procedures is sent to the IRS.

Under current procedures, certain pension plans for highly compensated employees, commonly ''top hat'' plans, and apprenticeship plans may file a one-time statement in lieu of annual reports. With respect to such plans the information collection requirements of the Notice are satisfied by sending a completed first page of an annual report form along with the penalty payment. The one-time statements are required to be sent to a different address within the Department. The Program is designed to allow the processing of all penalty payments at a single location within the Department.

3. Describe any consideration of information technology used to reduce burden, as well as any technical or legal obstacles to reducing burden.

The Department, in conjunction with the IRS, PBGC, and OMB, is currently exploring means by which to enhance the Form 5500 filing review, processing, and data system. Until that time when an electronic filing alternative is available, the Department has chosen the least burdensome collection method for receiving notification of participation in the Program and correctly accounting for payment of penalties.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in 2 above.

The Department, IRS, and PBGC utilize a consolidation annual report (Form 5500 Series) which eliminates the duplicative reporting that would otherwise result from the separate reporting to each agency. However, the consolidated report does not accommodate specific notification of the Department of participation in the Program, nor does it accommodate recording of payment of penalties. Therefore, the minimal information collection requirements of this Program were deemed necessary.

There is no similar information gathered by any state or Federal agency or other sources that would enable the Department of effectively monitor participation in the Program.

5. If the collection of information has a significant impact on a substantial number of small businesses or other small entities (item 15 of the Paperwork Reduction Act Submission form), describe the methods used to minimize burden.

Not Applicable.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently.

If the collection is not conducted, it may not be possible to institute the Program because the Department would be unable to determine whether persons seeking to take advantage of the reduced penalties offered under the Program had in fact complied with its conditions. The purpose of the Program is to encourage delinquent plan administrators to come forward and file delinquent reports. Lack of compliance with existing filing requirements impairs the administration and enforcement of the statute by the Department, as well as the IRS and the PBGC. The collection used in the Program creates a minimal burden on plan administrators who are already in breach of ERISA's filing requirements while giving them access to reduced penalties.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with the general information collection guidelines in 5 CFR 1320.6 (*e.g.*, payment to respondents, disclosure of proprietary information, etc.).

There are no special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

8. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to obtained or those who must compile records should occur at least once every 3 years—even if the collection of information activity is the same as in prior periods. There may be circumstances that mitigate against consultation in a specific situation. These circumstances should be explained.

The employee benefit plan community is aware that the Department has been considering institution of a reduced penalty program for persons who voluntary file delinquent reports, and is generally supportive of the Program. The minimal information collection associated with the Program will not dissuade participation by delinquent play administrators.

The Form 5500 Series was developed in coordination with the IRS and PBGC, and the DFVC Program has been reviewed by these agencies as well. In addition, PWBA regularly requests comments from the ERISA Advisory Council with respect to suggestions for reducing paperwork.

9. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The annual reports are required by law to be made available for inspection at the Department and at the offices of the plan administrators. Accordingly, since this collection is merely one page of the annual report, the Department provides no assurance of confidentiality to respondents.

10. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature pertaining to sexual behavior and attitudes, religious beliefs, or other matters that are commonly considered private.

11. Provide estimates of annualized cost to the Federal Government and to the respondents. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), any other expense that would not have been incurred without this collection of information.

Based on expense estimates, the annual cost to the Department attributable to the receipt and maintenance of the Program is estimated to be approximately $150,000. This figure includes estimated costs to the Department for lockbox maintenance, computer services, and other

operational expenses such as equipment, overhead, and support staff.

As reflected in item 12 below, the burden hours attributable to the collection by the universe of respondents is estimated to be 3,500 hours. It is estimated that the cost to plans to complete the collection will range from $20 to $25 per hour. Therefore, the estimated aggregate cost to respondents is approximately $70,000 to $87,500 in the first year, and $49,000 to $61,250 in succeeding years.

12. Provide estimates of the burden of the collection of information including both recordkeeping and reporting requirements. The statement should:

• Provide number of respondents, frequency of response, annual burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not make special surveys to obtain information on which to base burden estimates. Consultation with a sample of potential respondents is desirable. If the burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated burden and explain the reasons for the variance.

An estimated 10,000 delinquent employee benefit plan administrators are expected to file under the Program in the first year, and an estimated 7,000 filings are expected in subsequent years. Participation in the Program is voluntary, and filing under the Program would not be necessary more often than annually, and most participants would probably participate one time only. The annual burden per filing is estimated to be approximately 21 minutes, based on a pilot pretest of not more than nine people from both Federal employment and the private sector. The burden on respondents is not expected to vary widely because of differences in activity, size or complexity.

• If the request for approval is for more than one form, provide separate burden estimates for each form for which approval is sought and aggregate the burdens on the Paperwork Reduction Act Submission form. If only one form is submitted, you need not duplicate the information entered on the Paperwork Reduction Act Submission form.

Not applicable.

13. For amendments to existing collections, explain reasons for changes in burden, including the need for any increase.

Not applicable.

14. For collections of information whose results are planned to be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

The Form 5500 Series collection, and by extension, this DFVC Program collection, are not a collection of information for statistical use. Once collected, however, the information is available to the Department and the public, and it is used for purposes other than enforcement and disclosure.

[FR Doc. 95–7742 Filed 3–29–95; 8:45 am]

BILLING CODE 4510–22–M

Evaluation of the Summer Youth Employment and Training Program

AGENCY: Office of the Secretary, Labor.

ACTION: Expedited review under the Paperwork Reduction Act.

SUMMARY: The Employment and Training Administration, Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR 1320 (53 FR 16618, May 10, 1988)), is submitting a study to examine the range of practices currently being used in the Summer Youth Employment and Training Administration (SYETP) to deliver educational services. It will assess the quality of training and evaluate contributions to the educational deficiencies of participants.

DATES: The Employment and Training Administration has requested an expedited review of this submission under the Paperwork Reduction Act; this Office of Management and Budget (OMB) review has been requested to be completed by April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the Evaluation of the SYETP should be directed to Mr. Kenneth A. Mills, Departmental Clearance Officer, Office of Information Resource Management Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210, (202) 219–5095.

Comments should also be sent to OMB, Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, NEOB Room 10235, Washington, DC 20503, (202) 395–7316.

Any member of the public who wants to comment on the information collection request which has been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Average Burden Hours/Minutes Per Response: 113 minutes

Frequency of Response: One time

Number of Respondents: 9,115

Total Annual Burden Hours: 17,167 hours

Total Annual Responses: 9,115

Affected Public: Individuals or households; Non-for-profit institutions; State, Local or Tribal Government

Respondents Obligation to Reply: Voluntary

Signed at Washington, DC, this 24th day of March 1995.

Kenneth A. Mills,

Departmental Clearance Officer.

I. Introduction

This document represents a request for approval of the data collection protocols to be used in the *Evaluation of the Summer Youth Employment and Training Program*, being conducted by Social Policy Research Associates (SPR) and Brandeis University's Center for Human Resources, under contract to the U.S. Department of Labor (DOL). The study uses qualitative (case study) and quantitative data collection and analysis methods to examine training practices being used in the Summer Youth Employment and Training Program (SYETP), Title II–B of JTPA. The Introduction to this document provides a brief overview of the study and its purposes, and it discusses the data collection procedures and analysis plans. Subsequent sections respond to the Office of Management and Budget's (OMB) specific instructions for justification and address issues related to the collection of information using statistical methods.

Background

Funded under Title II–B of the Job Training Partnership Act, SYETP has its origins in a thirty-year federal commitment to create summer jobs for disadvantaged youth. However, developments in recent years have as well affirmed an emphasis on providing educational services. For example, amendments to Title II–B enacted in 1986 enumerated the enhancement of basic educational skills and encouragement of school completion as explicit goals of the program. Further, SDAs were required to assess the reading and mathematics skill levels of SYETP participants and to provide remedial and basic education services where appropriate. Subsequent DOL issuances reinforced the educational emphasis of the Summer Youth program and encouraged efforts to link work and learning.

Purposes of the Study

The changing focus of SYETP raises questions about the proper role of the program's educational component and the feasibility of diagnosing and meaningfully redressing the basic skills deficiencies of large numbers of youth within the compressed time frame of the summer program. Thus, the objectives of the evaluation are to examine the range of practices currently being used to deliver educational services, explain variation in service designs, assess the quality of training being provided, and evaluate its ability to meet the needs of participants and make significant contributions to their educational deficiencies. Ultimately the study will enable DOL to gauge the adequacy of services currently being provided, identify areas of weakness and, conversely, service designs that appear especially efficacious, and provide leadership and technical assistance to improve training practices.

Conceptual Framework

Guiding the data collection and analysis efforts are a client-level model of high quality educational services and a system-level model of factors that determine training practices. The client-level model of training quality, presented in Exhibit I, depicts how clients flow through the SYETP program, the quality indicators for each type of service that the program provides, and the intended consequences of high-quality services for youth. Steps identified in this model are:

• Recruitment, assessment, and service planning practices. Quality indicators associated with this phase of service delivery include whether programs have a clear strategy for which youth should be targeted and effective procedures to recruit them, whether they conduct a comprehensive assessment of youths' skills and interests, and whether the assessment results are used to develop an individualized service strategy tailored to the skills and interests of each participant.

• Providing effective educational services, either through classroom or work-based instruction. Quality indicators for both training content and instructional methods are identified in the exhibit, including whether the training objectives are well-specified, whether they promote the educational skills needed in the workplace, whether training is provided in a functional context, whether participants' progress is documented, whether there are ample opportunities to learn, and whether the style of instruction promotes active learning that is adaptive to the needs of individual participants.

• Providing linkages with continuing educational activities, to sustain and build on learning gains.

In contrast to the client-level model, the system-level model, shown in Exhibit II, is intended as a casual (rather than a temporal) model and identifies factors that influence service delivery, including those that facilitate or impede the development of high-quality educational services. The far right box of this model contains the elements of high-quality SYETP educational services that were described in the client-level model. The exhibit schematically identifies aspects of Federal and State policies and the local environment that can affect an SDA's program design, and it shows how design decisions and educational provider characteristics, in turn, affect the quality of educational services provided. Specifically, it identifies:

• Federal, State, and local influences on programs' designs, including federal Title II–B policies, other Federal initiatives and policies, State JTPA and educational policies, and characteristics of local youth and of the local area.

• SDA design factors, including program goals, target groups, and service delivery arrangements.

• Attributes of the service providers who deliver educational services to participants, including the types of institutions, their history, objectives, and funding sources.

Questions for the Evaluation

The preceding conceptual frameworks give rise to a number of specific questions to be investigated in the project. These include issues relating to the design of services at the SDA level, the design of services at the level of the educational provider, and the quality and impact of educational services.

• The design of SYETP at the SDA level.

—What general objectives have SDAs established for their Title II–B programs? What specific objectives (in terms of skills to be conveyed, benchmarks to be achieved) have been established for the Title II–B educational components?

—Do programs identify priority client groups? If so, what target groups have they established? Who makes those decisions, and how and why were they made?

—What types of providers are used by the SDA for educational instruction? How were these providers selected and why were they selected?

—How are other services, including supportive services and stipends, used in the summer youth program? How are these services used to support educational and other goals for the program?

—What linkages has the SDA established between its Titles II–B and II–C programs?

—What ''front-end'' and ''back-end'' linkages has the SDA established with public schools? Who instigated these linkages and who maintains them? Are the linkages formal or informal?

—What role have federal and state policies and local influences played in the SDA's design decisions? How have these policies been perceived and implemented?

• The design of SYETP at the provider level

—What types of organizations provide educational instruction? What objectives have been established for their programs?

—Why did the provider decide to participate in the summer youth program and how was it selected?

—What objectives has the provider established for its educational program? What skills (e.g., basic skills, SCANS skills) is it endeavoring to teach? Is it attempting to link learning and work?

—What service design is it using to meet these objectives? Who developed the design and why? Was the design established explicitly for the summer youth educational program?

—How are educational services sequenced? How was the curriculum developed?

—How did it recruit and train its staff?

—How have the SDA's objectives for the summer youth educational program been communicated to the service provider and how have they been acted upon?

—What role has the SDA played in designing the provider's educational services, including its content and method of delivery? How does the SDA monitor the services that are being provided and how does it suggest changes?

—How does the provider's design reflect other elements of the local context, including the needs of the community, the characteristics of youth in the area, and the characteristics of the school district?

• The quality and impact of educational services

—What procedures are used by SDAs to recruit youth for the summer program? Do recruitment methods correspond to their targeting goals?

—How is the participant's initial assessment conducted and how is

subsequent progress assessed and documented?

—How are individual service plans developed? Are the service plans truly individualized to the needs, skills, and interests of each participant? Does the youth play an active role in formulating the service plan? Are the resulting goals clear and ambitious (without being unrealistic)?

—Does the educational instruction that is being provided have well-specified objectives? Do the objectives indicate skills to be acquired (rather than knowledge to be learned)?

—Does the instruction emphasize skills needed in the workplace? Are the skills taught in a functional context?

—Does the instruction promote active learning and training for transfer?

—Is instruction adaptive and provided by capable and caring adults who view their role as a ''facilitator''?

—Have linkages been established to provide feedback to schools or other programs serving the youth?

—What implications do service provider characteristics and design decisions have for the quality of educational services?

—What implications does participation in SYETP, in general, have for stabilizing or improving academic or other achievements, promoting school completion, and increasing the motivation to learn?

—What implications do alternative designs for delivering educational services (e.g., provider characteristics, the locus on instruction) have for these same youth outcomes?

Study Design

To address the research questions identified above, this study uses two evaluation components—a process study and a client-level study of outcomes.

The Process Study

The process study uses a series of ''nested'' qualitative case studies to examine the design and operation of SYETP services at 30 SDAs nationwide and approximately 3 educational providers at each of these SDAs (up to 90 providers total). The data collection activities will consist of a review of plans for the Summer Program as well as 4-day on-site visits to each selected SDA and its associated providers, during which time researchers will meet with SDA and provider administrators and staff, classroom instructors, and worksite supervisors, and they will observe educational instruction. While on site, researchers also will conduct 1 focus group with approximately 5–6 youth participants at each educational provider visited and review case files for 2 youths at each provider. Follow-up telephone discussions also will be conducted with youths selected for the case file reviews and with their parents and school counselors to learn of retrospective impressions of and satisfaction with the SYETP experience and perceived impacts on subsequent achievements and behaviors in school.

Selecting the Sample

As part of the study, samples are being drawn of 30 SDAs and up to 3 educational activities in each SDA (or 90 total). To ensure that the resulting sample will be nationally representative, the 30 SDAs are being selected using stratified random sampling. In selecting the sample, all SDAs nationwide are being assigned to one of 4 strata. The first 3 of these groups are defined according to the percent of their Summer Youth participants who receive educational instruction, with the first stratum consisting of those SDAs with percents between 1% and 41%, the second between 42% and 73%, and the third between 73% and 100%. These cutoffs were chosen so that approximately equal numbers of youths receiving educational instruction are in each of the three strata. The 4th stratum consists of those SDAs for whom information on the number of participants in educational instruction is not available.

Within each strata, SDAs were sampled with the odds of selection proportionate to the number of participants being served,[1] so that the resulting sample of SDAs is approximately self-weighting.

Because this study is intended to describe and compare the effectiveness of a wide variety of approaches to building the educational skills of SYETP participants, educational providers are selected within each of the 30 SDAs using purposive selection methods. Specifically, all educational providers used by these SDAs are to be categorized according to their:

- Content emphasis (e.g., basic skills only; SCANS foundation skills and/or competencies; or other academic subjects, such as science, history, or art).
- Locus of educational instruction (e.g., classroom-based, work-based, or both).
- Type of provider (e.g., SDA; secondary school, other educational institution such as community college or technical college, or other).
- Targeted participants (e.g., 14–15 year olds, 16–18 year olds, other target groups).

Providers are being selected to ensure the diversity of the sample (both within the SDA and across all 30 SDAs) with respect to these dimensions.

Data Collection

The field protocols, or topic guides, developed for this process study are designed to guide the data collection activities. These protocols will permit site visitors to tailor discussions and observations on a standardized set of issues to the particular context of each case study SDA and sampled educational activity. The following topic guides have been developed and are submitted for OMB's review:

- SDA Guide #1 includes the topics to be covered in discussions with SDA policy, planning, and administrative staff, including those relating to the goals, design, and management of the Summer Program.
- SDA Guide #2 includes the discussion topics to be used with SDA staff responsible for direct operation or oversight of client recruitment, assessment, service planning, and case management services for Title II–B participants.
- Program Guide #1 includes the topics to be covered in discussions with administrators of the selected educational activity, staff that participated in the planning and development of the detailed curriculum, and supervisors responsible for hiring, training, and overseeing instructors/work site supervisors involved in educational activities.
- Program Guide #2 includes the topics to be used in discussions about the classroom-based learning approach with classroom instructors or other staff whose primary responsibility is to support learning in a classroom or individual study setting (e.g., tutors, educational resource staff).
- Program Guide #3 includes the topics to be used in discussions with work project coordinators and worksite supervisors who are involved in work-based learning. This guide includes topics for projects using the 100% work-based learning approach as well as topics for staff involved in work activities that are closely coordinated with classroom-based learning.
- Program Guide #4 is a guide for structured observations of educational activities.
- Program Guide #5 is a guide for structured review of curriculum materials.
- Client Guide #1 describes the topics to be addressed in focus group

[1] Dollar allocations for the Summer Youth program were used in the fourth stratum, because the number of participants receiving educational instruction is not available for these SDAs.

discussions with approximately 5 youth participating in each selected educational activity.

- Client Guide #2 will be used to extract relevant information for the case history sample from the participants' written case files at the SDA or provider.
- Client Follow-Up Guide describes the topics to be discussed with selected youth participants (i.e., those selected for the case file review) several months after their Summer Program's participation has ended.
- Parent/Guardian Guide will guide the issues to be addressed with these youths' parent or guardian during the follow-up period.
- Counselor Guide describes the topics to be addressed with the youths' secondary school counselors during the school year following the youths' summer participation.

Data Analysis

The analysis of the case studies will begin with a *within-site* explanatory analysis. This task will consist of bringing to bear the data that has been collected to arrive at a comprehensive picture of the practices in each of the SDAs and service providers that were selected for the study and how they have contributed to the needs of the participants. A particular objective will be to uncover especially innovative practices, with an eye to understanding how they were implemented and what makes them work so well.

The next step will consist of *cross-site* comparisons to synthesize the findings. This analysis will clarify further the unique procedures that programs adopt to deliver high quality training in a variety of environments and arrive at an understanding of commonalities and differences between programs and how these are related to effective practices.

Client-Level Study of Outcomes

In addition to collecting and analyzing information from the case studies about program practices, this study also will gather and analyze quantitative information for a sample of approximately 1,800 youths who participate in the Summer Program in 1994 and an additional 4,000 youths who participate in the 1995. By compiling and analyzing information for a sample of participants on the services that were received and the outcomes that were obtained, the study will draw inferences regarding the relative efficacy of various service design and delivery methods.

Selecting Participants for the Study

A key element of the overall research design is to tie the results from the case study observations of classroom instruction and appraisals of training quality to the analysis of participants' outcomes. In this way, inferences can be drawn regarding the relationship between the training practices observed in the field to the consequences of those practices for the youth who receive them. For this reason, participants selected for the client-level study of outcomes will be those whose SYETP instruction was delivered by the service providers whose practices were observed on site. Specifically, participants will be selected in the following ways:

- Preliminary information received from the 30 SDAs has led us to determine that approximately 15 of them require pre-tests and post-tests of basic skills for all participants receiving academic instruction. All youth served in the summer of 1994 by the 3 selected providers in these SDAs will be included in the study. This will yield an expected sample of approximately 1,800 respondents.
- The service providers visited for the case studies in the 30 SDAs included in the study will each be asked to administer a common pre-test/post-test in the summer of 1995, as well as a brief instrument measuring self-esteem. All youth served by these providers will be included in the study. This will yield approximately an additional 3,600 respondents.
- A randomly chosen sample of 400 youths not receiving educational instruction also will be included in the study as a comparison group.

Data Collection

The plan for the client-level study of outcomes is based on the analysis of information for the sampled participants drawn from a variety of sources and that, to a large degree, already exists. Thus, the compilation of these data for analysis purposes entails data gathering at least as much as new data collection. Specific data sources to be used are these:

- The SDA's MIS. Although the specific types of information doubtless will vary from one SDA to the next, most SDAs' MIS will include: participant's demographic and background characteristics (e.g., race, school status, gender), barriers to employment (e.g., whether the youth is a limited-English speaker or has a disability), and summary information about services received. SDAs will be requested to transmit these data to the contractor electronically (e.g., on data diskette).
- SDA's Client Files. Those SDAs able to provide pre-test/post-test scores for youth served in the summer of 1994 will forward those scores to the contractor for data entry. All participating SDAs will forward the hard-copy pre-test/post-tests and self-esteem surveys of sampled participants served in 1995 to the contractor for scoring and keypunching.
- School Records. An important objective of the study is to learn how participants (at least those who are students) fare in their subsequent schooling. Outcomes of interest include measures of academic achievement (e.g., grade-point-average), but also evidence of behavioral problems (e.g., as evidenced by absenteeism, suspensions/expulsions). Thus, school record information will be abstracted for sampled summer 1995 youths who sign and have their parents/guardians sign a consent form.

Exhibit 3 summarizes the variables to be measured from these sources.

Data Analysis

A preliminary analysis will be conducted using SDA MIS data and pre-test/post-test scores for the 1,800 youth who participated in the summer program in 1994, selected as described above. A more comprehensive analysis for a larger sample will be conducted when school record data are collected, for youths who participated in the summer of 1995. Additional outcomes to be examined with these data include: self-esteem, school attendance, grade completion, grade-point average, and absenteeism. Two types of analysis will be conducted:

- Descriptive analyses, which will paint a picture of the characteristics of persons receiving educational instruction in the sampled programs, the types of services received, and the outcomes obtained.
- Explanatory analyses that will examine the efficacy of alternative service designs and delivery mechanisms for subsequent outcomes.

Reporting

The project's major deliverables include:

- An Interim Report. This report will detail the results of the process analysis, describing results from the case studies regarding how services are designed and delivered. It also will include the preliminary results from the study of outcomes based on the data collected for youth who participated in the summer of 1994.

• A Technical Assistance Guide (TAG). The TAG will be a practitioner's guide describing effective practices in the delivery of educational services, focusing especially on how educational instruction can be delivered in a functional, work-related context.

• A Final Report. This report will represent a summation of the study's findings and recommendations. As such, it will include the content of the Interim Report, combined with the comprehensive results of the study of outcomes.

II. Supporting Statement

A. Justification

1. Circumstances Making the Data Collection Necessary

The Department of Labor (DOL) is considering ways of improving the educational component of the JTPA Title II-B Summer Youth Employment and Training program (SYETP), in keeping with Secretary Reich's ''First Jobs/New Jobs/Better Jobs'' initiative. Its objectives for SYETP are to improve the program's effectiveness in assisting young people acquire strong workplace foundation skills (including basic skills, thinking skills, and interpersonal skills) and gain an appreciation of the inextricable connection between learning and success in the workplace. As part of its effort to foster program improvements, DOL needs to obtain a thorough understanding of educational services currently being provided to summer youth participants—including how participants are assessed, the curriculum being used, and how the educational and work components of SYETP are integrated—and identify particularly efficacious practices.

As part of its response to Executive Order No. 12862 requiring all Federal agencies to develop customer service standards, DOL also needs to know participants' views about the services they received in SYETP, including their service needs and how well the program responded to those needs. This information is critical to implementing changes that can improve program responsiveness.

2. Use of Information and Consequences if Not Collected

The information being collected in this study will be used to address these objectives:

1. Describe variation in the design of SYETP educational services across service delivery areas (SDAs) and their service providers, with respect to general goals and objectives they have established for the program, their targeting decisions, assessment procedures, specific skills being taught, the locus of instruction, linkages between work and learning, and linkages with public schools and year-around Title II–C JTPA services.

2. Describe variation in the quality of educational services, including whether assessments are comprehensive, whether service strategies are individualized to the needs and interests of participants, whether the participants are actively involved in formulating the service plan, whether educational instruction has well-specified objectives relating to skills to be acquired, whether skills are taught in a functional context and emphasize skills needed in the workplace, and whether instruction is adaptive.

3. Identify factors that explain variation in how educational services are being designed and delivered, such as federal policies, opportunities for technical assistance and training, state-level partnerships between JTPA and the school system, and other local influences.

4. Document consequences of participation in SYETP educational services, especially high quality services, for participants' skill levels, subsequent academic achievement, and school attendance and performance.

5. Document participants' satisfaction with the program, including their assessment of the helpfulness of the services they received.

If this information is not collected, DOL will not have the information it needs to evaluate how educational services are being delivered or their effectiveness, and thus it will not have the necessary foundation for implementing program improvements.

3. Considerations to Reduce Burden

The data collection activities have been designed to minimize the burden on respondents in four major ways. First, pre-existing information will be utilized wherever possible to minimize the need for new data collection. These pre-existing sources will include SDAs' plans for their Title II–B programs, RFPs and contracts written by SDAs to secure the services of the direct providers of educational instruction, data collected as part of last summer's study of SYETP, test scores, information from school records, and existing MIS data compiled by SDAs about their participants' characteristics, services, and outcomes. These data sources can be forwarded to the contractor with minimal burden to SDA or school or provider staff and to program participants. Where data abstraction requires hand-coding (e.g., from school records), abstractors will be compensated by the contractor.

Second, where feasible (and at least with respect to the MIS data), information will be transferred to the contractor electronically (i.e., via modem or data diskette), greatly facilitating the data transmission process.

Third, only data of direct relevance to the goals of the study will be collected.

Fourth, much time on site will be devoted to the unobtrusive observation of educational instruction and the review of written documents and participants' case files, and this too should be minimally burdensome to SDA and service provider staff or participants.

4. Efforts to Identify Duplication

A study conducted of SYETP during the summer of 1993 included 50 on-site visits and a mail survey of all SDAs (1205–0327, expired 12/93). However, this data collection focused on general operational issues, did not entail on-site observations of classroom instruction to characterize its quality and did not attempt to study youth at any point beyond their period of participation.

Additional information available about SYETP comes from the SDAS's plans for their summer's activities. However, these documents provide no information about how or how well the plans are implemented, nor do they allow an assessment of the instruction's quality or effectiveness, nor do they speak to the participants' satisfaction with the services they received.

Finally, states are required to submit annual reports providing aggregate counts of participants served and their characteristics (1205–0200, expires 7/97). However, these simple summary reports are useful for little more than identifying the numbers of persons of different ages and education levels who were served.

5. Why Similar Information Cannot be Used

Information from the sources described above will be used to the fullest extent possible in the study being planned. Indeed, these data provide a strong foundation to support the study by providing essential background and other information. However, DOL has concluded, on the basis of the effort to identify duplication, that these pre-existing sources are not adequate to characterize the quality or education services, support an analysis of the factors associated with high quality services, describe the consequences of participation in SYETP for subsequent achievements, or document participants' satisfaction with the program. Nor are they adequate,

consequently, to support DOL's efforts to foster program improvements.

6. Burden on Small Businesses

Some activities associated with this study will involve the collection of data from the administrators or staff of organizations providing educational instruction as part of SYETP, and some of these entities may be small businesses. However, as described under #3, ''Considerations to Reduce Burden,'' only information of direct relevance to the study's objectives will be collected while on site. Secondly, much on-site data collection to be conducted at service providers will involve the unobtrusive observation of classroom instruction and the review of client case files, and it will thus entail minimal burden on the providers' administrators or staff. Finally, as part of the agreement allowing them to deliver services under JTPA, providers acknowledge DOL's right to evaluate and/or monitor their activities and services.

7. Consequences of Less Frequent Data Collection

The data collection activities associated with this study will be conducted one time only.

8. Collection Inconsistent With 5 CFR 1320.6

Data collection will be consistent with 5 CFR 1320.6.

9. Efforts to Consult With Persons Outside the Agency

Responsibility for devising and carrying out the data collection rests with DOL's contractor, Social Policy Research Associates (SPR), and its subcontractor, Brandeis University's Center for Human Resources. Key personnel associated with these institutions are nationally known experts in evaluation research and have in-depth knowledge of employment and training programs in general and Summer Youth programs in particular.

Additionally, the study team has enlisted the aid of additional experts, who are serving as consultants on the project. Their advice was solicited regarding the usefulness of the data elements to be collected, the feasibility of the data collection plan, and the clarity of instructions. These consultants are:

Ms. Nancy Bross, Public Policy Support, 1377 McLendon Ave., N.E., Atlanta, Georgia 30307, (404) 581–9895

Ms. Lee Bruno, Consultant, 3106 Old Largo Road, Upper Marlborough, Maryland 20772, (301) 627–1415

Ms. Janice Hendrix, North Central Indiana PIC, 36 West Fifth St., Suite 102–B, Peru, Indiana 46970, (317) 473–5571

Mr. Gill Ritt, Career Resource Associates, 2932 Sumac Drive, Atlanta, Georgia 30360, (404) 698–8427

Mr. Kip Stottlemyer, Consultant, 1408 Milestone Drive, Collierville, Tennessee 38017, (901) 854–1438

In addition, all the protocols guiding the conversations with key respondents have been pre-tested on not more than 9 respondents, and modifications to the protocols were made on this basis where it seemed appropriate.

10. Assurances of Confidentiality

The information to be collected will be held strictly confidential and will be used for research purposes only. To ensure confidentiality, DOL will require that the study team take the following measures:

- Access to the data will be limited to the contractor's project team members only.
- Reports to DOL will focus on describing and analyzing the range of service designs and training practices that were observed and will not associate a design or process with any specific SDA or service provider, except by way of providing an example of exemplary practices, and then only with the SDA's approval.
- Reports to DOL that contain individual vignettes based on the experiences of participants will not contain individual names or any other identifying information.
- The contractor's project team members will be trained in the confidentiality requirements and cautioned to use the data for research purposes only.

11. Justification of Questions of a Sensitive Nature

Two sources of data are potentially sensitive. First, pre-tests and post-tests will be administered to youth included in the study. Second, school record information will be abstracted for those youth in the sample who participated in the summer program of 1995 and who return to school in the fall. These data elements are imperative to examine learning gains for those who receive educational services and to examine if SYETP participation is associated with improved school performance.

However, for the most part these data elements do not represent new data collection activities. JTPA currently requires that all summer youth be administered a test of basic skills to determine their need for basic skills remediation, and many SDAs also administer post-tests to document learning gains.

Similarly, information about school performance will be abstracted from existing student files. Moreover, youths and their parents/guardians will be asked to sign a consent form before the abstraction will be conducted. This form will outline the objectives of the study and ask the youth and his/her parent to allow access to student records for purposes of the evaluation. It will be explained that participation in the study is completely voluntary and that a refusal to participate will not jeopardize the youth's receiving SYETP services.

12. Cost to the Federal Government and to Respondents

The total estimate cost to the federal government for the collection and analysis of these data is $849,543. Because the study will be conducted over 3 years,[2] the average per annum cost is approximately $283,000. This amount includes the costs of designing the field protocols, performing the on-site visits and telephone follow-up, recording observations from the site visits, collecting the client-level data for the study of outcomes, analyzing the data, and preparing two reports on the results (i.e., an Interim Report and a Final Report) and a Technical Assistance Guide (to disseminate information on effective practices). The method used to derive this figure entailed a quantification of hours of effort involved by each study team member and included expenses for materials and services (e.g., photocopying expenses and expenses involved in binding the report).

The costs to respondents result only from the time spent answering the questions. Estimates of the time to respond are presented below.

13. Estimate of Burden

Below is the estimate of the respondent burden. Time estimates are based on the pretest of the instruments (for the topic guides to be used in the process study) or from the use of the instruments in previous studies (for the pre-test/post-test and self-esteem scales). It is anticipated that these will be conducted within the next year and

[2] A separate PWR package will be submitted for any burden associated with follow-up work done after the first year.

the burden hours represent the first year burden claimed. If follow-up activities extend beyond one year, an Inventory Correction Worksheet will be submitted.

Instruments	Number of respondents	Minutes per respondent	Total hours
SDA Guides for Discussions With:			
1. Policy, Planning, and Administrator Staff	60	60	60
2. Recruitment, Service Planning, and Case Management Staff	60	45	45
Program Guides for Discussions With:			
1. Program Administrators	90	90	135
2. Classroom Instructors	85	20	28
3. Work Project Coodinators	10	20	3
Client Guides for:			
1. Focus Group with Participants	450	15	112
2. Participants, at Follow-up	120	15	30
Guide for Discussions with Parents	120	5	10
Guide for Discussions with Regular School Counselors	120	15	30
Pre-test and Post-test of Participant's Basic Skills (Workplace Literacy Test)	4,000	240	16,000
Self-Esteem Instrument (Rosenberg Self-Esteem Scale)	4,000	10	667

Additional data collection to be used in the project represents the abstraction or review of existing information. There are no respondents for these guides and thus they entail minimal burden on SDA or provider personnel or program participants beyond copying documents or data files and shipping them to the contractor. Where hand-extraction of information is required (e.g., from student records , abstractors (SDA or service provider personnel) will be compensated.

14. Reason for Change in Burden

This is a new collection as reported in ETA's ICB (Information Collection Budget). The first year's burden of 17,120 hours is being submitted now. An Inventory Correction Worksheet will be submitted for any follow—up activities in the out years.

15. Plans for Statistical Analysis

Data to be collected for this project for the process study generally will not be analyzed using qualitative research methods, findings will be detailed in a narrative, and their implications for improving program quality will be detailed.

Data collected for the study of outcomes will be analyzed using statistical methods to address these research issues:

- What are the characteristics of persons receiving educational services in the Summer Youth program? Are educational services targeted to those who have a greater need for remediation?
- What types of educational services were provided? Specifically, in what subject areas (e.g., math, reading, other academic subjects, SCANS skills) was instruction provided? With what intensity?
- How does the intensity and nature of the training received relate to outcomes, including learning gains, school attendance rates, grades in school, rates of absenteeism, and suspensions and expulsions? How do the outcomes for youth who received educational instruction compare to those in the compoarison group?
- Data for this component of the project will be compiled in various phases:
- Phase I: Collect MIS and pre-test/post-test data for sample members who participated in the summer program in 1994. Collection of this information will occur during the winter of 1995.
- Phase II: Collect MIS, pre-test/post-test, and self-esteem data for sample members who participated in the summer program in 1995. Collection of this information will occur during the winter of 1996.
- Phase III: Collect school record information. These data will be collected during the summer of 1996, after the conclusions of the 1995–96 school year, so that school outcomes measured for those who participated in the 1995 summer program will reflect a full school year.

Methods to be used in analyzing these data will include univariate and multivariate statistics. Specifically, univariate distributions will be calculated to describe the characteristics of participants, their services, and their outcomes. Cross-tabulations will be used to examine the relationship between variables. Multivariate analyses, primarily regression analysis, will be used to examine how various participant characteristics and measures of services received relate to outcomes.

The project's major deliverables include:

- An Interim Report. This report will detail the results of the process analysis, describing results from the case studies regarding how services are designed and delivered. It also will include the preliminary results from the study of outcomes based on the data collected for youth who participated in the summer of 1994. This report will be completed at the end of the Summer of 1995.
- A Technical Assistance Guide (TAG). The TAG will be a practitioner's guide describing effective practices in the delivery of educational services, focusing especially on how educational instruction can be delivered in a functional, work-related context.

The TAG will be prepared in the Spring of 1996.

- A Final Report. This report will represent a summation of the study's findings and recommendations. As such, it will include the content of the Interim Report, combined with the comprehensive results of the study of outcomes. This report will be prepared in the Spring of 1997.

B. Collection of Information Employing Statistical Methods

This process study utilizes qualitative case study data collection and analysis methods. In terms of identifying appropriate respondents in each local site and analyzing case study data, qualitative rather than statistical methods will be used. Discussions of estimation procedures and degree of accuracy (power analysis) in generalizing sample findings to the universe of all potential respondents are not applicable to the process study, because findings will not be expressed in quantitative terms.

The study of outcomes will employ statistical methods, however. These methods are described in the rest of this section.

1. Potential Respondent Universe and Sampling Methods

Approximately 625,000 youths can be expected to participate in the Title II–B program during each of the summers of 1994 and 1995, if current levels of funding are maintained. Of these, about 40%, or 250,000, will be receiving educational services. These youth are served by the nation's approximately 640 service delivery areas (SDAs).

The youths to be included in the study will be served by approximately 90 service providers used for educational instruction in 30 SDAs that were selected for examination in the process study. To ensure that the sample of SDAs is nationally representative, the 30 SDAs are selected using stratified random sampling. In selecting the sample, all SDAs nationwide are assigned to one of 4 strata. The first 3 of these groups are defined according to the percent of their Summer Youth participants that receive educational instruction, with the first stratum consisting of those SDAs with percents between 1 % and 41%, the second between 42% and 73%, and the third between 74% and 100%. These cutoffs were chosen so that approximately equal numbers of youths receiving educational instruction are in each of these three strata. The 4th stratum consists of those SDAs for whom information of the number of participants in educational instruction is not available.

Approximately an equal number of SDAs were drawn from each stratum and, within each stratum, SDAs were sampled with the odds of selection proportionate to the number of participants being served,[3] so that the resulting sample would be approximately self-weighting. The number of SDAs in each stratum and the number selected for the study are shown below.

Percent of the SDA's youths receiving educational instruction	Total number of SDAs	Number of SDAs in the sample
Low: 1% to 41%	273	8
Med. 42% to 73%	132	8
High: 74% to 100%	101	8
Information missing	117	7

[3] Dollar allocations for the Summer Youth program were used in the fourth stratum, because the number of participants receiving educational instruction is not available for these USAs.

Because this study is intended to describe and compare the effectiveness of a wide variety of approaches to building the educational skills of SYETP participants, educational providers are selected within each of the 30 SDAs using purposive selection methods. Specifically, all educational providers used by these SDAs are to be categorized according to their:

- Content emphasis (e.g., basic skills only; SCANS foundation skills and/or competencies; or other academic subjects, such as science, history, or art).
- Locus of educational instruction (e.g., classroom-based, work-based, or both).
- Type of provider (e.g., SDA; secondary school, other educational institution such as community college or technical college, or other).
- Targeted participants (e.g., 14–15 year olds, 16–18 year olds, other target groups).

Providers are being selected to ensure the diversity of the sample (both within the SDA and across all 30 SDAs) with respect to these dimensions.

Because most providers serve fairly few youths, all youths served by the selected providers during the summer of 1995 will generally be selected for the study of outcomes. However, for large providers (those serving more than approximately 70 participants), youths will be selected who attended classes served by the instructors who were observed by the site visitors, the 400 youth to be selected for the comparison group will be selected randomly, approximately 15 from each SDA.

Following the above procedures, an approximately equal number of youths will be selected from each SDA. MIS data for each of these youth, should be available without exception, as will pre-test and post-test scores and the measure of self-esteem. Similarly, because SDAs typically require access to school records as part of the assessment process, we anticipate that high percentages of sampled youths and their parents/guardians will sign the consent forms allowing the researchers' access to this information. At least an 80% rate of cooperation is anticipated.

2. Procedures for the Collection of Information

Sample Selection. As discussed above, the sample has been drawn in a two-stage process. First, a sample of SDAs and their providers was chosen, and next participants served by these providers are selected, along with a randomly chosen sample of participants for the comparison group.

Degree of Accuracy. To meet DOL's objectives for the survey, the sample size must be sufficient to allow reliable estimation of relatively small differences in outcomes across various service strategies. Let us suppose that the outcome variable is a percentage (e.g., the percentage of participants who complete their next grade level), that the average of the outcome is 50%, that we can explain 25% of the outcome's variation with all predictor variables combined, and that 10% of the variance in the educational components can be explained by other control variables. Under these circumstances, the sample size to be used for this study would be able to detect an approximately 3 percentage points difference in outcomes across a dichotomous measure of service (e.g., instruction is provided in a functional context or not). Note that these are generally fairly conservative assumptions. For example, sample size requirements would be less stringent if the average of the outcome were either higher or lower than 50%.

Estimation Procedures. As described in Section A, Item 15, several estimation techniques will be used. First, means and univariate distributions will be calculated to describe the sample. Second, t-tests of means (for outcomes measured on a continuous scale) and chi-square tests (for categorical variables) will be calculated to determine whether outcomes vary significantly for participants with different characteristics (e.g., age) or who received different services. Third, multivariate analysis methods will be used, with various measures of outcomes as the dependent variable. Independent variables will include participant characteristics (e.g., age, gender, pre-test scores) and measures of the types of services received.

Ordinary least squares (OLS) will be used as the estimation technique for most of these multivariate models, because of its desirable properties. However, OLS is inefficient when the dependent variable is categorical (e.g., whether the next school grade was completed). In these cases, logit analysis will be used.

3. Methods to Maximize Response Rates

Most data to be used for the client study represent pre-existing records collected by SDAs and schools. For this reason, response rates should be quite high for all components of the data collection. Potentially, however, some participants or their parents may deny the researchers access to school records. To minimize this possibility, SDAs and their service providers will be contacted far in advance of the start of the 1995 summer program, and their cooperation will be enlisted. Thus, when youth are

first enrolled in the program they can be told immediately that they are being asked to participate in the study and the study's importance can be explained carefully to them.

4. Tests of Procedures

The data collection for the client-level study involves no new survey or other instruments. Therefore, no test of procedures is deemed necessary.

5. Contractor and Individuals Consulted

The Department of Labor has contracted with Social Policy Research Associates (SPR) to design, conduct, and analyze the study of outcomes. Key personnel at SPR at Dr. Ronald D'Amico, Dr. Katherine Dickinson, and Mr. Richard West. They may be contacted at: Social Policy Research Associates, 200 Middlefield Road Suite 100, Menlo Park, CA 94025. Their phone is (415) 617–8625.

[FR Doc. 95–7743 Filed 3–29–95; 8:45 am]

BILLING CODE 4510–22–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–026)]

NASA Advisory Council (NAC), Minority Business Resource Advisory, Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: April 26, 1995, 9 a.m. to 4 p.m.

ADDRESSES: NASA, Langley Research Center, Building 1219, Room 225, Hampton, Virginia 23681–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas, III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration Room 9K70, 300 E Street SW, Washington, DC 20546, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Call to Order
—Reading of Minutes
—Overview of Langley Research Center SDB Program
—Report on Action Items from Last Meeting
—Subcommittee Reports
—Update on NASA SDB Program
—Committee Goals for 1995
—Public Comment
—Adjournment

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: March 24, 1995.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 95–7747 Filed 3–29–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–40–8027–MLA–3, ASLBP No. 94–700–04–MLA–3]

Sequoyah Fuels Corp., (Source Material License No. SUB–1010); Notice of Hearing

March 24, 1995.

Notice is hereby given that the Presiding Officer in this proceeding has determined that there should be made available an Opportunity for Intervention in the on-going proceeding which involves a license amendment application of Sequoyah Fuels Corporation for its facility at Gore, Oklahoma. During the course of the course of this proceeding, the Licensee has proposed modifications to the original license amendment application dated May 6, 1994. Because the modifications are significant, a new opportunity for intervention is warranted. The new amendment application seeks to change the existing structure of the Licensee's management team at its facility.

This proceeding is being conducted under the Commission's Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings, set forth in 10 CFR part 2, subpart L. Further details appear in the Statement of Considerations, Informal Hearing Procedures for Materials Licensing Adjudications, 54 Fed. Reg. 8269 (February 28, 1989). Documents relating to this proceeding are available for public inspection and copying at the Commission's Public Document Room, Gelman Building, 2120 L St., N.W., Washington, D.C.

Sequoyah Fuels Corporation, Native Americans for a Clean Environment INACE) and The Cherokee Nation (Nation) are parties to this proceeding. In accordance with 10 CFR 2.1205(i)(4), any person whose interest may be affected by this proceeding may, within 30 days of publication of this Notice, file a petition for leave to intervene. Such petition must identify (1) the interest of the petitioner in the proceeding, (2) how that interest may be affected by he results of the proceeding, with particular reference to the factors set out in 10 CFR 2.1205(g), (3) the petitioner's areas of concern about the licensing activity which must be germane to the subject matter of the proceeding, and (4) the circumstances establishing that the petition is timely and that the petitioner has the requisite standing to intervene in the hearing.

Each petition must be submitted to the Secretary of the Commission, ATTN: Chief, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. Copies should be served upon the Presiding Officer; the Special Assistant; the Assistant General Counsel for Hearings and Enforcement; and the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies should also be served on the Licensee, through its attorney Maurice Axelrad, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, D.C. 20036; Native Americans for a Clean Environment, through its attorney Diane Curran, Esq., c/o IEER, 6935 Laurel Avenue, Suite 204, Takoma Park, MD 20912; and The Cherokee Nation, through its attorney James Wilcoxen, Esq., Wilcoxen & Wilcoxen, P.O. box 357, Muskogee, OK 74402–0357. Pursuant to 10 CFR 2.1205(j)(2), any party may file an answer to a petition to intervene within 10 days of service of such petition.

Pursuant to 10 CFR 2.1211(a), any member of the public who is not a party to this proceeding may make a written statement in order to express his or her views of the issues involved in this license renewal proceeding. These statements are not evidence and do not become part of the decisional record under 10 CFR 2.1251(c). Written statements should be submitted to the Secretary of the Commission, ATTN: Chief, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Rockville, Maryland, March 24, 1995.

James P. Gleason,

Presiding Officer, Administrative Judge.

[FR Doc. 95–7801 Filed 3–29–95; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1980 (44

U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Repayment of Debt
(2) *Form(s) submitted:* ID–22, G–145
(3) *OMB Number:* 3220–0165
(4) *Expiration date of current OMB clearance:* May 31, 1995
(5) *Type of request:* Revision of a currently approved collection
(6) *Respondents:* Individuals or households
(7) *Estimated annual; number of respondents:* 125
(8) *Total annual responses:* 125
(9) *Total annual reporting hours:* 6
(10) *Collection description:* Section 2 of the Railroad Unemployment Insurance Act (RUIA) provides unemployment and sickness benefits for qualified railroad workers. When the RRB determines that an overpayment of RUIA benefits has occurred, it initiates action to notify the claimant and to recover the amount owned the RRB. The collection obtains information needed by the RRB to allow for the repayment of the amount owed by the claimant by credit card, in addition to the customary form of payment by check or money order.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB receiver, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–7755 Filed 3–29–95; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Earnings Information Request
(2) *Form(s) submitted:* G–19–F
(3) *OMB Number:* 3220–0184
(4) *Expiration date of current OMB clearance:* May 31, 1995
(5) *Type of request:* Revision of a currently approved collection
(6) *Respondents:* Individuals or households
(7) *Estimated annual number of respondents:* 3,000
(8) *Total annual responses:* 3,000
(9) *Total annual reporting hours:* 400
(10) *Collection description:* Under Section 2 of the Railroad Retirement Act, an annuity is not payable or is reduced for any month(s) in which the beneficiary works for a railroad or earns more than prescribed amounts. The collection obtains earnings information not previously or erroneously reported by a beneficiary.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–7756 Filed 3–29–95; 8:45 am]

BILLING CODE 7905–01–M

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning April 1, 1995, shall be at the rate of 33 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 1995, 34.2 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 65.8 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: March 21, 1995.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–7757 Filed 3–29–95; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Under Review by Office of Management and Budget

Acting Agency Clearance Officer: David T. Copenhafer (202) 942–8800.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549.

Rule Amendments and New Form:

Rule 24f–1—File No. 270–130
Rule 24f–2—File No. 270–131
Form 24F–2—File No. 270–399

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed amendments to rules 24f–1 and 24f–2 under the Investment Company Act of 1940, regarding registration under the Securities Act of 1933 of certain investment company securities. In addition, the Commission has submitted for OMB approval proposed Form 24F–2 for filing annual notices required by rule 24f–2.

Rule 24f–1 permits certain investment companies that have inadvertently sold more shares than are registered to retroactively register the oversold shares under the Securities Act of 1933. The reporting burden under the rule is approximately 2 hours per respondent. The proposed amendments are technical in nature and will not change the reporting burden.

Rule 24f–2 allows certain investment companies to register shares under the Securities Act of 1933 without specifying at the time of registration the total number of shares to be registered. Rule 24f–2 requires investment companies electing to register an indefinite number of shares to file an annual notice (''Rule 24f–2 Notice'') with the Commission for purposes of

reporting the number of shares sold during the previous fiscal year. Form 24F–2 will provide a standard format for filing Rule 24f–2 Notices. The reporting burden required under Rule 24f–2 is approximately 1.9 hours per respondent. The proposed amendments and form will not change the reporting burden.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to the Clearance Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms to David T. Copenhafer, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549, and Clearance Officer for the SEC, Office of Management and Budget, Paperwork Reduction Project numbers 3235–0155 (Rule 24f–1), 3235–0159 (Rule 24f–2), and (Form 24F–2), Room 3208, New Executive Office Building, Washington, DC 20543.

Dated: March 21, 1995.

Margaret E. McFarland,

Deputy Secretary.

[FR Doc. 95–7839 Filed 3–29–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35524; International Series Release No. 795 File No. SR–Amex–95–04]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to Proposed Rule Change by the American Stock Exchange, Inc. Relating to Margin Levels for Currency Warrants Based on the Value of the U.S. Dollar in Relation to the Mexican Peso

March 22, 1995.

Pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 16, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') Amendment No. 1 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the original proposal with the Commission on February 8, 1995. Notice of the proposed rule change appeared in the **Federal Register** on February 17, 1995.[3] The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its pending proposal to list warrants on the Exchange based upon the value of the U.S. dollar in relation to the Mexican peso (''Mexican Peso Warrants'') in order to specify applicable margin requirements. The text of Amendment No. 1 to the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for Amendment No. 1 to the proposed rule change and discussed any comments it received on the amendment. The text of these statements may be examined at the places specified in Item IV below. The Amex 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

In the Exchange's proposal to list and trade Mexican Peso Warrants pursuant to Section 106 of the Amex Company Guide, the Amex represented that ''the Exchange will require that customer positions in Mexican Peso Warrants be subject to the margin requirements applicable to foreign currency options.''[4] The Exchange is now amending that proposal to specify objective margin levels that will be applicable to Mexican Peso Warrants trading on the Exchange. Specifically, the Exchange proposes that for Mexican Peso Warrants held ''short'' in a customer's account, the margin will be 100% of the current market value of each such warrant plus 12% of the product of the units of underlying currency per warrant and the spot price for such currency. This requirement would apply to both initial and maintenance margin. The minimum ''add-on'' for out-of-the-money Mexican Peso Warrants would be 8% of the product of the units of underlying currency per warrants and the spot price for such currency.

The Exchange believes that Amendment No. 1 to the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that the proposal will promote just and equitable principles of trade and will contribute to the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that Amendment No. 1 to the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on Amendment No. 1 to the proposed rule change 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 Exchange consents, the Commission will:

(a) By order approve such proposed rule change, as amended, or

(b) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See Securities Exchange Act Release No. 35363 (February 13, 1995), 60 FR 9416.

[4] *Id.*

[5] 15 U.S.C. 78f(b)(5) (1988).

communications relating to the proposed rule change, as amended, 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. Copies of such filing will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to File No. SR–Amex–95–04 and should be submitted by April 20, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7842 Filed 3–29–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No 34–35532; File No. SR–CBOE–94–43]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to a Proposed Rule Change Relating to the Listing of Regular and Long-Term Index Options on the S&P SmallCap 600 Index

March 24, 1995.

I. Introduction

On November 8, 1994, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commision (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to list and trade on the Exchange cash-settled, European-style index options on the Standard & Poor's SmallCap 600 Index (''S&P SmallCap 600'' or ''Index''), a broad-based capitalization weighted index designed to measure the performance of small capitalization stocks. The CBOE filed Amendment No. 1 to its proposal on January 9, 1995, and Amendment No. 2 to its proposal on March 14, 1995.[3] The proposed rule change was published for comment and appeared in the **Federal Register** on February 1, 1995.[4] No comments were received regarding the CBOE's proposal.

II. Description of the Proposal

A. General

The CBOE proposes to list and trade cash-settled, European-style stock index options on the S&P SmallCap, a capitalization-weighted index of 600 domestic stocks chosen for market size, liquidity, and industry group representation.

B. Composition of the Index

The S&P SmallCap 600 Index has been designed to measure the performance of small capitalization stocks. The Index is a capailization-weighted index of U.S. stocks with each stock affecting the Index in proportion to its market capitalization.

As of October 19, 1994, the 600 component stocks ranged in capitalization from $933 million to $46 million, and the market capitalization of the Index totalled $181 billion. The largest stock accounted for 0.51% of the total weighting of the Index, while the smallest accounted for 0.03%. The median capitalization of the components in the Index was $267 million. A breakdown of the component stocks by trading markets shows that Nasdaq is the primary market for 53% of the weight of the Index (318 issues), the New York Stock Exchange (''NYSE'') represents 43% (257 issues), and the American Stock Exchange (''Amex'') represents 4% (25 issues). The Nasdaq stocks in the Index are authorized as Nasdaq National Market Securites, the top tier of Nasdaq stocks.

A total of 98 industry groups are represented in the Index. The top five groups and their weights are: (1) Computer Software and Services—9.01%; (2) Insurance—5.13%; (3) Savings and Loans—4.88%; (4) Health Care Services—4.31%; and (5) Banks—Regional—4.26%. During the period April through September 1994, the average monthly trading volume for the Index component stocks ranged from 93,000 to 25.3 million shares. The average monthly volume was 1.9 million shares. The top 100 stocks account for 33.42% of the Index, while the bottom 100 stocks account for 5.69% of the Index. The prices for each of the components ranged from $1.385 to $64.50. The average price was $19.37. The shares outstanding for each of the Index component stocks ranged from 4.0 million to 189.0 million with an average of 17.8 million.[5]

S&P relies on several criteria to select Index component stocks. Among other things, stocks must trade on the NYSE or Amex, or be Nasdaq National Market securities; stocks must trade above $1.00 at the time of selection; companies with 50% or more of their shares outstanding held by another corporation are not included; companies with 60% or more of their shares held by insiders are not included; stocks must have at least a six month trading history; stocks that do not trade on any three days during a 12-month period are not included; and share turnover (annual trading volume as a percent of shares outstanding) has to exceed 20% on an annualized basis. Index component stocks are then chosen from the field of stocks that meets these criteria so that they balance the economic sector weighings, described above.[6]

C. Calculation of the Index

The methodology used to calculate the value of the Index is similar to that used to calculate the value of the S&P 500 Index. The value of the Index is determined by adding the price of each stock multiplied by the number of shares outstanding. This sum is then divided by an index divisor (''Index Divisor'') which gives the Index a value of 100 on its base date of December 31, 1993. The Index Divisor is adjusted for pertinent changes as described below in the section titled ''Maintenance.'' The Index had a closing value of 96.82 on September 30, 1994.

D. Maintenance

The S&P SmallCap 600 will be maintained by S&P, and the CBOE has represented that it will not influence any S&P decisions concerning maintenance of the Index.[7] To maintain

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[6] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Amendment No. 1 Provides the following information regarding the Index: (1) Industry groups represented; (2) price and volume information regarding the component stocks; and (3) component stock seleciton criteria. See letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Steve Youhn, Attorney, Division of Market Regulation (''Division''), Commission, dated January 5, 1995 (''Amendment No. 1'').

Amendment No. 2 provides that the CBOE will monitor the Index semi-annually, and will notify staff of the Commission in the event that certain index component capitalization and volume levels fall below designated thresholds. See letter from Joseph Levin, Vice-President, Research & Product Development, CBOE, to Michael Walinskas, Branch Chief, Division, Commission, dated March 14, 1995 (''Amendment No. 2'').

[4] See Securities Exchange Act Release No. 35280 (January 25, 1995), 60 FR 6325.

[5] See Amendment No. 1, *supra* note 3.

[6] *Id.* The CBOE has represented that should the character of the Index change from the basic description contained herein, it shall so notify the Commission staff, and such change could require a filing pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder. Telephone conversation between Eileen Smith, Director, Product Development, Research Department, CBOE, and Francois Mazur, Attorney, Division, Commission, on March 1, 1995.

[7] *See* March 1, 1995 telephone conversation, *supra* note 6.

continuity of the Index, the Index Divisor will be adjust to reflect certain events relating to the component stocks. These events include, but are not limited to, adjustments for company additions and deletions, share changes, stock splits, stock dividends, and stock price adjustments due to company restructurings or spinoffs. Some corporate actions, such as stock splits and stock dividends, require simple changes in the common shares outstanding and the stock prices of the companies in the Index. Other corporate actions, such as share issuances, change the market value of the Index and require an Index Divisor adjustment as well.

Although the CBOE is not involved in the maintenance of the Index, it has represented that it will monitor the Index on a semi-annual basis and will notify staff of the Commission when: (1) 10% of the capitalization of the Index comprises securities with a market capitalization of less than $100 million; or (2) when 10% of the capitalization of the Index is made up of components with an average daily trading volume of less than 10,000 shares over the previous six months.[8]

E. Index Option Trading

In addition to regular Index options, the Exchange may provide for the listing of long-term (up to three years expiration) index options series (''LEAPS'') and reduced-value LEAPS on the Index. For reduced-value LEAPS, the underlying value would be computed at one-tenth of the Index level. The current and closing index value of any such reduced-value LEAP will, after such initial computation, be rounded to the nearest one-hundredth.

The Exchange seeks to have the discretion to list series in 2½ point intervals when the Index level is below 200. The minimum tick size for series trading below $3 will be 1⁄16th and for series trading above $3 the minimum tick will be 1⁄8th. The trading hours for options on the Index will be from 8:30 a.m. to 3:15 p.m. Chicago time.

F. Settlement of Index Options

The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 3:15 p.m. (Chicago time) on the immediately preceding Thursday. The exercise settlement value of the Index at option expiration will be calculations by S&P based on the opening prices of the component securities on the business day prior to expiration, which will normally be a Friday (''A.M. Settlement'').[9] If a stock fails to open for trading, the last available price on the stock will be used in the calculation of the Index, as is done for currently listed indexes.

G. Surveillance

The Exchange will use the same surveillance procedures currently used for each of the Exchange's other index options to monitor trading in Index options and Index LEAPS on the S&P SmallCap 600. These procedures include complete access to trading activity in the underlying securities. In addition, the Intermarket Surveillance Group Agreement (''ISG Agreement''), dated July 14, 1983, as amended January 29, 1990, will be applicable to the trading of options on the Index.[10]

H. Position Limits

The Exchange proposes to establish position limits for options on the S&P SmallCap 600 at 100,000 contracts on either side of the market, and no more than 60,000 of such contracts may be in the series in the nearest expiration month. Exercise limits will be set at the same level as position limits.[11] The Exchange represents that these limits are roughly equivalent, in dollar terms, to the limits applicable to comparable small-capitalization indexes, including the Wilshire Small Cap Index and the Russell 2000 Index.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[12] The Commission finds that the trading of options on the Index will permit investors to participate in the price movements of the 600 securities on which the Index is based. The Commission also believes that the trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolios. Accordingly, the Commission believes S&P SmallCap 600 options will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of stocks in the small-capitalization range of U.S. equity securities. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of S&P SmallCap 600 options will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets.[13]

The trading of S&P SmallCap 600 options, however, raises several issues, including issues related to index design, customer protection, surveillance, and market impact. For the reasons discussed below, the Commission believes that the CBOE has adequately addressed these issues.

A. Index Design and Structure

The Commission finds that it is appropriate and consistent with the Act to classify the Index as broad-based, and therefore to permit Exchange rules applicable to the trading of broad-based index options to apply to the Index options. Specifically, the Commission believes the Index is broad-based

[8] See Amendment No. 2, *supra* note 3.

[9] When the last trading day is moved because of Exchange holidays (such as when CBOE is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement value of Index options at expiration will be determined at the opening of regular Thursday trading.

[10] The CBOE is a member of the ISG, which was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the CBOE; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of the potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock, and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[11] See CBOE Rule 24.5.

[12] 15 U.S.C. 78f(b)(5) (1988).

[13] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option or warrant proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options or warrants on the S&P SmallCap 600 Index will provide investors with a hedging vehicle that should reflect the overall movement of the small-capitalization stock universe. The Commission also believes that these options and warrants will provide investors with a means by which to make investment decisions in the small-capitalization equity market, allowing them to establish positions or increase existing positions in small-capitalized stocks in a cost effective manner.

because it reflects a substantial segment of the U.S. equities market, in general, and small-capitalization securities in particular. First, the Index consists of 600 relatively actively traded,[14] small-capitalization domestic securities. Second, the total capitalization of the Index, as of October 19, 1994, was $181 billion, with the market capitalizations of the individual stocks in the Index ranging from a high of $933 million to a low of $46 million, with a median value of $267 million. Third, the Index includes stocks of companies from a broad range of industries, and no industry segment comprises more than 9.01% of the Index's total value.[15] Fourth, as of October 19, 1994, no single stock comprises more than 0.51% of the Index's total value, and the percentage weighting of the 100 largest issues in the Index accounted for only 33.42% of the Index. Fifth, the Index selection and maintenance criteria will serve to ensure that the Index maintains its broad representative sample of stocks in the small-capitalization range of U.S. equity securities. Accordingly, the Commission believes it is appropriate to classify the Index as broad-based.

The Commission believes that the general broad diversification, capitalizations, and relatively liquid markets of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, as discussed above, the Index represents a broad cross-section of domestic small capitalization stocks, with no single industry group or stock dominating the Index. Second, the majority of the stocks that comprise the Index are relatively actively traded.[16] Third, the Commission believes that the Index selection and maintenance criteria will serve to ensure that the Index will not be dominated by low-priced stocks with small capitalizations, floats, and trading volumes.[17] Fourth, the CBOE has represented that it will monitor the Index semi-annually and will notify the staff of the Commission when: (1) ten percent of the capitalization of the Index is comprised of securities with a market capitalization of less than $100 million; or (2) ten percent of the capitalization of the Index is made up of components with an average daily trading volume of less than 10,000 shares over the previous six months.[18] Fifth, the Exchange has proposed reasonable position and exercise limits for the Index options that will serve to minimize potential manipulation and other market impact concerns. Although a position and exercise limit of 100,000 contracts is high by traditional standards, in dollar value it represents $968,200,000 (based on the September 30, 1994 Index closing value of 96.82), an amount equivalent to that allowed for other small-capitalization index options currently trading.[19] Accordingly, the Commission believes it is unlikely that attempted manipulations of the prices of the Index components would affect significantly the Index's value.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Index options, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risk of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options will be subject to the same regulatory regime as the other standardized options traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Index options.

C. Surveillance

The Commission generally believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[20] In this regard, the NYSE, Amex, and the NASD are all members of ISG.[21] In addition, the CBOE will apply the same surveillance procedures as those used for existing broad based index options trading on the CBOE.

D. Market Impact

The Commission believes that the listing and trading of S&P SmallCap 600 Index Options on the CBOE will not adversely affect the underlying securities markets.[22] First, as described above, the Index is broad-based and comprised of 600 stocks with no one stock or industry group dominating the Index. Second, as noted above, the stocks contained in the Index have relatively large capitalizations and are relatively actively traded. Third, existing CBOE stock index options rules and surveillance procedures will apply to S&P SmallCap 600 options. Fourth,

[14] A significant majority of the stocks are relatively actively traded, as indicated by an Index component median average daily trading volume of 53,179 shares. Telephone conversation between Eileen Smith, Director, Product Development, Research Department, CBOE, and Francois Mazur, Attorney, Division, Commission, on February 23, 1995.

The Commission notes that an index purportedly representing high capitalization stocks might not be deemed to have actively traded stocks if the components stocks' median average daily volume was only 53,179 shares. With regard to a small capitalization index, where almost by their nature the most active stocks will likely not be included, a median average daily trading volume less than that for existing broad based indexes could be acceptable, depending upon the index's other features. For the S&P SmallCap 600, the median average daily trading volume is acceptable given the large number of component stocks and the inclusion of criteria designed to exclude inactively traded stocks from being selected.

[15] See Section II.B, *supra.*

[16] See *supra* note 14.

[17] Currently, 65% of the Index is accounted for by stocks meetings the CBOE's options listing standards. Telephone conversation between Eileen Smith, Director, Product Development, Research Department, CBOE, and Francois Mazur, Attorney, Division, Commission, on February 28, 1995. These standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7,000,000; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. *See* CBOE Rule 5.3, Interpretation .01.

As a general matter, for broad-based index options, the Commission prefers that at least 50% of an index's components continue to be options-eligible. Given the broad diversity of the SmallCap 600 Index and the selection and maintenance criteria, together with the fact that 65% of the Index's components are options eligible, the Commission believes that the Index will not be readily susceptible to manipulation. See *supra* Section II.B.

[18] See Amendment No. 2, *Supra* note 3.

[19] The Commission would not be inclined to approve such a high position limit if the position limit dollar equivalent amount were substantially higher than as currently proposed.

[20] See Securities Exchange Act Release No. 31243 (October 5, 1992), 57 FR 45849.

[21] See *supra* note 10.

[22] The CBOE has stated that it has the necessary systems capacity to support new series that would result from the introduction of the S&P SmallCap 600 options. In addition, the Options Price Reporting Authority (''OPRA'') has represented that additional traffic generated by options and LEAPs on the S&P SmallCap 600 Index is within OPRA's capacity. *See* letter from Joseph P. Corrigan, Executive Director, OPRA, to Eileen Smith, Director, Product Development, Research Department, CBOE, dated October 26, 1994.

the position limits of 100,000 contracts on either side of the market, with no more than 60,000 of such contracts in a series in the nearest month expiration month, will serve to minimize potential manipulation and market impact concerns. Fifth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corportation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring S&P SmallCap 600 options (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing expiring index options for exercise settlement purposes based on opening prices rather than closing prices may help reduce adverse effects on the securities underlying options on the Index.[23]

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Specifically, Amendment No. 2 provides that the CBOE will monitor, semi-annually, the Index and will notify staff of the Commission in the event that certain index component capitalization and volume levels fall below designated thresholds. The Commission believes that this monitoring provision is not a material change that raises regulatory concerns not already addressed by the proposal. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 2 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. 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 the the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–94–43 and should be submitted by April 20, 1995.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act, and, in particular, Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (File No SR–CBOE–94–43), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7841 Filed 3–29–95; 8:45 am]

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[23] Securities Exchange Act Release No. 30944 (July 28, 1992), 57 FR 33376.

[24] 15 U.S.C. 78s(b)(2) (1988).

[25] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35533; File No. SR–NASD–95–06]

Self-Regulatory Organizations; Notice of Filing of Proposed rule Change by National Association of Securities Dealers, Inc. Relating to Interpretation of the Board of Governors—Forwarding of Proxy and Other Material Under Article III, Section 1 of the NASD Rules of Fair Practice

March 24, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 22, 1995,[1] 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend its Interpretation of the board of Governors—Forwarding of Proxy and Other Material under Article III, Section 1 to the NASD Rules of Fair Practice.[2] Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

NASD Rules of Fair Practice

Business Conduct of Members

* * * * *

Article III, Section 1

Interpretation of the Board of Governors

Forwarding of Proxy and Other Materials

Introduction

A member has an inherent duty in carrying out high standards of commercial honor and just and equitable principles of trade to forward (i) all proxy material which is properly furnished to it by the issuer of the securities or a stockholder of such issuer, to each beneficial owner of shares of that issue (*or the beneficial owner's designated investment adviser*) which are held by the member for the beneficial owner thereof and (ii) all annual reports, information statements and other material sent to stockholders, which are properly furnished to it by the issuer of the securities to each beneficial owner of shares of that issue (*or the beneficial owner's designated investment adviser*) which are held by the member for the beneficial owner thereof. For the assistance and guidance of members in meeting their responsibilities, the Board of Governors has promulgated this interpretation. The provisions hereof shall be followed by all members and failure to do so shall constitute conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Article III, Section 1 of the Rules of Fair Practice of the Association.

Interpretation

Section 1. No member shall give a proxy to vote stock which is registered in its name, except as required or permitted under the provisions of Section 2 or 3 hereof, unless such member is the beneficial owner of such stock.

Section 2. Whenever an issuer or stockholder of such issuer soliciting proxies shall timely furnish to a member:

(a)[1] sufficient copies of all soliciting material which such person is sending to registered holders, and

(b)[2] satisfactory assurance that he will reimburse such member for all out-of-pocket expenses, including reasonable clerical expenses incurred by such member in connection with such solicitation, such member shall transmit promptly to each beneficial owner of stock of such issuer (*or the beneficial owner's designated investment adviser*) which is in its possession or control and registered in a name other than the name of the beneficial owner all such material furnished. Such material shall include a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy

[1] The NASD initially submitted the proposed rule change on February 5, 1995. Amendment No. 1, submitted on March 22, 1995, replaces the proposed rule change in its entirety.

[2] NASD Manual, Rules of Fair Practice, Art. III, Sec. 1 (CCH) ¶ 2151.05.

records maintained by the member, and a letter informing the beneficial owner (*or the beneficial owner's designated investment adviser*) of the time limit and necessity for completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. A member shall furnish a copy of the symbols to the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of rule 17a–4 of the General Rules and Regulations under the Securities Exchange Act of 1934, 17 C.F.R. 240.17a–4. Notwithstanding the provisions of this section, a member may give a proxy to vote any stock pursuant to the rules of any national securities exchange to which the member is also responsible provided that the records of the member clearly indicate which procedure it is following.

This section shall not apply to beneficial owners residing outside of the United States of America though members may voluntarily comply with the provisions hereof in respect to such persons if they do desire.

Section 3. A member may give a proxy to vote any stock registered in its name if such member holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote.

A member which has in its possession or within its control stock registered in the name of another member and which desires to transmit signed proxies pursuant to the provisions of Section 2, shall obtain the requisite number of signed proxies from such holder of record.

Notwithstanding the foregoing,

(a) any member designated by a named ERISA Plan fiduciary as the investment manager of stock held as assets of the ERISA Plan may vote the proxies in accordance with the ERISA Plan fiduciary responsibilities if the ERISA Plan expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and has not expressly reserved the proxy voting right for the named ERISA Plan fiduciary;[3] *and*

(b) any person registered as an investment adviser under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner to vote the proxies for stock which is in the possession or control of the member, may vote such proxies.

Section 4. A member when so requested by an issuer and upon being furnished with:

(a)[1] sufficient copies of annual reports, information statements or other material sent to stockholders, and

(b)[2] satisfactory assurance that it will be reimbursed by such issuer for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit promptly to each beneficial owner *(or the beneficial owner's designated investment adviser)* of stock of such issuer which is in its possession and control and registered in a name other than the name of the beneficial owner all such material furnished.

This section shall not apply to beneficial owners residing outside of the United States of America though members may voluntarily comply with the provisions hereof in respect to such persons if they so desire.

Section 5. For purposes of this Interpretation, the term ''designated investment adviser'' is a person registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and is designated in writing by the beneficial owner to receive proxy and related materials and vote the proxy, and to receive annual reports and other material sent to stock holders. The written designation must be signed by the beneficial owner; be addressed to the member; and include the name of the designated investment adviser. Members who receive such a written designation from a beneficial owner must ensure that the designated investment adviser is registered with the SEC pursuant to the Investment Advisers Act of 1940 and that the investment adviser is exercising investment discretion over the customer's account pursuant to an advisory contract to vote proxies and/or to receive proxy soliciting material, annual reports and other material. Members must keep records substantiating this information. Beneficial owners have an unqualified right at any time to rescind designation of the investment adviser to receive materials and to vote proxies. The rescission must be in writing and submitted to the member.

* * * * *

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the NASD Board of Governors at its meeting on January 16, 1995, which authorized the filing of the rule change with the SEC. No other action by the NASD is necessary for the filing of the rule change. Article VII, Section 1(a)(4) of the By-Laws permits the Board of Governors to make interpretations of the Rules of Fair Practice without recourse to the membership for approval.

(b) Questions regarding this rule filing may be directed to John H. Pilcher, General Counsel's Office, at (202) 728–8287.

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

The NASD reviewed recent amendments to New York Stock Exchange (''NYSE'') rules,[4] to allow a beneficial owner of stock to designate a registered investment adviser to vote proxies and receive proxy and related issuer material in lieu of the beneficial owner. Upon review, the NASD believes that providing beneficial owners with the right to make this type of designation benefits investors, and that uniformity between NASD rules and NYSE rules on this subject is appropriate. The NASD also believes that certain investment managers of ERISA Plans in the over-the-counter market shold be allowed to vote proxies.[5] The NASD, therefore, proposes to amend the Board of Governors Interpretation—Forwarding of Proxy and Other Materials under Article III, Section 1 of the NASD Rules of Fair Practice (''Interpretation'') to make the NASD rules on these subjects substantially similar to NYSE rules.

Designated Registered Investment Advisers

The rule change would allow a benefical owner of any issuer's stock to inform an NASD member that is the record holder of that stock that the beneficial owner has authorized a designated registered investment adviser to receive and vote proxies and to receive related issuer material in lieu of the beneficial owner.

The rule change would provide that, for purposes of the Interpretation, a ''designated investment adviser'' is a person registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner to receive and vote the proxy, and to receive annual reports and other material sent to stock holders. The beneficial owner would be required to sign a written designattion to the member; such designation must be addressed to the member; and such designation must include the name of the designated investment adviser. The beneficial owner would have an

[3] For purposes of this interpretation, the term ''ERISA'' is an acronym for the Employee Retirement Income Security Act of 1974.

[4] Securities Exchange Act Release No. 34596 (Aug. 25, 1994), 59 FR 45050 (Aug. 31, 1994) (''Release 34–34596'').

[5] NYSE Rule 450(1) is comparable to the proposed rule change. See 2 NYSE Guide, Rules of Board, Rule 450 (CCH) ¶ 2450.

unqualified right at any time to rescind designation of the investment adviser to receive materials and to vote proxies. The rescission would have to be in writing and submitted to the member.

The rule change would require that a member who receives a written designation from a beneficial owner ensure that the beneficial owner's designated investment adviser is registered under the Investment Advisers Act of 1940; is exercising investment discretion pursuant to an advisory contract for the beneficial owner; and is designated in writing by the beneficial owner to receive and vote proxies for stock which is in the possession of the member. Members would be required to keep records substantiating this information.[6]

ERISA Investment Managers

The rule change would provide that any member designated by a named ERISA Plan fiduciary as the investment manager[7] of stock held as assets of the ERISA Plan may vote the proxies in accordance with the ERISA Plan fiduciary responsibilities of the ERISA Plan expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset, and has not expressly reserved the proxy voting right for the named ERISA Plan fiduciary.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[8] in that the rule change will benefit investors by: (i) Providing investor with the ability to designate their registered investment advisers to receive and vote their proxies and to receive other material; (ii) providing authority to certain investment managers of ERISA Plans to receive and vote proxies and (iii) providing desired uniformity between NASDA rules and NYSE rules on such proxy procedures.

[6] Release 34–34596, *supra* n. 4, clarified that the NYSE would provide certain additional guidance regarding the NYSE rule changes under an NYSE Information Memo. The NASD's rule change would contain substantially similar requirements as described under Release 34–34596 and contained in the NYSE Information Memo (See NYSE Information Memo No. 94–41 (Sept. 7, 1994).

[7] ERISA defines the term ''investment manager'' to mean any fiduciary (other than a trustee or named fiduciary, as defined in Section 1102(a)(2) of Title 29): (A) Who has the power to manage, acquire, or dispose of any asset of a plan; (B) who is: (i) registered as an investment adviser under the Investment Advisers Act of 1940; (ii) a bank, as defined in that Act; or (iii) an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and (C) has acknowledged in writing that he is a fiduciary with respect to that plan. See 29 U.S.C. 1002 (38).

[8] 15 U.S.C. 78*o*–3.

(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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference 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 SR–NASD–95–06 and should be submitted by April 20, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

[FR Doc. 95–7837 Filed 3–29–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20967; 811–4355]

Kidder, Peabody Tax-Free Income Fund; Notice of Application

March 24, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Kidder, Peabody Tax-Free Income Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 7, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 18, 1995 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicant, 60 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION:

The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations:

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On July 19, 1985, applicant filed a notification of registration pursuant to section 8(b) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on November 22, 1985, and applicant commenced the initial public offering of its National Tax-Free

Series' (the ''National Series'') shares and New York Tax-Free Series' (the ''New York Series'') shares on December 26, 1985. Applicant's Massachusetts Tax-Free Series never commenced a public offering of its shares.

2. On June 27, 1990, applicant's trustees approved a plan to liquidate applicant's assets and distribute the proceeds in the form of cash to applicant's shareholders. Proxy materials were filed with the SEC and were distributed, on or about August 16, 1990, to applicant's shareholders of record as of July 23, 1990. The liquidation was approved by applicant's shareholders at a meeting held on November 2, 1990.

3. On November 9, 1990, applicant liquidated the National Series' and New York Series' assets. The portfolio securities were disposed of by competitive bidding from 16 dealers, with the transactions being consummated with the highest bidder. No brokerage commissions were paid with respect to these transactions. On November 13, 1990, applicant distributed all of the National Series' assets, $11,002,504, to its shareholders who received distributions equal to their proportionate shares. Each National Series' shareholder received $15.26 per share. Also on November 13, 1990, applicant distributed all of the New York Series' assets, $3,650,797, to its shareholders who received distributions equal to their proportionate shares. Each New York Series' shareholder received $14.88 per share.

4. All expenses incurred in connection with the liquidation, consisting of legal, accounting, printing and other expenses, were borne by Kidder, Peabody & Co. Incorporated, applicant's principal underwriter.

5. As of the date of the application, applicant had no assets, liabilities or shareholders. Applicant is not a party to any litigation or administrative proceeding.

6. Applicant is neither engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs. Applicant intends to terminate its existence as a Massachusetts business trust as soon as practicable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7843 Filed 3–29–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26258]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

March 24, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 17, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities (70–7701)

Northeast Utilities (''Northeast''), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, has filed a post-effective amendment to its declaration under Sections 6(a) and 7 of the Act and Rule 54 thereunder.

By orders dated May 23, 1990 (HCAR No. 25093) and July 29, 1994 (HCAR No. 26092, the Commission authorized, among other things, Northeast to issue and sell, and/or purchase in the open market and sell, from time-to-time through December 31, 1995 up to 10 million common shares under Northeast's Dividend Reinvestment Plan (''DRP''). As of March 1, 1995, Northeast has issued and sold 4,470,352 authorized common shares and 4,877,247 shares have been purchased in the open market by an agent acting on behalf of Northeast and distributed to DRP participants pursuant to the DRP.

Northeast now proposes to issue and/or purchase and sell to DRP participants, through December 31, 2005, the remaining 652,401 common shares under the DRP. For the same period Northeast also proposes to issue and/or purchase and sell to DRP participants up to an additional 20 million common shares under the DRP. In all respects, the terms and conditions associated with the issuance, acquisition and sale of the shares to be issued under the DRP will remain as previously authorized.

New England Electric System, et al. (70–8475)

New England Electric System (''NEES''), a registered holding company, and New England Electric Resources, Inc. (''NEERI''), its wholly owned, nonutility subsidiary company, both of 25 Research Drive, Westborough, Massachusetts 01582, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rule 45 thereunder. The Commission issued a notice of the transaction on November 18, 1994 (HCAR No. 26163). Subsequently, applicants-declarants amended the filing to request additional authorization, thus necessitating this supplemental notice.

NEES proposes to provide financing to NEERI by making capital contributions up to an additional $12.7 million and/or by lending to NEERI from time to time additional amounts not to exceed $12.7 million at any one time, such loans to be in the form of non-interest bearing subordinated notes.

NEERI proposes to enter into a joint arrangement with Separation Technologies, Inc. (''STI''), the developer of a process for separating unburned carbon from coal ash. As part of its joint arrangement with STI, NEERI proposes to enter into a project with STI and STI Projects, a Florida General Partnership between STI and Oxbow Carbon International, Inc. (''STIP''), involving the processing of coal ash at an electric generation facility in the New England/New York region (''NE/NY Project'') owned by a nonaffiliated electric company (''Owner''). NEERI plans to invest up to $700,000 in the NE/NY Project in return for 15% of certain project revenues.

In addition, NEERI will provide consulting services to STI and/or STIP in connection with the NE/NY Project for a fee. Such services may include marketing, sales, higher value product research and development and engineering consultation on balance of plant equipment matters. STIP will be responsible for processing the ash at the Owner's facility.

NEERI proposes to enter into similar joint arrangements with STI and STIP at other locations where STI equipment will be installed. NEERI's investment in these other utility locations is anticipated to range between $500,000 and $2.0 million per installation, with a cumulative investment not to exceed $10 million. NEERI's investments in such future projects may take the form of, without limitation, joint ventures, general partnerships, limited partnerships, teaming agreements, royalties or other revenue sharing, special purpose entities, loans, and equity participation. NEERI's project investments may involve the acquisition of voting securities or interests not exceeding 9.9%

NEERI proposes to perform research with STI to further refine the carbon-rich and low carbon processed waste stream and to find other applications for the STI separation process in recycling. NEERI states that it will not expend more than $1 million on such research activities. NEERI also proposes to offer marketing and engineering advice and consulting services to STI and STIP.

Furthermore, NEERI proposes to acquire up to $1 million of STI's 6% cumulative convertible preferred stock at a price of $6.50 per share (''Shares''). All or any portion of the Shares shall be convertible at any time, or from time to time, at NEERI's option, into the same number of shares of STI common stock. The Shares will automatically convert to shares of common stock (upon the closing of an initial public offering of STI common stock) in which STI's aggregate gross proceeds from such offering exceed $5 million and in which the share offering price is $6.50 or more. Dividends ion the Shares will accrue cumulatively at a rate of 6% per annum of the price per Share from the date of payment for the Share to the date of its conversion, if any, to common. The 6% cumulative dividend would be paid in STI common shares upon conversion of Shares to common.

NEERI will have the right to exercise one vote per Share on all matters submitted to a vote of STI common stock generally. NEERI will also have the option to appoint one member of the STI Board of Directors. NEERI will have protection against dilution of the Shares for a period of five years after their purchase. NEERI states that its investment in the Shares will result in NEERI's ownership of not more than 5% of the voting securities of STI.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7838 Filed 3–29–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20966; 811–56211]

TCW High Yield Fund, Inc.; Notice of Application

March 24, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: TCW High Yield Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on February 24, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 18, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicant, 865 South Figueroa Street, Suite 1800, Los Angeles, California 90017.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end, diversified management investment company, organized as a corporation under the laws of Maryland. On July 22, 1988, Applicant registered under the Act and filed a registration statement under the Securities Act of 1933 (the ''1993 Act''). Applicant's registration statement was not declared effective, and Applicant has made no public offering of its shares.

2. Under letter dated February 15, 1995, Applicant requested that its registration statement under the 1933 Act be withdrawn pursuant to Rule 477 thereunder.

3. Applicant has never issued or sold shares of which it is the issuer. Applicant has no shareholders, liabilities, or assets. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs. After the Commission issues an order declaring that Applicant has ceased to be an investment company, Applicant intends to file Articles of Dissolution with the Maryland Department of Assessments and Taxation in Baltimore, Maryland.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–7840 Filed 3–29–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2184]

Notice of Intent To Prepare a Programmatic Environmental Impact Statement Concerning the Department of State's Permitting Process for International Bridges Along the Texas/Mexico Border

LEAD AGENCY: Department of State, Washington, D.C.

COOPERATING AGENCIES:
Environmental Protection Agency (EPA)
U.S. Fish and Wildlife Service (F&WS)
U.S. Coast Guard
International Boundary and Water Commission (IBWC), U.S. Section
General Services Administration (GSA)

SUMMARY: Under Executive Order 11423 (August 16, 1968) and the International Bridge Act of 1972, 33 U.S.C. 535 *et seq.*, the U.S. Department of State (''the Department'') has the authority, inter alia, to issue permits for the construction of bridges along the Texas/Mexico border. (Once such a permit is granted, other agencies, including the U.S. Section of the IBWC and the U.S.

Coast Guard, require additional permits related to their respective regulatory functions; the U.S. Army Corps of Engineers may also require separate permits.) To date, with respect to each permit application, the Department has issued a Finding of No Significant Impact, based on an Environmental Assessment (EA), consistent with the requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.* (NEPA).

With several bridges permitted to date and given the expectation of continuing permit applications, the Department intends to prepare voluntarily a Programmatic Environmental Impact Statement (PEIS) to assess the cumulative environmental impacts in the United States of existing bridges along the Texas/Mexico border. The PEIS will also describe the general types of projects expected in the foreseeable future and will address the types of impacts that are expected to result from the continuation of present permitting procedures. The Department will use the results of the PEIS to inform both the manner and substance of its permitting process.

In undertaking this PEIS, the Department has elected to follow the procedures pertaining to the preparation of programmatic environmental impact statements contained in the NEPA regulations promulgated by the Council on Environmental Quality, 40 CFR 1500 *et seq.*, as well as by the Department, 22 CFR 161 *et seq.* The Department, EPA, F&WS, IBWC, Coast Guard, GSA and other Federal, state and local agencies will be able to develop supplemental EISs or incorporate the PEIS into future NEPA documentation (EAs or EISs), as allowed by NEPA, for activities or locations not specifically addressed in the PEIS.

ALTERNATIVES PROPOSED: Alternatives to be considered include the No Action alternative. Other alternatives identified during the scoping process will be discussed in the Draft PEIS.

PUBLIC SCOPING: Comments received as a result of this notice will be used to assist the Department primarily in identifying the alternatives to be included in the PEIS and in assessing the impacts, in the United States, of these alternatives on the quality of the human environment. Scoping meetings will be held the week of May 8 in Harlingen, Laredo and El Paso, Texas to identify alternatives and significant issues related to the PEIS. The exact dates, times and locales for these meetings will be published in local newspapers. Individuals or organizations may participate in the scoping process by providing written comments or by attending the scoping meetings. Written comments may be forwarded to either:

U.S. Department of State, OES/ETC, Attn: Ms. Charlotte Roe, 2201 C Street NW., Washington, D.C. 20520, Tel: (202) 647–3367, FAX: (202) 736–7351

USAED, Fort Worth, CESWF–PL–RE, Attn: Mr. Eric Verwers, P.O. Box 17300, Fort Worth, Texas 76102–0300, Tel: (817) 334–2370, FAX: (817) 885–7539.

Comments and suggestions should be received no later than 60 days following this notice in order to be considered in the Draft PEIS.

Charlotte Roe,

Multilateral Affairs Officer, Department of State, OES/ETC.

[FR Doc. 95–7816 Filed 3–29–95; 8:45 am]

BILLING CODE 4710–09–M

[Public Notice 2183]

United States International Telecommunications Advisory Committee Radiocommunications Sector Study Group 8—Mobile Services; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunications Sector Study Group 8—Mobile Services will meet on 19 April 1995 at 10 a.m. to 1 p.m., in room 1408 at the Department of State, 2201 C Street, Washington, DC 20520.

Study Group 8 studies and develops recommendations concerning technical and operating characteristics of mobile, radiodetermination, amateur and related satellite services.

This April meeting will review the results of the ad hoc groups and task groups of the study group and begin preparations for the June 12–16, 1995 international meeting of Study Group 8.

Members of the General Public may attend the meeting and join in the discussions, subject to the instructions of the Chairman, John T. Gilsenan.

Note: In order to gain access to State Department for this meeting, please call 202–647–0201 and leave your name; also, please provide your social security number, and date of birth. Please use ''C'' Street Entrance.

Dated: March 21, 1995.

Warren G. Richards,

Chairman, U.S. ITAC for ITU-Radiocommunications Sector.

[FR Doc. 95–7825 Filed 3–29–95; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Airspace Reclassification in the Vicinity of Bellingham, WA, in Support of Transport Canada Terminal Airspace Design; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting; correction.

SUMMARY: This action corrects errors made in the supplementary information portion of the Notice of Informal Airspace Meetings for the Airspace Reclassification in the Vicinity of Bellingham, WA, in support of Transport Canada Terminal Airspace Design, to be held May 9 and May 10, 1995.

FOR FURTHER INFORMATION CONTACT: Melodie DeMarr, Federal Aviation Administration, Northwest Mountain Regional Office, ANM–530, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone: (206) 227–2532.

SUPPLEMENTARY INFORMATION: In **Federal Register** Document 95–7030 published on March 22, 1995 (60 FR 15172), the telephone number for the contact person should be (206) 227–2532 and under Meeting Procedures, ''FAA Southern Region'' should be ''FAA Northwest Mountain Region.''

Issued in Washington, DC on March 24, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–7831 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–13–P

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lafayette Regional Airport, Lafayette, Louisiana

AGENCY: Federal Aviation Administration (FFA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lafayette Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 1, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gregory Roberts, Director of Aviation, at the following address: Mr. Gregory Roberts, Director of Aviation, Lafayette Regional Airport, 200 Terminal Drive, Lafayette, Louisiana 70508.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

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 impose and use the revenue from a PFC at Lafayette Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 8, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 21, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: September 1, 1995

Proposed charge expiration date: October 31, 2002

Total estimated PFC revenue: $2,946,976.00

Brief description of proposed project(s):

Projects to Impose and Use PFC's

Airside ACAA Lifting Device;
Terminal Improvements and Reimbursement;
PFC Development, Implementation, and Administration; and Perimeter Road Rehabilitation.

Projects to Impose PFC's

Rehabilitate runway 11/29.

Proposed class or classes of air carriers to be exempted from collecting PFC's:

All air taxi/commercial operators (ATCO) filing or required to file FAA Form 1800–31.

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: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Lafayette Regional Airport.

Issued in Fort Worth, Texas on March 8, 1995.

Edward N. Agnew,

Assistant Manager, Airports Division.

[FR Doc. 95–7832 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Oklahoma County, Oklahoma

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environment Impact Statement (EIS) will be prepared for the proposed highway project in Oklahoma County, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Bruce A. Lind, Acting Division Administrator, Federal Highway Administration, 200 Northwest Fifth Street, Room 454, Oklahoma City, Oklahoma 73102, Telephone: (405) 231–4725.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oklahoma Department of Transportation, will prepare an EIS in conjunction with a Major Investment Study (MIS) for a proposal to improve Interstate 40 in Oklahoma County. The proposed improvement would involve reconstructing Interstate 40 from the I–40/Meridian Avenue interchange east 9.6 kilometers (6 miles) to the I–40/1235/1–35 interchange in Oklahoma City, Oklahoma County. Improvements to this segment of Interstate 40 are considered necessary to provide for the projected traffic demand, to enhance safety and to replace structurally deficient bridge structures.

The MIS/EIS will consider a number of alternatives including: taking no action, reconstruction on existing alignment and construction on new alignment and incorporate mass transit alternatives currently under study.

The MIS/EIS process will solicit input from all appropriate Federal, State and local agencies. A public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public agency review and comment.

To ensure that the full range of issues related to this 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 the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 23, 1995.

Mike Herron,

Technology Operations Engineer, Oklahoma City, Oklahoma.

[FR Doc. 95–7815 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Rock County, Wisconsin

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 bypass south and west of Janesville on State Highway (STH) 11, Rock County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Madrzak, Statewide Projects Engineer, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905. Telephone (608) 264–5968.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement to improve STH 11 in Rock County, Wisconsin. The proposed improvement creates an arterial bypass south and west of Janesville on STH 11 for a distance of about 9.7 km (6 mi). A new structure over the Rock River is proposed.

STH 11 is identified in WiosDOT's Corridors 2020 as a 2-lane connector linking Monroe and southwestern Wisconsin to Rock County. The 1991 Rock County Regional Transportation Study included the proposed arterial bypass in their recommendations for enhancing the regional economic development for the corridor. Improvements to the corridor are considered necessary to provide for the compatibility with the regional function of STH 11, and also to provide for the safety and traffic demand of this highway.

Planning, environmental and engineering studies are underway to develop transportation alternatives. The EIS will assess the environmental impacts of alternatives including (1) no-build; (2) improvements along existing local roads and (3) an alignment on new location.

Information 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 previously expressed, or are known to have interest in this proposal. A series of public meetings will be held in the project corridor throughout the data gathering and development of alternatives. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the hearing. As part of the scoping process, coordination activities have begun. Scoping meetings will continue to be held on an individual or group meeting basis. Agency coordination will be accomplished during these meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 112372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued March 20, 1995.

Richard C. Madrzak,

Statewide Projects Engineer, Madison, Wisconsin.

[FR Doc. 95–7753 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: San Diego County, CA

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 will be prepared for a proposed highway project in San Diego County, California.

FOR FURTHER INFORMATION CONTACT: Dennis A. Scovill, Chief, District Operations-C, Federal Highway Administration, 980 Ninth Street, Suite 400, Sacramento, CA 95814–2724, Telephone: 916/498–5034.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (CALTRANS), will prepare an Environmental Impact Statement (EIS) on a proposal to extend State Route (SR) 905 easterly approximately six miles, connection Interstate 805 and the Otay Mesa International Boarder Crossing, in Diego County. Sensitive resources already identified within the project area include archaeological sites, vernal pools and other wetlands.

The purpose of the project is to accommodate existing and future east-west traffic generated by development on Otay Mesa and growing use of the Otay Mesa International Port-Of-Entry. Initial freeway construction will be for a four-or-six-lane roadway (depending on the results of traffic modeling studies currently in progress) which would improve safety and traffic flow in the Otay Mesa area. The EIS will address an ultimate ten-lane freeway (including two high occupancy vehicle lanes). The project also includes evaluation of siting locations for six proposed interchanges: including Caliente Boulevard, Heritage Road, Dritannia Boulevard, La Media Road, and Siempre Viva Road, as well as a major junction with (proposed) SR 125.

Several Alternatives are being considered for this project. These include a ''no build'' alternative, expansion of Otay Mesa Road, several different alignments of a new SR 905 route from I–805 to the Otay Mesa International Border Crossing, and system alternatives (e.g., public transport via electric trolley or bus).

The appropriate federal, state and local agencies, private organizations and citizens who have previously expressed or are known to have interest in this proposal will placed on a mailing list to receive project-related materials.

A public information/scoping meeting is planned for Monday, April 10, 1995 from 6:00 to 8:00 p.m. at the Sanyo Building, 2055 Sanyo Avenue, Otay Mesa. Scoping meetings will also be arranged with responsible/cooperating agencies and special interest groups upon request. A public hearing will be held after the EIS is available for review. Public notice will given as to the time and place of the hearing.

To ensure that the full range of issues related to this proposal 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 FHWA at the address provided above.

Issued on March 24, 1995.

Dennis Scovill,

Chief, District Operations-C, Sacramento, California.

[FR Doc. 95–7786 Filed 3–29–95; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1994 Rev., Supp. No. 14]

Surety Companies Acceptable on Federal Bonds; Redomestication and Name Change; The Travelers Indemnity Company of Rhode Island

The Travelers Indemnity Company of Rhode Island, a Rhode Island corporation has redomesticated from the state of Rhode Island to the state of Connecticut and has formally changed its name to The Travelers Indemnity Company of Connecticut, both changes effective December 31, 1994. The Company was last listed as an acceptable surety on Federal bonds at 59 FR 34180, July 1, 1994.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to The Travelers Indemnity Company of Connecticut, Hartford, CT. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $21,404,000 established for the Company as of July 1, 1994, remains unchanged until June 30, 1995.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR part 223).

A list of qualified companies is published annually as of July 1, in the

Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1994 Revision, at page 34180 to reflect this change.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, Telephone (202/FTS) 874–6696.

Dated: March 20, 1995.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 95–7844 Filed 3–29–95; 8:45 am]

BILLING CODE 4810–35–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

National Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., announcement is hereby published for a meeting of the National Advisory Board. The meeting is open to the public.

DATES: The National Advisory Board meeting is scheduled for Thursday, April 27, 1995, 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Federal Deposit Insurance Corporation, Board Room 6010, 550 17th St., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, N.W., Washington, D.C. 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Pursuant to section 21A (d) of the Federal Home Loan Bank Act, the Thrift Depositor Protection Oversight Board established a National Advisory Board and six Regional Advisory Boards to advise the Oversight Board and the Resolution Trust Corporation (RTC) on the disposition of real property assets of the Corporation.

Agenda

A detailed agenda will be available at the meeting. The meeting will include remarks from executives of the RTC, the Executive Director of the Thrift Depositor Protection Oversight Board and the chair of the National Advisory Board. In addition, there will be briefings from the chairpersons of the six regional advisory boards on their respective meetings held throughout the country from March 2 through April 7. The Board will address the issues involving the RTC's disposition of environmental resources and other special properties. Specific topics addressed at the six regional meetings include: the nature and extent of environmentally sensitive RTC properties; RTC activity in assisting environmental interests to acquire significant properties; the future of the RTC's environmentally sensitive properties when taken over by the Federal Deposit Insurance Corporation; oversight of the hazard remediation program initiated by the RTC, and the status of properties covered by the Coastal Barrier Improvement Act.

Statements

Interested persons may submit, in writing, data, information or views on the issues pending before the National Advisory Board prior to or at the meeting. Seating is available on a first come first served basis for this open meeting.

Dated: March 27, 1995.

Jill Nevius,

Committee Management Officer.

[FR Doc. 95–7836 Filed 3–29–95; 8:45 am]

BILLING CODE 2221–01–M

UNITED STATES INFORMATION AGENCY

Management of the Summer Institute for EFL Teacher Trainers in Eastern/Central Europe and the NIS

ACTION: Notice—request for proposals.

SUMMARY: The Office of Academic Programs, English Language programs Division, Programs Branch, of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to conduct a five- to six-week Summer Institute for up to 20 EFL teacher trainers from Albania, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Kazakhstan, Latvia, Lithuania, Macedonia, Poland, Romania, Russia, Slovakia, Slovenia, and Ukraine. The exact number of participants will be contingent on available funding.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Fulbright Hayes Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Name and Number: All communications with USIA concerning this announcement should refer to the above title and reference number *E/ALP–95–02*.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, April 21, 1995. Faxed documents will not be accepted, nor will documents postmarked on April 21 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Grants should begin by July 5; the program should not run over 6 weeks: it should begin the weekend of July 15 and conclude the week of August 20, 1995.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Programs, English Language Programs Division, E/ELP—Room 304, U.S. Information Agency, 301 4th Street, SW., Washington, DC 220547, telephone number 202–619–5869, fax number 202–401–1250 to request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Program Officer/Specialist Marguerite Hess on all industries and correspondences. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Academic Programs, English Language Programs Division, Programs Branch, or submitting their proposals. Once the RFP deadline has passed, the Office of Academic Programs, English Language

Program Division, Programs Branch, may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/ALP–95–02, Office of Grants Management, E/XE, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The U.S. Information Agency (USIA) is soliciting proposals from U.S. professional or educational not-for-profit institutions/organizations to hold a 5–6 week Summer Institute, whose purpose will be to prepare the participants to coordinate EFL teacher training activities in their respective countries upon their return. The Institute will therefore encompass curriculum design and program management as well as training in methodology. Upon completion of the program, graduates of the institution will work together with USIA EFL Fellows who are already working in each country as part of the Eastern/Central European and NIS EFL Fellow Program.

Guidelines

Programs must comply with J–1 visa regulations. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details.

Proposed Budget

The proposal must contain a comprehensive line item budget, based on the specific guidance in the Solicitation Package. At this time, the Agency has not determined the full funding level for FY'95.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Allowable costs for the program include the following:

Domestic Ground Travel
Book Allowance (not to exceed $400 per participant)
Weekly Stipend for participants
Meals and Lodging for participants and Washington, D.C. escort
Cultural Activities Fee
TESOL Membership Fee
Course/Accreditation Fees
Tax Guidance/Preparation
Educational/Course Materials
Administrative Expenses and Honoraria

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidlines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the Agency contracts office, as well as the USIA Office of Eastern European and NIS Affairs. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier Effect/Impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is frequent.

10. Cost-effectiveness; The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 30, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: March 22, 1995.

Dell Pendergrast,

Deputy Associate Director, Educational and Cultural Affairs.

[FR Doc. 95–7863 Filed 3–29–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 61

Thursday, March 30, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: March 27, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., March 31, 1995.

CHANGES IN MEETING: Meeting concerning Protocol Revisions was canceled.

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: March 28, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–8020 Filed 3–28–95; 3:47 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: March 27, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., March 30, 1995.

CHANGES IN MEETING: Meeting concerning Bunk Beds was canceled.

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: March 28, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–8021 Filed 3–28–95; 3:47 pm]

BILLING CODE 6355–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

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 10:02 a.m. on Tuesday, March 28, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the Corporation's supervisory and corporate activities, and (2) matters relating to the probable failure of an insured depository institution.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Tigert Helfer, that Corporation 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)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: March 28, 1995.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 95–8025 Filed 3–28–95; 3:48 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

''FEDERAL REGISTER'' NUMBER: 95–7387.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 30, 1995 at 10:00 a.m. Meeting open to the Public.

THE FOLLOWING ITEMS WERE ADDED TO THE AGENDA:

Regulations:
- Proposed Regulation Schedule (continued from meeting of March 23, 1995)
- Personal Use of Campaign Funds; Announcement of Effective Date (11 CFR Parts, 100, 104 and 113)

DATE AND TIME: Tuesday, April 4, 1995 at 2:00 p.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conduced pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, April 6, 1995 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1995–07: Kenneth D. Albertsen on behalf of Key Bank of Alaska
Regulations:
Presidential Primary and General Election Regulations: Draft Final Rules and Explanation and Justification
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 95–8016 Filed 3–28–95; 3:46 pm]

BILLING CODE 6715–01–M

federal register

Thursday
March 30, 1995

Part II

Office of Management and Budget

Office of Federal Procurement Policy

48 CFR Parts 9903 and 9904

Cost Accounting Standards Board; Cost Accounting Standards for Composition, Measurement, Adjustment, and Allocation of Pension Costs; Final Rule

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Parts 9903, 9904

Cost Accounting Standards Board; Cost Accounting Standards for Composition, Measurement, Adjustment, and Allocation of Pension Costs

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Final rule.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), is revising the Cost Accounting Standards relating to accounting for pension costs under negotiated government contracts. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires that the Board, when promulgating any new or revised Cost Accounting Standard, publish a final rule. This final rule addresses certain problems that have emerged since the original promulgation (in the 1970's) of the pension Standards: CAS 9904.412—''Cost Accounting Standard for composition and measurement of pension cost,'' and CAS 9904.413, ''Adjustment and allocation of pension cost.'' The changes address pension cost recognition for qualified pension plans subject to the tax-deductibility limits of the Federal Tax Code, problems associated with pension plans that are not qualified plans under the Federal Tax Code, and problems associated with overfunded pension plans.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202–395–3254).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The Cost Accounting Standards Board's rules and regulations are codified at 48 CFR Chapter 99. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires that the Board, prior to the establishment of any new or revised Cost Accounting Standard, complete a prescribed rulemaking process. This process consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of government contracts as a result of a proposed Standard.
2. Promulgate an Advance Notice of Proposed Rulemaking.
3. Promulgate a Notice of Proposed Rulemaking.
4. Promulgate a final rule.

This final rule is step four in the four step process.

B. Background

Prior Promulgations: The previous CASB published CAS 9904.412—''Cost Accounting Standard for Composition and Measurement of Pension Cost'' on September 24, 1975 and CAS 9904.413—''Adjustment and Allocation of Pension Cost'' on July 20, 1977. The effective dates of these Standards were January 1, 1976 and March 10, 1978, respectively. These Standards were developed in the early years of the applicability of the Employee Retirement Income Security Act (ERISA). At that time, the problems on which this final rule focuses were not significant. Adequate or minimum, rather than excess funding, concerned pension managers of that era. Over the intervening years, government contractors' pension plans have become more adequately funded. At the same time, limits on the maximum amount of benefits that can be provided by a qualified pension plan have been considerably constrained in real terms. At the time the previous coverage was promulgated, there was little or no inconsistency between an orderly method of accruing pension costs and a contractor's ability to concurrently fund those accruals.

The Tax Reform Act of 1986 amended the Federal Tax Code to impose an excise tax on contributions in excess of the maximum tax-deductible amount for qualified pension plans. Immediately thereafter, the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) added a second, often more restrictive full-funding limitation on the determination of the tax-deductible amount. To avoid the incurrence of an unallowable excise tax, government contractors generally did not fund any accrued pension cost in excess of the maximum tax-deductible pension contribution. However, portions of accrued pension costs that were not funded were not allowable. Furthermore, because the Standards prohibited the reassignment of accrued but unfunded pension costs, contractors could not allocate such costs to contracts when funded in future periods. On April 8, 1991, the Board issued a ''Memorandum for Agency Senior Procurement Executives'' which granted temporary authority to reassign to future periods pension costs that were not funded in the year of accrual because they lacked tax-deductibility.

An overwhelming majority of respondents to the Board's November 1990 solicitation of agenda items gave a high priority to the problems associated with fully-funded qualified plans and those connected with the growing universe of nonqualified pension plans. The Board sought public comments with a set of Staff Discussion Papers. A Paper addressing the ''pay-as-you-go'' or unfunded plan issue was published by the Board on June 17, 1991. See 56 FR 27780. A Paper seeking views on the ''full funding'' problem was published on August 19, 1991. See 56 FR 41151. On January 26, 1993, after consideration of the public comments received on these Staff Discussion Papers, the CASB published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register**, 58 FR 6103. The ANPRM set forth proposed amendments to deal with both the unfunded pension plan issue related to nonqualified pension plans and the ''full-funding'' problem of qualified plans.

In the public comments to the ANPRM, the Board found two areas of concern particularly persuasive. These dealt with the ANPRM lacking any full-funding limitation, and the complexities and problems introduced by drastic revisions to the amortization period for actuarial gains and losses.

The ANPRM was premised on the idea that, by reducing such amortization periods, there would be only a relatively short time lag between cost/price recognition and the eventual funding. This premise, as pointed out by the commenters, was unsound. Because the ANPRM lacked any full-funding limitation, it could result in recognition of pension costs in years in which surplus assets existed. This is of particular concern to the Board because of the number of contractors that now have overfunded plans.

The Board also determined that changing amortization periods, in order to improve cost predictability, was unnecessary. Most commenters believed that a satisfactory degree of predictability could be achieved under the existing Standards' amortization rules.

On November 5, 1993, after consideration of the public comments received on the ANPRM, the CASB published a Notice of Proposed Rulemaking (NPRM), 58 FR 58999. The NPRM set forth proposed amendments to resolve the regulatory conflict for qualified pension plans by incorporating into the Standards the ERISA full-funding limitation, while

maintaining the current amortization rules. To address questions concerning overfunded pension plans, the Board added coverage to CAS 9904.413 defining what constitutes a segment closing and providing greater specificity regarding accounting for pension costs when segments are closed or pension plans are terminated. The NPRM retained the accounting approach for nonqualified pension plans included in the ANPRM.

The public comments received in response to the NPRM raised some new issues. In the final rule, the Board addresses these issues focusing on three areas in particular. These deal with the restriction of accrual accounting by an outside limit, incomplete and unclear coverage for segment closings and pension plan terminations, and the lack of accounting for differences between accrued and funded pension costs. A majority of public comments expressed strong opinions, which were divided between support for accrual accounting and support for funding as the basis for determining allocable contract costs. In addition, numerous public comments were submitted concerning specific actuarial and technical issues.

The final rule reflects these and other concerns expressed by commenters to the NPRM. In addition, certain pension actuaries and the Pension Committee of the American Academy of Actuaries submitted suggestions to address the actuarial soundness of the final rule.

Termination of Temporary Waiver Authority

The final rule removes the regulatory conflict between the funding limits of ERISA and the period assignment provisions of CAS 9904.412–40(c). Therefore, the Board terminates the temporary waiver authority granted in the ''Memorandum for Agency Senior Procurement Executives'' issued on April 8, 1991.

Summary of Proposed Amendments

The Board's final rule provides for accrual accounting to initially compute the pension cost for a cost accounting period. The Board also recognizes that funding of such cost serves to substantiate the cost and adds to the verifiability of the measurement of cost. For assignment purposes, the computed cost is subject to a corridor with zero as the floor and the maximum tax-deductible amount, where applicable, as the ceiling. The computed cost is also subject to an assignable cost limitation so that cost will not be assigned to an overfunded pension plan. The cost assigned to the period must be funded as specified in the Standard to be allocable to final cost objectives. This four-step process of computing, assigning, funding, and allocating pension cost applies to both qualified and nonqualified defined-benefit pension plans.

This final rule affirms the complementary funding approach for nonqualified plans that takes into account Federal income tax deductibility. The Board views the complementary funding approach as a reasonable compromise addressing the Government's concern that claimed cost be substantiated by funding while providing contractors with relief from adverse cash flow consequences of funding a cost that is not tax-deductible. The Board decided that tax-exempt entities do not experience such cash flow disadvantages, and therefore, they are required to fund all pension cost that is assigned to the period.

For nonqualified defined-benefit plans that do not meet the communication, nonforfeiture, or funding criteria, or for which the contractor chooses to use the pay-as-you-go method, the assigned cost is equal to the amount of benefits paid in that period. To promote consistency between periods, this final rule requires that any lump sum settlements or annuity purchases be amortized.

For qualified defined-benefit pension plans, the conflict between the Standards and ERISA is removed. The cost assigned to a period is limited to the accrued cost that can be funded without penalizing a contractor. A $0 floor was added to the corridor to eliminate any inequity between a requirement to credit negative costs to contracts and the contractor's inability to make withdrawal from the funding agency.

By not requiring the assignment of negative pension cost, the Board has deferred the Government's recovery of excess assets in overfunded plans. This delay is appropriate for on-going pension plans when no assets have reverted or inured to the contractor. The effect of this delay has been mitigated by clarifying and strengthening the Government's rights or obligations for a cost adjustment when there is a segment closing, plan termination, or freezing of benefits.

Portions of pension costs computed for a period that fall outside of the assignable cost corridor ($0 floor and a ceiling based on tax-deductibility) are reassigned to future periods, together with an interest adjustment, as portions of unfunded actuarial liability and are identified as assignable cost deficits or assignable cost credits, respectively. Unfunded portions of assigned cost continue to be separately identified and eliminated from future cost computations.

For nonqualified plans, a clarification in the final rule is made by the addition of the concept of ''permitted unfunded accruals''; the portion of the computed and assigned cost of a nonqualified plan exempted from current funding based on the tax rate offset. These amounts are updated and described as the accumulated value of permitted unfunded accruals. All such previously assigned and allocated costs, adjusted for earnings, expenses, and benefit payments, are treated as plan assets retained by the contractor for purposes of assessing the funding status of the plan.

The fundamental requirement for assignment of pension cost has been expanded to include a ''CAS balance test'' modeled after the Internal Revenue Service ''equation of balance''. The CAS balance test requires that the entire actuarial accrued liability be accounted for by the assets or the portions of unfunded actuarial liability identified under subparagraphs 9904.412–50(a) (1) and (2). For the CAS balance test to function, the definition of unfunded actuarial liability is revised to clarify that an actuarial surplus exists whenever the actuarial value of assets exceeds the actuarial accrued liability. The accumulated value of prepayment credits, that is, funds that have yet to be applied to assigned costs, is excluded from the assets.

Technical corrections have been made to enhance the actuarial completeness of the final rule. Consistent with recent changes in ERISA and Generally Accepted Accounting Principles, as embodied in Statement 87 of the Financial Accounting Standards Board, and reflecting the sophistication of modern actuarial valuations, this final rule requires the use of explicit actuarial assumptions that are individually reasonable. Revisions have been made to distinguish the actuarial value of assets used for computations of on-going pension costs from the market value of assets used for current period adjustments. In addition, Generally Accepted Actuarial Principles and Practices as promulgated by the Actuarial Standards Board were considered in the drafting of this final rule.

Finally, this rule implements an amendment to the CAS applicability and exemption requirements contained in Section 9903.201–1(b)(11). This amendment is made necessary due to recent statutory changes contained in the Federal Acquisition Streamlining Act, Public Law 103–355.

Transition

The Board is aware that contracting officers and contractors have negotiated many pragmatic agreements while awaiting the promulgation of this final rule. The transition methods and illustrations of 9904.412–64 and 9904.413–64 are presented as model solutions. The Board expects that modifications of these methods and alternate approaches may be necessary to ensure equity for both the Government and contractors. Cognizant Federal officials are encouraged to ratify existing agreements that comport with the concepts of this final rule. For prior agreements or interim solutions based on a ''fresh-start'' amortization of the unfunded actuarial liability of qualified defined-benefit pension plans, the cognizant Federal official should verify that no portion of unfunded actuarial liability for prior unfunded costs that could have been funded, or, for other previously disallowed costs, have in fact been inadvertently included in pension costs.

The transition rules are constructed on a few basic concepts. Prior assigned costs of qualified plans, which were neither funded nor allocated to contracts because they lacked tax-deductibility, may be assigned, with interest, to periods beginning on or after the effective date of this rule. Conversely, unfunded accrued costs of nonqualified plans allocated to contracts should be treated as assets, updated for earnings and benefit payments, and applied against either the actuarial accrued liability used to compute cost accruals or the benefits paid under the pay-as-you-go method.

C. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this final rule, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq*.

D. Executive Order 12866 and the Regulatory Flexibility Act

The economic impact of this final rule on contractors and subcontractors is expected to be minor. As a result, the Board has determined that this final rule does not result in the promulgation of a ''major rule'' under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this final rule does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

E. Public Comments

Public Comments: This final rule is based upon the Board's Notice of Proposed Rulemaking made available for public comment on November 5, 1993, 58 FR 58999. Thirty sets of public comments were received from contractors, Government agencies, professional associations, actuarial firms, law firms, public accounting firms, and individuals. The comments received and the Board's actions taken in response thereto are summarized below:

Comment: Twelve commenters expressed concern that the introduction of a funding limit on accrual accounting was a significant departure from the full accrual accounting approach of the ANPRM. Some commenters were also concerned with the complexity inherent in any rule governing pension costs. For these reasons the commenters supported the promulgation of a second NPRM.

Response: The Staff Discussion Papers, the ANPRM, and the NPRM each addressed the role of accrual accounting and the role of funding. The Staff Discussion Paper on fully-funded defined-benefit pension plans requested comments on the relative weights the Board should assign to accrual accounting, funding, and predictability as a basis for cost determination. The Staff Discussion Paper on unfunded nonqualified defined-benefit pension plans balanced its avoidance of a funding requirement with a very constrained method of accrual accounting for so-called ''accruable'' plans.

In response to the comments on the Staff Discussion Papers, the ANPRM adopted accrual accounting for both qualified plans and accruable nonqualified plans, which permitted certain portions of computed pension costs to be unfunded. Because the Board supported the need to substantiate the accrual with funding, the ANPRM required that the accrued costs for qualified plans be funded as soon as practicable. The ANPRM presumed there would not be a lengthy delay between accrual and funding, and so it did not link the period assignment of the accrual to current period funding. For nonqualified plans, the assignment of accrued costs was tied to funding, but the ANPRM introduced an exception for the effect of taxes on contractor cashflows. As with the Staff Discussion Paper, non-accruable plans, and accruable plans that so elect, were limited to the pay-as-you-go method.

The NPRM kept the same accounting approach for nonqualified plans as the ANPRM. Comments from the Government and contractors persuaded the Board that the conflict between full accrual accounting and ERISA funding, not predictability, was the significant problem. Finding that there could be indefinitely extended delays in the funding of the accruals of overfunded plans, the Board determined that it was necessary to link the period assignment of costs to current period funding in order to assure the verifiability of the accrued amounts. To resolve the conflict with ERISA's funding limits, the ERISA full-funding limitation was incorporated into the NPRM. Furthermore, aware of the need to address overfunded plans, the Board added clarity and specificity to the current period adjustment required when a segment closes. The Board explicitly included an adjustment for plan terminations because there has been some uncertainty as to the prior Board's intent.

With this final rule, the Board affirms the accounting approaches of the NPRM. Throughout the four-step promulgation process, accrual accounting consistently has been the starting point for the recognition of pension costs. The period assignment rule is tied to ERISA's tax-deductible maximum to prevent conflict with any of ERISA's funding limits. This final rule retains the complementary funding rule for nonqualified plans. The Board adopted many technical corrections suggested in public comments from actuaries and other professionals. To ensure that the technical corrections did not alter the conceptual approach of the NPRM, the Board sought and received input from certain pension actuaries and the American Academy of Actuaries.

Besides continuing support for either unrestricted accrual accounting or cost recognition based solely on funding, the public comments on the NPRM generally addressed details of the coverage requiring clarification or correction. This final rule does not deviate from the conceptual construct of the NPRM. As intended by the four-step promulgation process, this rule has evolved and the Board has found an informed balance between the advantages of accrual accounting and funding. Further public exposure would not alter the conceptual approach exposed in the NPRM and expressed in this final rule.

Comment: Thirteen commenters expressed their opposition to the adoption of the ERISA full-funding

limitation. These commenters supported full accrual accounting as the only method that provides true matching of the incurrence of pension costs with the periods during which benefits were earned. They contend that tax law is not good accrual accounting and that the Board should make accounting rules independently of the concerns of taxability.

Response: The Board continues to recognize that one of the primary benefits of accrual accounting, and one of the stated goals of the Board, is the proper matching of benefiting contracts with the incurrence of expense. The Board also continues to support accrual accounting as the most effective means to promote consistency between cost accounting periods.

This final rule is based on the use of accrual accounting to initially compute the pension cost for a period. The assignable cost is then determined by comparing the computed pension cost accrual to a minimum of $0 and to the maximum tax-deductible amount. The Board has determined that funding is needed to substantiate the cost allocation because of the magnitude of the liability and the extended delay between the accrual of the cost and the settlement of the liability. This final rule has not adopted ERISA as an accounting method, but has modified accrual accounting to fit within the confines of practicable funding.

Comment: Eleven other commenters supported the imposition of the full-funding limit. Two commenters recommended that the cost accrual be subject to a $0 minimum because contractors are prohibited from withdrawing funds from a qualified trust.

Response: In this final rule, the Board refines the NPRM concept of a full-funding limitation. The full-funding limitation of the final rule is implemented through the definition and operation of the ''assignable cost limitation'' which defines the point when the plan is overfunded for cost recognition purposes. When a pension plan is overfunded, the Government would be violating its fiduciary duty to the taxpayers by advancing any further reimbursements to the contractor. The assignable cost limitation is similar to ERISA's pre-OBRA 87 full funding limitation, but uniquely defined to avoid confusion with ERISA terminology. As with the NPRM, whenever a plan is determined to be overfunded, that is, the actuarial value of assets exceeds the liability, all existing amortization bases are deemed fully amortized and eliminated.

The Board concurs that there should be a $0 floor imposed on the assignable pension cost for the period. The Standard requires the funding agency to be established for the ''exclusive benefit'' of the participants so that withdrawals by the contractor are prohibited, absent a plan termination. To be internally consistent, this final rule eliminates the assignment of negative costs to a period and the allocation of such credit to contracts, except when either assets revert or inure to the contractor or the segment is no longer continuing.

However, when a contractor makes a voluntary investment decision to not fund the assigned cost of its qualified pension plan, which is otherwise allocable to and payable as cost or price under Government contracts, the contractor has knowingly accepted the consequences of its decision. In this case, because there is no conflict between ERISA and the Standards, there is no reason to alter the cost computation and assignment for the period. Permitting arbitrary reassignment of the cost to other periods would be contrary to the Board's stated goal of enhancing the consistency of costs between periods and could create a potential for gaming.

Comment: A major concern of thirteen commenters was that the full-funding limitation is difficult to predict. Some commenters opined that the emphasis on funding made the rule unnecessarily complex.

Response: In this final rule, full-funding, which is measured by the assignable cost limitation based on the actuarial value of assets and the actuarial accrued liability, is reasonably predictable. Through the smoothing techniques of an asset valuation method, large swings in assets values are dampened. In a relatively stable population, the actuarial accrued liability can be fairly well predicted using actuarial projection techniques for forward pricing purposes. Other events that dramatically affect the liability are addressed in the provisions on cost method changes, segmentation, segment closings, plan terminations, and frozen plans. Finally, contractors have some flexibility in determining the timing of certain other events, such as assumption changes or plan amendments, that affect the size of the actuarial accrued liability.

When pension plan assets and liabilities are sufficiently different in amount, the impact of the tax-deductible limits of ERISA can be forecast with a fair degree of certainty. The tax-deductible limit, computed without regard to the full-funding limitation, is generally based on the normal cost and 10 year amortization of the unfunded actuarial liability and is also relatively predictable.

A predictability problem does arise when a plan is near the threshold of ERISA's full-funding limitations. The impact of these limits is sensitive to small changes in the market value of assets, the actuarial accrued liability, and prevailing Treasury rates. The Board believes that the ''all or nothing'' nature and the magnitude of the impact are beyond the normal assumption of risk inherent in firm fixed-priced contracting. However, the Board believes that this is a forward-pricing problem that may be addressed by the contracting officer through the negotiation of an advance agreement reflecting the contractor's unique facts, circumstances, and expected level and mix of Government contracting. Such advance agreements could provide a method for achieving equity in the forecasting of pension costs for contractors whose pension plans are close to entering or emerging from the funding limits of ERISA.

While the special problems of forward-pricing will continue to require attention by the contracting officer, this final rule does not add more complication. The concepts of assignable cost limitation, assignable cost deficit, and assignable cost credit contained in this final rule are simply the accounting and actuarial mechanisms necessary to assign computed costs that fall outside of the funding corridor to future periods.

Comment: Twelve commenters noted that, despite the full-funding limitation, the cost assigned under the NPRM could still be greater than the tax-deductible maximum. Seven commenters remarked that ERISA requires amortizations to continue, and a new base be established, when the contribution is affected by the OBRA 87 full-funding limitation only. Seven commenters recommended that subparagraph 9904.412–50(b)(1) be clarified.

Response: This has been corrected in the final rule by using the maximum tax-deductible amount, however determined, as the limit on assignable cost for qualified plans. The accrued pension cost not assigned to the current period is reassigned to future periods as an assignable cost deficit. This final rule also specifies that any negative accrued cost be reassigned to future periods as an assignable cost credit.

This final rule specifies that all existing amortization bases are deemed fully amortized when the accrued cost is affected by the assignable cost limitation. This rule provides that any

unfunded actuarial liability, including an actuarial surplus, existing in the next accounting period is deemed to be an actuarial gain or loss unless it is attributable to a change in assumptions, plan amendment, or separately identified portions of unfunded actuarial liability attributable to unfunded and/or disallowed pension costs.

Comment: Fifteen commenters stated that funding would not be needed to validate the liability of nonqualified defined-benefit plans if the Board retained the existing requirement that the benefits be ''compelled''.

Response: The Board believes it is reasonable for the Government to require that pension cost of both qualified and nonqualified pension plans allocated to contracts, which the Government pays for through cost or price, be subject to funding. This final rule ensures that any unfunded portion of assigned cost is isolated from the computation of future cost accruals. To prevent windfall gains or losses and to minimize the need for advance agreements discussed above, costs allocated to fixed-priced contracts must be funded to the extent possible.

The Board notes that the excess funding, which occurs when a contractor funds more than the assigned pension cost for the period, is carried forward to future periods with interest. This final rule retains the premature funding provisions of the original Standard through the definition and operation of prepayment credits.

Comment: Five commenters stated that current period funding of assigned costs for nonqualified pension plans is necessary to enhance the verifiability of all costs allocated to contracts and to reduce the risk that the promised benefits might never be paid.

Response: As already discussed, the Board is persuaded that funding of the assigned cost is necessary to substantiate the liability. The Board is also persuaded that requiring a taxable contractor to fund 100% of the pension cost could impose a cash flow penalty to the extent the amount funded may not be tax-deductible. The Board has modified the funding requirement accordingly. However, the Board does not wish to provide a cash flow advantage to tax-exempt contractors for whom no such cash flow penalty exists. Accordingly, the complementary funding rule is restricted to taxable entities only.

This final rule addresses the risk that unfunded costs will not be verified by providing for an accounting of all assigned costs. Funded costs are captured and accounted for within the assets of the funding agency. Amounts exempted from funding based on the tax-rate are retained in the general assets of the contractor and accounted for within the accumulated value of permitted unfunded accruals. Portions of assigned cost not substantiated by complementary funding must be separately identified and accounted for pursuant to 9904.412–50(a)(2). This final rule ensures that all portions of assigned cost and allocated cost are tracked and accounted for, and thereby removes much of the risk.

Comment: Eight commenters were concerned that a ''Rabbi'' trust would not satisfy the ''exclusive benefit'' requirement in the definition of a funding agency since creditors might have superior rights to those of the plan participants. Other commenters asked if other nonqualified trust arrangements could qualify as a funding agency under the Standard.

Response: The Board's intention when revising the definition of a funding agency was to prohibit the use of bookkeeping reserves, escrow accounts, or any other arrangement under which the rights of the plan participants were not clearly superior to those of the plan sponsor. The basic test of ''exclusive benefit'' is whether the contractor has relinquished all rights to the funds and that, except for the extraordinary event of bankruptcy, the participants have primary rights to the funds. The solvency of a contractor is always a concern to the Government that is not restricted merely to pension costs.

The Board does not intend that a ''Rabbi trust'' be the only funding arrangement that satisfies the funding agency definition. Other arrangements such as so-called secular trusts can be satisfactory. The Board expects that as tax law changes and as qualified plan benefit limits possibly become more or less restrictive, other funding arrangements may become more effective and more widely adopted.

The Board does not intend for the ''exclusive benefit'' clause to prohibit asset reversions where, after settling all benefit obligations to plan participants, the residual assets of the trust revert or inure to a contractor. The funding agency coverage in the pension Standards is intended to be consistent with the coverage for funded insurance reserves found at 9904.416–50(a)(1)(v)(B), which permits a reversion of assets only after all benefit obligations have been satisfied through insurance.

Comment: Nine commenters were concerned that taxes and administrative costs associated with Rabbi trusts will increase pension costs. Five commenters believe that the NPRM (and prior ANPRM) complementary funding rule for nonqualified plans creates an administrative burden.

Response: The Board recognizes that there will be some additional expenses associated with the use of complementary funding and the use of nonqualified trust funds. The specificity of the final rule gives contractors clear rules under which they can choose to compute, assign, and allocate the costs of a nonqualified plan. The benefits of an accurate accounting of all assigned costs will offset any increased administrative expense to the Government and contractors.

There will be an increase in the cost of such plans for the taxes on the earnings of the nonqualified trust fund that are directly paid by or reimbursed from the fund. These taxes are a valid expense of the pension plan incurred in response to the final rule's requirement that a portion of the assigned cost be funded. The Board notes that, in fact, such increased costs are being returned to the Government through the payment of the tax.

The rule specifies that income taxes on the earnings of a nonqualified trust are treated as administrative expenses and not as decrements to the assumed investment earning rate. This technical correction clarifies that the interest assumption used to compute actuarial values is not reduced to reflect taxes on fund earnings. This rule is not intended to prevent contractors from expressing the actuarial assumption for administrative expenses as a percentage of the earnings.

Comment: Two commenters suggested that the final rule address how ERISA's funding limits are allocated to segments.

Response: Only the maximum tax-deductible amount and the contribution to the funding agency are determined for the pension plan in its entirety. Under segmented accounting, all other aspects of period cost; i.e., normal cost, unfunded actuarial liability, assignable cost limitation, are measured at the segment level. This final rule requires that the tax-deductible maximum, determined for the plan as a whole, must be apportioned to segments using a basis that considers the assignable costs or the funding levels of the segments. Illustrations of how plan-wide values are apportioned to segments have been added.

In addition, to ease the funding of costs attributable to Government contracts, this final rule allows contractors with predominantly commercial business to apportion contributions for qualified defined-

benefit plans to their Government segments first, but only if the contractor uses segmented accounting. Unfunded assigned costs, whether attributable to Government contracts or commercial business, will be separately identified under 9904.412–50(a)(2) and thereby isolated from future cost computations and future allocation. This provision allows the contractor to determine when to fund costs of its qualified defined-benefit plan for segments that are associated solely with commercial business.

Although the assets of a pension plan are subject to the claims of all plan participants, the Board believes the funding requirements and protections of ERISA will prevent any untenable differences in funding levels of segments from arising. Because nonqualified plans lack the funding requirement protection of ERISA, the funding of such plans must be apportioned across all segments.

Comment: Four commenters suggested that the definition of a segment closing should be clarified. Concerns were raised that an internal reorganization would require a current period adjustment for a segment closing even though neither the segment's nor the contractor's relationship to the Government had changed.

Response: The definition has been revised to delineate three conditions requiring a current period adjustment. The first condition occurs when there is a change in ownership of the segment, not just a simple reorganization within the contractor's internal structure. The second event is the one addressed in the NPRM; that is, when the contractual relationship ends because the segment operationally ceases to exist. The third case addresses the end of the contractual relationship with the Government, whether the segment continues in operation or not.

Comment: Two commenters opposed using the accrued benefit cost method (ABCM) to determine the actuarial liability for a segment closing or plan termination adjustment. These commenters believe the ABCM understates the liability. Four commenters supported limiting the actuarial assumptions used to determine the segment closing and plan termination adjustment. These commenters also supported a phase-in of benefit improvements adopted within 5 years of a segment closing or plan termination.

Response: In this final rule, the actuarial accrued liability, used for determining the adjustment for a segment closing or curtailment of benefits, is determined using the accrued benefit cost method. For a curtailment of benefits or for plan participants who are terminated from employment in a segment closing, the accrued benefit is the appropriate measure of the ultimate benefit that will be paid under the plan. If plan participants remain employed by the contractor, whether in the same or another segment, the Board believes the responsibility for future salary increases, which are attributable to future productivity, merit, and inflation, belongs to the future customers that benefit from the participants' continued employment. The Board notes that the ABCM does recognize the cost of vesting earned by the participants' future service.

The Board also believes that when there is an immediate period liquidation of the liability through the payment of lump sum settlements or the purchase of annuities, the cost of such settlements and annuities is an exact measure of the liability, although the Government does have a right to share in any future dividends or refunds. This final rule has been revised accordingly.

Consistent with the requirement that actuarial assumptions be individual best-estimates of future long-term economic and demographic trends, this final rule requires that the assumptions used to determine the actuarial liability be consistent with the assumptions that have been in use. This is consistent with the fact that the pension plan is continuing even though the segment has closed or the earning of future benefits has been curtailed. The Board does not intend this rule to prevent contractors from using assumptions that have been revised based on a persuasive actuarial experience study or a change in a plan's investment policy.

This final rule does include a sixty-month phase-in of voluntary benefit improvements to forestall an increase in the liability in contemplation of a segment closing or plan termination. Improvements mandated by law or granted though collective bargaining negotiations are not considered voluntary. A plan termination or curtailment of benefits is viewed as negating the intent of any recent voluntary benefit improvements.

Under the revised definition of a segment closing, some employees may remain in a segment performing non-Government work while other employees may be transferred to other segments. For consistency, the provisions for transfers of either active or retired participants specify that the assets transferred must equal the actuarial accrued liability determined under the accrued benefit cost method.

Comment: One commenter asked if a contractor must determine whether a termination of plan gain or loss has occurred before an adjustment is required. Another commenter asked if a termination of plan gain or loss occurs when a pension plan is ''frozen.''

Response: The definition has been changed to refer to an event; that is, the termination of a pension plan. Any resultant gain or loss for Government contracting purposes is determined by the 9904.413–50(c)(12) adjustment. The ''freezing'' of a pension plan is addressed by the addition of a definition for a ''Curtailment of Benefits.''

Comment: Two commenters supported the amortization of any segment closing adjustment, rather than an immediate period adjustment.

Response: Under this final rule, the 9904.413–50(c)(12) adjustment is determined as a current period adjustment, whether or not assets actually revert from the trust. The Board believes a current period adjustment is appropriate when there is a disruption of the contracting relationship, a discontinuance of the operational segment, or a discontinuance of the pension plan. When such events occur, pension costs can no longer be computed and adjusted on an on-going basis since there are either no future accounting periods in which credits or charges can be allocated to contracts or no future periods in which benefits will be earned.

If a contractor will continue to have a contracting relationship with the Government, the final rule does permit the cognizant Federal official and the contractor to negotiate an amortization schedule. This provision will allow a contractor to allocate an adjustment credit to future years during which it can recover the amount of credited assets either through decreased pension costs or through prices charged to other customers benefiting from the future work performed by plan participants.

Comment: Eleven commenters requested that the Board clarify that the 9904.413–50(c)(12) adjustment could result in a charge to final cost objectives if the liabilities exceeded the assets.

Response: The final rule refers to the ''difference'' between assets and liabilities without prejudice towards either adjustment credits or adjustment charges. An illustration of the adjustment when liabilities exceed assets has been added.

Comment: Four commenters asked the Board to clarify how the Government's share of the adjustment was to be determined. Five commenters opposed the inclusion of fixed-price contracts in

any formula used to determine the Government's share.

Response: The asset value used to determine the adjustment amount is the market value of the assets, including permitted unfunded accruals, plus portions of unfunded liability identified pursuant to 9904.412–50(a)(2), i.e., plan assets retained by the contractor due to allocated but unfunded costs. The asset value is reduced for the accumulated value of any prepayment credits since such assets have never been assigned to past periods nor allocated to Government contracts. Because this asset value represents the current value of assigned costs of prior periods, the sum of previously assigned pension costs is the denominator of the fraction. The portion of these assets attributable to the Government's participation in the funding of the pension plan through cost or price is measured by the sum of costs allocated to Government contracts. The fraction is determined based on data from years that are representative of the Government's participation, which is a factual determination best made by the contracting officer.

Costs allocated to fixed-price contracts subject to CAS 9904.412 and 9904.413 are included since the Government has participated in the funding of the plan through the payment of the estimated pension cost considered in the pricing of the contract. A risk/reward of a fixed-price contract is the deviation of actual costs from the estimated cost considered in the price. If a single period event, e.g., segment closing, plan termination, or benefit curtailment, alters the on-going nature of the pension plan or segment, the effect on fixed-price contracts should be similar to that of an accounting practice change.

Comment: Four commenters supported amending the NPRM coverage to explicitly state that the 9904.413–50(c)(12) adjustment is determined net of the excise tax on pension plan asset reversions.

Response: The Board agrees. Before applying the fraction that determines the Government's share, subdivision 9904.413–50(c)(12)(vi) reduces the adjustment amount for any excise taxes assessed on assets that revert to the contractor as part of a pension plan termination. The excise tax is intended to discourage plan sponsors from terminating their qualified pension plans, and under this final rule, Government contractors are subject to the same termination penalty as their commercial counterparts. Since the excise tax is returned to the Government, albeit the Internal Revenue Service, the Board believes equity warrants determining the Government's share based on the net adjustment amount.

While the Board believes the Government's allocable share of any adjustment should be net of any reversion excise tax, the allowability of such excise taxes continues to be determined by the applicable cost principles. Income taxes, which are paid to the Internal Revenue Service as an offset against prior tax deductions, continue not to be allocable.

Comment: Six commenters suggested that a segment closing adjustment is not necessary if the assets and liabilities of the segment were transferred to the successor contractor.

Response: The Board agrees. The appropriate coverage and illustrations have been added.

List of Subjects in 48 CFR Parts 9903 and 9904

Cost accounting standards, Government procurement.

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

PART 9903—CONTRACT COVERAGE

1. The authority citations for Parts 9903 and 9904 continue to read as follows:

Authority: Public Law 100–679, 102 Stat 4056, 41 U.S.C. 422.

9903.201 [Amended]

2. Subsection 9903.201–1 is amended by removing and reserving paragraph (b)(11).

PART 9904—COST ACCOUNTING STANDARDS

3. Subsection 9904.412–30 is amended by revising paragraph (a) to read as follows:

9904.412–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Accrued benefit cost method* means an actuarial cost method under which units of benefits are assigned to each cost accounting period and are valued as they accrue; that is, based on the services performed by each employee in the period involved. The measure of normal cost under this method for each cost accounting period is the present value of the units of benefit deemed to be credited to employees for service in that period. The measure of the actuarial accrued liability at a plan's inception date is the present value of the units of benefit credited to employees for service prior to that date. (This method is also known as the Unit Credit cost method without salary projection.)

(2) *Actuarial accrued liability* means pension cost attributable, under the actuarial cost method in use, to years prior to the current period considered by a particular actuarial valuation. As of such date, the actuarial accrued liability represents the excess of the present value of future benefits and administrative expenses over the present value of future normal costs for all plan participants and beneficiaries. The excess of the actuarial accrued liability over the actuarial value of the assets of a pension plan is the Unfunded Actuarial Liability. The excess of the actuarial value of the assets of a pension plan over the actuarial accrued liability is an actuarial surplus and is treated as a negative unfunded actuarial liability.

(3) *Actuarial assumption* means an estimate of future conditions affecting pension cost; for example, mortality rate, employee turnover, compensation levels, earnings on pension plan assets, changes in values of pension plan assets.

(4) *Actuarial cost method* means a technique which uses actuarial assumptions to measure the present value of future pension benefits and pension plan administrative expenses, and which assigns the cost of such benefits and expenses to cost accounting periods. The actuarial cost method includes the asset valuation method used to determine the actuarial value of the assets of a pension plan.

(5) *Actuarial gain and loss* means the effect on pension cost resulting from differences between actuarial assumptions and actual experience.

(6) *Actuarial valuation* means the determination, as of a specified date, of the normal cost, actuarial accrued liability, actuarial value of the assets of a pension plan, and other relevant values for the pension plan.

(7) *Assignable cost credit* means the decrease in unfunded actuarial liability that results when the pension cost computed for a cost accounting period is less than zero.

(8) *Assignable cost deficit* means the increase in unfunded actuarial liability that results when the pension cost computed for a qualified defined-benefit pension plan exceeds the maximum tax-deductible amount for the cost accounting period determined in accordance with the Employee Retirement Income Security Act of 1974

(ERISA), 29 U.S.C. 1001 *et seq.*, as amended.

(9) *Assignable cost limitation* means the excess, if any, of the actuarial accrued liability plus the current normal cost over the actuarial value of the assets of the pension plan.

(10) *Defined-benefit pension plan* means a pension plan in which the benefits to be paid or the basis for determining such benefits are established in advance and the contributions are intended to provide the stated benefits.

(11) *Defined-contribution pension plan* means a pension plan in which the contributions are established in advance and the benefits are determined thereby.

(12) *Funded pension cost* means the portion of pension cost for a current or prior cost accounting period that has been paid to a funding agency.

(13) *Funding agency* means an organization or individual which provides facilities to receive and accumulate assets to be used either for the payment of benefits under a pension plan, or for the purchase of such benefits, provided such accumulated assets form a part of a pension plan established for the exclusive benefit of the plan participants and their beneficiaries. The fair market value of the assets held by the funding agency as of a specified date is the Funding Agency Balance as of that date.

(14) *Immediate-gain actuarial cost method* means any of the several cost methods under which actuarial gains and losses are included as part of the unfunded actuarial liability of the pension plan, rather than as part of the normal cost of the plan.

(15) *Market value of the assets* means the sum of the funding agency balance plus the accumulated value of any permitted unfunded accruals belonging to a pension plan. The Actuarial Value of the Assets means the value of cash, investments, permitted unfunded accruals, and other property belonging to a pension plan, as used by the actuary for the purpose of an actuarial valuation.

(16) *Multiemployer pension plan* means a plan to which more than one employer contributes and which is maintained pursuant to one or more collective bargaining agreements between an employee organization and more than one employer.

(17) *Nonforfeitable* means a right to a pension benefit, either immediate or deferred, which arises from an employee's service, which is unconditional, and which is legally enforceable against the pension plan or the contractor. Rights to benefits that do not satisfy this definition are considered forfeitable. A right to a pension benefit is not forfeitable solely because it may be affected by the employee's or beneficiary's death, disability, or failure to achieve vesting requirements. Nor is a right considered forfeitable because it can be affected by the unilateral actions of the employee.

(18) *Normal cost* means the annual cost attributable, under the actuarial cost method in use, to current and future years as of a particular valuation date, excluding any payment in respect of an unfunded actuarial liability.

(19) *Pay-as-you-go cost method* means a method of recognizing pension cost only when benefits are paid to retired employees or their beneficiaries.

(20) *Pension plan* means a deferred compensation plan established and maintained by one or more employers to provide systematically for the payment of benefits to plan participants after their retirement, provided that the benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees may be an integral part of a pension plan.

(21) *Pension plan participant* means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit from a pension plan which covers employees of such employer or members of such organization who have satisfied the plan's participation requirements, or whose beneficiaries are receiving or may be eligible to receive any such benefit. A participant whose employment status with the employer has not been terminated is an active participant of the employer's pension plan.

(22) *Permitted unfunded accrual* means the amount of pension cost for nonqualified defined-benefit pension plans that is not required to be funded under 9904.412–50(d)(2). The Accumulated Value of Permitted Unfunded Accruals means the value, as of the measurement date, of the permitted unfunded accruals adjusted for imputed earnings and for benefits paid by the contractor.

(23) *Prepayment credit* means the amount funded in excess of the pension cost assigned to a cost accounting period that is carried forward for future recognition. The Accumulated Value of Prepayment Credits means the value, as of the measurement date, of the prepayment credits adjusted for interest at the valuation rate and decreased for amounts used to fund pension costs or liabilities, whether assignable or not.

(24) *Projected benefit cost method* means either (i) any of the several actuarial cost methods which distribute the estimated total cost of all of the employees' prospective benefits over a period of years, usually their working careers, or (ii) a modification of the accrued benefit cost method that considers projected compensation levels.

(25) *Qualified pension plan* means a pension plan comprising a definite written program communicated to and for the exclusive benefit of employees which meets the criteria deemed essential by the Internal Revenue Service as set forth in the Internal Revenue Code for preferential tax treatment regarding contributions, investments, and distributions. Any other plan is a Nonqualified Pension Plan.

(b) * * *

4. Subsection 9904.412–40 is revised to read as follows:

9904.412–40 Fundamental requirement.

(a) *Components of pension cost.* (1) For defined-benefit pension plans, except for plans accounted for under the pay-as-you-go cost method, the components of pension cost for a cost accounting period are (i) the normal cost of the period, (ii) a part of any unfunded actuarial liability, (iii) an interest equivalent on the unamortized portion of any unfunded actuarial liability, and (iv) an adjustment for any actuarial gains and losses.

(2) For defined-contribution pension plans, the pension cost for a cost accounting period is the net contribution required to be made for that period, after taking into account dividends and other credits, where applicable.

(3) For defined-benefit pension plans accounted for under the pay-as-you-go cost method, the components of pension cost for a cost accounting period are:

(i) The net amount of periodic benefits paid for that period, and

(ii) An amortization installment, including an interest equivalent on the unamortized settlement amount, attributable to amounts paid to irrevocably settle an obligation for periodic benefits due in current and future cost accounting periods.

(b) *Measurement of pension cost.* (1) For defined-benefit pension plans other than those accounted for under the pay-as-you-go cost method, the amount of pension cost of a cost accounting period shall be determined by use of an immediate-gain actuarial cost method.

(2) Each actuarial assumption used to measure pension cost shall be separately identified and shall represent the contractor's best estimates of anticipated experience under the plan, taking into account past experience and reasonable expectations. The validity of each assumption used shall be evaluated solely with respect to that assumption. Actuarial assumptions used in calculating the amount of an unfunded actuarial liability shall be the same as those used for other components of pension cost.

(c) *Assignment of pension cost.* Except costs assigned to future periods by 9904.412–50(c) (2) and (5), the amount of pension cost computed for a cost accounting period is assignable only to that period. For defined-benefit pension plans other than those accounted for under the pay-as-you-go cost method, the pension cost is assignable only if the sum of (1) the unamortized portions of assignable unfunded actuarial liability developed and amortized pursuant to 9904.412–50(a) (1), and (2) the unassignable portions of unfunded actuarial liability separately identified and maintained pursuant to 9904.412–50(a)(2) equals the total unfunded actuarial liability.

(d) *Allocation of pension cost.* Pension costs assigned to a cost accounting period are allocable to intermediate and final cost objectives only if they meet the requirements for allocation in 9904.412–50(d). Pension costs not meeting these requirements may not be reassigned to any future cost accounting period.

5. Subsection 9904.412–50 is revised to read as follows:

9904.412–50 Techniques for application.

(a) *Components of pension cost.* (1) The following portions of unfunded actuarial liability shall be included as a separately identified part of the pension cost of a cost accounting period and shall be included in equal annual installments. Each installment shall consist of an amortized portion of the unfunded actuarial liability plus an interest equivalent on the unamortized portion of such liability. The period of amortization shall be established as follows:

(i) If amortization of an unfunded actuarial liability has begun prior to the date this Standard first becomes applicable to a contractor, no change in the amortization period is required by this Standard.

(ii) If amortization of an unfunded actuarial liability has not begun prior to the date this Standard first becomes applicable to a contractor, the amortization period shall begin with the period in which the Standard becomes applicable and shall be no more than 30 years nor less than 10 years. However, if the plan was in existence as of January 1, 1974, the amortization period shall be no more than 40 years nor less than 10 years.

(iii) Each increase or decrease in unfunded actuarial liability resulting from the institution of new pension plans, from the adoption of improvements, or other changes to pension plans subsequent to the date this Standard first becomes applicable to a contractor shall be amortized over no more than 30 years nor less than 10 years.

(iv) If any assumptions are changed during an amortization period, the resulting increase or decrease in unfunded actuarial liability shall be separately amortized over no more than 30 years nor less than 10 years.

(v) Actuarial gains and losses shall be identified separately from unfunded actuarial liabilities that are being amortized pursuant to the provisions of this Standard. The accounting treatment to be afforded to such gains and losses shall be in accordance with Cost Accounting Standard 9904.413.

(vi) Each increase or decrease in unfunded actuarial liability resulting from an assignable cost deficit or credit, respectively, shall be amortized over a period of 10 years.

(vii) Each increase or decrease in unfunded actuarial liability resulting from a change in actuarial cost method, including the asset valuation method, shall be amortized over a period of 10 to 30 years. This provision shall not affect the requirements of 9903.302 to adjust previously priced contracts.

(2) Except as provided in 9904.412–50(d)(2), any portion of unfunded actuarial liability attributable to either (i) pension costs applicable to prior years that were specifically unallowable in accordance with then existing Government contractual provisions or (ii) pension costs assigned to a cost accounting period that were not funded in that period, shall be separately identified and eliminated from any unfunded actuarial liability being amortized pursuant to paragraph (a)(1) of this subsection. Such portions of unfunded actuarial liability shall be adjusted for interest at the valuation rate of interest. The contractor may elect to fund, and thereby reduce, such portions of unfunded actuarial liability and future interest adjustments thereon. Such funding shall not be recognized for purposes of 9904.412–50(d).

(3) A contractor shall establish and consistently follow a policy for selecting specific amortization periods for unfunded actuarial liabilities, if any, that are developed under the actuarial cost method in use. Such policy may give consideration to factors such as the size and nature of the unfunded actuarial liabilities. Except as provided in 9904.412–50(c)(2) or 9904.413–50(c)(12), once the amortization period for a portion of unfunded actuarial liability is selected, the amortization process shall continue to completion.

(4) Any amount funded in excess of the pension cost assigned to a cost accounting period shall be accounted for as a prepayment credit. The accumulated value of such prepayment credits shall be adjusted for interest at the valuation rate of interest until applied towards pension cost in a future accounting period. The accumulated value of prepayment credits shall be reduced for portions of the accumulated value of prepayment credits used to fund pension costs or to fund portions of unfunded actuarial liability separately identified and maintained in accordance with 9904.412–50(a)(2). The accumulated value of any prepayment credits shall be excluded from the actuarial value of the assets used to compute pension costs for purposes of this Standard and Cost Accounting Standard 9904.413.

(5) An excise tax assessed pursuant to a law or regulation because of excess, inadequate, or delayed funding of a pension plan is not a component of pension cost. Income taxes paid from the funding agency of a nonqualified defined-benefit pension plan on earnings or other asset appreciation of such funding agency shall be treated as an administrative expense of the fund and not as a reduction to the earnings assumption.

(6) For purposes of this Standard, defined-benefit pension plans funded exclusively by the purchase of individual or group permanent insurance or annuity contracts, and thereby exempted from ERISA's minimum funding requirements, shall be treated as defined-contribution pension plans. However, all other defined-benefit pension plans administered wholly or in part through insurance company contracts shall be subject to the provisions of this Standard relative to defined-benefit pension plans.

(7) If a pension plan is supplemented by a separately-funded plan which provides retirement benefits to all of the participants in the basic plan, the two plans shall be considered as a single plan for purposes of this Standard. If the effect of the combined plans is to provide defined-benefits for the plan participants, the combined plans shall

be treated as a defined-benefit plan for purposes of this Standard.

(8) A multiemployer pension plan established pursuant to the terms of a collective bargaining agreement shall be considered to be a defined-contribution pension plan for purposes of this Standard.

(9) A pension plan applicable to a Federally-funded Research and Development Center (FFRDC) that is part of a State pension plan shall be considered to be a defined-contribution pension plan for purposes of this Standard.

(b) *Measurement of pension cost.* (1) For defined-benefit pension plans other than those accounted for under the pay-as-you-go cost method, the amount of pension cost assignable to cost accounting periods shall be measured by an immediate-gain actuarial cost method.

(2) Where the pension benefit is a function of salaries and wages, the normal cost shall be computed using a projected benefit cost method. The normal cost for the projected benefit shall be expressed either as a percentage of payroll or as an annual accrual based on the service attribution of the benefit formula. Where the pension benefit is not a function of salaries and wages, the normal cost shall be based on employee service.

(3) For defined-benefit plans accounted for under the pay-as-you-go cost method, the amount of pension cost assignable to a cost accounting period shall be measured as the sum of:

(i) The net amount for any periodic benefits paid for that period, and

(ii) The level annual installment required to amortize over 15 years any amounts paid to irrevocably settle an obligation for periodic benefits due in current or future cost accounting periods.

(4) Actuarial assumptions shall reflect long-term trends so as to avoid distortions caused by short-term fluctuations.

(5) Pension cost shall be based on provisions of existing pension plans. This shall not preclude contractors from making salary projections for plans whose benefits are based on salaries and wages, or from considering improved benefits for plans which provide that such improved benefits must be made.

(6) If the evaluation of the validity of actuarial assumptions shows that any assumptions were not reasonable, the contractor shall:

(i) Identify the major causes for the resultant actuarial gains or losses, and

(ii) Provide information as to the basis and rationale used for retaining or revising such assumptions for use in the ensuing cost accounting period(s).

(c) *Assignment of pension cost.* (1) Amounts funded in excess of the pension cost computed for a cost accounting period pursuant to the provisions of this Standard shall be accounted for as a prepayment credit and carried forward to future accounting periods.

(2) For qualified defined-benefit pension plans, the pension cost computed for a cost accounting period is assigned to that period subject to the following adjustments, in order of application:

(i) Any amount of computed pension cost that is less than zero shall be assigned to future accounting periods as an assignable cost credit. The amount of pension cost assigned to the period shall be zero.

(ii) When the pension cost equals or exceeds the assignable cost limitation:

(A) The amount of computed pension cost, adjusted pursuant to paragraph (c)(2)(i) of this subsection, shall not exceed the assignable cost limitation,

(B) All amounts described in 9904.412–50(a)(1) and 9904.413–50(a), which are required to be amortized, shall be considered fully amortized, and

(C) Except for portions of unfunded actuarial liability separately identified and maintained in accordance with 9904.413–50(a)(2), any portion of unfunded actuarial liability, which occurs in the first cost accounting period after the pension cost has been limited by the assignable cost limitation, shall be considered an actuarial gain or loss for purposes of this Standard. Such actuarial gain or loss shall exclude any increase or decrease in unfunded actuarial liability resulting from a plan amendment, change in actuarial assumptions, or change in actuarial cost method effected after the pension cost has been limited by the assignable cost limitation.

(iii) Any amount of computed pension cost of a qualified pension plan, adjusted pursuant to paragraphs (c)(2)(i) and (ii) of this subsection that exceeds the sum of (A) the maximum tax-deductible amount, determined in accordance with ERISA, and (B) the accumulated value of prepayment credits shall be assigned to future accounting periods as an assignable cost deficit. The amount of pension cost assigned to the current period shall not exceed the sum of the maximum tax-deductible amount plus the accumulated value of prepayment credits.

(3) The cost of nonqualified defined-benefit pension plans shall be assigned to cost accounting periods in the same manner as qualified plans (with the exception of paragraph (c)(2)(iii) of this subsection) under the following conditions:

(i) The contractor, in disclosing or establishing his cost accounting practices, elects to have a plan so accounted for;

(ii) The plan is funded through the use of a funding agency; and,

(iii) The right to a pension benefit is nonforfeitable and is communicated to the participants.

(4) The costs of nonqualified defined-benefit pension plans that do not meet all of the requirements in 9904.412–50(c)(3) shall be assigned to cost accounting periods using the pay-as-you-go cost method.

(5) Any portion of pension cost computed for a cost accounting period that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of ERISA shall not be assigned to the current period. Rather, such excess shall be treated as an assignable cost deficit, except that it shall be assigned to future cost accounting periods using the same amortization period as used for ERISA purposes.

(d) *Allocation of pension costs.* The amount of pension cost assigned to a cost accounting period allocated to intermediate and final cost objectives shall be limited according to the following criteria:

(1) Except for nonqualified defined-benefit plans, the costs of a pension plan assigned to a cost accounting period are allocable to the extent that they are funded.

(2) For nonqualified defined-benefit pension plans that meet the criteria set forth at 9904.412–50(c)(3), pension costs assigned to a cost accounting period are fully allocable if they are funded at a level at least equal to the percentage of the complement (i.e., 100%-tax rate % = percentage of assigned cost to be funded) of the highest published Federal corporate income tax rate in effect on the first day of the cost accounting period. If the contractor is not subject to Federal income tax, the assigned costs are allocable to the extent such costs are funded. Funding at other levels and benefit payments of such plans are subject to the following:

(i) Funding at less than the foregoing levels shall result in proportional reductions of the amount of assigned cost that can be allocated within the cost accounting period.

(ii) (A) Payments to retirees or beneficiaries shall contain an amount drawn from sources other than the funding agency of the pension plan that is, at least, proportionately equal to the

accumulated value of permitted unfunded accruals divided by an amount that is the market value of the assets of the pension plan excluding any accumulated value of prepayment credits.

(B) The amount of assigned cost of a cost accounting period that can be allocated shall be reduced to the extent that such payments are drawn in a higher ratio from the funding agency.

(iii) The permitted unfunded accruals shall be identified and accounted for year to year, adjusted for benefit payments directly paid by the contractor and for interest at the actual annual earnings rate on the funding agency balance.

(3) For nonqualified defined-benefit pension plans accounted for under the pay-as-you-go method, pension costs assigned to a cost accounting period are allocable in that period.

(4) Funding of pension cost shall be considered to have taken place within the cost accounting period if it is accomplished by the corporate tax filing date for such period including any permissible extensions thereto.

6. Subsection 9904.412–60 is revised to read as follows:

9904.412–60 Illustrations.

(a) *Components of pension cost.* (1) Contractor A has insured pension plans for each of two small groups of employees. One plan is exclusively funded through a group permanent life insurance contract and is exempt from the minimum funding requirements of ERISA. The other plan is funded through a deposit administration contract, which is a form of group deferred annuity contract that is not exempt from ERISA's minimum funding requirements. Both plans provide for defined benefits. Pursuant to 9904.412–50(a)(6), for purposes of this Standard the plan financed through a group permanent insurance contract shall be considered to be a defined-contribution pension plan; the net premium required to be paid for a cost accounting period (after deducting dividends and any credits) shall be the pension cost for that period. However, the deposit administration contract plan is subject to the provisions of this Standard that are applicable to defined-benefit plans.

(2) Contractor B provides pension benefits for certain hourly employees through a multiemployer defined-benefit plan. Under the collective bargaining agreement, the contractor pays six cents into the fund for each hour worked by the covered employees. Pursuant to 9904.412–50(a)(8), the plan shall be considered to be a defined-contribution pension plan. The payments required to be made for a cost accounting period shall constitute the assignable pension cost for that period.

(3) Contractor C provides pension benefits for certain employees through a defined-contribution pension plan. However, the contractor has a separate fund that is used to supplement pension benefits for all of the participants in the basic plan in order to provide a minimum monthly retirement income to each participant. Pursuant to 9904.412–50(a)(7), the two plans shall be considered as a single plan for purposes of this Standard. Because the effect of the supplemental plan is to provide defined-benefits for the plan's participants, the provisions of this Standard relative to defined-benefit pension plans shall be applicable to the combined plan.

(4) Contractor D provides supplemental benefits to key management employees through a nonqualified defined-benefit pension plan funded by a so-called ''Rabbi Trust.'' The trust agreement provides that Federal income taxes levied on the earnings of the Rabbi trust may be paid from the trust. The contractor's actuarial cost method recognizes the administrative expenses of the plan and trust, such as broker and attorney fees, by adding the prior year's expenses to the current year's normal cost. The income taxes paid by the trust on trust earnings shall be accorded the same treatment as any other administrative expense in accordance with 9904.412–50(a)(5).

(5) (i) Contractor E has been using the entry age normal actuarial cost method to compute pension costs. The contractor has three years remaining under a firm fixed price contract subject to this Standard. The contract was priced using the unfunded actuarial liability, normal cost, and net amortization installments developed using the entry age normal method. The contract was priced as follows:

ENTRY AGE NORMAL VALUES

Cost component	Year 1	Year 2	Year 3
Normal cost	$100,000	$105,000	$110,000
Amortization	50,000	50,000	50,000
Pension cost	150,000	155,000	160,000

(ii) The contractor, after notifying the cognizant Federal official, switches to the projected unit credit actuarial cost method. The unfunded actuarial liability and normal cost decreased when redetermined under the projected unit credit method. Pursuant to 9904.412–50(a)(1)(vii), the contractor determines that an annual installment credit of $20,000 will amortize the decrease in unfunded actuarial liability (UAL) over ten years. The following pension costs are determined under the projected unit credit method:

PROJECTED UNIT CREDIT VALUES

Cost component	Year 1	Year 2	Year 3
Normal cost	$80,000	$85,000	$90,000
Amortization:			
Prior method	50,000	50,000	50,000
UAL decrease	(20,000)	(20,000)	(20,000)
Pension cost	110,000	115,000	120,000

(iii) The change in cost method is a change in accounting method that decreased previously priced pension costs by $40,000 per year. In accordance with 9903.302, Contractor E shall adjust the cost of the firm fixed-price contract for the remaining three years by $120,000 ($40,000×3 years).

(6) Contractor F has a defined-benefit pension plan for its employees. Prior to being subject to this Standard the contractor's policy was to compute and fund as annual pension cost normal cost plus only interest on the unfunded actuarial liability. Pursuant to 9904.412–40(a)(1), the components of pension cost for a cost accounting period must now include not only the normal cost for the period and interest on the unfunded actuarial liability, but also an amortized portion of the unfunded actuarial liability. The amortization of the liability and the interest equivalent on the unamortized portion of the liability must be computed in equal annual installments.

(b) *Measurement of pension cost.* (1) Contractor G has a pension plan whose costs are assigned to cost accounting periods by use of an actuarial cost method that does not separately identify actuarial gains and losses or the effect on pension cost resulting from changed actuarial assumptions. Contractor G's method is not an immediate-gain cost method and does not comply with the provisions of 9904.412–50(b)(1).

(2) For several years Contractor H has had an unfunded nonqualified pension plan which provides for payments of $200 a month to employees after retirement. The contractor is currently making such payments to several retired employees and recognizes those payments as its pension cost. The contractor paid monthly annuity benefits totaling $24,000 during the current year. During the prior year, Contractor H made lump sum payments to irrevocably settle the benefit liability of several participants with small benefits. The annual installment to amortize these lump sum payments over fifteen years at the valuation interest rate assumption is $5,000. Since the plan does not meet the criteria set forth in 9904.412–50(c)(3)(ii), pension cost must be accounted for using the pay-as-you-go cost method. Pursuant to 9904.412–50(b)(3), the amount of assignable cost allocable to cost objectives of that period is $29,000, which is the sum of the amount of benefits actually paid in that period ($24,000) plus the second annual installment to amortize the prior year's lump sum settlements ($5,000).

(3) Contractor I has two qualified defined-benefit pension plans that provide for fixed dollar payments to hourly employees. Under the first plan, the contractor's actuary believes that the contractor will be required to increase the level of benefits by specified percentages over the next several years. In calculating pension costs, the contractor may not assume future benefits greater than that currently required by the plan. With regard to the second plan, a collective bargaining agreement negotiated with the employees' labor union provides that pension benefits will increase by specified percentages over the next several years. Because the improved benefits are required to be made, the contractor can consider such increased benefits in computing pension costs for the current cost accounting period in accordance with 9904.412–50(b)(5).

(4) In addition to the facts of 9904.412–60(b)(3), assume that Contractor I was required to contribute at a higher level for ERISA purposes because the plan was underfunded. To compute pension costs that are closer to the funding requirements of ERISA, Contractor I decides to ''fresh start'' the unfunded actuarial liability being amortized pursuant to 9904.412–50(a)(1); i.e., treat the entire amount as a newly established portion of unfunded actuarial liability, which is amortized over 10 years in accordance with 9904.412–50(a)(1)(ii). Because the contractor has changed the periods for amortizing the unfunded actuarial liability established pursuant to 9904.412–50(a)(3), the contractor has made a change in accounting practice subject to the provisions of Cost Accounting Standard 9903.302.

(c) *Assignment of pension cost.* (1) Contractor J maintains a qualified defined-benefit pension plan. The actuarial value of the assets of $18 million is subtracted from the actuarial accrued liability of $20 million to determine the total unfunded actuarial liability of $2 million. Pursuant to 9904.412–50(a)(1), Contractor J has identified and is amortizing twelve separate portions of unfunded actuarial liabilities. The sum of the unamortized balances for the twelve separately maintained portions of unfunded actuarial liability equals $1.8 million. In accordance with 9904.412–50(a)(2), the contractor has separately identified, and eliminated from the computation of pension cost, $200,000 attributable to a pension cost assigned to a prior period that was not funded. The sum of the twelve amortization bases maintained pursuant to 9904.412–50(a)(1) and the amount separately identified under 9904.412–50(a)(2) equals $2 million ($1,800,000+200,000). Because the sum of all identified portions of unfunded actuarial liability equals the total unfunded actuarial liability, the plan is in actuarial balance and Contractor J can assign pension cost to the current cost accounting period in accordance with 9904.412–40(c).

(2) Contractor K's pension cost computed for 1996, the current year, is $1.5 million. This computed cost is based on the components of pension cost described in 9904.412–40(a) and 9904.412–50(a) and is measured in accordance with 9904.412–40(b) and 9904.412–50(b). The assignable cost limitation, which is defined at 9904.412–30(a)(9), is $1.3 million. In accordance with the provisions of 9904.412–50(c)(2)(ii)(A), Contractor K's assignable pension cost for 1996 is limited to $1.3 million. In addition, all amounts that were previously being amortized pursuant to 9904.412–50(a)(1) and 9904.413–50(a) are considered fully amortized in accordance with 9904.412–50(c)(2)(ii)(B). The following year, 1997, Contractor K computes an unfunded actuarial liability of $4 million. Contractor K has not changed his actuarial assumptions nor amended the provisions of his pension plan. Contractor K has not had any pension costs disallowed or unfunded in prior periods. Contractor K must treat the entire $4 million of unfunded actuarial liability as an actuarial loss to be amortized over fifteen years beginning in 1997 in accordance with 9904.412–50(c)(2)(ii)(C).

(3) Assume the same facts shown in illustration 9904.412–60(c)(2), except that in 1995, the prior year, Contractor K's assignable pension cost was $800,000, but Contractor K only funded and allocated $600,000. Pursuant to 9904.412–50(a)(2), the $200,000 of unfunded assignable pension cost was separately identified and eliminated from other portions of unfunded actuarial liability. This portion of unfunded actuarial liability was adjusted for 8% interest, which is the interest assumption for 1995 and 1996, and was brought forward to 1996 in accordance with 9904.412–50(a)(2). Therefore, $216,000 ($200,000×1.08) is excluded from the amount considered fully amortized in 1996. The next year, 1997, Contractor K must eliminate $233,280 ($216,000×1.08) from the $4 million so that only $3,766,720 is treated as an actuarial loss in accordance with 9904.412–50(c)(2)(ii)(C).

(4) Assume, as in 9904.412–60(c)(2), the 1996 pension cost computed for Contractor K's qualified defined-benefit pension plan is $1.5 million and the assignable cost limitation is $1.7

million. However, because of the ERISA limitation on tax-deductible contributions, Contractor K cannot fund more than $1 million without incurring an excise tax, which 9904.412–50(a)(5) does not permit to be a component of pension cost. In accordance with the provisions of 9904.412–50(c)(2)(iii), Contractor K's assignable pension cost for the period is limited to $1 million. The $500,000 ($1.5 million − $1 million) of pension cost not funded is reassigned to the next ten cost accounting periods beginning in 1997 as an assignable cost deficit in accordance with 9904.412–50(a)(1)(vi).

(5) Assume the same facts for Contractor K in 9904.412–60(c)(4), except that the accumulated value of prepayment credits equals $700,000. Therefore, in addition to the $1 million, Contractor K can apply $500,000 of the accumulated value of prepayment credits towards the pension cost computed for the period. In accordance with the provisions of 9904.412–50(c)(2)(iii), Contractor K's assignable pension cost for the period is the full $1.5 million ($1 million+$500,000) computed for the period. The $200,000 of remaining accumulated value of prepayment credits ($700,000 − $500,000) is adjusted for interest at the valuation rate and carried forward until needed in future accounting periods in accordance with 9904.412–50(a)(4).

(6) Assume the same facts for Contractor K in 9904.412–60(c)(4), except that the 1996 assignable cost limitation is $1.3 million. Pension cost of $1.5 million is computed for the cost accounting period, but the assignable cost is limited to $1.3 million in accordance with 9904.412–50(c)(2)(ii)(A). Pursuant to 9904.412–50(c)(2)(ii)(B), all existing amortization bases maintained in accordance with subparagraph 9904.412–50(a)(1) are considered fully amortized. The assignable cost of $1.3 million is then compared to the maximum tax-deductible amount of $1 million. Pursuant to 9904.412–50(c)(2)(iii), Contractor K's assignable pension cost for the period is limited to $1 million. The $300,000 ($1.3 million − $1 million) excess of the assignable cost limitation over the tax-deductible maximum is assigned to future periods as an assignable cost deficit.

(7) Contractor L is currently amortizing a large decrease in unfunded actuarial liability over a period of ten years. A similarly large increase in unfunded actuarial liability is being amortized over 30 years. The absolute value of the resultant net amortization credit is greater than the normal cost so that the pension cost computed for the period is a negative $200,000. Contractor L first applies the provisions of 9904.412–50(c)(2)(i) and determines the assignable pension cost is $0. The negative pension cost of $200,000 is assigned to the next ten cost accounting periods as an assignable cost credit in accordance with 9904.412–50(a)(1)(vi). However, when Contractor L applies the provisions of 9904.412–50(c)(2)(ii), the assignable cost limitation is also $0. Because the assignable cost of $0 determined under 9904.412–50(c)(2)(i) is equal to the assignable cost limitation, the assignable cost credit of $200,000 is considered fully amortized along with all other portions of unfunded actuarial liability being amortized pursuant to 9904.412–50(a)(1). Conversely, if the assignable cost limitation had been greater than zero, the assignable cost credit of $200,000 would have carried-forward and amortized in future periods.

(8) Contractor M has a qualified defined-benefit pension plan which is funded through a funding agency. It computes $1 million of pension cost for a cost accounting period. However, pursuant to a waiver granted under the provisions of ERISA, Contractor M is required to fund only $800,000. Under the provisions of 9904.412–50(c)(5), the remaining $200,000 shall be accounted for as an assignable cost deficit and assigned to the next five cost accounting periods in accordance with the terms of the waiver.

(9) Contractor N has a company-wide defined-benefit pension plan, wherein benefits are calculated on one consistently applied formula. That part of the formula defining benefits within ERISA limits is administered and reported as a qualified plan and funded through a funding agency. The remainder of the benefits are considered to be a supplemental or excess plan which, while it meets the criteria at 9904.412–50(c)(3)(iii) as to nonforfeitability and communication, is not funded. The costs of the qualified portion of the plan shall be comprised of those elements of costs delineated at 9904.412–40(a)(1), while the supplemental or excess portion of the plan shall be accounted for and assigned to cost accounting periods under the pay-as-you-go cost method provided at 9904.412–40(a)(3) and 9904.412–50(c)(4).

(10) Assuming the same facts as in 9904.412–60(c)(9), except that Contractor N funds its supplemental or excess plan using a so-called ''Rabbi Trust'' vehicle. Because the nonqualified plan is funded, the plan meets the criteria set forth at 9904.412–50(c)(3)(ii). Contractor N may account for the supplemental or excess plan in the same manner as its qualified plan, if it elects to do so pursuant to 9904.412–50(c)(3)(i).

(11) Assuming the same facts as in 9904.412–60(c)(10), except that under the nonqualified portion of the pension plan a former employee will forfeit his pension benefit if the employee goes to work for a competitor within three years of terminating employment. Since the right to a benefit cannot be affected by the unilateral action of the contractor, the right to a benefit is considered to be nonforfeitable for purposes of 9904.412–30(a)(17). The nonqualified plan still meets the criteria set forth at 9904.412–50(c)(3)(iii), and Contractor N may account for the supplemental or excess plan in the same manner as its qualified plan, if it elects to do so.

(12) Assume the same facts as in 9904.412–60(c)(11), except that Contractor N, while maintaining a ''Rabbi Trust'' funding vehicle elects to have the plan accounted for under the pay-as-you-go cost method so as to have greater latitude in annual funding decisions. It may so elect pursuant to 9904.412–50(c)(3)(i).

(13) The assignable pension cost for Contractor O's qualified defined-benefit plan is $600,000. For the same period Contractor O contributes $700,000, which is the minimum funding requirement under ERISA. In addition, there exists $75,000 of unfunded actuarial liability that has been separately identified pursuant to 9904.412–50(a)(2). Contractor O may use $75,000 of the contribution in excess of the assignable pension cost to fund this separately identified unfunded actuarial liability, if he so chooses. The effect of the funding is to eliminate the unassignable $75,000 portion of unfunded actuarial liability that had been separately identified and thereby eliminated from the computation of pension costs. Contractor O shall then account for the remaining $25,000 of excess contribution as a prepayment credit in accordance with 9904.412–50(a)(4).

(d) *Allocation of pension cost.* (1) Assume the same set of facts for Contractor M in 9904.412–60(c)(8) except there was no ERISA waiver; i.e., only $800,000 was funded against $1 million of assigned pension cost for the period. Under the provisions of 9904.412–50(d)(1), only $800,000 may be allocated to Contractor M's intermediate and final cost objectives. The remaining $200,000 of assigned cost, which has not been funded, shall be separately identified and maintained in accordance with 9904.412–50(a)(2) so

that it will not be reassigned to any future accounting periods.

(2) Contractor P has a nonqualified defined-benefit pension plan which covers benefits in excess of the ERISA limits. Contractor P has elected to account for this plan in the same manner as its qualified plan and, therefore, has established a ''Rabbi Trust'' as the funding agency. For the current cost accounting period, the contractor computes and assigns $100,000 as pension cost. The contractor funds $65,000, which is equivalent to a funding level equal to the complement of the highest published Federal corporate income tax rate of 35%. Under the provisions of 9904.412–50(d)(2), the entire $100,000 is allocable to cost objectives of the period.

(3) Assume the set of facts in 9904.412–60(d)(2), except that Contractor P's contribution to the Trust is $59,800. In that event, the provisions of 9904.412–50(d)(2)(i) would limit the amount of assigned cost allocable within the cost accounting period to the percentage of cost funded (i.e., $59,800/$65,000 = 92%). This results in allocable cost of $92,000 (92% of $100,000) for the cost accounting period. Under the provisions of 9904.412–40(c) and 9904.412–50(d)(2)(i), respectively, the unallocable $8,000 may not be assigned to any future cost accounting period. In addition, in accordance with 9904.412–50(a)(2), the $8,000 must be separately identified and no amount of interest on such separately identified $8,000 shall be a component of pension cost in any future cost accounting period.

(4) Again, assume the set of facts in 9904.412–60(d)(2) except that, Contractor P's contribution to the Trust is $105,000 based on a valuation interest assumption of 8%. Under the provisions of 9904.412–50(d)(2) the entire $100,000 is allocable to cost objectives of the period. In accordance with the provisions of 9904.412–50(c)(1) Contractor P has funded $5,000 ($105,000—$100,000) in excess of the assigned pension cost for the period. The $5,000 shall be accounted for as a prepayment credit. Pursuant to 9904.412–50(a)(4), the $5,000 shall be adjusted for interest at the 8% valuation rate of interest and excluded from the actuarial value of assets used to compute the next year's pension cost computations. The accumulated value of prepayment credits of $5,400 (5,000 × 1.08) may be used to fund the next year's assigned pension cost, if needed.

(5) Contractor Q maintains a nonqualified defined-benefit pension plan which satisfies the requirements of 9904.412–50(c)(3). As of the valuation date, the reported funding agency balance is $3.4 million excluding any accumulated value of prepayment credits. When the adjusted funding agency balance is added to the accumulated value of permitted unfunded accruals of $1.6 million, the market value of assets equals $5.0 million ($3.4 million + $1.6 million) in accordance with 9904.412–30(a)(13). During the plan year, retirees receive monthly benefits totalling $350,000. Pursuant to 9904.412–50(d)(2)(ii)(A), at least 32% ($1.6 million divided by $5 million) of these benefit payments shall be made from sources other than the funding agency. Contractor Q, therefore, draws $238,000 from the funding agency assets and pays the remaining $112,000 using general corporate funds.

(6) Assume the same facts as 9904.412–60(d)(5), except that by the time Contractor Q receives its actuarial valuation it has paid retirement benefits equalling $288,000 from funding agency assets. The contractor has made deposits to the funding agency equal to the tax complement of the $500,000 assignable pension cost for the period. Pursuant to 9904.412–50(d)(2)(ii)(B), the assignable $500,000 shall be reduced by the $50,000 ($288,000—$238,000) of benefits paid from the funding agency in excess of the permitted $238,000, unless the contractor makes a deposit to replace the $50,000 inadvertently drawn from the funding agency. If this corrective action is not taken within the time permitted by 9904.412–50(d)(4), Contractor Q shall allocate only $450,000 ($500,000–$50,000) to final cost objectives. Furthermore, the $50,000, which was thereby attributed to benefit payments instead of funding, must be separately identified and maintained in accordance with 9904.412–50(a)(2).

(7) Contractor R has a nonqualified defined-benefit plan that meets the criteria of 9904.412–50(c)(3). For 1996, the funding agency balance was $1,250,000 and the accumulated value of permitted unfunded accruals was $600,000. During 1996 the earnings and appreciation on the assets of the funding agency equalled $125,000, benefit payments to participants totalled $300,000, and administrative expenses were $60,000. All transactions occurred on the first day of the period. In accordance with 9904.412–50(d)(2)(ii)(A), $200,000 of benefits were paid from the funding agency and $100,000 were paid directly from corporate assets. Pension cost of $400,000 was assigned to 1996. Based on the current corporate tax rate of 35%, $260,000 ($400,000 × (1–35%)) was deposited into the funding agency at the beginning of 1996. For 1997 the funding agency balance is $1,375,000 ($1,250,000 + $260,000 + $125,000—$200,000—$60,000). The actual annual earnings rate of the funding agency was 10% for 1996. Pursuant to 9904.412–50(d)(2)(iii), the accumulated value of permitted unfunded accruals is updated from 1996 to 1997 by: (i) adding $140,000 (35% × $400,000), which is the unfunded portion of the assigned cost; (ii) subtracting the $100,000 of benefits paid directly by the contractor; and (iii) increasing the value of the assets by $64,000 for imputed earnings at 10% (10% × ($600,000 + $140,000—$100,000)). The accumulated value of permitted unfunded accruals for 1997 is $704,000 ($600,000 + $140,000—$100,000 + $64,000).

7. Subsection 9904.412–63 is revised to read as follows:

9904.412–63 Effective date.

(a) This Standard is effective as of March 30, 1995.

(b) This Standard shall be followed by each contractor on or after the start of its next cost accounting period beginning after the receipt of a contract or subcontract to which this Standard is applicable.

(c) Contractors with prior CAS-covered contracts with full coverage shall continue to follow the Standard in 9904.412 in effect prior to March 30, 1995, until this Standard, effective March 30, 1995, becomes applicable following receipt of a contract or subcontract to which this Standard applies.

8. A new subsection 9904.412–64 is added to read as follows:

9904.412–64 Transition method.

To be acceptable, any method of transition from compliance with Standard 9904.412 in effect prior to March 30, 1995, to compliance with the Standard effective March 30, 1995, must follow the equitable principle that costs, which have been previously provided for, shall not be redundantly provided for under revised methods. Conversely, costs that have not previously been provided for must be provided for under the revised method. This transition subsection is not intended to qualify for purposes of assignment or allocation, pension costs which have previously been disallowed for reasons other than ERISA tax-deductibility limitations. The sum of all portions of unfunded actuarial liability identified pursuant to Standard 9904.412, effective March 30, 1995, including such portions of unfunded actuarial liability determined for transition purposes, is subject to the

provisions of 9904.412–40(c) on requirements for assignment. The method, or methods, employed to achieve an equitable transition shall be consistent with the provisions of Standard 9904.412, effective March 30, 1995, and shall be approved by the contracting officer. Examples and illustrations of such transition methods include, but are not limited to, the following:

(a) *Reassignment of certain prior unfunded accruals.*

(1) Any portion of pension cost for a qualified defined-benefit pension plan, assigned to a cost accounting period prior to [insert date of publication in the **Federal Register**], which was not funded because such cost exceeded the maximum tax-deductible amount, determined in accordance with ERISA, shall be assigned to subsequent accounting periods, including an adjustment for interest, as an assignable cost deficit. However, such costs shall be assigned to periods on or after March 30, 1995, only to the extent that such costs have not previously been allocated as cost or price to contracts subject to this Standard.

(2) Alternatively, the transition method described in paragraph (d) of this subsection may be applied separately to costs subject to paragraph (a)(1) of this subsection.

(b) *Reassignment of certain prior unallocated credits.*

(1) Any portion of pension cost for a defined-benefit pension plan, assigned to a cost accounting period prior to March 30, 1995, which was not allocated as a cost or price credit to contracts subject to this Standard because such cost was less than zero, shall be assigned to subsequent accounting periods, including an adjustment for interest, as an assignable cost credit.

(2) Alternatively, the transition method described in paragraph (d) of this subsection may be applied separately to costs subject to paragraph (b)(1) of this subsection.

(c) *Accounting for certain prior allocated unfunded accruals.* Any portion of unfunded pension cost for a nonqualified defined-benefit pension plan, assigned to a cost accounting period prior to March 30, 1995, that was allocated as cost or price to contracts subject to this Standard, shall be recognized in subsequent accounting periods, including adjustments for imputed interest and benefit payments, as an accumulated value of permitted unfunded accruals.

(d) *''Fresh start'' alternative transition method.* The transition methods of paragraphs (a)(1), (b)(1), and (c) of this subsection may be implemented using the so-called ''fresh start'' method whereby a portion of the unfunded actuarial liability of a defined-benefit pension plan, which occurs in the first cost accounting period after March 30, 1995, shall be treated in the same manner as an actuarial gain or loss. Such portion of unfunded actuarial liability shall exclude any portion of unfunded actuarial liability that must continue to be separately identified and maintained in accordance with 9904.412–50(a)(2), including interest adjustments. If the contracting officer already has approved a different amortization period for the fresh start amortization, then such amortization period shall continue.

(e) *Change to pay-as-you-go method.* A change in accounting method subject to 9903.302 will have occurred whenever costs of a nonqualified defined-benefit pension plan have been accounted for on an accrual basis prior to March 30, 1995, and the contractor must change to the pay-as-you-go cost method because the plan does not meet the requirement of 9904.412–50(c)(3), either by election or otherwise. In such case, any portion of unfunded pension cost, assigned to a cost accounting period prior to March 30, 1995 that was allocated as cost or price to contracts subject to this Standard, shall be assigned to future accounting periods, including adjustments for imputed interest and benefit payments, as an accumulated value of permitted unfunded accruals. Costs computed under the pay-as-you-go cost method shall be charged against such accumulated value of permitted unfunded accruals before such costs may be allocated to contracts.

(f) *Actuarial assumptions.* The actuarial assumptions used to calculate assignable cost deficits, assignable cost credits, or accumulated values of permitted unfunded accruals for transition purposes shall be consistent with the long term assumptions used for valuation purposes for such prior periods unless the contracting officer has previously approved the use of other reasonable assumptions.

(g) *Transition illustrations.* Unless otherwise noted, paragraphs (g) (1) through (9) of this subsection address pension costs and transition amounts determined for the first cost accounting period beginning on or after the date this revised Standard becomes applicable to a contractor. For purposes of these illustrations an interest assumption of 7% is presumed to be in effect for all periods.

(1) For the cost accounting period immediately preceding the date this revised Standard was applicable to a contractor, Contractor S computed and assigned pension cost of $1 million for a qualified defined-benefit pension plan. The contractor made a contribution equal to the maximum tax-deductible amount of $800,000 for the period leaving $200,000 of assigned cost unfunded for the period. Except for this $200,000, no other assigned pension costs have ever been unfunded or otherwise disallowed. Using the transition method of paragraph (a)(1) of this subsection, the contractor shall establish an assignable cost deficit equal to $214,000 ($200,000 × 1.07), which is the prior unfunded assigned cost plus interest. If this assignable cost deficit amount, plus all other portions of unfunded actuarial liability identified in accordance with 9904.412–50(a) (1) and (2), equal the total unfunded actuarial liability, pension cost may be assigned to the current period.

(2) Assume that Contractor S in 9904.412–64(g)(1) priced the entire $1 million into firm fixed-price contracts. In this case, no assignable cost deficit amount may be established. In addition, the $214,000 ($200,000 × 1.07) shall be separately identified and maintained in accordance with 9904.412–50(a)(2). If all portions of unfunded actuarial liability identified in accordance with 9904.412–50(a) (1) and (2), equal the total unfunded actuarial liability, pension cost may be assigned to the period.

(3) Assume the same facts as in 9904.412–64(g)(1), except Contractor S only funded and allocated $500,000. The $300,000 of assigned cost that was not funded, but could have been funded without exceeding the tax-deductible maximum, may not be recognized as an assignable cost deficit. Instead, the $300,000 must be separately identified and maintained in accordance with 9904.412–50(a)(2). If the $321,000 ($300,000 × 1.07) plus the $214,000 already identified as an assignable cost deficit plus all other portions of unfunded actuarial liability identified in accordance with 9904.412–50(a) (1) and (2), equal the total unfunded actuarial liability, pension cost may be assigned to the period.

(4) Assume that, for Contractor S in 9904.412–64(g)(3), the only portion of unfunded actuarial liability that must be identified under 9904.412–50(a)(2) is the $321,000. If Contractor S chooses to use the ''fresh start'' transition method, the $321,000 of unfunded assigned cost must be subtracted from the total unfunded actuarial liability in accordance with 9904.412–63(d). The net amount of unfunded actuarial liability shall then be amortized over a

period of fifteen years as an actuarial loss in accordance with 9904.412–50(a)(1)(v) and Cost Accounting Standard 9904.413.

(5) For the cost accounting period immediately preceding the date this revised Standard becomes applicable to a contractor, Contractor T computed and assigned pension cost of negative $400,000 for a qualified defined-benefit plan. Because the contractor could not withdraw assets from the trust fund, the contracting officer agreed that instead of allocating a current period credit to contracts, the negative costs would be carried forward, with interest, and offset against future pension costs allocated to the contract. Using the transition method of paragraph (b)(1) of this subsection, the contractor shall establish an assignable cost credit equal to $428,000 ($400,000 × 1.07). If this assignable cost credit amount, plus all other portions of unfunded actuarial liability identified in accordance with 9904.412–50(a) (1) and (2), equals the total unfunded actuarial liability, pension cost may be assigned to the period.

(6) Assume that in 9904.412–64(g)(5), following guidance issued by the contracting agency the contracting officer had deemed the cost for the prior period to be $0. In order to satisfy the requirements of 9904.412–40(c) and assign pension cost to the current period, Contractor S must account for the prior period negative accruals that have not been specifically identified. Following the transition method of paragraph (b)(1) of this subsection, the contractor shall identify $428,000 as an assignable cost credit.

(7) Assume the facts of 9904.412–64(g)(5), except Contractor S uses the ''fresh start'' transition method. In addition, for the current period the plan is overfunded since the actuarial value of the assets is greater than the actuarial accrued liability. In this case, an actuarial gain equal to the negative unfunded actuarial liability; i.e., actuarial surplus, is recognized since there are no portions of unfunded actuarial liability that must be identified under 9904.412–50(a)(2).

(8) Since March 28, 1989 Contractor U has computed, assigned, and allocated pension costs for a nonqualified defined-benefit plan on an accrual basis. The value of these past accruals, increased for imputed interest at 7% and decreased for benefits paid by the contractor, is equal to $2 million as of the beginning of the current period. Contractor U elects to establish a ''Rabbi trust'' and the plan meets the other criteria at 9904.412–50(c)(3). Using the transition method of paragraph (c) of this subsection, Contractor U shall recognize the $2 million as the accumulated value of permitted unfunded accruals, which will then be included in the market value and actuarial value of the assets. Because the accumulated value of permitted unfunded accruals is exactly equal to the current period market value of the assets, 100% of benefits for the current period must be paid from sources other than the funding agency in accordance with 9904.412–50(d)(2)(ii).

(9) Assume that Contractor U in 9904.412–64(g)(8) establishes a funding agency, but elects to use the pay-as-you-go method for current and future pension costs. Furthermore, plan participants receive $500,000 in benefits on the last day of the current period. Using the transition method of paragraph (e) of this subsection to ensure prior costs are not redundantly provided for, the contractor shall establish assets; i.e., an accumulated value of permitted unfunded accruals, of $2 million. Since these assets are sufficient to provide for the current benefit payments, no pension costs can be allocated in this period. Furthermore, previously priced contracts subject to this Standard shall be adjusted in accordance with 9903.302. The accumulated value of permitted unfunded accruals shall be carried forward to the next period by adding $140,000 (7% x $2 million) of imputed interest, and subtracting the $500,000 of benefit payments made by the contractor. The accumulated value of permitted unfunded accruals for the next period equals $1,640,000 ($2 million + $140,000—$500,000).

9904.413 [Amended]

9. Subsection 9904.413–30 is amended by revising paragraph (a) to read as follows:

9904.413–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this chapter 99 shall have the meaning ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Accrued benefit cost method* means an actuarial cost method under which units of benefits are assigned to each cost accounting period and are valued as they accrue; that is, based on the services performed by each employee in the period involved. The measure of normal cost under this method for each cost accounting period is the present value of the units of benefit deemed to be credited to employees for service in that period. The measure of the actuarial accrued liability at a plan's inception date is the present value of the units of benefit credited to employees for service prior to that date. (This method is also known as the Unit Credit cost method without salary projection.)

(2) *Actuarial accrued liability* means pension cost attributable, under the actuarial cost method in use, to years prior to the current period considered by a particular actuarial valuation. As of such date, the actuarial accrued liability represents the excess of the present value of future benefits and administrative expenses over the present value of future normal costs for all plan participants and beneficiaries. The excess of the actuarial accrued liability over the actuarial value of the assets of a pension plan is the Unfunded Actuarial Liability. The excess of the actuarial value of the assets of a pension plan over the actuarial accrued liability is an actuarial surplus and is treated as a negative unfunded actuarial liability.

(3) *Actuarial assumption* means an estimate of future conditions affecting pension cost; for example, mortality rate, employee turnover, compensation levels, earnings on pension plan assets, changes in values of pension plan assets.

(4) *Actuarial cost method* means a technique which uses actuarial assumptions to measure the present value of future pension benefits and pension plan administrative expenses, and which assigns the cost of such benefits and expenses to cost accounting periods. The actuarial cost method includes the asset valuation method used to determine the actuarial value of the assets of a pension plan.

(5) *Actuarial gain and loss* means the effect on pension cost resulting from differences between actuarial assumptions and actual experience.

(6) *Actuarial valuation* means the determination, as of a specified date, of the normal cost, actuarial accrued liability, actuarial value of the assets of a pension plan, and other relevant values for the pension plan.

(7) *Curtailment of benefits* means an event; e.g., a plan amendment, in which the pension plan is frozen and no further material benefits accrue. Future service may be the basis for vesting of nonvested benefits existing at the time of the curtailment. The plan may hold assets, pay benefits already accrued, and receive additional contributions for unfunded benefits. Employees may or may not continue working for the contractor.

(8) *Funding agency* means an organization or individual which provides facilities to receive and

accumulate assets to be used either for the payment of benefits under a pension plan, or for the purchase of such benefits, provided such accumulated assets form a part of a pension plan established for the exclusive benefit of the plan participants and their beneficiaries. The fair market value of the assets held by the funding agency as of a specified date is the Funding Agency Balance as of that date.

(9) *Immediate-gain actuarial cost method* means any of the several cost methods under which actuarial gains and losses are included as part of the unfunded actuarial liability of the pension plan, rather than as part of the normal cost of the plan.

(10) *Market value of the assets* means the sum of the funding agency balance plus the accumulated value of any permitted unfunded accruals belonging to a pension plan. The Actuarial Value of the Assets means the value of cash, investments, permitted unfunded accruals, and other property belonging to a pension plan, as used by the actuary for the purpose of an actuarial valuation.

(11) *Normal cost* means the annual cost attributable, under the actuarial cost method in use, to current and future years as of a particular valuation date, excluding any payment in respect of an unfunded actuarial liability.

(12) *Pension plan* means a deferred compensation plan established and maintained by one or more employers to provide systematically for the payment of benefits to plan participants after their retirement, provided that the benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees may be an integral part of a pension plan.

(13) *Pension plan participant* means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit from a pension plan which covers employees of such employer or members of such organization who have satisfied the plan's participation requirements, or whose beneficiaries are receiving or may be eligible to receive any such benefit. A participant whose employment status with the employer has not been terminated is an active participant of the employer's pension plan.

(14) *Pension plan termination* means an event; i.e., plan amendment, in which either the pension plan ceases to exist and all benefits are settled by purchase of annuities or other means, or the trusteeship of the plan is assumed by the Pension Benefit Guarantee Corporation or other conservator. The plan may or may not be replaced by another plan.

(15) *Permitted unfunded accruals* means the amount of pension cost for nonqualified defined-benefit pension plans that is not required to be funded under 9904.412–50(d)(2). The Accumulated Value of Permitted Unfunded Accruals means the value, as of the measurement date, of the permitted unfunded accruals adjusted for imputed earnings and for benefits paid by the contractor.

(16) *Prepayment credit* means the amount funded in excess of the pension cost assigned to a cost accounting period that is carried forward for future recognition. The Accumulated Value of Prepayment Credits means the value, as of the measurement date, of the prepayment credits adjusted for interest at the valuation rate and decreased for amounts used to fund pension costs or liabilities, whether assignable or not.

(17) *Projected benefit cost method* means either (i) any of the several actuarial cost methods which distribute the estimated total cost of all of the employees' prospective benefits over a period of years, usually their working careers, or (ii) a modification of the accrued benefit cost method that considers projected compensation levels.

(18) *Qualified pension plan* means a pension plan comprising a definite written program communicated to and for the exclusive benefit of employees which meets the criteria deemed essential by the Internal Revenue Service as set forth in the Internal Revenue Code for preferential tax treatment regarding contributions, investments, and distributions. Any other plan is a nonqualified pension plan.

(19) *Segment* means one of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service. The term includes Government-owned contractor-operated (GOCO) facilities, and joint ventures and subsidiaries (domestic and foreign) in which the organization has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the organization has less than a majority ownership, but over which it exercises control.

(20) *Segment closing* means that a segment has (i) been sold or ownership has been otherwise transferred, (ii) discontinued operations, or (iii) discontinued doing or actively seeking Government business under contracts subject to this Standard.

(21) *Termination of employment gain or loss* means an actuarial gain or loss resulting from the difference between the assumed and actual rates at which plan participants separate from employment for reasons other than retirement, disability, or death.

(b) * * *

10. Subsection 9904.413–40 is amended by revising paragraphs (b) and (c) to read as follows:

9904.413–40 Fundamental requirement.

(a) * * *

(b) *Valuation of the assets of a pension plan.* The actuarial value of the assets of a pension plan shall be determined under an asset valuation method which takes into account unrealized appreciation and depreciation of the market value of the assets of the pension plan, including the accumulated value of permitted unfunded accruals, and shall be used in measuring the components of pension costs.

(c) *Allocation of pension cost to segments.* Contractors shall allocate pension costs to each segment having participants in a pension plan. A separate calculation of pension costs for a segment is required when the conditions set forth in 9904.413–50(c)(2) or (3) are present. When these conditions are not present, allocations may be made by calculating a composite pension cost for two or more segments and allocating this cost to these segments by means of an allocation base. When pension costs are separately computed for a segment or segments, the provisions of Cost Accounting Standard 9904.412 regarding the assignable cost limitation shall be based on the assets and liabilities for the segment or segments for purposes of such computations. In addition, the amount of pension cost assignable to a segment or segments shall not exceed the maximum tax-deductible amount computed for the plan as a whole and apportioned among the segment(s).

11. Subsection 9904.413–50 is revised to read as follows:

9904.413–50 Techniques for application.

(a) *Assignment of actuarial gains and losses.* (1) In accordance with the provisions of Cost Accounting Standard 9904.412, actuarial gains and losses shall be identified separately from other unfunded actuarial liabilities.

(2) Actuarial gains and losses determined under a pension plan whose

costs are measured by an immediate-gain actuarial cost method shall be amortized over a 15 year period in equal annual installments, beginning with the date as of which the actuarial valuation is made. The installment for a cost accounting period shall consist of an element for amortization of the gain or loss plus an element for interest on the unamortized balance at the beginning of the period. If the actuarial gain or loss determined for a cost accounting period is not material, the entire gain or loss may be included as a component of the current or ensuing year's pension cost.

(3) Pension plan terminations and curtailments of benefits shall be subject to adjustment in accordance with 9904.413–50(c)(12).

(b) *Valuation of the assets of a pension plan.* (1) The actuarial value of the assets of a pension plan shall be used:

(i) In measuring actuarial gains and losses, and

(ii) For purposes of measuring other components of pension cost.

(2) The actuarial value of the assets of a pension plan may be determined by the use of any recognized asset valuation method which provides equivalent recognition of appreciation and depreciation of the market value of the assets of the pension plan. However, the actuarial value of the assets produced by the method used shall fall within a corridor from 80 to 120 percent of the market value of the assets, determined as of the valuation date. If the method produces a value that falls outside the corridor, the actuarial value of the assets shall be adjusted to equal the nearest boundary of the corridor.

(3) The method selected for valuing pension plan assets shall be consistently applied from year to year within each plan.

(4) The provisions of paragraphs (b)(1) through (3) of this subsection are not applicable to plans that are treated as defined-contribution plans in accordance with 9904.412–50(a)(6).

(5) The market and actuarial values of the assets of a pension plan shall not be adjusted for any fee, reserve charge, or other investment charge for withdrawals from or termination of an investment contract, trust agreement, or other funding arrangement, unless such fee is determined in an arm's length transaction, and actually incurred and paid.

(c) *Allocation of pension cost to segments.* (1) For contractors who compute a composite pension cost covering plan participants in two or more segments, the base to be used for allocating such costs shall be representative of the factors on which the pension benefits are based. For example, a base consisting of salaries and wages shall be used for pension costs that are calculated as a percentage of salaries and wages; a base consisting of the number of participants shall be used for pension costs that are calculated as an amount per participant. If pension costs are separately calculated for one or more segments, the contractor shall make a distribution among the segments for the maximum tax-deductible amount and the contribution to the funding agency as follows:

(i) When apportioning the maximum tax-deductible amount, which is determined for a qualified defined-benefit pension plan as a whole pursuant to the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, as amended, to segments, the contractor shall use a base that considers the otherwise assignable pension costs or the funding levels of the individual segments.

(ii) When apportioning amounts deposited to a funding agency to segments, contractors shall use a base that is representative of the assignable pension costs, determined in accordance with 9904.412–50(c) for the individual segments. However, for qualified defined-benefit pension plans, the contractor may first apportion amounts funded to the segment or segments subject to this Standard.

(2) Separate pension cost for a segment shall be calculated whenever any of the following conditions exist for that segment, provided that such condition(s) materially affect the amount of pension cost allocated to the segment:

(i) There is a material termination of employment gain or loss attributable to the segment,

(ii) The level of benefits, eligibility for benefits, or age distribution is materially different for the segment than for the average of all segments, or

(iii) The appropriate actuarial assumptions are, in the aggregate, materially different for the segment than for the average of all segments. Calculations of termination of employment gains and losses shall give consideration to factors such as unexpected early retirements, benefits becoming fully vested, and reinstatements or transfers without loss of benefits. An amount may be estimated for future reemployments.

(3) Pension cost shall also be separately calculated for a segment under circumstances where—

(i) The pension plan for that segment becomes merged with that of another segment, or the pension plan is divided into two or more pension plans, and in either case,

(ii) The ratios of market value of the assets to actuarial accrued liabilities for each of the merged or separated plans are materially different from one another after applying the benefits in effect after the pension plan merger or pension plan division.

(4) For a segment whose pension costs are required to be calculated separately pursuant to paragraphs (c) (2) or (3) of this subsection, such calculations shall be prospective only; pension costs need not be redetermined for prior years.

(5) For a segment whose pension costs are either required to be calculated separately pursuant to paragraph (c)(2) or (c)(3) of this subsection or calculated separately at the election of the contractor, there shall be an initial allocation of a share in the undivided market value of the assets of the pension plan to that segment, as follows:

(i) If the necessary data are readily determinable, the funding agency balance to be allocated to the segment shall be the amount contributed by, or on behalf of, the segment, increased by income received on such assets, and decreased by benefits and expenses paid from such assets. Likewise, the accumulated value of permitted unfunded accruals to be allocated to the segment shall be the amount of permitted unfunded accruals assigned to the segment, increased by interest imputed to such assets, and decreased by benefits paid from sources other than the funding agency; or

(ii) If the data specified in paragraph (c)(5)(i) of this subsection are not readily determinable for certain prior periods, the market value of the assets of the pension plan shall be allocated to the segment as of the earliest date such data are available. Such allocation shall be based on the ratio of the actuarial accrued liability of the segment to the plan as a whole, determined in a manner consistent with the immediate gain actuarial cost method or methods used to compute pension cost. Such assets shall be brought forward as described in paragraph (c)(7) of this subsection.

(iii) The actuarial value of the assets of the pension plan shall be allocated to the segment in the same proportion as the market value of the assets.

(6) If, prior to the time a contractor is required to use this Standard, it has been calculating pension cost separately for individual segments, the amount of assets previously allocated to those segments need not be changed.

(7) After the initial allocation of assets, the contractor shall maintain a record of the portion of subsequent

contributions, permitted unfunded accruals, income, benefit payments, and expenses attributable to the segment and paid from the assets of the pension plan: Income and expenses shall include a portion of any investment gains and losses attributable to the assets of the pension plan. Income and expenses of the pension plan assets shall be allocated to the segment in the same proportion that the average value of assets allocated to the segment bears to the average value of total pension plan assets for the period for which income and expenses are being allocated.

(8) If plan participants transfer among segments, contractors need not transfer assets or actuarial accrued liabilities unless a transfer is sufficiently large to distort the segment's ratio of pension plan assets to actuarial accrued liabilities determined using the accrued benefit cost method. If assets and liabilities are transferred, the amount of assets transferred shall be equal to the actuarial accrued liabilities, determined using the accrued benefit cost method, transferred.

(9) Contractors who separately calculate the pension cost of one or more segments may calculate such cost either for all pension plan participants assignable to the segment(s) or for only the active participants of the segment(s). If costs are calculated only for active participants, a separate segment shall be created for all of the inactive participants of the pension plan and the cost thereof shall be calculated. When a contractor makes such an election, assets shall be allocated to the segment for inactive participants in accordance with paragraphs (c) (5), (6), and (7) of this subsection. When an employee of a segment becomes inactive, assets shall be transferred from that segment to the segment established to accumulate the assets and actuarial liabilities for the inactive plan participants. The amount of assets transferred shall be equal to the actuarial accrued liabilities, determined under the accrued benefit cost method, for these inactive plan participants. If inactive participants become active, assets and liabilities shall similarly be transferred to the segments to which the participants are assigned. Such transfers need be made only as of the last day of a cost accounting period. The total annual pension cost for a segment having active employees shall be the amount calculated for the segment plus an allocated portion of the pension cost calculated for the inactive participants. Such an allocation shall be on the same basis as that set forth in paragraph (c)(1) of this subsection.

(10) Where pension cost is separately calculated for one or more segments, the actuarial cost method used for a plan shall be the same for all segments. Unless a separate calculation of pension cost for a segment is made because of a condition set forth in paragraph (c)(2)(iii) of this subsection, the same actuarial assumptions may be used for all segments covered by a plan.

(11) If a pension plan has participants in the home office of a company, the home office shall be treated as a segment for purposes of allocating the cost of the pension plan. Pension cost allocated to a home office shall be a part of the costs to be allocated in accordance with the appropriate requirements of Cost Accounting Standard 9904.403.

(12) If a segment is closed, if there is a pension plan termination, or if there is a curtailment of benefits, the contractor shall determine the difference between the actuarial accrued liability for the segment and the market value of the assets allocated to the segment, irrespective of whether or not the pension plan is terminated. The difference between the market value of the assets and the actuarial accrued liability for the segment represents an adjustment of previously-determined pension costs.

(i) The determination of the actuarial accrued liability shall be made using the accrued benefit cost method. The actuarial assumptions employed shall be consistent with the current and prior long term assumptions used in the measurement of pension costs. If there is a pension plan termination, the actuarial accrued liability shall be measured as the amount paid to irrevocably settle all benefit obligations or paid to the Pension Benefit Guarantee Corporation.

(ii) In computing the market value of assets for the segment, if the contractor has not already allocated assets to the segment, such an allocation shall be made in accordance with the requirements of paragraphs (c)(5) (i) and (ii) of this subsection. The market value of the assets shall be reduced by the accumulated value of prepayment credits, if any. Conversely, the market value of the assets shall be increased by the current value of any unfunded actuarial liability separately identified and maintained in accordance with 9904.412–50(a)(2).

(iii) The calculation of the difference between the market value of the assets and the actuarial accrued liability shall be made as of the date of the event (e.g., contract termination, plan amendment, plant closure) that caused the closing of the segment, pension plan termination, or curtailment of benefits. If such a date is not readily determinable, or if its use can result in an inequitable calculation, the contracting parties shall agree on an appropriate date.

(iv) Pension plan improvements adopted within 60 months of the date of the event which increase the actuarial accrued liability shall be recognized on a prorata basis using the number of months the date of adoption preceded the event date. Plan improvements mandated by law or collective bargaining agreement are not subject to this phase-in.

(v) If a segment is closed due to a sale or other transfer of ownership to a successor in interest in the contracts of the segment and all of the pension plan assets and actuarial accrued liabilities pertaining to the closed segment are transferred to the successor segment, then no adjustment amount pursuant to this paragraph (c)(12) is required. If only some of the pension plan assets and actuarial accrued liabilities of the closed segment are transferred, then the adjustment amount required under this paragraph (c)(12) shall be determined based on the pension plan assets and actuarial accrued liabilities remaining with the contractor. In either case, the effect of the transferred assets and liabilities is carried forward and recognized in the accounting for pension cost at the successor contractor.

(vi) The Government's share of the adjustment amount determined for a segment shall be the product of the adjustment amount and a fraction. The adjustment amount shall be reduced for any excise tax imposed upon assets withdrawn from the funding agency of a qualified pension plan. The numerator of such fraction shall be the sum of the pension plan costs allocated to all contracts and subcontracts (including Foreign Military Sales) subject to this Standard during a period of years representative of the Government's participation in the pension plan. The denominator of such fraction shall be the total pension costs assigned to cost accounting periods during those same years. This amount shall represent an adjustment of contract prices or cost allowance as appropriate. The adjustment may be recognized by modifying a single contract, several but not all contracts, or all contracts, or by use of any other suitable technique.

(vii) The full amount of the Government's share of an adjustment is allocable, without limit, as a credit or charge during the cost accounting period in which the event occurred and contract prices/costs will be adjusted accordingly. However, if the contractor continues to perform Government contracts, the contracting parties may negotiate an amortization schedule,

including interest adjustments. Any amortization agreement shall consider the magnitude of the adjustment credit or charge, and the size and nature of the continuing contracts.

12. Subsection 9904.413–60 is revised to read as follows:

9904.413–60 Illustrations.

(a) *Assignment of actuarial gains and losses.* Contractor A has a defined-benefit pension plan whose costs are measured under an immediate-gain actuarial cost method. The contractor makes actuarial valuations every other year. In the past, at each valuation date, the contractor has calculated the actuarial gains and losses that have occurred since the previous valuation date and has merged such gains and losses with the unfunded actuarial liabilities that are being amortized. Pursuant to 9904.413–40(a), the contractor must make an actuarial valuation annually. Any actuarial gains or losses measured must be separately amortized over a 15-year period beginning with the period for which the actuarial valuation is made in accordance with 9904.413–50(a) (1) and (2).

(b)(1) *Valuation of the assets of a pension plan.* Contractor B has a qualified defined-benefit pension plan, the assets of which are invested in equity securities, debt securities, and real property. The contractor, whose cost accounting period is the calendar year, has an annual actuarial valuation of the pension plan assets in June of each year; the effective date of the valuation is the beginning of that year. The contractor's method for valuing the assets of the pension plan is as follows: debt securities expected to be held to maturity are valued on an amortized basis running from initial cost at purchase to par value at maturity; land and buildings are valued at cost less depreciation taken to date; all equity securities and debt securities not expected to be held to maturity are valued on the basis of a five-year moving average of market values. In making an actuarial valuation, the contractor must compare the values reached under the asset valuation method used with the market value of all the assets as required by 9904.413–40(b). In this case, the assets are valued as of January 1 of that year. The contractor established the following values as of the valuation date.

	Asset valuation method	Market
Cash	$100,000	100,000
Equity securities	6,000,000	7,800,000
Debt securities, expected to be held to maturity	550,000	600,000
Other debt securities	600,000	750,000
Land and Buildings, net of depreciation	400,000	750,000
Total	7,650,000	10,000,000

(2) Section 9904.413–50(b)(2) requires that the actuarial value of the assets of the pension plan fall within a corridor from 80 to 120 percent of market. The corridor for the plan's assets as of January 1 is from $12 million to $8 million. Because the asset value reached by the contractor, $7,650,000, falls outside that corridor, the value reached must be adjusted to equal the nearest boundary of the corridor: $8 million. In subsequent years the contractor must continue to use the same method for valuing assets in accordance with 9904.413–50(b)(3). If the value produced falls inside the corridor, such value shall be used in measuring pension costs.

(c) *Allocation of pension costs to segments.* (1) Contractor C has a defined-benefit pension plan covering employees at five segments. Pension cost is computed by use of an immediate-gain actuarial cost method. One segment (X) is devoted primarily to performing work for the Government. During the current cost accounting period, Segment X had a large and unforeseeable reduction of employees because of a contract termination at the convenience of the Government and because the contractor did not receive an anticipated follow-on contract to one that was completed during the period. The segment does continue to perform work under several other Government contracts. As a consequence of this termination of employment gain, a separate calculation of the pension cost for Segment X would result in materially different allocation of costs to the segment than would a composite calculation and allocation by means of a base. Accordingly, pursuant to 9904.413–50(c)(2), the contractor must calculate a separate pension cost for Segment X. In doing so, the entire termination of employment gain must be assigned to Segment X and amortized over fifteen years. If the actuarial assumptions for Segment X continue to be substantially the same as for the other segments, the termination of employment gain may be separately amortized and allocated only to Segment X; all other Segment X computations may be included as part of the composite calculation. After the termination of employment gain is amortized, the contractor is no longer required to separately calculate the costs for Segment X unless subsequent events require each separate calculation.

(2) Contractor D has a defined-benefit pension plan covering employees at ten segments, all of which have some contracts subject to this Standard. The contractor's calculation of normal cost is based on a percentage of payroll for all employees covered by the plan. One of the segments (Segment Y) is entirely devoted to Government work. The contractor's policy is to place junior employees in this segment. The salary scale assumption for employees of the segment is so different from that of the other segments that the pension cost for Segment Y would be materially different if computed separately. Pursuant to 9904.413–50(c)(2)(iii), the contractor must compute the pension cost for Segment Y as if it were a separate pension plan. Therefore, the contractor must allocate a portion of the market value of pension plan's assets to Segment Y in accordance with 9904.413–50(c)(5). Memorandum records may be used in making the allocation. However, because the necessary records only exist for the last five years, 9904.413–50(c)(5)(ii) permits an initial allocation to be made as of the earliest date such records are available. The initial allocation must be made on the basis of the immediate gain actuarial cost method or methods used to calculate prior years' pension cost for the plan. Once the assets have been allocated, they shall be brought forward to the current period as described in 9904.413–50(c)(7). A portion of the undivided actuarial value of assets shall then be allocated to the segment based on the segment's proportion of the market value of assets in accordance with 9904.413–50(c)(5)(iii). In future cost accounting periods, the contractor shall make separate pension cost calculations for Segment Y based on the appropriate salary scale assumption. Because the factors comprising pension cost for the other nine segments are relatively equal, the contractor may compute pension cost for these nine segments by using composite factors. As required by 9904.413–50(c)(1), the base to be used for allocating such costs shall be representative of the factors on which the pension benefits are based.

(3) Contractor E has a defined-benefit pension plan which covers employees at twelve segments. The contractor uses composite actuarial assumptions to

develop a pension cost for all segments. Three of these segments primarily perform Government work; the work at the other nine segments is primarily commercial. Employee turnover at the segments performing commercial work is relatively stable. However, employment experience at the Government segments has been very volatile; there have been large fluctuations in employment levels and the contractor assumes that this pattern of employment will continue to occur. It is evident that separate termination of employment assumptions for the Government segments and the commercial segments will result in materially different pension costs for the Government segments. Therefore, the cost for these segments must be separately calculated, using the appropriate termination of employment assumptions for these segments in accordance with 9904.413–50(c)(2)(iii).

(4) Contractor F has a defined-benefit pension plan covering employees at 25 segments. Twelve of these segments primarily perform Government work; the remaining segments perform primarily commercial work. The contractor's records show that the termination of employment experience and projections for the twelve segments are so different from that of the average of all of the segments that separate pension cost calculations are required for these segments pursuant to 9904.413–50(c)(2). However, because the termination of employment experience and projections are about the same for all twelve segments, Contractor F may calculate a composite pension cost for the twelve segments and allocate the cost to these segments by use of an appropriate allocation base in accordance with 9904.413–50(c)(1).

(5) After this Standard becomes applicable to Contractor G, it acquires Contractor H and makes it Segment H. Prior to the merger, each contractor had its own defined-benefit pension plan. Under the terms of the merger, Contractor H's pension plan and plan assets were merged with those of Contractor G. The actuarial assumptions, current salary scale, and other plan characteristics are about the same for Segment H and Contractor G's other segments. However, based on the same benefits at the time of the merger, the plan of Contractor H had a disproportionately larger unfunded actuarial liability than did Contractor G's plan. Any combining of the assets and actuarial liabilities of both plans would result in materially different pension cost allocation to Contractor G's segments than if pension cost were computed for Segment H on the basis that it had a separate pension plan. Accordingly, pursuant to 9904.413–50(c)(3), Contractor G must allocate to Segment H a portion of the assets of the combined plan. The amount to be allocated shall be the market value of Segment H's pension plan assets at the date of the merger determined in accordance with 9904.413–50(c)(5), and shall be adjusted for subsequent receipts and expenditures applicable to the segment in accordance with 9904.413–50(c)(7). Pursuant to 9904.413–40(b)(1) and 9904.413–50(c)(5)(iii), Contractor G must use these amounts of assets as the basis for determining the actuarial value of assets used for calculating the annual pension cost applicable to Segment H.

(6) Contractor I has a defined-benefit pension plan covering employees at seven segments. The contractor has been making a composite pension cost calculation for all of the segments. However, the contractor determines that, pursuant to this Standard, separate pension costs must be calculated for one of the segments. In accordance with 9904.413–50(c)(9), the contractor elects to allocate pension plan assets only for the active participants of that segment. The contractor must then create a segment to accumulate the assets and actuarial accrued liabilities for the plan's inactive participants. When active participants of a segment become inactive, the contractor must transfer assets to the segment for inactive participants equal to the actuarial accrued liabilities for the participants that become inactive.

(7) Contractor J has a defined-benefit pension plan covering employees at ten segments. The contractor makes a composite pension cost calculation for all segments. The contractor's records show that the termination of employment experience for one segment, which is performing primarily Government work, has been significantly different from the average termination of employment experience of the other segments. Moreover, the contractor assumes that such different experience will continue. Because of this fact, and because the application of a different termination of employment assumption would result in significantly different costs being charged the Government, the contractor must develop separate pension cost for that segment. In accordance with 9904.413–50(c)(2)(ii), the amount of pension cost must be based on an acceptable termination of employment assumption for that segment; however, as provided in 9904.413–50(c)(10), all other assumptions for that segment may be the same as those for the remaining segments.

(8) Contractor K has a five-year contract to operate a Government-owned facility. The employees of that facility are covered by the contractor's overall qualified defined-benefit pension plan which covers salaried and hourly employees at other locations. At the conclusion of the five-year period, the Government decides not to renew the contract. Although some employees are hired by the successor contractor, because Contractor K no longer operates the facility, it meets the 9904.413–30(a)(20)(i) definition of a segment closing. Contractor K must compute the actuarial accrued liability for the pension plan for that facility using the accrued benefit cost method as of the date the contract expired in accordance with 9904.413–50(c)(12)(i). Because many of Contractor K's employees are terminated from the pension plan, the Internal Revenue Service considers it to be a partial plan termination, and thus requires that the terminated employees become fully vested in their accrued benefits to the extent such benefits are funded. Taking this mandated benefit improvement into consideration in accordance with 9904.413–50(c)(12)(iv), the actuary calculates the actuarial accrued liability to be $12.5 million. The contractor must then determine the market value of the pension plan assets allocable to the facility, in accordance with 9904.413–50(c)(5), as of the date agreed to by the contracting parties pursuant to 9904.413–50(c)(12)(iii), the date the contract expired. In making this determination, the contractor is able to do a full historical reconstruction of the market value of the assets allocated to the segment. In this case, the market value of the segment's assets amounted to $13.8 million. Thus, for this facility the value of pension plan assets exceeded the actuarial accrued liability by $1.3 million. Pursuant to 9904.413–50(c)(12)(vi), this amount indicates the extent to which the Government over-contributed to the pension plan for the segment and, accordingly, is the amount of the adjustment due to the Government.

(9) Contractor L operated a segment over the last five years during which 80% of its work was performed under Government CAS-covered contracts. The Government work was equally divided each year between fixed-price and cost-type contracts. The employees of the facility are covered by a funded nonqualified defined-benefit pension plan accounted for in accordance with 9904.412–50(c)(3). For each of the last five years the highest Federal corporate income tax rate has been 30%. Pension costs of $1 million per year were

computed using a projected benefit cost method. Contractor L funded at the complement of the tax rate ($700,000 per year). The pension plan assets held by the funding agency earned 8% each year. At the end of the five-year period, the funding agency balance; i.e., the market value of invested assets, was $4.4 million. As of that date, the accumulated value of permitted unfunded accruals; i.e., the current value of the $300,000 not funded each year, is $1.9 million. As defined by 9904.413–30(a)(20)(i), a segment closing occurs when Contractor L sells the segment at the end of the fifth year. Thus, for this segment, the market value of the assets of the pension plan determined in accordance with 9904.413–30(a)(10) is $6.3 million, which is, the sum of the funding account balance ($4.4 million) and the accumulated value of permitted unfunded accruals ($1.9 million). Pursuant to 9904.413–50(c)(12)(i), the contractor uses the accrued benefit cost method to calculate an actuarial accrued liability of $5 million as of that date. There is no transfer of plan assets or liabilities to the buyer. The difference between the market value of the assets and the actuarial accrued liability for the segment is $1.3 million ($6.3 million—$5 million). Pursuant to 9904.413–50(c)(12)(vi), the adjustment due the Government for its 80% share of previously-determined pension costs for CAS-covered contracts is $1.04 million (80% times $1.3 million). Because contractor L has no other Government contracts the $1.04 million is a credit due to the Government.

(10) Assume the same facts as in 9904.413–60(c)(9), except that Contractor L continues to perform substantial Government contract work through other segments. After considering the amount of the adjustment and the current level of contracts, the contracting officer and the contractor establish an amortization schedule so that the $1.04 million is recognized as credits against ongoing contracts in five level annual installments, including an interest adjustment based on the interest assumption used to compute pension costs for the continuing contracts. This amortization schedule satisfies the requirements of 9904.413–50(c)(12))(vii).

(11) Assume the same facts as in 9904.413–60(c)(9). As part of the transfer of ownership, Contractor L also transfers all pension liabilities and assets of the segment to the buyer. Pursuant to 9904.413–50(c)(12)(v), the segment closing adjustment amount for the current period is transferred to the buyer and is subsumed in the future pension cost accounting of the buyer. If the transferred liabilities and assets of the segment are merged into the buyer's pension plan which has a different ratio of market value of pension plan assets to actuarial accrued liabilities, then pension costs must be separately computed in accordance with 9904.413–50(c)(3).

(12) Contractor M sells its only government segment. Through a contract novation, the buyer assumes responsibility for performance of the segment's government contracts. Just prior to the sale, the actuarial accrued liability under the actuarial cost method in use is $18 million and the market value of assets allocated to the segment of $22 million. In accordance with the sales agreement, Contractor M is required to transfer $20 million of assets to the new plan. In determining the segment closing adjustment under 9904.413–12(c)(12) the actuarial accrued liability and the market value of assets are reduced by the amounts transferred to the buyer by the sale. The adjustment amount, which is the difference between the remaining assets ($2 million) and the remaining actuarial liability ($0), is $2 million.

(13) Contractor N has three segments that perform primarily government work and has been separately calculating pension costs for each segment. As part of a corporate reorganization, the contractor closes the production facility for Segment A and transfers all of that segment's contracts and employees to Segments B and C, the two remaining government segments. The pension assets from Segment A are allocated to the remaining segments based on the actuarial accrued liability of the transferred employees. Because Segment A has discontinued operations, a segment closing has occurred pursuant to 9904.413–30(a)(20)(ii). However, because all pension assets and liabilities have been transferred to segments that are the successors in interest of the contracts of Segment A, an immediate period adjustment is not required if Contractor N and the cognizant Federal official negotiate an amortization schedule pursuant to 9904.413–50(c)(12)(vii).

(14) Contractor O does not renew its government contract and decides to not seek additional government contracts for the affected segment. The contractor reduces the work force of the segment that had been dedicated to the government contract and converts the segment's operations to purely commercial work. In accordance with 9904.413–30(a)(20)(iii), the segment has closed. Immediately prior to the end of the contract the market value of the segment's assets was $20 million and the actuarial accrued liability determined under the actuarial cost method in use was $22 million. An actuarial accrued liability of $16 million is determined using the accrued benefit cost method as required by 9904.413–50(c)(12)(i). The segment closing adjustment is $4 million ($20 million—$16 million).

(15) Contractor P terminated its underfunded defined-benefit pension plan for hourly employees. The market value of the assets for the pension plan is $100 million. Although the actuarial accrued liability exceeds the $100 million of assets, the termination liability for benefits guaranteed by the Pension Benefit Guarantee Corporation (PBGC) is only $85 million. Therefore, the $15 million of assets in excess of the liability for guaranteed benefits are allocated to plan participants in accordance with PBGC regulations. The PBGC does not impose an assessment for unfunded guaranteed benefits against the contractor. The adjustment amount determined under 9904.413–50(c)(12) is zero.

(16) Assume the same facts as 9904.413–60(c)(17), except that the termination liability for benefits guaranteed by the Pension Benefit Guarantee Corporation (PBGC) is $120 million. The PBGC imposes a $20 million ($120 million—$100 Million) assessment against Contractor P for the unfunded guaranteed benefits. The contractor then determines the Government's share of the pension plan termination adjustment charge of $20 million in accordance with 9904.413–50(c)(12)(vi). In accordance with 9904.413–50(c)(12)(vii), the cognizant Federal official may negotiate an amortization schedule based on the contractor's schedule of payments to the PBGC.

(17) Assume the same facts as in 9904.413–60(c)(16), except that pursuant to 9904.412–50(a)(2) Contractor P has an unassignable portion of unfunded actuarial liability for prior unfunded pension costs which equals $8 million. The $8 million represents the value of assets that would have been available had all assignable costs been funded and, therefore, must be added to the assets used to determine the pension plan termination adjustment in accordance with 9904.413–50(c)(12)(ii). In this case, the adjustment charge is determined to be $12 million ($20 million − $8 million).

(18) Contractor Q terminates its qualified defined-benefit pension plan without establishing a replacement plan. At termination, the market value

of assets are $85 million. All obligations for benefits are irrevocably transferred to an insurance company by the purchase of annuity contracts at a cost of $55 million, which thereby determines the actuarial liability in accordance with 9904.413–50(c)(12)(i). The contractor receives a reversion of $30 million ($85 million − $55 million). The adjustment is equal to the reversion amount, which is the excess of the market value of assets over the actuarial liability. However, ERISA imposes a 50% excise tax of $15 million (50% of $30 million) on the reversion amount. In accordance with 9904.413–50(c)(12)(vi), the $30 million adjustment amount is reduced by the $15 million excise tax. Pursuant to 9904.413–50(c)(12)(vi), a share of the $15 million net adjustment ($30 million—$15 million) shall be allocated, without limitation, as a credit to CAS-covered contracts.

(19) Assume that, in addition to the facts of 9904.413–60(c)(18), Contractor Q has an accumulated value of prepayment credits of $10 million. Contractor Q has $3 million of unfunded actuarial liability separately identified and maintained pursuant to 9904.412–50(a)(2). The assets used to determine the adjustment amount equal $78 million. This amount is determined as the market value of assets ($85 million) minus the accumulated value of prepayment credits ($10 million) plus the portion of unfunded actuarial liability maintained pursuant to 9904.412–50(a)(2) ($3 million). Therefore, the difference between the assets and the actuarial liability is $23 million ($78 million − $55 million). In accordance with 9904.413–50(c)(12)(vi), the $23 million adjustment is reduced by the $15 million excise tax to equal $8 million. The contracting officer determines that the pension cost data of the most recent eight years reasonably reflects the government's participation in the pension plan. The sum of costs allocated to fixed-price and cost-type contracts subject to this Standard over the eight-year period is $21 million. The sum of costs assigned to cost accounting periods during the last eight years equals $42 million. Therefore, the government's share of the net adjustment is 50% ($21 million divided by $42 million) of the $8 million and equals $4 million.

(20) Contractor R maintains a qualified defined-benefit pension plan. Contractor R amends the pension plan to eliminate the earning of any future benefits; however the participants do continue to earn vesting service. Pursuant to 9904.413–30(a)(7), a curtailment of benefits has occurred. An actuarial accrued liability of $78 million is determined under the accrued benefit cost method using the interest assumption used for the last four actuarial valuations. The market value of assets, determined in accordance with 9904.413–50(c)(12)(ii), is $90 million. Contractor R shall determine the Government's share of the adjustment in accordance with 9904.413–50(c)(12)(vi). The contractor then shall allocate that share of the $12 million adjustment ($90 million − $78 million) determined under 9904.413–50(c)(12) to CAS-covered contracts. The full amount of adjustment shall be made without limitation in the current cost accounting period unless arrangements to amortize the adjustment are permitted and negotiated pursuant to 9904.413–50(c)(12)(vii).

(21) Contractor S amends its qualified defined-benefit pension plan to ''freeze'' all accrued benefits at their current level. Although not required by law, the amendment also provides that all accrued benefits are fully vested. Contractor S must determine the adjustment for the curtailment of benefits. Fifteen months prior to the date of the plan amendment freezing benefits, Contractor S voluntarily amended the plan to increase benefits. This voluntary amendment resulted in an overall increase of over 10%. All actuarial accrued liabilities are computed using the accrued benefit cost method. The actuarial accrued liability for all accrued benefits is $1.8 million. The actuarial accrued liability for vested benefits immediately prior to the current plan amendment is $1.6 million. The actuarial accrued liability determined for vested benefits based on the plan provisions before the voluntary amendment is $1.4 million. The $1.4 million actuarial liability is based on benefit provisions that have been in effect for six years and is fully recognized. However, the $200,000 increase in liability due to the voluntary benefit improvement adopted 15 months ago must be phased-in on a prorata basis over 60 months. Therefore, only 25% (15 months divided by 60 months) of the $200,000 increase, or $50,000, can be included in the curtailment liability. The current amendment voluntarily increasing vesting was just adopted and, therefore, none of the associated increase in actuarial accrued liability can be included. Accordingly, in accordance with 9904.413–50(c)(12)(iv), Contractor S determines the adjustment for the curtailment of benefits using an actuarial accrued liability of $1.45 million ($1.4 million plus $50,000).

(22) Contractor T has maintained separate qualified defined-benefit plans for Segments A and B and has separately computed pension costs for each segment. Both segments perform work under contracts subject to this Standard. On the first day of the current cost accounting period, Contractor T merges the two pension plans so that segments A and B are now covered by a single pension plan. Because the ratio of assets to liabilities for each plan is materially different from that of the merged plan, the contractor continues the separate computation of pension costs for each segment pursuant to 9904.413–50(c)(3). After considering the assignable cost limitations for each segment, Contractor T determines the potentially assignable pension cost is $12,000 for Segment A and $24,000 for Segment B. The maximum tax-deductible amount for the merged plan is $30,000, which is $6,000 less than the sum of the otherwise assignable costs for the segments ($36,000). To determine the portion of the total maximum tax-deductible amount applicable to each segment on a reasonable basis, the contractor prorates the $30,000 by the pension cost determined for each segment after considering the assignable cost limitations for each segment. Therefore, in accordance with 9904.413–50(c)(1)(i), the assignable pension cost is $10,000 for Segment A ($30,000 times $12,000 divided by $36,000) and $20,000 for Segment B ($30,000 times $24,000 divided by $36,000). Contractor T funds the full $30,000 and allocates the assignable pension cost for each segment to final cost objectives.

(23) Assume the same facts as in 9904.413–60(c)(22), except that the tax-deductible maximum is $40,000 and the ERISA minimum funding requirement is $18,000. Since funding of the accrued pension cost is not constrained by tax-deductibility, Contractor T determines the assignable pension cost to be $12,000 for Segment A and $24,000 for Segment B. If the contractor funds $36,000, the full assigned pension cost of each segment can be allocated to final cost objectives. However, because the contractor funds only the ERISA minimum of $18,000, the contractor must apportion the $18,000 contribution to each segment on a basis that reflects the assignable pension cost of each segment in accordance with 9904.413–50(c)(1)(ii). To measure the funding level of each segment, Contractor T uses an ERISA minimum funding requirement separately determined for each segment, as if the segment were a separate plan. On this basis, the allocable pension cost is determined to be $8,000 for Segment A and $10,000 for

Segment B. In accordance with 9904.412–50(a)(2), Contractor T must separately identify, and eliminate from future cost computations, $4,000 ($12,000 − $8,000) for Segment A and $14,000 ($24,000 − $10,000) for Segment B.

(24) Assume the same facts as in 9904.413–60(c)(23), except that Segment B performs only commercial work. As permitted by 9904.413–50(c)(1)(ii), the contractor first applies $12,000 of the contribution amount to Segment A, which is performing work under Government contracts, for purposes of 9904.412–50(d)(i). The remaining $6,000 is applied to Segment B. The full assigned pension cost of $12,000 for Segment A is funded and such amount is allocable to CAS-covered contracts. Pursuant to 9904.412–50(a)(2), the contractor separately identifies, and eliminates from future pension costs, the $18,000 ($24,000 − $6,000) of unfunded assigned cost for Segment B.

(25) Contractor U has a qualified defined-benefit pension plan covering employees at two segments that perform work on contracts subject to this Standard. The ratio of the actuarial value of assets to actuarial accrued liabilities is significantly different between the two segments. Therefore, Contractor U is required to compute pension cost separately for each segment. The actuarial value of assets allocated to Segment A exceeds the actuarial accrued liability by $50,000. Segment B has an unfunded actuarial liability of $20,000. Thus, the pension plan as a whole has an actuarial surplus of $30,000. Pension cost of $5,000 is computed for Segment B and is less than Segment B's assignable cost limitation of $9,000. The tax-deductible maximum is $0 for the plan as whole and, therefore, $0 for each segment. Contractor U will deem all existing amortization bases maintained for Segment A to be fully amortized in accordance with 9904.412–50(c)(2)(ii). For Segment B, the amortization of existing portions of unfunded actuarial liability continues unabated. Furthermore, pursuant to 9904.412–50(c)(2)(iii), the contractor establishes an additional amortization base for Segment B for the assignable cost deficit of $5,000.

13. Subsection 9904.413–63 is revised to read as follows:

9904.413–63 Effective date.

(a) This Standard is effective as of March 30, 1995.

(b) This Standard shall be followed by each contractor on or after the start of its next cost accounting period beginning after the receipt of a contract or subcontract to which this Standard is applicable.

(c) Contractors with prior CAS-covered contracts with full coverage shall continue to follow Standard 9904.413 in effect prior to March 30, 1995, until this Standard, effective March 30, 1995, becomes applicable following receipt of a contract or subcontract to which this revised Standard applies.

14. A new subsection 9904.413–64 is added to read as follows:

9904.413–64 Transition method.

(a) To be acceptable, any method of transition from compliance with Standard 9904.413 in effect prior to March 30, 1995, to compliance with Standard 9904.413 in effect as of March 30, 1995, must follow the equitable principle that costs, which have been previously provided for, shall not be redundantly provided for under revised methods. Conversely, costs that have not previously been provided for must be provided for under the revised method. This transition subsection is not intended to qualify for purposes of assignment or allocation, pension costs which have previously been disallowed for reasons other than ERISA funding limitations.

(b) The sum of all portions of unfunded actuarial liability identified pursuant to Standard 9904.413, effective March 30, 1995, including such portions of unfunded actuarial liability determined for transition purposes, is subject to the requirements for assignment of 9904.412–40(c).

(c) Furthermore, this Standard, effective March 30, 1995, clarifies, but is not intended to create, rights of the contracting parties, and specifies techniques for determining adjustments pursuant to 9904.413–50(c)(12). These rights and techniques should be used to resolve outstanding issues that will affect pension costs of contracts subject to this Standard.

(d) The method, or methods, employed to achieve an equitable transition shall be consistent with the provisions of this Standard and shall be approved by the contracting officer.

(e) All adjustments shall be prospective only. However, costs/prices of prior and existing contracts not subject to price adjustment may be considered in determining the appropriate transition method or adjustment amount for the computation of costs/prices of contracts subject to this Standard.

[FR Doc. 95–7555 Filed 3–29–95; 8:45 am]

BILLING CODE 3110–01–P

federal register

Thursday
March 30, 1995

Part III

Department of Housing and Urban Development

NOFA for Lead-Based Paint (LBP) Risk Assessments; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3778; FR–3875–N–01]

NOFA for Lead-Based Paint (LBP) Risk Assessments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability for FY 1995.

SUMMARY: This NOFA informs Public Housing Agencies and Indian Housing Authorities (referred to jointly as ''HAs'') that have pre-1980 family developments, of the availability of up to $8,052,535 in funding for lead-based paint (LBP) risk assessments. The NOFA contains information on the following:

(a) The purpose of the NOFA, available amounts and eligibility;

(b) Application processing, including how to apply and how selections will be made;

(c) A schedule of steps involved in the application process;

(d) Notice that funds will be awarded on a first-come, first-served basis; and

(e) Notice of the requirement that the Department's risk assessment protocol be used by HAs in conducting a LBP risk assessment and in developing recommendations regarding interim controls.

DATES: An application may be submitted immediately after publication of this NOFA, and must be submitted by 3:00 p.m. local time (i.e., the time in the HUD Field Office where the application is submitted) on May 30, 1995. This deadline is firm as to date and hour. In the interest of fairness to all applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their applications to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES: Application kits may be obtained from HUD Field Offices. Completed applications are to be submitted to the Field Office that has jurisdiction over the HA submitting the request for funding. Copies of the Department's LBP risk assessment protocol, which establishes minimum requirements that must be used by HAs funded under this NOFA, are available at cost by calling HUD USER on 1–800–245–2691 or (301) 251–5154 (not a toll-free number). A telecommunications device (TDD) for persons with hearing and speech impediments is available at 1–800–877–8339.

FOR FURTHER INFORMATION CONTACT: William J. Flood, Director, Modernization Division, Office of Distressed and Troubled Housing Recovery, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4134, Washington, D.C. 20410, telephone (202) 708–1640. Indian Housing Authorities may contact: Dom Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B–133, Washington, DC 20410, telephone (202) 755–0032. A telecommunications device (TDD) for persons with hearing and speech impediments is available at (202) 708–0850 . (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control numbers 0348–0043, 2577–0044, 2525–0101, and 0348–0046.

I. Purpose and Substantive Description

A. Allocation Amounts

(1) *Total amount available.* The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Pub. L. 102–139, approved October 28, 1991; at 105 Stat. 744) (1992 Appropriations Act) set aside $25,000,000, of the $2,800,975,000 of budget authority available for modernization of existing public housing developments, for the risk assessment of lead-based paint (LBP). However, amounts actually available from the appropriated amount were reduced because conversions from Section 8 (U.S. Housing Act of 1937)-funded section 202 (Housing Act of 1959) direct loan projects to rental assistance-funded section 202 grant projects did not occur at the rate anticipated by Congress in the FY 1992 Appropriations Act. Reductions were made in the FY 1991 carryover balances to fund FY 1992 programs, as provided in the Appropriations Act. The amount of funds available for LBP risk assessment in FY 1992 was $23,853,455. In accordance with the language of that Appropriations Act, where funds awarded totaled less than the amount available, the remaining funds are to be carried over in subsequent NOFAs. Thus, in FY 1992, the Department awarded $9,055,821. In FY 1993, $14,797,634 was available for LBP risk assessment funding and $2,840,711 was awarded based on applications received. In FY 1994, $11,946,823 was available; of that amount $3,888,076 was awarded, based on applications received. Additionally, $16,312 was awarded in FY 1994 to correct calculation errors made on applications submitted and eligible for funding in FY 1993. The total amount of funding that remains available under this FY 1995 NOFA is up to $8,052,535. The funding may change if the carryovers, transfers, and recaptures estimated to occur in FY 1995 are not realized.

(2) *Selection of applications for funding.* Awards shall be made on a first-come, first-served basis. Additionally, an application must be complete and must meet the threshold criteria set forth in Section II.B. of this NOFA. As such, it is required that the proposed risk assessment be performed in pre-1980 family developments. Further, the Department has determined that a development targeted within an application will not be eligible for funding where a development has been:

- Tested and abated; or
- Tested and the results were negative; or
- Tested, results were positive, and an adequate interim control plan has been developed; or
- The subject of a risk assessment previously.

In these instances, the Department recognizes that hazards have been addressed or identified; thus, there is no need to conduct a risk assessment.

(3) *Cost.* Where a development is eligible to be the subject of a complete risk assessment, in accordance with the threshold criteria set forth in Section II.B. of this NOFA, the HA shall base its funding request on a per-unit-to-be-sampled-per-development cost. The per-unit cost must include costs for collection of dust and soil samples, collection of paint chip samples (where necessary), administration, laboratory analysis of collected paint, dust, and soil samples, interpretation of laboratory results on samples collected, review of maintenance and management practices, and the *development* (not the implementation) of recommendations for interim controls. Costs associated with interim controls are not eligible for funding under this NOFA. Funding of interim controls must be secured from other HA sources (i.e., CIAP, CGP, operating subsidy, operating reserves, or State/local contributions).

The cost-per-unit-to-be-sampled may not exceed the amount of $495. Prior year funding indicates that a number of HAs were able to complete risk assessments at less than this amount (ranging from $250 to $350 per-unit-to-be-sampled, excluding HA administrative costs). HAs are strongly encouraged to budget prudently for these costs. Where this amount is exceeded, the HA must submit justification of the amount requested, and the Field Office will examine the cost reasonableness of such request.

The number of units to be sampled, which, at a minimum, must be used by HAs funded under this NOFA, is outlined in the table below:

Number of units in development	Number of units for inspecting and testing (collecting samples)
1–4	All.
5–20	4 units or 50% (whichever is greater).
21–75	10 units or 20% (whichever is greater).
76–125	17.
126–175	19.
176–225	20.
226–300	21.
301–400	22.
401–500	23.
501+	24, plus 1 dwelling for each additional increment of 50 units or less.

The method to be used in determining which units are to be included in the sample is as follows:

(a) Units cited as having building code violations within the past year;

(b) Units determined to be in poor condition;

(c) Units that contain two or more children between the ages of 6 months and 6 years;

(d) Units that serve as day-care facilities; and

(e) Units prepared for reoccupancy within the past 3 months. If necessary, add additional units to achieve the required minimum sample number specified in the above table.

Note: In addition to the minimum number of units to be sampled, add units housing children with elevated blood lead levels.

As explained in Section III, Application Content, of this NOFA, an application must state each development number and specify the number of units to be sampled, the amount requested for each development, and the total amount the HA is requesting.

(4) *Distribution of funds.* An administrative decision has been made not to assign funds to HUD Field Offices using the same method as in previous fiscal years. Funds will be assigned to Field Offices based on the number of applications submitted that met the eligibility criteria and the amount of funds requested. The Department expects to have enough money to fund all eligible applications. In the event funding requests exceed the amount available, awards will be made based on the date and time applications were received in the HUD Field Office. HUD Field Offices shall date- and time-stamp each application upon receipt.

In Fiscal Year 1995, up to $7,835,117 will be targeted to public housing agencies, and up to $217,418 will be targeted to Indian housing authorities in the Office of Native American Programs (ONAP). As many eligible applications as possible will be funded.

(5) *Remaining funds.* In the event that the funds awarded under this NOFA total less than the amount available, the remaining amount will be carried over to FY 1996, because the FY 1992 Appropriations Act specifically targets these funds for the assessment of risks associated with lead-based paint. If funds are carried over to FY 1996, a subsequent NOFA for these remaining set-aside funds will be published.

(6) *Section 3 (24 CFR part 135).* Section 3 of the Housing and Urban Development Act of 1968 and the regulations at 24 CFR part 135 (see June 30, 1994, Interim Rule, 59 FR 33866) are applicable to funding awards made under this NOFA. One of the purposes of the assistance 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 section 3 residents and section 3 business concerns.

B. Eligibility and Requirements

(1) All HAs with pre-1980 family developments are eligible (i.e., both large HAs funded under the Comprehensive Grant Program (CGP) and small HAs funded under the Comprehensive Improvement Assistance Program (CIAP)). Specific developments targeted for funding within an application must meet the requirements set forth in Section II.B. of this NOFA.

(2) HAs, especially smaller ones, are encouraged to form a consortium for purposes of having risk assessments conducted. Such a consortium would enable a number of HAs to obtain coordinated services for those risk assessments.

(3) In accordance with section 14(a)(3) of the U.S. Housing Act of 1937 (1937 Act) (added by the 1992 Appropriations Act, 105 Stat. 759), pre-1980 family developments within a HA's inventory may be the subject of a LBP risk assessment. As stated in section 14(a)(3), risk assessments are intended ''to assess the risks of lead-based paint poisoning * * * in all projects constructed before 1980 that are, or will be, occupied by families.'' Risk assessments are not mandatory; however, HAs are strongly encouraged to conduct them. In undertaking a risk assessment, a HA shall use a risk assessment protocol that, at a minimum, follows the Department's Lead-Based Paint Risk Assessment Protocol. Upon completion of the risk assessment, the HA must provide a copy of the results of the risk assessment to the appropriate Field Office. The risk assessment must be completed within eighteen (18) months of HUD's fund reservation notification to the HA.

While the scope of the risk assessment may exceed the contents of the Department's protocol, funding shall be requested based on this protocol. The goal of the protocol is to enable a HA to identify lead hazards, so that appropriate interim controls can be implemented until random testing and/or full abatement can be undertaken. Section 14(a)(3) of the 1937 Act requires that professional risk assessments include dust and soil sampling and laboratory analysis. The risk assessment protocol has been developed by the Department to ensure compliance with this provision and with certain requirements of the Lead-Based Paint Poisoning Prevention Act.

HAs are expected to implement the interim control recommendations resulting from the completed risk assessment, especially in cases where full abatement will not be undertaken within a reasonable time frame (one year). However, actual implementation of recommendations that result from the risk assessment conducted is not eligible for funding under this NOFA. The implementation of resulting recommendations (*e.g.*, comprehensive or random testing, abatement of lead, interim control measures, and work order modifications) may be funded from other HA sources (i.e., CIAP, CGP, operating subsidy, operating reserves or State/local contributions).

In no instance shall the implementation of interim control measures satisfy the HA's obligation under the Lead-Based Paint Poisoning Prevention Act to abate lead-based paint hazards; rather, they are interim measures to be used until testing and/or full abatement can be undertaken, as appropriate. Similarly, in no instance

shall conducting a risk assessment satisfy the HA's obligation under the Lead-Based Paint Poisoning Prevention Act to test for and abate lead-based paint hazards.

(4) CIAP requirements, as set forth in 24 CFR part 968, subpart B, and the CIAP Handbook, 7485.1 REV–4, are applicable to HAs funded under this NOFA. These requirements encompass implementation schedules, progress reports, budget revisions, requests for extensions, closeouts, etc. Fund requisitions are to be processed through the LOCCS/VRS system.

(5) HAs must follow the requirements of 24 CFR part 85 for the procurement of risk assessments.

(6) In accepting funding to perform a risk assessment, HAs must agree to participate, if requested by HUD, in a subsequent evaluation of the risk assessment protocol. This evaluation will entail a review of collected sampling data and the effectiveness of recommended interim control procedures.

C. Ineligible Costs and Activities

(1) A specific development targeted within an application is *not* eligible for funding, in accordance with the threshold requirements set forth in Section II.B. of this NOFA, where the development has been:

- Tested and abated; or
- Tested and the results were negative; or
- Tested, results were positive, and an adequate interim control plan has been developed; or
- The subject of a risk assessment previously.

(2) Actual implementation of recommendations that result from the risk assessment conducted is *not eligible* for funding under this NOFA. The implementation of resulting recommendations (*e.g.*, comprehensive or random testing, abatement of lead, interim control measures, and work order modifications) may be funded from other HA sources (i.e., CIAP, CGP, operating subsidy, or operating reserves). HAs are expected to implement these recommendations, especially those related to interim control measures when abatement of lead hazards will not take place within a reasonable time (one year). *In no instance shall the implementation of interim control measures satisfy the HA's obligation under the Lead-Based Paint Poisoning Prevention Act to test and/or abate lead-based paint hazards.*

(3) Funds under this NOFA may not be used to purchase insurance including existing-conditions LBP liability insurance. While funds may be used to conduct risk assessments required to be in place prior to the issuance of an insurance policy, under no circumstance may these funds be used to pay for the premiums associated with this insurance.

D. Selection of Applications

(1) Applications will be selected for funding only after they have been deemed eligible in accordance with the threshold requirements set forth in Section II.B. of this NOFA. The Department expects to have enough money to fund all eligible applications. In the event funding requests exceed the amount available, awards will be made based on a first-come, first-served basis as indicated by the date- and time-stamp posted by the HUD Field Office when the HA's application is submitted.

(2) *Field Offices shall ensure that all applications (including copies) are date- and time-stamped immediately upon receipt.* Field Offices shall notify Headquarters of funding decisions on July 13, 1995. The Field Office will be responsible for identifying, notifying applicants of, and receiving corrections of any technical deficiencies in the application, as discussed in Section IV of this NOFA.

(3) The Field Office Public Housing Division Director shall make final funding decisions. Each Field Office will advise Headquarters, by the date specified in Section I.D (2) of this NOFA, of the number of eligible applications, the amounts requested for each eligible development listed in each eligible application, and the total amount requested by an eligible housing authority. Headquarters will assign funds to the Field Offices based on total amounts requested from applicant HAs within each Field Offices' jurisdiction.

E. Notification of Awards

The Field Office will notify the HA of its funding decision after HUD has completed the required congressional notification. Reservation and congressional notification documents will be prepared by the Field Office.

II. Application Process

A. General Requirements

Forms that comprise the application kit are available from HUD Field Offices. To be considered for funding, an original and 2 copies of the application must be submitted to the HUD Field Office that has jurisdiction over the applicant HA. An application may be submitted immediately upon publication of this NOFA, and must be submitted before 3:00 p.m., local time, on May 30, 1995, to the HUD Field Office that has jurisdiction over the applicant HA. The contents of the application are listed below, in Section III of this NOFA.

The above-stated deadline is firm as to date and hour. In the interest of fairness to all applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

B. Threshold Requirements

To be considered eligible for funding, an HA must propose to conduct risk assessments for pre-1980 family developments that:

- Have not previously been the subject of a risk assessment; or
- Have not been tested and abated; or
- Have been tested and results were positive, but the developments have not been abated or an adequate interim control plan has not been developed.

III. Checklist of Application Submission Requirements

The following documents comprise the application:

(a) OMB Standard Form 424, Application for Federal Assistance (HAs shall complete only items 2, 5, 12, 13, 14, 15, 17 and 18) and SF–424(B);

(b) Form HUD–52825, Comprehensive Assessment/Program Budget, Part I—Summary. The total amount requested for funding will be identified on this form under either account 1410.1, Administration (where HA staff will be used and the HA certifies that it has the capability of, and will be conducting the professional risk assessment; NOTE: a portion, not to exceed ten percent [10%] of the funding requested, may be used for administrative expenses incurred by the HA, including the use of a consultant to prepare background materials in support of the risk assessment), or account 1430.2, Consultant Fees (where the HA will be contracting for the professional risk assessment).

(c) Form HUD–52825, Comprehensive Assessment/Program Budget, Part II—Supporting Pages. Developments proposed to be the subject of a risk assessment are to be identified on this form. The applicant must provide the name; address; project number; total number of units; number of units to be sampled, in accordance with the requirements set forth in Section I.A(3) of this NOFA and in the risk assessment protocol; and amount requested for each

development, with supporting justification, as appropriate.

(d) Certification signed by the HA Executive Director that, at a minimum, the risk assessment protocol to be used will be equivalent to the Department's protocol.

(e) Certification signed by the HA Executive Director that the proposed risk assessment will be completed within eighteen (18) months of the date that funds are awarded and that the HA agrees to participate, if requested by HUD, in a subsequent evaluation of the risk assessment protocol, to assess its validity for the identification of lead-based paint hazards and effectiveness in addressing those hazards.

(f) Certification signed by the HA Executive Director that a copy of the completed risk assessment will be provided to the appropriate HUD Field Office upon completion of the assessment.

(g) Certification that HA staff are qualified to conduct LBP risk assessments in accordance with the protocol, if applicable.

(h) Certification that the HA will comply with the requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135.

(i) Form HUD–50070, Certification for Drug-Free Workplace.

(j) Certification for Contracts, Grants, Loans and Cooperative Agreements, required of HAs established under State law that are applying for grants exceeding $100,000.

(k) SF–LLL, Disclosure of Lobbying Activities, required of HAs established under State law only where any funds, other than federally appropriated funds, will be or have been used to influence Federal workers or Members of Congress or their staffs regarding specific grants or contracts.

(l) Form HUD–2880, Applicant/Recipient Disclosure/Update Report.

IV. Corrections to Deficient Applications

Immediately after the submission of an application, the appropriate Field Office will screen the application to determine whether all items were submitted. If items 1, 2, and 3 listed in Section III, Application Content, of this NOFA are missing, the application will be considered substantially incomplete and, therefore, ineligible for processing.

If the HA fails to submit any of items 4–12 listed in Section III of this NOFA, or the application contains a technical mistake, such as an incorrect signatory, the Field Office will immediately notify the HA that it has 14 calendar days from the date of HUD's written notification to submit or correct the specified items. If any of items 4–12 are missing and the HA does not submit them within the 14-day cure period, the application will be ineligible for further processing.

V. Other Matters

A. Environmental Review

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. 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, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The NOFA merely sets forth funding availability for HAs to conduct, at their discretion, risk assessments for lead paint hazards.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice will likely have a beneficial impact on family formation, maintenance, and general well-being. Families could benefit from this funding action as a result of the identification of immediate and potential lead-based paint hazards; that identification will ultimately lead to a safer environment. However, since the impact on the family is not necessarily significant and is beneficial, no further review is considered necessary.

D. Section 102 of the HUD Reform Act; Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—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. (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 these disclosure requirements.)

Public notice. HUD will include recipients that receive assistance pursuant to this NOFA in its **Federal Register** notice of recipients of all HUD assistance awarded on a competitive basis. (See 24 CFR 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

E. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) is codified as 24 CFR part 4 and applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD) (this is not a toll-free number). The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

F. Section 112 of the Reform Act

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b), added by 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 has been implemented in 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 that part.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) 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) (the ''Byrd Amendment'') 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, 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. The Department has determined that an IHA established by an Indian Tribe as a result of the exercise of its sovereign power is not subject to the Byrd Amendment, but an IHA established under State law is subject to those requirements and prohibitions.

Authority: 42 U.S.C. 1437l and 3535(d).

Dated: March 17, 1995.

Ronald J. Morony,

Acting Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–7833 Filed 3–29–95; 8:45 am]

BILLING CODE 4210–33–P

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Vol. 60, No. 61

Thursday, March 30, 1995

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