5–18–95
Vol. 60 No. 96
Pages 26667–26822

federal register

Thursday
May 18, 1995

Briefings on How To Use the Federal Register
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Contents

Federal Register

Vol. 60, No. 96

Thursday, May 18, 1995

Actuaries, Joint Board for Enrollment
See Joint Board for Enrollment of Actuaries

Agricultural Research Service
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
University of Idaho, 26714

Agriculture Department
See Agricultural Research Service
See Federal Crop Insurance Corporation
See Forest Service
NOTICES
Agency information collection activities under OMB review, 26714

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Occupational safety and health—
Health services research, 26727–26731

Children and Families Administration
PROPOSED RULES
Developmental disabilities program, 26774–26793

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
South Carolina, 26721

Coast Guard
RULES
Drawbridge operations:
Illinois, 26686–26687
Ports and waterways safety:
Upper Mississippi River; safety zone, 26687–26688
Upper New York Bay, NY and NJ, 26688–26690
PROPOSED RULES
Drawbridge operations:
Chicago Drawbridge Negotiated Rulemaking Committee—
Establishment and meeting, 26710
NOTICES
Committees; establishment, renewal, termination, etc.:
Commercial Fishing Industry Vessel Advisory Committee, 26757
Towing Safety Advisory Committee, 26757–26758

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
See Navy Department
PROPOSED RULES
Civilian health and medical program of uniformed services (CHAMPUS):
Experimental procedure; recognition as nationally accepted medical practice, 26705–26709
NOTICES
Agency information collection activities under OMB review, 26722
Meetings:
Defense Information School Board of Visitors, 26722
Science Board task forces, 26722–26723

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Indian education formula grants to local educational agencies, 26723
School-to-work opportunities State implementation program, 26812–26821
Special education and rehabilitative services:
Blind vending facilities under Randolph-Sheppard Act—
Arbitration panel decisions, 26724

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
School-to-work opportunities State implementation program, 26812–26821

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Toxic substances:
Significant new uses—
1H,3H,5H-oxazolo [3,4-c] oxazole, dihydro-7a-methyl-, 26690–26691
PROPOSED RULES
Air quality implementation plans:
Preparation, adoption, and submittal—
Motor vehicle inspection/maintenance program requirements; amendments, 26710–26711

Executive Office of the President
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
Lockheed, 26683–26686
PROPOSED RULES
Airworthiness directives:
Boeing, 26697–26700
Bombardier, 26700–26702
British Aerospace, 26702–26704

Federal Communications Commission
PROPOSED RULES
Radio stations; table of assignments:
Georgia, 26711
Illinois, 26711–26712
Washington, 26712

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
Noninsured crop disaster assistance program, 26669–26676

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 26771

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 26724–26725
Colorado Interstate Gas Co., 26725
NorAm Gas Transmission Co., 26725

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Kelso, WA, 26758
Intermodal Surface Transportation Efficiency Act:
National scenic byways program; interim policy, 26759–26762

Federal Maritime Commission
NOTICES
Agency information collection activities under OMB review, 26725–26726
Casualty and nonperformance certificates:
Cunard Line Ltd., 26726
Cunard Line Ltd. et al., 26726
Ocean freight forwarders, marine terminal operations, and passenger vessels:
Tariff cancellations; correction, 26772

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Sun Financial Corp., 26726
Swiss Bank Corp., 26726–26727

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Contra Costa goldfields, etc. (four plants from Northern California), 26713
Northern spotted owl, 26712
NOTICES
Agency information collection activities under OMB review, 26737
Environmental statements; availability, etc.:
Incidental take permits—
Lewis County, WA: northern spotted owl, etc., 26737–26738

Food and Drug Administration
NOTICES
Human drugs:
Export applications—
Revia (naltrexone hydrochloride (HCl) 50 milligrams (mg) film-coated tablets, 26731

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Hawaii
Pacific Allied Products, Inc.; plastic food/beverage containers, 26715
Louisiana
Star Enterprise; crude oil refinery complex, 26715
Ohio
Columbus Industries, Inc.; air filters, 26715–26716
Texas, 26716
Star Enterprise; crude oil refinery complex, 26716–26717

Forest Service
NOTICES
Meetings:
Southwest Oregon Provincial Interagency Executive Committee Advisory Committee, 26714–26715
Wildcat River Advisory Commission, 26715

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
HOPE homeownership program—
Single family homes program (HOPE 3), 26732–26733

Immigration and Naturalization Service
RULES
Immigration:
Two-year home country physical presence requirement for certain foreign medical graduates; waiver, 26676–26683
PROPOSED RULES
Immigration:
Aircraft, vessels, and trains outside United States; preinspection services, 26696

Indian Affairs Bureau
NOTICES
Indian tribes, acknowledgement of existence determinations, etc.:
Mattaponi Tribe, 26808
Tribal-State Compacts approval; Class III (casino) gambling:
Upper Skagit Indian Tribe, WA; correction, 26810

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Taxable substances, imported:
Acrylic fiber, 26766

International Trade Administration
NOTICES
Countervailing duties:
Ceramic tile from—
Mexico, 26717–26719
Export trade certificates of review, 26719–26720
Applications, hearings, determinations, etc.:
Purdue University, 26720

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Dallas Area Rapid Transit, 26739

Joint Board for Enrollment of Actuaries
NOTICES
Meetings:
Actuarial Examinations Advisory Committee, 26739–26740

Justice Department
See Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
ACF Industries, Inc., 26740

Labor Department
See Employment and Training Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Colorado, 26733
Meetings:
Southeast New Mexico Playa Lakes Coordinating Committee, 26733
Oil and gas leases:
California, 26733–26734
Wyoming, 26734
Realty actions; sales, leases, etc.:
Arizona, 26734–26735
Nevada, 26735–26736
Survey plat filings:
Idaho, 26736
Wisconsin, 26736
Withdrawal and reservation of lands:
California, 26736–26737

National Institutes of Health
NOTICES
Meetings:
National Institute of Dental Research, 26731–26732
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Connaught Laboratories, Inc., 26732

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
Sea turtle conservation; shrimp trawling requirements—Additional turtle excluder device requirements within statistical zones, 26691–26694
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 26694–26695
Gulf of Alaska groundfish, 26694
NOTICES
Endangered and threatened species:
Snake River sockeye salmon, and spring/summer/fall chinook salmon; proposed recovery plan availability, 26720
Whaling Commission, International:
Bowhead whale; strike quota; U.S. implementation, 26720–26721

National Park Service
NOTICES
Meetings:
National Capital Memorial Commission, 26738

National Science Foundation
NOTICES
Meetings:
Astronomical Sciences Special Emphasis Panel, 26742
Biological Sciences Advisory Committee, 26742
Computer and Information Science and Engineering Advisory Committee, 26742
Design, Manufacture, and Industrial Innovation Special Emphasis Panel, 26742
Electrical and Communications Systems Special Emphasis Panel, 26742–26743
Research, Evaluation, and Dissemination Special Emphasis Panel, 26743

Navy Department
NOTICES
Privacy Act:
Systems of records, 26723

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Florida Power & Light Co., 26743
Joseph Paolino & Sons, Inc., 26743–26744

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Walker Products Co., Inc., et al., 26740–26741

Personnel Management Office
RULES
Health benefits, Federal employees:
Inpatient hospital charges, physician charges, and FEHB benefit payments; limitations, 26667–26668
NOTICES
Meetings:
Federal Prevailing Rate Advisory Committee, 26744–26745

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

Research and Special Programs Administration
RULES
Hazardous materials:
Transportation of dangerous goods international standards alignment, 26796–26806

Securities and Exchange Commission
NOTICES
Agency information collection activities under OMB review, 26746
Self-regulatory organizations;
National securities exchange registration applications—United States Stock Exchange, Inc., 26752–26753
Self-regulatory organizations; proposed rule changes:
Municipal Securities Rulemaking Board, 26747–26752

National Association of Securities Dealers, Inc., 26753–26754
Philadelphia Stock Exchange, Inc., 26754–26756
Applications, hearings, determinations, etc.:
Vermont Pure Holdings, Ltd., 26756

State Department
NOTICES
Meetings:
International Telecommunications Advisory Committee, 26756–26757

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Wyoming, 26704–26705

Trade Representative, Office of United States
NOTICES
Japan:
Auto parts replacement market access barriers; determination and comment request, 26745–26746

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Research and Special Programs Administration

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 26762–26766

United States Information Agency
NOTICES
Art objects; importation for exhibition:
Culture and Power in France: Treasures from the Bibliotheque Nationale; correction, 26772
Grants and cooperative agreements; availability, etc.:
College and university affiliations program, 26766–26770
Meetings:
Public Diplomacy, U.S. Advisory Commission, 26770

Separate Parts In This Issue

Part II
Department of Health and Human Services, Administration for Children and Families, 26774–26793

Part III
Department of Transportation, Research and Special Programs Administration, 26796–26806

Part IV
Department of the Interior, Bureau of Indian Affairs, 26808

Part V
Department of the Interior, Bureau of Indian Affairs, 26810

Part VI
Department of Labor, Employment and Training Administration and the Department of Education, 26812–26821

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
890.....26667

7 CFR
404.....26669

8 CFR
212.....26676
245.....26676
248.....26676

Proposed Rules:
235.....26696

14 CFR
39.....26683

Proposed Rules:
39 (3 documents) 26697, 26700, 26702

30 CFR

Proposed Rules:
950.....26704

32 CFR

Proposed Rules:
199.....26705

33 CFR
117.....26686
165 (2 documents) 26687, 26688

Proposed Rules:
117.....26710

40 CFR
721.....26690

Proposed Rules:
51.....26710

45 CFR

Proposed Rules:
1385.....26774
1386.....26774
1387.....26774
1388.....26774

47 CFR

Proposed Rules:
73 (3 documents) 26711, 26712

49 CFR
171.....26796
172.....26796
173.....26796
178.....26796

50 CFR
217.....26691
227.....26691
672.....26694
675 (3 documents) 26694, 26695

Proposed Rules:
17 (2 documents) 26712, 26713

Rules and Regulations

Federal Register
Vol. 60, No. 96
Thursday, May 18, 1995

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AG31

Federal Employees Health Benefits Program: Limitation on Physician Charges and FEHB Program Payments

AGENCY: Office of Personnel Management.

ACTION: Interim regulation with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation that amends current Federal Employee Health Benefits (FEHB) Program regulations to require that the charges and FEHB fee-for-service plans' benefit payments for certain physician services furnished to retired enrolled individuals do not exceed the limits on charges and payments established under the Medicare fee schedule for physician services. The regulation authorizes the FEHB plans, under the oversight of OPM, to notify the Secretary of Health and Human Services (HHS) of a Medicare participating hospital, physician or supplier who knowingly and willfully fails to accept, on a repeated basis, the Medicare rate as payment in full from an FEHB plan. The regulation also authorizes the FEHB plans, under the oversight of OPM, to notify the Secretary of HHS of a Medicare nonparticipating physician or supplier who knowingly and willfully charges, on a repeated basis, more than the Medicare limiting charge amount (115 percent of the Medicare Nonparticipating Physician Fee Schedule amount).

DATES: This interim regulation is effective May 18, 1995. Comments must be received on or before July 17, 1995.

ADDRESSES: Send written comments to Lucretia F. Myers, Assistant Director for Insurance Programs, Retirement and Insurance Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Robert G. Iadicicco (202) 606–0004.

SUPPLEMENTARY INFORMATION: Section 11003 of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Pub. L. 103–66, amended the FEHB law to limit the charges and FEHB fee-for-service plans' benefit payments for certain physician services (as defined in section 1848(j) of the Social Security Act) received by retired enrolled individuals.

The OBRA of 1993 provision is related to section 7002(f) of OBRA of 1990, Pub. L. 101–508. The OBRA of 1990 provision limited the charges and FEHB fee-for-service plans' benefit payments for certain inpatient hospital services received by retired enrolled individuals. OPM implemented the OBRA of 1990 provision by issuing interim and final regulations in the March 27, 1992, and July 20, 1993, issues of the **Federal Register** (57 FR 10609 and 58 FR 38661). This interim regulation amends the previous regulations.

The interim regulation expands the definition of a retired enrolled individual to include individuals who are not enrolled in Medicare part B.

The interim regulation specifies the physician services covered by the limitation on charges and benefit payments.

The interim regulation establishes how FEHB fee-for-service plans will determine benefit payments for physician services covered by the limitation. The plans will base their payment on the lower of the actual charge of the provider or the amount determined to be equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule for Medicare participating physicians and the Medicare Nonparticipating Physician Fee Schedule for Medicare nonparticipating physicians. Retired enrolled individuals' coinsurance payments will be based on the same amount.

The interim regulation specifies the limits on what providers can collect for both inpatient hospital services and physician services.

OPM has not required fee-for-service plans with an insufficient number of affected enrollees to apply the limits on physician services. We made this determination in keeping with OBRA of 1993's primary objective of reducing expenses.

The interim regulation authorizes the FEHB plans, under the oversight of OPM, to notify the Secretary of Health and Human Services (HHS) or the Secretary's designee when a medical provider knowingly and willfully collects, on a repeated basis, more than the applicable limits for inpatient hospital services or physician services. OPM strongly encourages and supports the efforts of FEHB plans to inform retired enrolled individuals and medical providers of the limits on charges and benefit payments, monitor compliance with the limits, and, if necessary, report repeat violators to the Secretary of HHS, or the Secretary's designee.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking and making this regulation effective upon publication. The notice is being waived because the limitation on FEHB plans' benefit payments and providers' charges enacted by Pub. L. 103–66 addressed in this regulation was effective with respect to the contract year beginning on January 1, 1995.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect the health care coverage of Federal annuitants and former spouses.

E.O. 12866, Regulatory Review

This rule has been reviewed by OMB in accordance with E.O. 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

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

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

2. The heading of subpart I is revised to read as follows:

Subpart I—Limit on Inpatient Hospital Charges, Physician Charges, and FEHB Benefit Payments

3. Section 890.901 is revised to read as follows:

§ 890.901 Purpose.

This subpart identifies the individuals whose charges and FEHB benefit payments for inpatient hospital services and/or physician services may be limited and sets forth the circumstances of the limit.

4. Section 890.902 is amended by revising paragraphs (c) and (d) to read as follows:

§ 890.902 Definition.

* * * * *

(c) Is age 65 or older or becomes age 65 while receiving inpatient hospital services or physician services; and

(d) Is not covered by Medicare part A and/or part B.

5. Section 890.903 is revised to read as follows:

§ 890.903 Covered services.

(a) The limitation on the charges and FEHB benefit payments for inpatient hospital services apply to inpatient hospital services which are:

(1) Covered under both Medicare part A and the retired enrolled individual's FEHB plan; and

(2) Supplied to a retired enrolled individual who does not have Medicare part A; and

(3) Provided by hospital providers who have in force participation agreements with the Secretary of Health and Human Services (HHS) consistent with sections 1814(a) and 1866 of the Social Security Act, and receive Medicare part A payments in accordance with the diagnosis related group (DRG) based prospective payment system (PPS).

(b) The limitation on the charges and FEHB benefit payments for physician services apply to physician services, (as defined in section 1848(j) of the Social Security Act), which are:

(1) Covered under both Medicare part B and the retired enrolled individual's FEHB plan; and

(2) Supplied to a retired enrolled individual who does not have Medicare part B.

6. Section 890.904 is amended by designating the current paragraph as paragraph (a), amending newly designated paragraph (a) by adding the words ''for inpatient hospital services'' after the words ''FEHB plan's benefit payment'', and by adding paragraph (b) to read as follows:

§ 890.904 Determination of FEHB benefit payment.

* * * * *

(b) The FEHB plan's benefit payment for physician services under this subpart is determined by taking the lower of the following amounts:

(1) The amount determined by the FEHB plan, which is equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule for Medicare participating physicians and the Medicare Nonparticipating Physician Fee Schedule for Medicare nonparticipating physicians (the amount payable before the Medicare deductible and coinsurance are applied); or

(2) The actual billed charges; and

(3) Reducing the lower amount by any FEHB plan deductible, coinsurance, or copayment that is the responsibility of the retired enrolled individual.

7. Section 890.905 is revised to read as follows:

§ 890.905 Limits on inpatient hospital and physician charges.

(a) Hospitals may not collect from FEHB plans and retired enrolled individuals for inpatient hospital services more than the amount determined to be equivalent to the Medicare part A payment under the DRG-based PPS.

(b) Medicare participating providers may not collect for FEHB plans and retired enrolled individuals for physician services more than the amount determined to be equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule.

(c) Medicare nonparticipating providers may not collect from FEHB plans and retired enrolled individuals for physician services more than the amount to be equivalent to the Medicare limiting charge amount.

8. Section 890.906 is redesignated as § 890.909 and a new § 890.906 is added to read as follows:

§ 890.906 Retired enrolled individuals coinsurance payments.

(a) A retired enrolled individual's coinsurance responsibility for inpatient hospital services is calculated in accordance with the plan's contractual benefit structure and is based on the amount determined to be equivalent to the Medicare part A payment under the DRG-based PPS.

(b) A retired enrolled individual's coinsurance responsibility for physician services is calculated in accordance with the plan's contractual benefit structure and is based on the lower of the actual charges or the amount determined to be equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule for Medicare participating physicians and the Medicare Nonparticipating Physician Fee Schedule for Medicare nonparticipating physicians.

9. Section 890.907 is redesignated as § 890.910 and a new § 890.907 is added to read as follows:

§ 890.907 Effective dates.

(a) The limitation specified in this subpart applies to inpatient hospital admissions commencing on or after January 1, 1992.

(b) The limitation specified in this subpart applies to physician services supplied on or after January 1, 1995.

10. Section 890.908 is added to read as follows:

§ 890.908 Notification of HHS.

An FEHB plan, under the oversight of OPM, will notify the Secretary of HHS, or the Secretary's designee, if the plan finds that:

(a) A hospital knowingly and willfully collects, on a repeated basis, more than the amount determined to be equivalent to the Medicare part A payment under the DRG-based PPS.

(b) A Medicare participating physician or supplier knowingly and willfully collects, on a repeated basis, more than the amount determined to be equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule.

(c) A Medicare nonparticipating physician or supplier knowingly and willfully charges, on a repeated basis, more than the amount determined to be equivalent to the Medicare limiting charge amount.

[FR Doc. 95–12169 Filed 5–17–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 404

RIN 0563–AB13

Noninsured Crop Disaster Assistance Program

AGENCY: Federal Crop Insurance Corporation.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (''FCIC'') hereby adds a new part 404 to chapter IV of title 7 of the Code of Federal Regulations (''CFR''). The intended effect of this interim rule is to provide a noninsured crop disaster assistance program (''NAP'') to protect producers of crops for which insurance is not available. NAP provides a level of protection in most respects comparable to the catastrophic risk protection plan of insurance offered to producers on certain crops.

DATES: This rule is effective January 1, 1995. Written comments, data, and opinions on this rule will be accepted until close of business July 17, 1995 and will be considered when the rule is to be made final.

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

FOR FURTHER INFORMATION CONTACT: For further information and a copy of the Regulatory Impact Analysis to the Noninsured Crop Disaster Assistance Program, contact Diana Moslak, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 254–8314.

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

This rule has been determined to be ''significant'' for the purposes of Executive Order 12866, and therefore, has been reviewed by the Office of Management and Budget (''OMB'').

A Regulatory Impact Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that crop insurance reform is expected to result in net positive benefits to producers, taxpayers, and society. The impact on individual producers compared to payments under ad hoc disaster programs depends primarily on the farm's actual yield or yield assigned by the FCIC, market prices, and any adjustments for variable marketing or production costs. However, reform is expected to result in less volatility of producers' incomes and decrease the risk of no income due to adverse weather events. Rural communities and farmers will benefit from the advanced knowledge that payments will be made in times of catastrophic yield losses. The Government and taxpayers will benefit from a single disaster protection program and consequently reduced Federal outlays. Although producers will have an added burden to make application and report yields and acreage, the benefits in terms of greater risk protection and reduced potential for program fraud or abuse outweigh the costs.

The provisions set forth in this interim rule will contain information collections that require clearance by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Due to the necessity of implementing the rule immediately, the agency has requested clearance of this information collection from OMB. The public reporting burden for the information collections that would be required for compliance with these regulations is estimated to average 42 minutes per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Comments on the information collection may be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, NEOB, Washington, D.C. 20503. Attention: Desk Officer for USDA.

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

This regulation will not have a significant impact on a substantial number of small entities. Most producers will be able to certify to their historical production levels at the time of application based on existing records, or they may elect to base their initial coverage on transitional or assigned yields. The amount of data collected from applicants will only be that needed to establish an acceptable yield, and determine the number of acres planted, and eligibility of the producer, crop and acreage. The information required and time of collection is statutory. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605) and no Regulatory Flexibility Analysis was prepared.

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

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

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. Before any judicial action may be brought regarding the provisions of this regulation, the National Appeal Division administrative appeal procedures must be exhausted. The provisions of this rule are to be given retroactive effect to January 1, 1995.

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

This interim rule implements programs mandated by the amendments to the Federal Crop Insurance Act by the Federal Crop Insurance Reform Act of 1994. Those amendments required that the statutory changes be implemented for the 1995 crop year. Many of the final planting dates or risk periods for crops for which insurance is not available have passed or will soon pass. Planting decisions for 1995 crops have been or will shortly be made and it is necessary that producers, lenders, and suppliers know the parameters and requirements of the program. Disasters in 1995 subject

to the Act may have occurred. Therefore, it is impractical and contrary to the public interest to publish this rule for notice and comment prior to making the rule effective. However, comments are solicited for 60 days after the date of publication in the **Federal Register** and will be considered by FCIC before this rule is made final.

On October 13, 1994, the amendments to the Federal Crop Insurance Act, made by the Federal Crop Insurance Reform Act of 1994, were effective. This regulation will provide the provisions to carry out the noninsured crop disaster assistance program requirements of the Reform Act. The Noninsured Crop Disaster Assistance Program will replace the provisions of the Disaster Payment Program (7 CFR part 1477) and the provisions of the Tree Assistance Program (7 CFR part 1478). By separate rule, the Consolidated Farm Service Agency (''CFSA'') will amend these regulations to restrict the crop years of application to those prior to the crop year for which this rule will be effective and later remove those parts.

Background

Upon publication of 7 CFR part 404, this regulation will provide noninsured crop disaster assistance through the USDA and will replace ad hoc disaster assistance. The provisions of the noninsured crop disaster assistance program are as follows:

1. Section 404.9, paragraph (a)—Provides that producers who are eligible to receive NAP payments for crop years 1995 through 1998 will receive coverage against a covered loss greater than fifty percent (50%) of the approved yield for the eligible crop payable at sixty percent (60%) of the average market price for the crop.

2. Section 404.9, paragraph (b)—Provides that producers who are eligible to receive NAP payments after crop year 1998 will receive coverage against a covered loss greater than fifty percent (50%) of the approved yield for the eligible crop payable at fifty-five percent (55%) of the average market price for the crop.

3. Section 404.11, paragraph (a)—Specifies that eligible crops will be commercial crops or other agricultural commodities (except livestock), grown for food or fiber and will also include floricultural, ornamental nursery, Christmas tree crops, turfgrass sod, industrial crops, and aquacultural species.

4. Section 404.13—Specifies the minimum ''area'' of 320,000 acres or a geographical area with a minimum average value of at least $80 million for all crops produced annually.

5. Section 404.13, paragraph (d)—Allows for an area determination to be ten or more producers of the crop in those eligible areas outside the United States.

6. Section 404.15—Provides that yields will be established by the FCIC for the purposes of providing NAP payments. Yields may be established by using the actual production history of the producer over a prescribed period, or if there is inadequate documentation to calculate the actual production history, generally in accordance with 7 CFR part 400, subpart G. The FCIC will ensure that the NAP payments accurately reflect significant yield variations due to different farming practices, such as between irrigated and non-irrigated acreage.

7. Section 404.15, paragraph (h)—Specifies that producers with contracts for guaranteed payments for production will have their harvested production adjusted upward to reflect the amount of the contract payment.

8. Section 404.15, paragraph (i)—A producer who produces a crop in a county where the acreage of the crop for the county has increased by more than 100 percent over any year in the preceding seven years may not use an assigned yield unless:

(a) The planted acreage of the producer for the crop has been inspected prior to the loss by a third party acceptable to the FCIC; or

(b) The CFSA County Executive Director and the CFSA State Executive Director recommend an exemption to FCIC for approval. FCIC will limit use of assigned yields to one loss year.

9. Section 404.17—Provides for the filing of an annual acreage report by the producer for each eligible crop at the local office to be eligible for NAP payments. For each year, producers must report their current year's acreage and the previous year's crop production history.

10. Section 404.19, paragraphs (a) and (b)—Specifies that to qualify for NAP payments, any loss or prevented planting of the eligible crop must be due to drought, flood, or other natural disaster, as determined by the Secretary. NAP payments will not cover losses due to neglect or malfeasance of the producer, or the failure of the producer to reseed or replant to the same crop in those areas and under such circumstances where it is customary to reseed or replant, or the failure of the producer to follow good farming practices.

11. Section 404.19, paragraph (c)—Specifies that a producer of an eligible crop will not receive NAP payments for loss in production or prevented planting unless the projected average or actual yield for the crop in an area falls below 65 percent of the expected area yield established by FCIC. Once the area eligibility requirement has been satisfied, the total quantity of the eligible crop that the producer is able to harvest on the unit must be less than 50 percent of the approved yield. FCIC will make a payment for the difference between the determined yield and 50 percent of the producer's approved yield. Once the area eligibility requirement has been met, a producer of an eligible crop may receive NAP payments for prevented planting if the producer is prevented from planting more than 35 percent of the acreage. Intended acreage may be verified using records of historical acreage planted to the eligible crop.

12. Section 404.21, paragraph (a)—Provides for notice of damage or loss at the local office within 15 calendar days after the occurrence of the prevented planting or damage to the crop to be eligible for NAP payments. With the exception for the 1995 crop year, in which case, the notice must be filed within the later of 45 days after this rule is published in the **Federal Register** or 15 days after the occurrence of the prevented planting or damage to the crop.

13. Section 404.21, paragraph (b)—Requires the producer to make an application for payment at the local office before the deadline set by FCIC.

14. Section 404.23—Specifies that if the producer is eligible to receive NAP payments and is also eligible to receive benefits for the same loss under other USDA programs, the producer must elect the program from which to receive benefits.

15. Section 404.25—Specifies that the total amount of payments that a person may receive annually under this title will not exceed $100,000. A producer with qualifying gross revenues of $2 million or more may not receive NAP payments.

16. Section 404.27—Specifies that if a producer conceals or misrepresents any material fact, commits fraud, or participates in a scheme or device, the producer will not be eligible to receive any payments applicable to that crop year and could be subject to penalties specified in the Act.

List of Subjects in 7 CFR Part 404

Agricultural commodities, Disaster assistance, Reporting and recordkeeping requirements.

Interim Rule

For the reasons set out in the preamble, a new part 404 is added to

chapter IV of title 7 of the CFR, to read as follows:

PART 404—NONINSURED CROP DISASTER ASSISTANCE PROGRAM—REGULATIONS FOR THE 1995 AND SUCCEEDING CROP YEARS

Sec.
404.1 General statement.
404.3 Applicability.
404.5 Administration.
404.7 Definitions.
404.9 Coverage.
404.11 Eligibility.
404.13 Area.
404.15 Yield determinations.
404.17 Acreage report.
404.19 Loss requirements.
404.21 Application for payment and notice of loss.
404.23 Multiple benefits.
404.25 Payment and income limitations.
404.27 Misrepresentation, scheme and device, and fraud.
404.29 Refunds to the corporation.
404.31 Cumulative liability.
404.33 Appeals.
404.35 Exemption from levy.
404.37 Estates, trusts, and minors.
404.39 Death, incompetence, or disappearance.
404.41 OMB control numbers.

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

§ 404.1 General statement.

The Federal Crop Insurance Act, as amended by the Federal Crop Insurance Reform Act of 1994 (the ''Act''), requires the Federal Crop Insurance Corporation (FCIC) to implement a noninsured crop disaster assistance program (NAP) to provide eligible producers of eligible crops with protection somewhat comparable to the catastrophic risk protection plan of insurance. NAP is designed to help reduce production risks faced by producers of uninsurable crops. NAP will reduce financial losses that occur when natural disasters cause a loss of production or prevented planting of an eligible crop. Payment eligibility is based on an expected yield for the area and an approved yield for an individual producer unit based on actual production history or a transitional yield, if sufficient actual production records are not available. Production for both the applicable area expected yield and the individual producer approved yield for the unit must fall below specified percentages in order to be eligible for payments under this part.

§ 404.3 Applicability.

The provisions contained in this part are applicable to each eligible producer and each eligible crop and acreage for which catastrophic risk protection coverage is not otherwise available.

§ 404.5 Administration.

(a) The NAP program will be administered under the general supervision of the FCIC, and will be carried out through state and county committees and offices of the CFSA, or other local USDA offices if designated by FCIC.

(b) The state CFSA committee will, in accordance with this part, recommend the geographical size and shape of the area where a natural disaster has occurred, and whether the area eligibility requirement has been satisfied. The recommendation of eligibility will be submitted to FCIC for review and approval or disapproval.

(c) FCIC will determine all yields and prices under this part.

(d) No delegation herein to a state or county CFSA committee will preclude the FCIC Manager from determining any question arising under NAP or from reversing or modifying any determination made by a state or county CFSA committee.

§ 404.7 Definitions.

(a) *Actual production history.* Refer to 7 CFR part 400, subpart G, except that the terms of subpart G will read as follows when referring to NAP:

Insurance terms	NAP terms
Agent	Local office representative.
Claim	Application for payment.
Claim for indemnity	Application for payment.
Indemnity payment	NAP payment.
Insurable acreage	Eligible acreage.
Insurable cause	Natural disaster.
Insurable crop	Eligible crop.
Insurance company	Provider.
Insurance purposes	NAP purposes.
Insured	Eligible producer.
Insured producer	Eligible producer.
Uninsurable acreage	Ineligible acreage.
Uninsurable production.	Ineligible production.
Uninsured cause of loss appraisal.	Assigned production.
Uninsured production	Ineligible production.

(b) *Actual yield.* The yield per acre for a crop year calculated from production records or NAP payments in accordance with 7 CFR part 400, subpart G.

(c) *Adjusted yield.* The transitional yield reduced by the applicable percentage for lack of adequate records in accordance with 7 CFR part 400, subpart G.

(d) *Approved yield.* A yield calculated and approved by the verifier, used to determine any NAP payment in accordance with 7 CFR part 400, subpart G.

(e) *Aquacultural species.* Any species of aquatic organism grown as food for human consumption or fish raised as feed for fish that are consumed by humans, and which is propagated and reared in an aquatic medium by a commercial operator on private property in water in a controlled environment.

(f) *Area.* The geographic region recommended by the state CFSA committee, and approved by FCIC in accordance with § 404.13 of this part, where a natural disaster has occurred which may qualify producers in the geographic area for NAP payments.

(g) *Assigned yield.* A yield assigned for a crop year in the base period if the producer does not file an acceptable production report by the production reporting date in accordance with 7 CFR part 400, subpart G. Assigned yields are used in the same manner as actual yields when calculating APH. An assigned yield may not be used for a production report in a disaster year.

(h) *Average market price.* The price or dollar equivalent on an appropriate basis; i.e., bushel, ton, etc., for an eligible crop established by FCIC for determining NAP payments. Such price will be on a harvested basis without the inclusion of transportation, storage, processing, packing, marketing or other post-harvest expenses and will be based, in part, on historical data.

(i) *CCC.* The Commodity Credit Corporation.

(j) *CFSA.* The Consolidated Farm Service Agency of the United States Department of Agriculture.

(k) *County expected yield.* The eligible crop yield established by FCIC for the county. Such yield information may be obtained from the National Agricultural Statistics Service (NASS), CSREES, credible nongovernmental studies, and yields in similar areas. For planted annual crops, such yield will be based on the acreage planted for harvest.

(l) *Crop year.* The period of time within which the crop is normally grown and designated by the calendar year in which the crop is normally harvested in the area.

(m) *CSREES.* The Cooperative State Research, Education, and Extension Service.

(n) *Eligible crop.* An agricultural commodity including all types and varieties or acreage of a commodity for which insurance is not available under any FCIC insurance program and which is commercially produced for food or fiber as specified in this part. Eligible crop shall also include floricultural, ornamental nursery, Christmas tree, turfgrass sod, industrial crops, and aquacultural species. In the case of a crop that historically has multiple plantings in the same crop year that are planted or are prevented from being

planted on the same or different acreage will be considered different crops for determining NAP payments. This does not apply to a replacement crop.

(o) *Expected area yield.* The eligible crop yield established and approved by FCIC for the geographic area.

(p) *FCIC.* The Federal Crop Insurance Corporation, a wholly owned Government Corporation within the Consolidated Farm Service Agency, United States Department of Agriculture.

(q) *Good farming practices.* The cultural practices generally used in the area for the crop to make normal progress toward maturity and produce at least the individual unit approved yield. The practices are normally those recognized by CSREES as compatible with agronomic and weather conditions in the area.

(r) *Harvested.* A single harvest crop is considered harvested when the producer has, by hand or mechanically, removed the crop from the field. A multiple harvest crop is considered harvested when the producer has, by hand or mechanically, removed at least one harvesting from the field. The crop is considered harvested once it is taken off the field and placed in a truck or other conveyance. (Exceptions: Hay is considered harvested when in the bale, whether removed from the field or not. Grazing is not considered harvesting except for seeded pasture.)

(s) *Livestock.* Any farm or other animal excluding aquacultural species and, including but not limited to domestic avian, ruminant, equine, and swine species grown or maintained for any purpose.

(t) *Local office.* The CFSA office or other USDA office designated by FCIC.

(u) *Master yields.* Approved APH yields, for certain crops and counties as designated by the FCIC, used to determine any NAP payment in accordance with 7 CFR part 400, subpart G.

(v) *Natural disaster.* Means damaging weather, including but not limited to drought, hail, flood, excessive moisture, freeze, tornado, hurricane, or excessive wind, or any combination thereof; or other adverse natural occurrence, including but not limited to earthquake, volcanic eruption, heat, locust infestation; or that directly causes, accelerates, or exacerbates the destruction or deterioration of an eligible crop.

(w) *Operator.* The person who is in general control of the farming operation on the farm during the crop year.

(x) *Person.* A person as defined in 7 CFR part 1497, subpart B.

(y) *Prevented planting.* The inability to plant a crop with proper equipment during the planting period for the crop or commodity. A producer must have been unable to plant the eligible crop due to a natural disaster that prevented most producers in the surrounding area from planting such crop during the same planting period. The natural disaster that caused the prevented planting may occur prior to the planting period for the crop in the area, but must not occur earlier than the planting period for such crop the prior crop year.

(z) *Producer.* A person who, as owner, landlord, tenant, or sharecropper, is entitled to share in the production from the eligible commodity or in the proceeds thereof.

(aa) *Production report.* A written record showing the commodity's annual production and used to determine the producer's yield for NAP purposes. The report contains yield history by unit, if applicable, including planted acreage for annual crops, eligible acreage for perennial crops, and harvested and appraised production for the previous crop years. This report must be supported by verifiable written records, measurement of farm-stored production, or by other records of production approved by FCIC on an individual basis. Information contained in an application for payment is considered a production report for the unit for the crop year for which the application was filed.

(bb) *Qualifying gross revenues* means:

(1) With respect to a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the annual gross income for the calendar year from such operations; and

(2) With respect to a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the person's total gross income from all sources.

(cc) *Reseeded or replanted crop.* The same crop planted on the same acreage after the first planting of the crop has failed.

(dd) *Replacement crop.* A different crop planted on the same acreage after the failure of the first crop, excluding reseeded or replanted crops.

(ee) *Seeded pasture.* Acreage which is seeded on cropland, as defined in 7 CFR part 719, to an annual crop intended for use as grazing only by domestic animals.

(ff) *Share.* The producer's percentage of interest in the eligible crop as an owner, operator, or tenant at the beginning of the crop year. For the purposes of determining eligibility for NAP payments, the producer's share will not exceed the producer's share at the earlier of the time of loss or the beginning of harvest. Acreage or interest attributed to a spouse, child, or member of the same household may be considered part of the producer's share unless considered a separate person.

(gg) *Transitional NAP yield (''T'' Yield).* An estimated yield based on the county expected yield adjusted for individual producers as determined by FCIC. The T-yield will be used in the approved yield calculation process when less than four consecutive crop years of actual or assigned yields are available.

(hh) *Unit.* For the noninsured crop disaster assistance program, all acreage of the eligible crop in the county on the date coverage begins for the crop year:

(1) In which the person has one-hundred percent (100%) crop share; or

(2) Which is owned by one person and operated by another person on a share basis.

(Example: If, in addition to the land the person owns, the person rents land from five landlords, three on a crop share basis and two on a cash basis, the person would be entitled to four units, one unit for each crop share lease and one unit which includes the two cash leases and the land owned by the person.) Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop on such land will be considered as owned by the lessee. No unit other than that stated herein will be permitted.

§ 404.9 Coverage.

(a) Producers who are eligible to receive NAP payments for crop years 1995 through 1998 will receive coverage against loss in yield greater than fifty percent (50%) of the producer's approved yield for the eligible crop payable at sixty percent (60%) of the established average market price for the crop.

(b) Producers who are eligible to receive NAP payments after crop year 1998 will receive coverage against loss in yield greater than fifty percent (50%) of the producer's approved yield for the eligible crop payable at fifty-five percent (55%) of the established average market price for the crop.

(c) FCIC will adjust the NAP payment rate for crops that are produced with significant and variable expenses that are not incurred because the crop acreage was prevented from being planted or planted but not harvested.

(d) NAP payments will be determined by unit based on the production of all acreage of that crop (planted and eligible prevented from being planted) in the unit.

(e) Each producer's NAP payment will be based on the producer's share of the eligible crop.

§ 404.11 Eligibility.

(a) Eligible crops under this part will be any commercial agricultural crop, commodity, or acreage of a commodity grown for food or fiber for which the catastrophic risk protection plan of insurance is not available in the area under 7 CFR part 402 unless excluded in paragraph (b) of this section. All types and varieties of a crop or commodity will be treated as a single eligible crop. NAP benefits will be made available for:

(1) Any commercial crop grown for human consumption;

(2) Any commercial crop planted and grown for livestock consumption, including but not limited to grain and forage crops and seeded pasture;

(3) Any commercial crop grown for fiber, excluding trees grown for wood, paper, or pulp products;

(4) Any commercially produced aquacultural species;

(5) Floriculture;

(6) Ornamental nursery crops;

(7) Christmas trees;

(8) Turfgrass sod; and

(9) Industrial crops.

(b) NAP payments will not be available for:

(1) Losses of livestock or their by-products;

(2) Any person who has qualifying gross revenues in excess of $2 million;

(3) Any acreage in any area for any crop for which the catastrophic risk protection plan of insurance under 7 CFR part 402 is available or would have been available had the crop been timely planted in accordance with 7 CFR part 402 unless the delay in planting was caused by a natural disaster;

(4) Any person who has violated chapter XII and section 1764 of the Food Security Act of 1985 by being convicted under Federal or state law of planting, cultivating, growing, producing, harvesting or storing a controlled substance in any crop year;

(5) Producing an agricultural commodity in any crop year on a field on which highly erodible land is predominant, unless the person is exempt under the provisions of § 12.5 of this title; or

(6) Producing an agricultural commodity in any crop year on converted wetland, unless the person is exempt under the provisions of § 12.5 of this title.

(c) Any tenant, landlord, or producer on the unit separate from the person determined to be ineligible under this provision will remain eligible for NAP payments for their share of the crop unless such tenant, landlord, or producer on the unit is:

(1) Also convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance;

(2) Also in violation of chapter XII of the Food Security Act of 1985 and the regulations issued thereunder; or

(3) Otherwise determined by FCIC to be ineligible for NAP payments.

§ 404.13 Area.

For the purposes of this part, all acreage affected by a natural disaster, or any adjustment thereto, will be included in the area recommended by the state CFSA committee and submitted to FCIC for approval, regardless of whether the commodity produced on the affected acreage suffered a loss. The minimum area will be 320,000 acres or a geographical area with not less than an $80 million average value for all crops produced annually. The minimum area will be determined as follows:

(a) The shape of the area will be contiguous and will correspond to the shape of the natural disaster to the maximum extent possible. If the acreage affected by the natural disaster is less than the number of acres needed to meet the area size requirement and does not meet the $80 million value requirement, the state CFSA committee will add acres equally from all surrounding cropland including undamaged acres until the minimum size is met.

(b) If the acreage affected by the natural disaster is not contiguous:

(1) The area will include all acreage that has been affected by the same natural disaster within the area.

(2) The acreage included in the area will be contiguous taking into consideration geological breaks (identifiable variations in topography such as mountain ranges and rivers).

(3) If the distance between affected acreages is so distant that it is not practical to include all of the acreage within the area, the acreage may be divided into separate areas.

(c) The area may not be defined in any manner that arbitrarily includes or excludes producers or cropland.

(d) In lieu of paragraphs (a) and (b) of this section, for eligible areas outside the United States, the area shall include ten or more producers of the crop.

(e) If a part of a contiguous unit is affected by a disaster, the whole contiguous unit will need not be included in the determination of the area. However, the whole unit will be used to determine if the producer suffered a loss.

§ 404.15 Yield determinations.

(a) FCIC will establish expected area yields for eligible crops for each county or area for which the NAP is available, using available information, which may include, but is not limited to, NASS data, CSREES records, credible nongovernment studies, yields in similar areas, and reported APH data.

(b) FCIC may make county yield adjustments taking into consideration different yield variations due to different farming practices in the county such as irrigated and nonirrigated acreage.

(c) In establishing expected area yields for eligible crops:

(1) If the approved area corresponds to a single county, the expected area yield will be the yield established by FCIC for that county, including any adjustments permitted by this section;

(2) If the approved area encompasses portions of or more than one county, the expected area yield will be the weighted average of the yields established by FCIC for those counties in the area, including any adjustments permitted by this section.

(3) FCIC may adjust expected area yields if:

(A) The cultural practices, including the age of the planting or plantings, are different from those used to establish the yield.

(B) The expected area yield established on a state or county level is determined to be incorrect for the area.

(d) FCIC will establish approved yields for purposes of providing assistance under this part. Approved yields for the eligible crop will be based on the producer's actual production history in accordance with the provisions of 7 CFR part 400, subpart G.

(e) The approved yield established for the producer for the year in which the NAP payments are offered will be equal to the average of the consecutive crop year yields reported and certified of that producer for that eligible crop.

(f) If a producer receives an assigned yield for a year of natural disaster, the producer will be ineligible to receive an assigned yield for any subsequent year disaster unless adequate production records for the eligible crop from the previous one or more years are provided to the local office. The producer shall receive a zero yield for those years the producer is ineligible to receive an assigned yield.

(g) FCIC will select certain producers and require those selected to provide adequate records to support the information provided. Producers may also be required to support the yield certification at the time of loss adjustment or on post-audit. Each

certification must be supported by adequate records. Failure to produce adequate records may subject the producer to criminal and civil false claims actions under various Federal statutes as well as refund of any amount received. In addition, sanctions as set out at 7 CFR part 400, subpart R may be imposed for false certification. Adequate records may include:

(1) Commercial receipts, settlement sheets, warehouse ledger sheets, or load summaries if the eligible crop was sold or otherwise disposed of through commercial channels; and

(2) Such documentary evidence as is necessary in order to verify the information provided by the producer if the eligible crop has been sold, fed to livestock, or otherwise disposed of other than through commercial channels such as contemporaneous measurements, truck scale tickets, contemporaneous diaries, etc.

(h) Any producer who has a contract to receive a guaranteed payment for production, as opposed to delivery, of an eligible crop will have the production adjusted upward by the amount of the production corresponding to the amount of the contract payment received.

(i)(1) Producers will not be eligible to receive an assigned yield if the acreage of the crop in a county for the crop year has increased by more than 100 percent over any year in the preceding seven crop years, unless:

(i) The producer provides adequate records of production costs, acres planted, and yield for the crop year for which benefits are being sought.

(ii) If FCIC determines that the records provided under this paragraph are inadequate, FCIC may require proof that the eligible crop could have been marketed at a reasonable price had the crop been harvested.

(2) The provisions of paragraph (i)(1) of this section will not apply if:

(i) The crop has been inspected prior to the occurrence of a loss by a third party acceptable to FCIC; or

(ii) The CFSA County Executive Director, with concurrence of the CFSA State Director, makes a recommendation for an exemption from the requirements and such recommendation is approved by FCIC.

§ 404.17 Acreage report.

(a) Producers must file one or more acreage reports annually at the local office no later than the date specified by the Corporation for each crop the producer will want made eligible for the NAP program. The acreage report may be filed by the farm operator. Any producer will be bound by the acreage report filed by the farm operator unless the producer files a separate acreage report prior to the acreage reporting date.

(b) That acreage report must include:

(1) All acreage in the county of the eligible crop (for each planting in the event of multiple planting) in which the producer has a share;

(2) The producer's share at the time of planting or the beginning of the crop year;

(3) The CFSA farm serial numbers;

(4) The crop and practice;

(5) All persons sharing in the crop (the identity of any person having a substantial beneficial interest in the crop (refer to 7 CFR part 400, subpart Q) and the person's employer identification number or social security number);

(6) The date the crop was planted;

(7) Acreage prevented from being planted; and

(8) Production from the previous crop year. (For example: The producer reported the crop acreage planted in 1995. The producer must then report the 1995 production for that acreage by the 1996 acreage reporting date for the crop.)

(c) A person's failure to submit the required information by the designated acreage reporting dates shall result in the denial of NAP payments. If there is a change of ownership, operation, or share within the farming operation after the acreage reporting date, the local office must be notified not later than thirty calendar days after the change and proof of the change must be provided in order to maintain eligibility for payments under this part.

§ 404.19 Loss requirements.

(a) To qualify for payment under this part, the loss or prevented planting of the eligible crop must be due to drought, flood, or other natural disaster as determined by the Secretary.

(b) NAP assistance will not cover losses due to:

(1) The neglect or malfeasance of the producer;

(2) The failure of the producer to reseed or replant to the same crop in the county where it is customary to reseed or replant;

(3) The failure of the producer to follow good farming practices for the commodity and practice;

(4) Water contained or released by any governmental, public, or private dam or reservoir project;

(5) Failure or breakdown of irrigation equipment or facilities; or

(6) Except for tree crops and perennials, inadequate irrigation resources at the beginning of the crop year.

(c) A producer of an eligible crop will not receive NAP payments unless the projected average or actual yield for the crop, or an equivalent measurement if yield information is not available, in the area falls below sixty-five percent (65%) of the expected area yield. Once this area eligibility requirement has been satisfied:

(1) A reduced yield NAP payment will be made to a producer if the total quantity of the eligible crop that the producer is able to harvest on the unit is less than fifty percent (50%) of the individual unit approved yield for the crop, factored for the share of the producer for the crop. Production from the entire unit will be used to determine the individual loss. The quantity will not be reduced for any quality consideration unless a zero value is established.

(2) A prevented planting NAP payment will be made if the producer is prevented from planting more than thirty-five percent (35%) of the total eligible acreage intended for planting to the eligible crop.

(A) Eligible crop acreage will not exceed 100% of the simple average of the number of acres planted to the crop by the producer in the loss area during the years used to determine the approved yield, unless FCIC has previously agreed in writing to approve acreage exceeding this limit.

(B) The percentage of the acreage that is prevented from being planted will be determined by dividing the producer's prevented planted acreage within the loss area by the producer's total acreage intended to be planted in the loss area. The acreage intended to be planted may be verified using records of historical acreage.

(C) For the purposes of determining eligible acreage for prevented planting payment, all eligible acreage of the crop within the loss area will be reduced by the number of acres of the crop planted within the loss area. In the event one or more crops are eligible for a prevented planting payment in the same crop year, and there is acreage planted to another crop in excess of such crop eligible acreage, such excess acreage will be prorated to the crops eligible for prevented planting on the basis of such crop's eligible acreages.

(D) NAP payments for prevented planting will not be available for:

(i) tree crops and other perennials;

(ii) land which planting history or conservation plans indicate would remain fallow for crop rotation purposes;

(iii) land used for conservation purposes or intended to be or considered to have been left unplanted

under any program administered by USDA; or

(iv) land planted with a replacement crop.

§ 404.21 Application for payment and notice of loss.

(a) Any person with a share in the eligible crop who would be entitled to a NAP payment must make application and provide a notice of damage or loss within 15 calendar days after the occurrence of the prevented planting (the end of the planting period) or damage to the crop. For the 1995 crop year only, the notice must be filed within the later of 45 days after this rule is published in the **Federal Register** or 15 days after the occurrence of the prevented planting or damage to the crop. The notice must be filed at the local office serving the area where the producer's unit is located. The farm operator may provide the notice for all producers with an interest in the crop. All producers on a farm will be bound by the operator's filing or failure to file the application for payment unless the individual producers elect to timely file their notice.

(b) Applications for NAP payments must be filed on our form by the applicant with the local office no later than the application deadline.

(1) If the producer chooses not to harvest the crop, all eligible acres and crop units for which the producer intends to make an application for payment must be left intact until the units have been appraised or released by a FCIC loss adjuster.

(2) If the producer harvests the crop, the producer must provide such documentary evidence of crop production as FCIC may require which may include leaving representative samples of the crop for inspection.

(c) Failure to make timely application or to supply the required documentary evidence shall result in the denial of NAP payments.

(d) Benefits under this part may be assigned by the eligible producer only on our form and such assignment is effective only when approved by FCIC. Failure of FCIC to make payment in accordance with such assignment will not give rise to any liability on the part of FCIC to the assignee.

§ 404.23 Multiple benefits.

(a) If a producer is eligible to receive NAP payments under this part and benefits under any other program administered by the Secretary for the same crop loss, the producer must choose whether to receive the other program benefits or NAP payments. The producer is not eligible for both. Such election does not relieve the producer from the requirements of making a production and acreage report.

(b) Applicable programs include, but are not limited to, the Emergency Livestock Feed Assistance Program and any other program determined by FCIC to compensate the producer for the same crop loss.

§ 404.25 Payment and income limitations.

NAP payments made to eligible producers are subject to the following provisions:

(a) For the purpose of making such payments, the term ''producer'' will be considered to mean the term ''person'' as determined in accordance with 7 CFR part 1497, subpart B.

(b) No person shall receive payments under this part in excess of $100,000.

(c) A person who has qualifying gross revenues in excess of $2 million for the previous calendar year shall not be eligible to receive NAP payments under this part.

(d) Simple interest on payments to the producer which are delayed will be computed on the net payments ultimately found to be due, from and including the 61st day after the latter of the date the producer signs, dates, and submits a properly completed application for payment on the designated form, the date disputed applications are adjudicated, or the date the area trigger is established for NAP payments. Interest will be paid unless the reason for failure to timely pay is due to the producer's failure to provide information or other material necessary for the computation or payment. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1 of each year and may vary with each publication.

§ 404.27 Misrepresentation, scheme and device, and fraud.

(a) If FCIC determines that any producer has erroneously represented any fact or has adopted, participated in, or benefited from, any scheme or device that has the effect of defeating, or is designed to defeat the purpose of this part, such producer will not be eligible to receive any payments applicable to the crop year for which the scheme or device was adopted.

(b) If any misrepresentation, scheme or device, or practice has been employed for the purpose of causing FCIC to make a payment which FCIC otherwise would not make under this part:

(1) FCIC will withhold all or part of the payment that would otherwise be due.

(2) All amounts paid by FCIC to any such producer, applicable to the crop year in which the offense occurred, must be refunded to FCIC together with interest and other amounts as determined in accordance with this part.

(3) FCIC may impose such other penalties as authorized by section 506(n) of the Federal Crop Insurance Act, as amended or available under 7 CFR part 400, subpart R.

(c) Scheme and device may include, but is not limited to:

(1) Concealing any information having a bearing on the application of the rules of this part;

(2) Submitting false information to the FCIC or any county or state CFSA committee; or

(3) Creating fictitious entities for the purpose of concealing the interest of a person in the farming operation.

§ 404.29 Refunds to the corporation.

(a) In the event that there is a failure to comply with any term, requirement, or condition for payment made in accordance with this part, or the payment was established as a result of erroneous information provided by any person, or was erroneously computed, all such payments or overpayments will be refunded to FCIC on demand, together with interest.

(b) Interest will accrue in accordance with the provisions of 7 CFR 1403.9.

(c) Interest on any amount due the FCIC found to have been received by the producer as a result of fraud, misrepresentation, scheme or device, or presenting a false application for payment will start on the date the producer received the payment.

(d) Recovery of delinquent debts and set off will be in accordance with 7 CFR part 1403.

(e) If FCIC determines it is necessary to contract with a collection agency or to employ an attorney to assist in collection, the producer will pay all the expenses of collection.

(f) All amounts paid will be applied first to the payment of expense of collection, second to the reduction of any penalties which may have been assessed, then to the reduction of accrued interest, then to the reduction of the principal balance.

§ 404.31 Cumulative liability.

(a) The liability of any producer for any payment or refunds, which is determined in accordance with this part to be due to FCIC, will be in addition to any other liability of such producer

under any civil or criminal fraud statute or any other statute or provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 1014, and 31 U.S.C. 3729.

(b) All producers receiving payments under this part will be jointly and severally liable to repay any unearned NAP payments.

§ 404.33 Appeals.

The appeal, reconsideration, or review of all determinations made under this part, except the designation of an area for which there is no appeal rights because it is determined a rule of general applicability, must be in accordance with part 780 of this title or the regulations promulgated by the National Appeals Division, whichever is applicable.

§ 404.35 Exemption from levy.

Any payment that is due any person under this part will be made without regard to questions of title under state law and without regard to any attachment, levy, garnishment, or any other legal process against the crop, and the proceeds thereof, which may be asserted by any creditor, except statutory liens of the United States.

§ 404.37 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible will be eligible for NAP payments under this part only if such person meets one of the following requirements:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 404.39 Death, incompetence, or disappearance.

In the case of death, incompetence or disappearance, of any person who is eligible to receive NAP payments in accordance with this part, such payments will be disbursed in accordance with part 707 of this title.

§ 404.41 OMB control numbers.

The provisions set forth in this interim rule contain information collection that require clearance by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Previous information collection requirements have been approved under OMB control numbers 0560–0004, 0563–0007, 0563–0016, and 0563–0036. The new information collection requirements have been submitted to OMB for approval under OMB control number 0563–0016 and are not effective until approved by OMB.

Done in Washington, DC, on May 15, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–12292 Filed 5–15–95; 4:29 pm]

BILLING CODE 3410–08–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212, 245, and 248

[INS No. 1688–95]

RIN 1115–AD89

Waiver of the Two-Year Home Country Physical Presence Requirement for Certain Foreign Medical Graduates

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by allowing certain foreign medical graduates who entered the United States in J–1 status, or who acquired J–1 status after arrival in the United States, to obtain a waiver of the 2-year home country residence and physical presence requirement under section 212(e)(iii) of the Immigration and Nationality Act (Act) pursuant to a request by a State Department of Public Health, or its equivalent. The waiver is intended to permit these foreign medical graduates to work at a health care facility in an area designated by the Secretary, Health and Human Services (HHS), as having a shortage of health care professionals (''HHS-designated shortage area''). This interim rule also contains provisions which will permit these foreign medical graduates to change their nonimmigrant status in the United States from J–1 exchange visitor to H–1B specialty occupation worker.

DATES: This interim rule is effective May 18, 1995. Written comments must be received on or before July 17, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1688–95 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Sophia Cox, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

Under section 212(e) of the Act, certain J–1 exchange visitors (and their J–2 dependent spouse and children) are subject to a 2-year home country residence and physical presence requirement (the ''2-year requirement''). Exchange visitors (and dependents) who are subject to this requirement must reside and be physically present in their country of nationality or last residence abroad (''home'' country) for an aggregate of at least 2 years following departure from the United States. J–1/J–2 exchange visitors who are subject to the 2-year requirement are not allowed to change their nonimmigrant status to, or be admitted to the United States under the H (temporary worker or trainee) or L (intracompany transferee) nonimmigrant categories, or acquire lawful permanent resident status, unless they have complied with this requirement or have been granted a waiver thereof.

The following categories of exchange visitors (and their accompanying spouse and children in dependent J–2 status) are subject to the 2-year requirement: (a) Those whose J–1 program was financed in whole or in part by an agency of the U.S. Government, or by the government of their ''home'' country; (b) those whose field of specialized knowledge or skill, as indicated on Form IAP–66 (Certificate of Eligibility), is required in their home country; and (c) those who entered the United States in J–1 status (or who acquired J–1 status subsequent to arrival in the United States) to receive graduate medical education or training.

Under section 212(e) of the Act, a waiver of the 2-year requirement may be granted by the Service upon the favorable recommendation of the Director of the United States Information Agency (USIA). Waivers can be obtained on the basis of: (a) Exceptional hardship to the applicant's U.S. citizen or permanent resident

spouse or children; (b) persecution on account of race, religion, or political opinion; (c) a ''no objection'' statement issued by the applicant's ''home'' country; or (d) a request made to USIA by an interested U.S. Government agency to recommend a waiver to the Service, because the applicant's work is deemed to serve the public interest. By statute, in the case of foreign medical graduates who entered the United States to receive graduate medical education or training (and accompanying J–2 dependents), a ''no objection'' statement does not constitute a basis for USIA to recommend a waiver to the Service. Therefore, even if a ''no objection'' statement on behalf of such a foreign medical graduate has been issued, the Service is statutorily required to deny the waiver application, if such a statement forms the only basis for the waiver request.

A substantial number of foreign medical graduates pursue waivers of the 2-year requirement through requests by an interested U.S. Government agency. Prior to the enactment of section 220 of the Immigration and Nationality Technical Corrections Act of 1994 (1994 Technical Corrections Act), Pub. L. 103–416, 108 Stat. 4310, 4319–4320, dated October 25, 1994, only Federal Government agencies were considered to be an ''interested United States Government agency'' eligible to submit a waiver request to USIA on behalf of a J–1 exchange visitor. Because State governments were not permitted to act as interested government agencies, they were required to solicit the assistance of an appropriate Federal agency. Section 212(e)(iii) of the Act, as amended by section 220(b) of the 1994 Technical Corrections Act, now permits State Departments of Public Health, or their equivalent, to submit waiver requests for foreign medical graduates directly to USIA, provided that certain conditions have been met, as explained below.

As noted, under section 212(e) of the Act, the Service may not approve the applicant's waiver request unless the Director of the USIA has issued a favorable waiver recommendation. If USIA issues a favorable waiver recommendation, it notifies the Service thereof. Section 212(e) of the Act permits, but does not require, the Attorney General to grant the waiver pursuant to a favorable USIA recommendation. On the other hand, if USIA issues an unfavorable waiver recommendation, the Service must deny the waiver application. The Service's decision to deny the application may not be appealed, if the denial is based on lack of a favorable USIA waiver recommendation. Section 212(e) waivers are valid only for those exchange programs indicated in the waiver request. Any subsequent J program extension or program transfer may re-subject the exchange visitor (and his or her dependents) to the 2-year requirement.

Under current procedures, an application form is not required when the waiver application is based on an interested U.S. Government agency request or a no objection statement. Similarly, a form will not be required to apply for a waiver based on a request by a State Department of Public Health. The Service is in the process of developing an omnibus form to be used for all waiver applications, including waivers of the 2-year requirement. It should be noted that the burden rests on the applicant to establish eligibility for a waiver of the 2-year requirement. In certain cases, therefore, the Service may require other documentation from the applicant besides the favorable USIA recommendation to fully assess his or her waiver eligibility.

After the Service approves an application for a waiver of the 2-year requirement, the J–1 exchange visitor may seek H nonimmigrant status in order to engage in temporary employment for the organization or entity named in the waiver application. Foreign medical graduates who wish to work temporarily in the Unites States once a waiver of the 2-year requirement has been granted may seek H–1B classification as a specialty occupation worker. An alien may obtain H–1B status either through the simultaneous filing of an H–1B petition by the prospective employer and a change of status application by the alien, if the alien is in the United States, or through the filing of an H–1B petition alone and the alien subsequently obtaining the visa at a consular post abroad. Change of status applications are governed by section 248 of the Act. To request a change of nonimmigrant status from J–1 to H–1B, a change of status application must be filed simultaneously with the H–1B nonimmigrant visa petition, if the applicant is eligible. Once the H–1B petition and change of status application are approved, the alien will be permitted to remain in the United States and commence temporary employment with the employer or organization named in the approved H–1B petition.

As 8 CFR 248.2(c) currently reads, foreign medical graduates (and their dependents) who entered the United States on J–1 visas (or who acquired J–1 status after admission) to pursue graduate medical education or training are ineligible to apply for change of status under section 248 of the Act, even if a waiver of the 2-year requirement has been granted. This interim regulation revises 8 CFR 248.2(c) to conform with section 220 of the 1994 Technical Corrections Act. Accordingly, this interim regulation provides that foreign medical graduates who received a waiver of the 2-year requirement pursuant to a request by a State Department of Public Health, or its equivalent, may apply for change of status from J–1 to H–1B, if they other wise satisfy the change of status criteria found under section 248 of the Act.

Public Law 103–416

Section 220 of the 1994 Technical Corrections Act, enacted on October 25, 1994, permits the Service to grant a waiver of the 2-year requirement to a limited number of foreign medical graduates who have received a bona fide offer of full-time employment and who agree to practice medicine at a health care facility located in an HHS-designated shortage area. Any foreign medical graduate who is subject to the 2-year requirement, and who meets the eligibility criteria, may apply for a waiver under Pub. L. 103–416, regardless of whether he or she is physically present in the United States.

To be eligible for the waiver, the foreign medical graduate must enter into an employment contract to practice medicine full-time for at least 3 years at a health care facility located in the HHS-designated shortage area, and must agree to commence such employment within 90 days of receipt of the waiver. The Service may grant the waiver only if the Department of Public Health, or its equivalent, of the State where the foreign medical graduate will be employed, submits a formal request to USIA for a waiver recommendation, and USIA submits a favorable waiver recommendation to the Service. Although the State Department of Public Health, or its equivalent, must request the waiver on behalf of the foreign medical graduate, the health care facility at which the foreign medical graduate will work need not actually be owned or operated by the State.

The Service notes that section 220 of Pub. L. 103–416 does not expressly waive the 2-year requirement for the accompanying spouse or children of the foreign medical graduate. Longstanding Service policy, however, permits J–1 exchange visitors to include their J–2 dependent spouse and children in the waiver application. Consequently, a foreign medical graduate seeking a waiver of the 2-year requirement under section 220 of Pub. L. 103–416 shall be

permitted to include his or her accompanying J–2 spouse and children in the waiver application.

Foreign Medical Graduate

In the context of this interim rule, a foreign medical graduate refers specifically to a foreign national who has graduated from a medical school outside of the United States, and who acquired J–1 status to pursue graduate medical education or training in the United States. Foreign medical graduates seeking J–1 classification to pursue graduate medical education or training in the United States are subject to strict requirements set forth in section 212(j)(1) of the Act, and are subject to the 2-year requirement.

State Department of Public Health, or its Equivalent

Section 220 of Pub. L. 103–416 amends section 212(e)(iii) of the Act by permitting State Departments of Public Health (or their equivalent), in addition to U.S. Federal Government agencies, to submit requests for waiver recommendations directly to USIA on behalf of foreign medical graduates. Section 101(a)(36) of the Act defines the term ''State'' to include the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands, in addition to the 50 states. The same definition will apply to the term ''State'' in this rule. Further, it is the opinion of the Service that the statutory term ''State Department of Public Health, or its equivalent'' means the State agency or department that is responsible for public health issues, regardless of what the actual name of that agency or department is under State law.

Restrictions Imposed on the Waiver and the Change of Status Application

Section 214(k) of the Act, as added by section 220 of Pub. L. 103–416, imposes restrictions on waivers of the 2-year requirement for foreign medical graduates, when the application is based on a request by a State Department of Public Health, or its equivalent. By imposing conditions under section 214(k) of the Act, Congress manifested its intent that waivers of the 2-year requirement be granted only under strictly limited and controlled circumstances.

No objection statements. Section 214(k)(1)(A) of the Act provides that ''in the case of an alien who is otherwise contractually obligated to return to a foreign country, the government of such country (must) furnish ( ) the Director of the United States Information Agency with a statement in writing that it has no objection to the waiver.'' The foreign medical graduate seeking the waiver is responsible for ensuring that the ''no objection'' statement is provided directly to USIA. This additional requirement applies only when the foreign medical graduate seeks a waiver of the 2-year requirement pursuant to a request by a State Department of Public Health (or its equivalent). USIA addresses the question of what constitutes a contractual obligation in the preamble to its interim rule amending 22 CFR 514.44(e)(2), which was published in the **Federal Register** on April 3, 1995, at 60 FR 16785–16788.

Employment contracts. Section 214(k)(1)(B) of the Act provides that the Service may grant a waiver of the 2-year requirement based on a request by a State Department of Public Health only if the foreign medical graduate demonstrates a bona fide offer of full-time employment at a health facility and agrees to begin such employment within 90 days of receipt of the waiver. Section 214(k)(1)(B) of the Act also provides that the foreign medical graduate must agree to continue working at the health care facility named in the employment contract for at least 3 years. Such employment must be in accordance with the provisions of section 214(k)(2) of the Act. The USIA's implementing regulations at 22 CFR 514.44(e)(3)(B) therefore provide that the State Department of Public Health is required to submit the actual contract between the alien and the health care facility at the time the request for the favorable recommendation is made.

HHS-designated shortage areas. Section 214(k)(1)(C) of the Act provides that the foreign medical graduate must agree to practice medicine in accordance with section 214(k)(2) of the Act for at least 3 years ''only in the geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals.'' Since the Service is bound by HHS' determination of what constitutes a ''geographic area or areas * * * having a shortage of health care professionals,'' the request of a State Department of Public Health (or its equivalent), standing alone, cannot be deemed sufficient to meet his statutory requirement. The waiver application must be accompanied by evidence establishing that the geographic area or areas in which the foreign medical graduate will practice medicine are in HHS-designated shortage areas.

Numerical limitations on waivers under Pub. L. 103–416. Section 214(k)(1)(D) of the Act limits to 20-per-state the number of waivers the Service may grant under Pub. L. 103–416 each fiscal year. Consequently, if the Director of USIA issues a favorable waiver recommendation under Pub. L. 103–416, but the State requesting the waiver already has exhausted its annual waiver allotment, the Service is statutorily required to deny the waiver application. Accordingly, this rule provides that no appeal shall lie where the basis for denial is that the State has already been granted 20 waivers for that fiscal year.

Completion of the required 3-year employment contract as an H–1B nonimmigrant and change of nonimmigrant status from J–1 to H–1B. The restrictions imposed by Congress under section 214(k)(1) and (2) of the Act were intended to ensure that waivers of the 2-year requirement under Pub. L. 103–416 are granted only under strictly limited and controlled circumstances. These restrictions were also intended to ensure that foreign medical graduates who receive such a waiver actually provide health care services to those living HHS-designated shortage ares.

Under section 248(2) of the Act, a foreign medical graduate who came to the United States in J classification or acquired J classification in order to receive graduate medical education or training would normally be prohibited from filing an application for change of status. Section 214(k)(2)(A) of the Act, as added by section 220 of Pub. L. 103–416, however, provides that ''notwithstanding section 248(2), the Attorney General may change the status of an alien that qualifies under this subsection and section 212(e) to that of an alien described in section 101(a)(15)(i)(b).'' Section 214(k)(2) of the Act, as added by section 220 of Pub. L. 103–416 also states that no foreign medical graduate who has been granted a waiver and a change of nonimmigrant status from J–1 to H–1B, and who has failed to complete the 3-year employment contract with the sponsoring health care facility, shall be eligible to apply for an immigrant visa, for permanent residence, or for change of status to any other nonimmigrant category, until it has been established that he or she has resided and been physically present in his or her home country for an aggregate of 2 years following departure from the United States. Thus, section 212(k)(2) of the Act allows the foreign medical graduate to apply for change of nonimmigrant status from J–1, only to H–1B upon approval of the waiver, and also stipulates that a foreign medical graduate who fails to fulfill the required 3-year employment contract again becomes subject to the 2-year requirement. Taken together, these two provisions indicate that Congress

did not intend to permit the foreign medical graduate to proceed from J–1 status directly to lawful permanent resident status upon approval of the waiver.

Based on the above, the Service is of the opinion that, in enacting section 214(k) of the Act, Congress manifested its clear intent to require all foreign medical graduates, including those seeking to adjust their status or immigrate to this country, as well as those immediately changing status from J–1 to H–1B, to fulfill the 3-year employment contract or become subject to the 2-year requirement. To enable the Service to maintain control over the foreign medical graduate's stay in the United States in the manner intended by Congress, this interim rule provides that the foreign medical graduate must actually fulfill the contract with the health care facility named in the waiver application prior to obtaining permanent residence, or any nonimmigrant status other than H–1B. Accordingly, this interim regulation provides that a foreign medical graduate who received a waiver of the 2-year requirement under Pub. L. 103–416 may not apply for a change of status to another nonimmigrant category, for an immigrant visa, or for status as a lawful permanent resident prior to completing the required 3-year employment contract as an H–1B nonimmigrant with the health care facility named in the waiver application.

Eligibility to apply for change of status from J–1 to H–1B. While section 214(k)(2)(A) of the Act allows foreign medical graduates who received a waiver under Pub. L. 103–416 to apply for change of status from J–1 to H–1B (and their dependents from J–2 to H–4), it does not excuse the late filing of the application. Foreign medical graduates who have been granted a waiver of the 2-year requirement under Pub. L. 103–416, must be in valid J status when the change of status application is filed. Service regulations at 8 CFR 214.2(j)(1)(ii) provide that J–1 exchange visitors may be admitted to the United States for the duration of the exchange program, as noted on Form IAP–66, and an additional 30 days for travel. While J–1 exchange visitors are not authorized to work during this 30-day grace period (*see* § 274a.12(b)(11)), they are considered to be ''in status'' for purposes of applying for change of status under section 248 of the Act.

To prevent the foreign medical graduate from falling out of lawful nonimmigrant status, the Service encourages the State Department of Public Health to allow ample time for processing the waiver and subsequent filing and processing of the H–1B petition and change of status application. Foreign medical graduates who received a waiver under section 220 of Pub. L. 103–416 and whose J nonimmigrant stay has expired, or who have engaged in unauthorized employment, are ineligible to apply for change of status under section 248 of the Act. Such persons would not be precluded, however, from procuring an H–1B visa at a U.S. consular post abroad and seeking readmission to the United States in H–1B status to commence employment with the sponsoring health care facility.

Numerical limitations imposed on the issuance of H–1B visas. Although section 214(k)(2)(A) of the Act eases the change of status restrictions under section 248(2) of the Act, it does not ease the annual numerical limitations imposed on the H–1B specialty worker category under section 214(g)(1)(A) of the Act. Consequently, the Service would not be prohibited from granting a waiver of the 2-year requirement under Pub. L. 103–416, but would be statutorily prohibited from according H–1B status to the foreign medical graduate, if the annual numerical limitations imposed on the issuance of H–1B visas under section 214(g)(1)(A) of the Act have been reached.

Control measures to be implemented by the Service. As noted, waivers of the 2-year requirement pursuant to Pub. L. 103–416 are based on the premise that the foreign medical graduate's work at a health care facility will assist States in coping with health care shortages. To ensure compliance with section 214(k) of the Act, and to ensure that the public receives the intended benefit, the Service will implement the following measures.

The Form I–797 (Notice of Action) (including I–797A and I–797B) currently used to notify the alien of the approved waiver and/or change of status from J–1 to H–1B, if applicable, will explicitly state the terms and conditions of the waiver and change of status. To facilitate issuance of the H–1B visa abroad, or admission as an H–1B nonimmigrant at the port-of-entry in cases where the foreign medical graduate is ineligible or chooses not to apply for change of status, the H–1B approval notice shall indicate that he or she has obtained the necessary waiver under Pub. L. 103–416. Such notification serves two purposes. It ensures that the foreign medical graduate is made fully aware of the terms and conditions of his or her waiver and change of status. It also alerts the Service officer or State Health Department that special conditions have been placed on the alien's nonimmigrant status, thereby enabling the officer to take whatever steps are necessary to ensure that the alien's file is noted accordingly. When the foreign medical graduate's Form I–797 is later presented in support of an application for another benefit, such as an amended H–1B petition, a new H–1B petition for a different employer, or an adjustment of status application, the adjudicating officer will again be alerted to the special conditions that have been placed on the alien's nonimmigrant status. As a result, the Service will be able to verify whether the terms and conditions imposed under section 214(k) of the Act have been satisfied. These control measures are reflected in this interim rule at 8 CFR 212.7(c)(9)(ii).

Inability To Fulfill the Three-Year Employment Contract Due to Extenuating Circumstances

New section 214(k)(1)(B) of the Act grants the Attorney General discretion to excuse early termination of employment upon determining that extenuating circumstances so justify. The statute provides that extenuating circumstances may include the closure of the health care facility or hardship to the alien.

In determining whether to excuse the foreign medical graduate's early termination of employment with the health care facility named in the waiver application, the Service will carefully consider whether, based on all the facts before it, excusing such early termination would be consistent with the purpose of the statute—provision of health care services for at least a 3-year period of time in an HHS-designated shortage area. Closure of the facility, for example, could, under certain circumstances, warrant excusing failure to fulfill the 3-year employment contract, provided that the foreign medical graduate can establish that he or she has procured employment for the balance of the 3-year period with another health care facility in an HHS-designated shortage area. Similarly, an alien who claims that his or her inability to fulfill the 3-year employment contract is due to hardship shall also be required to submit evidence of new employment for another health care facility in an HHS-designated shortage area. A foreign medical graduate who seeks to establish extenuating circumstances on the basis of hardship also must submit evidence that the hardship was caused by unforeseen circumstances beyond his or her control. In short, before the Service will consider excusing the foreign medical graduate's early termination of

the 3-year employment contract with the health care facility named in the waiver application due to extenuating circumstances, the alien must submit an employment contract for the balance of this period with another health care facility in an HHS-designated shortage area. *See* section 214(k)(3) of the Act (the foreign medical graduate may only work in HHS-designated shortage areas during the required 3-year period of employment following approval of the waiver).

Changes in Employment During the Required Three-Year Period Following Approval of the Waiver

Any material change in the alien's H–1B employment must be reported to the Service by filing either an amended H–1B petition indicating any changes in the terms and conditions of the alien's current H–1B employment, or by filing a new petition if the alien seeks to change H–1B employers, in the manner generally required under current regulations at 8 CFR 214.2(h)(2)(i) (D) and (E), and 8 CFR 214.2(h)(11).

An amended H–1B petition for a foreign medical graduate who has been granted a waiver of the 2-year requirement under Pub. L. 103–416 shall be accompanied by evidence that he or she will continue practicing medicine in an HHS-designated shortage area for the health care facility named in the waiver application and in the original H–1B petition.

A foreign medical graduate who has been granted a waiver of the 2-year requirement under Pub. L. 103–416, who has not fulfilled the 3-year employment contract with the health care facility named in the waiver application, and who seeks to change H–1B employers due to extenuating circumstances or hardship is responsible for ensuring that the new health care facility files an H–1B petition. In such cases, the new petition shall be accompanied by a copy of Form I–797 (or I–797A or I–797B, as appropriate) relating to the original H–1B petition and an explanation from the alien, with supporting evidence, establishing that extenuating circumstances or hardship necessitate a change in employment. The new H–1B petition shall also be accompanied by an employment contract showing that the alien will practice medicine at the health care facility for the balance of the required 3-year period, and evidence that the geographic area or areas of intended employment designated in the new H–1B petition are in an HHS-designated shortage area.

The Service may consult with the Secretary of HHS to verify whether the area of intended employment specified in the new H–1B petition is in fact located in an HHS-designated shortage area. Further, in exercising its statutory discretion to excuse an alien's failure to complete the requisite 3-year employment contract, the Service, if it deems appropriate, may consult with USIA, the State Department of Public Health which initiated the waiver request, and the health care facility named in the original waiver application.

If, in the exercise of its discretion, the Service determines that extenuating circumstances or hardship exist, that employment will continue at a health care facility in an HHS-designated shortage area, and that both the new petitioner and the beneficiary have otherwise satisfied the H–1B eligibility criteria enumerated under 8 CFR 214.2(h), the new petition may be approved, and the foreign medical graduate may be permitted to serve the balance of the 3-year employment period at the health care facility named in the new H–1B petition.

Effect of Failure To Abide by the Terms and Conditions of the Waiver Granted Under Pub. L. 103–416

Section 241(a)(1)(C)(i) of the Act provides for the deportation of any alien admitted as a nonimmigrant who fails to: (a) Maintain the nonimmigrant status under which he or she was admitted; (b) fails to maintain the nonimmigrant status to which he or she was changed under section 248 of the Act; or (c) fails to comply with the conditions of any such nonimmigrant status. J–1 foreign medical graduates who do not fulfill the 3-year employment contract for the health care facility named in the waiver application (unless the Attorney General has determined there are extenuating circumstances or hardship to the alien), who do not work in HHS-designated shortage areas, or who change employment without permission from the Service, will be deemed not to be maintaining their nonimmigrant status or complying with the terms and conditions imposed upon the waiver and change of status application, and will therefore be deportable under section 241(a)(1)(C)(i) of the Act.

Application Period

Section 220(c) of Pub. L. 103–416 states that the statutory amendments to section 212(e) of the Act shall apply to aliens admitted to the United states under section 101(a)(15)(J) of the Act, or who acquire J status after admission to the Unites States before, on, or after the date of enactment, and before June 1, 1996. Consistent with Congress' intent to relieve health care shortages in HHS-designated shortage areas, the Service interprets this provision to mean that any foreign medical graduate who entered the United States in J nonimmigrant status, or who acquired J status upon arrival to pursue graduate medical education or training, before June 1, 1996, is eligible to apply for a waiver of the 2-year requirement pursuant to section 220 of Pub. L. 103–416, and for subsequent change of nonimmigrant status to H–1B. Further, if the foreign medical graduate acquired J status before June 1, 1996, in order to pursue graduate medical education or training, he or she will be eligible to request a section 220 waiver, even if the training is completed after June 1, 1996.

Foreign medical graduates who acquire J nonimmigrant status to pursue graduate medical education or training on or after June 1, 1996, however, will not be eligible to apply for benefits under Pub. L. 103–416, even if they wish to practice medicine in an HHS-designated shortage area. Those foreign medical graduates may, however, pursue a non-section 220 waiver under section 212(e) of the Act.

Good Cause Exception

This interim rule is effective on publication in the Federal Register although the Service invites post-promulgation comments and will address any such comments in a final rule. For the following reasons, the Service finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553. The provisions of Pub. L. 103–416, which provide a great public benefit, are already in effect. Adopting this rule without prior notice and comment allows foreign medical graduates whose J status is about to expire to apply for the waiver as soon as possible, thereby avoiding potential interruption of their lawful status during the normal notice and comment period. The rule also enables State Departments of Public Health to seek immediately the assistance of certain foreign medical graduates to ease local medical care shortages. Adopting this rule as an interim rule therefore benefits both foreign medical graduates and those who live in HHS-designated shortage areas.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605 (b)), has reviewed this regulation and, by approving it, certifies that this interim rule will not have a significant

economic impact on a substantial number of small entities because of the following factors. This interim rule will have limited or no effect on small entities, because only 20 waivers are authorized per State annually to foreign medical graduates under Pub. L. 103–416.

Executive Order 12866

This interim rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), regulatory Planning Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Exetutive Order 12612

This interim rule will not have substantial direct effect 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. Section 220 of Pub. L. 103–416 merely enables the States, in addition to Federal Government agencies, to submit waiver requests for foreign medical graduates directly to USIA, while preserving the authority of the Federal Government to grant or deny such waiver requests. The ability of Federal Government agencies to continue submitting waiver requests to USIA is not changed or curtailed in any way by this rule. Therefore, in accordance with Executive Order 12612, it has been determined that this interim rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that this interim rule has been assessed in light of the criteria in Executive Order 12606, and has determined that the regulation would enhance family well-being by allowing certain dependent J–2 family members to obtain derivative H–4 status in the United States based on the waiver granted to the principal physician and the principal's change of status from J–1 to H–1B, without the need to travel abroad to procure the nonimmigrant visa and seek re-admission to the United States. Permitting such changes of non-immigrant status allows the principal physician's dependent spouse and children to: (a) Accompany him or her while employed temporarily as an H–1B nonimmigrant; and (b) remain in this country on a permanent basis should he or she subsequently apply for, and be granted approval of, adjustment of status to that of a lawful permanent resident. This rule also enhances family well-being by allowing families in HHS–designated shortage areas to get much needed medical treatment and care.

Paperwork Reduction Act

The information collection requirements contained in this interim rule have been cleared by the Office of Management and Budget Under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 212

Administrative practices and procedure, Aliens, Immigration, passports and visa, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and Recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. In § 212.7, paragraphs (c)(9) and (c)(10) are redesignated as paragraphs (c)(10) and (c)(11), respectively, and a new paragraph (c)(9) and (c)(11), respectively, and a new paragraph (c)(9) is added to read as follows:

§ 212.7 Waiver of certain grounds of excludability.

* * * * *

(c) * * *

(9) *Waivers under Pub. L. 103–416 based on a request by a State Department of Public Health (or equivalent).* In accordance with section 220 of Pub. L. 103–416, an alien admitted to the United States as a nonimmigrant under section 101(a)(15)(J) of the Act, or who acquired status under section 101(a)(15)(J) of the Act after admission to the United States, to participate in an exchange program of graduate medical education or training (as of January 9, 1977), may apply for a waiver of the 2-year home country residence and physical presence requirement (the ''2-year requirement'') under section 212(e)(iii) of the Act based on a request by a State Department of Pubic Health, or its equivalent. To initiate the application for a waiver under Pub. L. 103–416, the Department of Public Health, or its equivalent, or the State in which the foreign medical graduate seeks to practice medicine, must request the Director of USIA to recommend a waiver to the Service. The waiver may be granted only if the Director of USIA provides the Service with a favorable waiver recommendation. Only the Service, however, may grant or deny the waiver application. If granted, such a waiver shall be subject to the terms and conditions imposed under section 214(k) of the Act. Although the alien is not required to submit a separate waiver application to the Service, the burden rests on the alien to establish eligibility for the waiver. If the Service approves a waiver request made under Pub. L. 103–416, the foreign medical graduate (and accompanying dependents) may apply for change of nonimmigrant status, from J–1 to H–1B and, in the case of dependents of such a foreign medical graduate, from J–2 to H–4. Aliens receiving waivers under section 220 of Pub. L. 103–416 are subject, in all cases, to the provisions of section 214(g)(1)(A) of the Act.

(i) *Eligiblity criteria.* J–1 foreign medical graduates (with accompanying J–2 dependents) are eligible to apply for a waiver of the 2-year requirement under Pub. L. 103–416 based on a request by a State Department of Public Health (or its equivalent) if:

(A) They were admitted to the United States under section 101(a)(15)(J) of the Act, or acquired J nonimmigrant status before June 1, 1996, to pursue graduate medical education or training in the United States.

(B) They have entered into a bona fide, full-time employment contract for 3 years to practice medicine at a health care facility located in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals (''HHS-designated shortage area'');

(C) They agree to commence employment within 90 days of receipt of the waiver under this section and agree to practice medicine for 3 years at the facility named in the waiver application and only in HHS-designated shortage areas. The health care facility named in the waiver application may be operated by:

(*1*) An agency of the Government of the United States or of the State in which it is located; or

(*2*) A charitable, educational, or other not-for-profit organization; or

(*3*) Private medical practitioners.

(D) The Department of Public Health, or its equivalent, in the State where the health care facility is located has requested the Director, USIA, to recommend the waiver, and the Director, USIA, submits a favorable waiver recommendation to the Service; and

(E) Approval of the waiver will not cause the number of waivers granted pursuant to Pub. L. 103–416 and this section to foreign medical graduates who will practice medicine in the same state to exceed 20 during the current fiscal year.

(ii) *Decision on waivers under Pub. L. 103–416 and notification to the alien.*—(A) *Approval.* If the Director of USIA submits a favorable waiver recommendation on behalf of a foreign medical graduate pursuant to Pub. L. 103–416, and the Service grants the waiver, the alien shall be notified of the approval on Form I–797 (or I–797A or I–797B, as appropriate). The approval notice shall clearly state the terms and conditions imposed on the waiver, and the Service's records shall be noted accordingly.

(B) *Denial.* If the Director of USIA issues a favorable waiver recommendation under Pub. L. 103–416 and the Service denies the waiver, the alien shall be notified of the decision and of the right to appeal under 8 CFR part 103. However, no appeal shall lie where the basis for denial is that the number of waivers granted to the State in which the foreign medical graduate will be employed would exceed 20 for that fiscal year.

(iii) *Conditions.* The foreign medical graduate must agree to commence employment for the health care facility specified in the waiver application within 90 days of receipt of the waiver under Pub. L. 103–416. The foreign medical graduate may only fulfill the requisite 3-year employment contract as an H–1B nonimmigrant. A foreign medical graduate who receives a waiver under Pub. L. 103–416 based on a request by a State Department of Public Health (or equivalent), and changes his or her nonimmigrant classification from J–1 to H–1B, may not apply for permanent residence or for any other change of nonimmigrant classification unless he or she has fulfilled the 3-year employment contract with the health care facility and in the specified HHS-designated shortage area named in the waiver application.

(iv) *Failure to fulfill the three-year employment contract due to extenuating circumstances.* A foreign medical graduate who fails to meet the terms and conditions imposed on the waiver under section 214(k) of the Act and this paragraph will once again become subject to the 2-year requirement under section 212(e) of the Act.

Under section 214(k)(1)(B) of the Act, however, the Service, in the exercise of discretion, may excuse early termination of the foreign medical graduate's 3-year period of employment with the health care facility named in the waiver application due to extenuating circumstances. Extenuating circumstances may include, but are not limited to, closure of the health care facility or hardship to the alien. In determining whether to excuse such early termination of employment, the Service shall base its decision on the specific facts of each case. In all cases, the burden of establishing eligibility for a favorable exercise of discretion rests with the foreign medical graduate. Depending on the circumstances, closure of the health care facility named in the waiver application may, but need not, be considered an extenuating circumstance excusing early termination of employment. Under no circumstances will a foreign medical graduate be eligible to apply for change of status to another nonimmigrant category, for an immigrant visa or for status as a lawful permanent resident prior to completing the requisite 3-year period of employment for a health care facility located in an HHS-designated shortage area.

(v) *Required evidence.* A foreign medical graduate who seeks to have early termination of employment excused due to extenuating circumstances shall submit documentary evidence establishing such a claim. In all cases, the foreign medical graduate shall submit an employment contract with another health care facility located in an HHS-designated shortage area for the balance of the required 3-year period of employment. A foreign medical graduate claiming extenuating circumstances based on hardship shall also submit evidence establishing that such hardship was caused by unforeseen circumstances beyond his or her control. A foreign medical graduate claiming extenuating circumstances based on closure of the health care facility named in the waiver application shall also submit evidence that the facility has closed or is about to be closed.

(vi) *Notification requirements.* A J–1 foreign medical graduate who has been granted a waiver of the 2-year requirement pursuant to Pub. L. 103–416, is required to comply with the terms and conditions specified in section 214(k) of the Act and the implementing regulations in this section. If the foreign medical graduate subsequently applies for and receives H–1B status, he or she must also comply with the terms and conditions of that nonimmigrant status. Such compliance shall also include notifying the Service of any material change in the terms and conditions of the H–1B employment, by filing either an amended or a new H–1B petition, as required, under §§ 214.2(h)(2)(i)(D), 214.2(h)(2)(i)(E), and 214.2(h)(11) of this chapter.

(A) *Amended H–1B petitions.* The health care facility named in the waiver application and H–1B petition shall file an amended H–1B petition, as required under § 214.2(h)(2)(i)(E) of this chapter, if there are any material changes in the terms and conditions of the beneficiary's employment or eligibility as specified in the waiver application filed under Pub. L. 103–416 and in the subsequent H–1B petition. In such a case, an amended H–1B petition shall be accompanied by evidence that the alien will continue practicing medicine with the original employer in an HHS-designated shortage area.

(B) *New H–1B petitions.* A health care facility seeking to employ a foreign medical graduate who has been granted a waiver under Pub. L. 103–416 (prior to the time the alien has completed his or her 3-year contract with the facility named in the waiver application and original H–1B petition), shall file a new H–1B petition with the Service, as required under §§ 214.2(h)(2)(i) (D) and (E) of this chapter. Although a new waiver application need not be filed, the new H–1B petition shall be accompanied by the documentary evidence generally required under § 214.2(h) of this chapter, and the following additional documents:

(*1*) A copy of Form I–797 (and/or I–797A and I–797B) relating to the waiver and nonimmigrant H status granted under Pub. L. 103–416;

(*2*) An explanation from the foreign medical graduate, with supporting evidence, establishing that extenuating circumstances necessitate a change in employment;

(*3*) An employment contract establishing that the foreign medical graduate will practice medicine at the health care facility named in the new H–1B petition for the balance of the required 3-year period; and

(*4*) Evidence that the geographic area or areas of intended employment indicated in the new H–1B petition are in HHS-designated shortage areas.

(C) *Review of amended and new H–1B petitions for foreign medical graduates granted waivers under Pub. L. 103–416 and who seek to have early termination of employment excused due to extenuating circumstances.—(1) Amended H–1B petitions.* The waiver granted under Pub. L. 103–416 may be affirmed, and the amended H–1B petition may be approved, if the petitioning health care facility establishes that the foreign medical graduate otherwise remains eligible for H–1B classification and that he or she will continue practicing medicine in an HHS-designated shortage area.

(*2*) *New H–1B petitions.* The Service shall review a new H–1B petition filed on behalf of a foreign medical graduate who has not yet fulfilled the required 3-year period of employment with the health care facility named in the waiver application and in the original H–1B petition to determine whether extenuating circumstances exist which warrant a change in employment, and whether the waiver granted under Pub. L. 103–416 should be affirmed. In conducting such a review, the Service shall determine whether the foreign medical graduate will continue practicing medicine in an HHS-designated shortage area, and whether the new H–1B petitioner and the foreign medical graduate have satisfied the remaining H–1B eligibility criteria described under section 101(a)(15)(H) of the Act and § 214.2(h) of this chapter. If these criteria have been satisfied, the waiver granted to the foreign medical graduate under Pub. L. 103–416 may be affirmed, and the new H1–B petition may be approved in the exercise of discretion, thereby permitting the foreign medical graduate to serve the balance of the requisite 3-year employment period at the health care facility named in the new H–1B petition.

(D) *Failure to notify the Service of any material changes in employment.* Foreign medical graduates who have been granted a waiver of the 2-year requirement and who have obtained H–1B status under Pub. L. 103–416 but fail to: Properly notify the Service of any material change in the terms and conditions of their H–1B employment, by having their employer file an amended or a new H–1B petition in accordance with this section and § 214.2(h) of this chapter; or establish continued eligibility for the waiver and H–1B status, shall (together with their dependents) again become subject to the 2-year requirement. Such foreign medical graduates and their accompanying H–4 dependents also become subject to deportation under section 241(a)(1)(C)(i) of the Act.

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; and 8 CFR part 2.

§ 245.1 [Amended]

4. In § 245.1, paragraph (c)(2) is amended by removing the ‘‘;’’ at the end of the paragraph and replacing it with a ‘‘.’’; and by adding a new sentence at the end of paragraph (c)(2) to read as follows:

§ 245.1 Eligibility.

* * * * *

(c) * * *

(2) * * * An alien who has been granted a waiver under section 212(e)(iii) of the Act based on a request by a State Department of Health (or its equivalent) under Pub. L. 103–416 shall be ineligible to apply for adjustment of status under section 245 of the Act if the terms and conditions specified in section 214(k) of the Act and § 212.7(c)(9) of this chapter have not been met;

* * * * *

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

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

Authority: 8 U.S.C. 1101, 1103, 1184, 1187, 1258; 8 CFR part 2.

6. In § 248.2, paragraph (c) is amended by removing the ‘‘; and’’ at the end of the paragraph and replacing it with a ‘‘.’’; and by adding two new sentences at the end of paragraph (c) to read as follows:

§ 248.2 Ineligible classes.

* * * * *

(c) * * * This restriction shall not apply when the alien is a foreign medical graduate who was granted a waiver under section 212(e)(iii) of the Act pursuant to a request made by a State Department of Public Health (or its equivalent) under Pub. L. 103–416, and the alien complies with the terms and conditions imposed on the waiver under section 214(k) of the Act and the implementing regulations at § 212.7(c)(9) of this chapter. A foreign medical graduate who was granted a waiver under Pub. L. 103–416 and who does not fulfill the requisite 3-year employment contract or otherwise comply with the terms and conditions imposed on the waiver is ineligible to apply for change of status to any other nonimmigrant classification; and

* * * * *

Dated: April 25, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–12272 Filed 5–17–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–82–AD; Amendment 39–9234; AD 95–10–17]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Lockheed Model L–1011–385 series airplanes. This action requires inspections to detect cracking or severing of the fuselage frames, and an additional inspection or repair, if necessary. This amendment is prompted by reports indicating that fatigue cracking was found on certain fuselage frames on these airplanes. The actions specified in this AD are intended to prevent reduced structural integrity of the fuselage shell due to the problems associated with fatigue cracking.

DATES: Effective May 23, 1995.

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

Comments for inclusion in the Rules Docket must be received on or before July 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–82–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate,

1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: The FAA has recently received six reports indicating that cracking was found on certain fuselage frames on Lockheed Model L–1011–385 series airplanes. This cracking occurred at the location where the outer flange of the frame attaches to the water line (WL) 280.6 longeron (the upper stringerless sidewall longeron) on the left- and right-hand sides of the airplane. Such cracking also has been found in multiple frames of a single airplane. On one airplane, two adjacent frames were severed completely; cracks were found in three more adjacent frames on this same airplane. In each of the cracked frames, the cracks emanated from the fastener hole that attaches the frame to the WL 280.6 longeron at the shear slip cutout.

The cracking appears to be fatigue related, primarily as a result of pressurization loads. An engineering analysis indicates that this cracking initiates when the airplane has accumulated between 20,000 and 25,000 total landings. Loads analysis and testing performed during its original certification shows that this airplane model can retain fail-safe load capability with a skin crack extending across two skin bays and one frame severed completely. (To date, no skin cracking has been reported.) Subsequent engineering analysis confirms that the airplane is capable of limit pressurization and fuselage bending loads with two adjacent frames severed completely.

Fatigue cracking in the fuselage frames, if not detected and corrected in a timely manner, could result in reduced structural integrity of the fuselage shell.

The FAA has reviewed and approved Lockheed Alert Service Bulletin 093–53–A271, dated April 25, 1995, including Attachments 1 and 2, which describes procedures for either an external X-ray inspection, or both an internal close visual and an eddy current inspection, to detect cracking or severing of the fuselage frames; and an inspection (using either an eddy current surface scan or a magneto-optic imager) of the adjacent frames and external skin, or repair, if necessary. The alert service bulletin specifies that, for certain airplanes, the inspection area is located between fuselage station (FS) 589 to FS 749 (for the C1 door) and FS 509 to FS 749 (for the C1A door) on the right-hand side of the airplane. (For airplanes on which any cracking or severing is found in the fuselage frames, the alert service bulletin describes procedures for an additional inspection of the fuselage frames between FS 1605 to FS 1745 on the left- and right-hand sides of the airplane.) For certain other airplanes, the alert service bulletin indicates that the inspection area includes all fuselage frames where the frame outer flange attaches to the WL 280.6 longeron (upper stringerless sidewall longeron) on both the left- and right-hand sides of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop on other Lockheed Model L–1011–385 series airplanes of the same type design, this AD is being issued to prevent reduced structural integrity of the fuselage shell. This AD requires either an external X-ray inspection, or both an internal close visual and an eddy current inspection, to detect cracking or severing of the fuselage frames; and an inspection (using either an eddy current surface scan or a magneto-optic imager) of the adjacent frames and external skin, or repair, if necessary. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

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

The required compliance time of 120 days for certain airplanes [reference paragraph (b) of this AD] is usually sufficient to allow for a brief comment period before adoption of a final rule. In this AD, however, the compliance time of 120 days for airplanes that have accumulated 20,000 total landings, but less than 25,000 total landings, was established based on inspections to date of airplanes in this category along with an engineering evaluation of frame crack propagation rates. The FAA established that compliance time in order to provide an acceptable level of safety commensurate with the compliance time of 25 days for airplanes that have accumulated 25,000 or more total landings. In addition, the FAA selected the 120-day compliance time because of a potential short-term problem with availability of sufficient parts for repairing a fuselage frame if any defect is found; a shorter compliance time might have resulted in the unnecessary removal of airplanes from service pending delivery of repair parts. Nevertheless, the FAA has determined that immediate adoption is necessary in this case because of the importance of initiating the required inspections as soon as possible.

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 rule to clarify this long-standing requirement.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–82–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

95–10–17 Lockheed Aeronautical Systems Company: Amendment 39–9234. Docket 95–NM–82–AD.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (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 prevent reduced structural integrity of the fuselage shell due to fatigue cracking of the fuselage frames, accomplish the following:

(a) Prior to the accumulation of 25,000 total landings, or within 25 days after the effective date of this AD, whichever occurs later: Perform either an external X-ray inspection, or both an internal close visual and an eddy current inspection, to detect cracking or severing of the fuselage frames at all fuselage frames where the frame outer flange attaches to the water line (WL) 280.6 longeron (upper stringerless sidewall longeron) on both the left- and right-hand sides of the airplane, in accordance with Lockheed Alert Service Bulletin 093–53–A271, dated April 25, 1995, including Attachments 1 and 2.

(1) If no cracking or severing is found, no further action is required by paragraph (a) of this AD.

(2) If any cracking or severing is found, prior to further flight, perform an inspection (using either an eddy current surface scan or a magneto-optic imager) to detect cracking of the adjacent frames and external skin, in accordance with the alert service bulletin. Prior to further flight, repair any cracking or severing found during any inspection required by paragraph (a) of this AD, in accordance with the alert service bulletin.

(b) Except as provided by paragraph (c) of this AD, prior to the accumulation of 20,000 total landings, or within 120 days after the effective date of this AD, whichever occurs later: Perform either an external X-ray inspection, or both an internal close visual and an eddy current inspection, to detect cracking or severing of the fuselage frames between fuselage stations (FS) 589 to FS 749 (for the C1 door) and between FS 509 to FS 749 (for the C1A door) on the right-hand side of the airplane, in accordance with Lockheed Alert Service Bulletin 093–53–A271, dated April 25, 1995, including Attachments 1 and 2. If any cracking or severing is found, prior to further flight, perform an inspection to detect cracking of the fuselage frames at FS 1605 to FS 1745 on the left- and right-hand sides of the airplane, in accordance with the alert service bulletin.

(1) If no cracking is found, no further action is required by paragraph (b) of this AD.

(2) If any cracking is found, prior to further flight, perform an inspection (using either an eddy current surface scan or a magneto-optic imager) to detect cracking of the adjacent frames and external skin, in accordance with the alert service bulletin. Prior to further flight, repair any cracking or severing found during any inspection required by paragraph (b) of this AD, in accordance with the alert service bulletin.

(c) Airplanes on which the inspection required by paragraph (a) of this AD is performed within the compliance time specified in paragraph (b) of this AD are not required to accomplish the inspection required by paragraph (b).

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

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

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

(f) The inspections and repair shall be done in accordance with Lockheed Alert Service Bulletin 093–53–A271, dated April 25, 1995, including Attachments 1 and 2. (NOTE: Attachment 1 is undated.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of

the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 23, 1995.

Issued in Renton, Washington, on May 10, 1995.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–11974 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–13–U

Coast Guard

33 CFR Part 117

[CGD02–95–001]

RIN 2115–AE47

Drawbridge Operation Regulation; Illinois Waterway

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is finalizing operation conditions for the remote operation of the Elgin, Joliet and Eastern Railway (EJ&E) Bridge over the Illinois Waterway at mile 290.1, at Lockport, Illinois. This action was taken at the request of the Elgin, Joliet and Eastern Railway Company. The change to remote operation permits more efficient operation of the railway bridge, while continuing to provide for the reasonable needs of navigation.

EFFECTIVE DATE: May 18, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the offices of the Commander, Second Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, Attention: Bridge Administrator, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, (314) 539–3724.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are David H. Sulouff, Project Officer, Bridge Branch and LT S. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

On September 1, 1994, the Coast Guard published a proposed rule (59 FR 45252) concerning this amendment. The Commander, Second Coast Guard District, also published the proposal as a Public Notice dated September 20, 1994. Interested parties were given until October 31, 1994 to submit comments. The Coast Guard received comments from the Illinois Department of Conservation and the Illinois River Carriers Association, representing approximately 34 river towing companies. On February 24, 1995, the Coast Guard published an interim rule (60 FR 10315) concerning this amendment with a comment closing date of April 25, 1995. No comments were received in response to this interim rule. A public hearing was not requested and one was not held.

Two minor changes have been made to the final rule from the interim rule. The interim final rule stated that the remote operator made marine broadcasts warning of the drawbridges closure on channel 16. In this final rule, reference to channel 16 was eliminated because the marine broadcast frequencies are designated by FCC regulations and not by the Coast Guard. This final rule also increases the number of broadcasts that the remote operator will make after the drawspan is lowered and locked in the closed to navigation position, from two broadcasts to periodic broadcasts. This change will ensure that vessels approaching the bridge after the drawspan has been lowered will be notified that the draw is closed.

Good cause exists for making this rule effective upon publication. No comments were received during the interim final rule's 60 day comment period. The Coast Guard has monitored the remote operation during the 60 day test period. There were no equipment failures and no reported negative impacts to navigation. This rule allows the bridge to be left open unless rail traffic or maintenance requires its closure. Vessel traffic will benefit from this rule by having the bridge maintained in the open to navigation position. For these reasons the Coast Guard has determined that there is no need to delay implementation of this rule.

Background and Purpose

The Elgin, Joliet and Eastern Railway requested approval from the Coast Guard to change the operation of the EJ&E Bridge over the Illinois waterway at mile 290.1, at Lockport, Illinois, from on-site bridge operation to a remote operating system. This rule change establishes remote operating procedures with associated operating and equipment requirements on EJ&E that will ensure the safe and timely operation of the railroad drawspan.

EJ&E has installed remote operating equipment and a control system, including radar, infrared boat detectors, motion detectors and communications equipment, to facilitate operation of the drawspan from Gary, Indiana. The drawspan can also be operated at the bridge site. The drawspan will be maintained in the open to navigation position except for the passage of rail traffic or maintenance. The equipment indicates any malfunction in the drawspan operation and allows the remote operator to ascertain the position of the drawspan at any time. The marine radio system allows communication between the remote operator and marine traffic at the bridge, on the VHF marine frequencies authorized by the Federal Communications Commission. A radar antenna has been installed on the bridge and the received signal is transmitted by fixed lines to the remote operator. The radar system is designed to scan upstream and downstream of the bridge. Infrared scanners and motion detectors are located in the channel drawspan to detect vessels under the drawspan. If an obstruction is detected beneath the drawspan during the closing cycle, before the drawspan is seated and locked, the drawspan will automatically stop lowering and shall be raised to the fully open position by the remote operator until the channel is clear. Once lowered and locked in the closed to navigation position, the boat detectors will not raise the drawspan.

During the drawspan closing cycle, the bridge operator shall make a radio broadcast indicating drawspan status. At the appropriate times in the cycle, the bridge operator shall announce that the drawspan will close to navigation, that the drawspan is closed to navigation, or that the drawspan has reopened to navigation.

Regulatory Evaluation

This rule is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

After considering comments received, the Coast Guard finds that any impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under 605(b) of the Regulatory

Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environmental

The Coast Guard has reviewed the environmental impact of this rule and concluded that under section 2.B.2.g(5), (Promulgation of operating requirements or procedures for drawbridges) of Commandant Instruction M16475.1B, (as revised by 59 FR 38654; July 29, 1994), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.395 is revised to read as follows:

§ 117.395 Illinois Waterway.

(a) The draws of the McDonough Street Bridge, mile 287.3; Jefferson Street bridge, mile 287.9; Cass Street bridge, mile 288.1; Jackson Street bridge, mile 288.4; and Ruby Street bridge, mile 288.7; all of Joliet, shall open on signal, except that they need not open from 7:30 a.m. to 8:30 a.m. and from 4:15 p.m. to 5:15 p.m. Monday through Saturday.

(b) The drawspan of the Elgin, Joliet and Eastern Railway bridge, mile 290.1 at Lockport, Illinois, is operated by remote operator located at the Elgin, Joliet & Eastern offices in Gary, Indiana as follows:

(1) The drawspan is normally maintained in the fully open to navigation position displaying green center span navigation lights to indicate that the drawspan is fully open.

(2) The bridge is equipped with the following:

(i) A radiotelephone link direct to the remote operator;

(ii) A radar antenna on top of the drawspan capable of scanning the river, one mile upstream and one mile downstream;

(iii) Infrared boat detectors under the drawspan, to allow the remote bridge operator to detect vessels under the drawspan;

(iv) Electronic motion detectors under the drawspan to allow the remote bridge operator to detect vessel movement under the drawspan;

(v) A siren for sound signals; and

(vi) Red and green center span navigation lights.

(3) The remote bridge operator shall maintain a 24 hour VHF marine radio watch for mariners to establish contact as they approach the bridge to ensure that the drawspan is open or that it remains open until passage of river traffic is complete.

(4) When rail traffic approaches the bridge, and the drawspan is in the open position, the remote bridge operator initiates a one minute warning period before closing the drawspan. During this warning period, the remote operator shall broadcast at least twice, via marine radio, that: ''The drawspan of the EJ&E Railroad bridge will be lowered in one minute.'' A siren on the bridge sounds for 20 seconds, to warn anyone on or under the bridge that the drawspan will be lowered.

(5) If a vessel is approaching the bridge upbound or, departing the Lockport Lock and Dam at mile 291.1, downbound, with intentions of passing through the drawspan, they shall respond to the remote bridge operators' marine radio broadcast, or initiate radio contact, indicating their proximity to the bridge and requesting an opening of the drawspan or that the drawspan remain open until the vessel passes. If any approaching vessel is detected or if a radiotelephone response is received, the remote operator shall not close the drawspan until the vessel or vessels have cleared the bridge.

(6) At the end of the one minute warning period, if no river traffic is approaching or under the drawspan, the remote bridge operator may begin lowering the drawspan. Navigation lights located at the center of the drawspan change from green to red when the drawspan is not in the fully open to navigation position. The drawspan takes approximately 90 seconds to lower.

(7) If the presence of a vessel or other obstruction is discovered approaching or under the drawspan, during the lowering sequence, before the drawspan is fully lowered and locked, the drawspan shall be stopped and raised to the fully open position. When the vessel or obstruction has cleared the drawspan, the remote operator shall confirm that the channel is clear and reinitiate the one minute warning cycle before lowering the drawspan.

(8) If no marine traffic is present the drawspan may be lowered and seated. When the drawspan is lowered and locked in the closed to navigation position, the remote bridge operator periodically broadcasts, via marine radio, that: ''The drawspan of the EJ&E Railroad bridge is closed to navigation.''

(9) Failure of the radar system, radio telephone system, infrared boat detectors or electronic motion sensors shall prevent lowering the drawspan from the remote location.

(10) when rail traffic has cleared the bridge, the remote bridge operator shall raise the drawspan to the fully open to navigation position. When the drawspan is raised and in the fully open to navigation position, the remote bridge operator broadcasts, at least twice, via marine radio, that: ''The drawspan of the EJ&E Railroad bridge is open to navigation.'' The center drawspan navigation lights change from red to green when the drawspan is fully open to navigation.

Dated: March 15, 1995.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District, St. Louis, MO.

[FR Doc. 95–12281 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP St. Louis 95–002]

RIN 2115–AA97

Safety Zone; Upper Mississippi River, mile 179.0 to 184.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Upper Mississippi River between mile 179.0 and 184.0. This regulation is needed to protect vessels from the hazards associated with operating in high water conditions. This regulation will restrict general navigation in the regulated area

for the safety of vessel traffic and the protection of life and property along the shore.

EFFECTIVE DATES: This regulation is effective on May 4, 1995 and will remain in effect until June 2, 1995, unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Robert Siddall, Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LTJG A.B. Cheney, Project Officer, Marine Safety Office, St. Louis, Missouri and LT S.M. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this rule and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, recent heavy rainfall on already saturated ground in portions of the Upper Mississippi River Basin has caused tributaries and the southern portion of the Upper Mississippi River to approach and exceed flood stages, leaving insufficient time to publish a proposed rulemaking. The Coast Guard deems it to be in the public's interest to issue a rule without waiting for comment period since high water conditions present immediate hazard.

Background and Purpose

The Upper Mississippi River in the vicinity of St. Louis Harbor has seen a rapid rise in the water level and is expected to be above flood stage by May 13, 1995. Recent torrential downpours, predominately in Missouri and southern Illinois, caused a very rapid rise in river stages. Water conditions that cause rapid and sharp rises in river stages also cause treacherous currents in the vicinity of bridges within St. Louis Harbor. These currents make the approach to the bridges more critical since the time to impose course corrections are diminished. Additionally, the high water conditions reduce both the vertical and horizontal clearances available to the navigating tow. Reducing tow lengths and increasing horsepower requirements will offset the effect of the increased current. The circumstances requiring this rule are swift currents and a rapid rise in river level on the Upper Mississippi River at St. Louis, MO. This rule is required for the safety and protection of vessels transiting the safety zone.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary. The imposed restrictions are anticipated to be of short duration. Captain of the Port, St. Louis, Missouri will monitor river conditions and will authorize entry into the closed area as conditions permit. Changes will be announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ). Mariners may also call the Port Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823 for current information.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.[5] of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation as an action to protect public safety. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Records and recordkeeping, Security measures, Vessels, Waterways.

Temporary Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

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

2. A temporary § 165.T02–028 is added, to read as follows:

§ 165.T02–028 Safety Zone: Upper Mississippi River.

(a) *Location.* The Upper Mississippi River between mile 179.0 and 184.0 is established as a safety zone.

(b) *Effective Dates.* This section is effective on May 4, 1995 and will terminate on June 2, 1995, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit vessel entry within the described zone without authority of the Captain of the Port apply. The Captain of the Port, St. Louis, Missouri will authorize entry into and operations within the described zone under certain conditions and limitations as announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: May 4, 1995.

S.P. Cooper,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 95–12282 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–95–055]

RIN 2115–AA97

Safety Zone: Ellis Island NECO Awards Gala Fireworks, Upper New York Bay, NY and NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a fireworks program located in Federal Anchorage 20C in Upper New York Bay, New York. This safety zone will be in

effect on May 21, 1995, from 10:15 p.m. until 11:30 p.m. The safety zone will temporarily close all waters of the Upper New York Bay, within a 300 yard radius of the fireworks barges anchored approximately 300 yards east of Liberty Island, New York.

EFFECTIVE DATE: This rule is effective on May 21, 1995, from 10:15 p.m. until 11:30 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Drafting Information

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

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for not publishing an NPRM. Due to the date this application was received, there was insufficient time to draft and publish a notice of proposed rulemaking that allows for a reasonable comment period prior to the event. The delay encountered if normal rulemaking procedures were followed would effectively cancel this event. Cancellation of this event is contrary to public interest.

Background and Purpose

On May 1, 1995, Fireworks by Grucci submitted an application to hold a fireworks program in the waters of Upper New York Bay, off of Liberty Island, New York. This fireworks program is being sponsored by the National Ethnic Coalition of Organizations Foundation, Inc., (NECO). This rule establishes a temporary safety zone in all waters of the Upper New York Bay within a 300 yard radius of fireworks barges anchored approximately 300 yards east of Liberty Island, New York, at or near 40°41′17″N latitude, 74°02′25″W longitude. The safety zone will be in effect on May 21, 1995, from 10:15 p.m. until 11:30 p.m., unless extended or terminated sooner by the Captain of the Port, New York. This safety zone precludes all vessels from transiting this portion of the Upper New York Bay and is needed to protect mariners from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone closes a portion of the Upper New York Bay to all vessel traffic on May 21, 1995, from 10:15 p.m. until 11:30 p.m., unless extended or terminated sooner by the Captain of the Port, New York. Although this regulation prevents traffic from transiting this area, the effect of this rule will not be significant for several reasons. Due to the fact that this safety zone will not impact any navigable channel; that the duration of the event is limited; that the event is at a late hour; and that extensive, advance advisories will be made to the maritime community, the impact of this rule is expected to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

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

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

Collection of Information

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

Federalism

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

Environment

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

List of Subjects in 33 CFR Part 165

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

Temporary Regulation

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

PART 165—[AMENDED]

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

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

2. A temporary section, § 165.T01–055, is added to read as follows:

§ 165.T01–055 Safety Zone; Ellis Island NECO Awards Gala Fireworks, Upper New York Bay, New York and New Jersey.

(a) *Location.* All waters of Federal Anchorage 20C, Upper New York Bay, within a 300 yard radius of the fireworks barges anchored approximately 300 yards east of Liberty Island, New York, at or near 40°41′17″N latitude, 074°02′25″W longitude. (Datum: NAD 83)

(b) *Effective period.* This section is in effect on May 21, 1995, from 10:15 p.m. until 11:30 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

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

Dated: May 10, 1995.

T. H. Gilmour,

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

[FR Doc. 95–12283 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50611A; FRL–4953–7]

RIN 2070–AB27

1*H*,3*H*,5*H*-oxazolo [3,4-c] oxazole, Dihydro-7a-methyl-; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described as 1*H*,3*H*,5*H*-oxazolo [3,4-c] oxazole, dihydro-7a-methyl-, which is the subject of premanufacture notice (PMN) P–91–1324. This rule will require certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: The effective date of this rule is July 17, 1995. This rule shall be promulgated for purposes of judicial review at 1 p.m. (e.s.t.) on June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. EB–543B, 401 M Street, SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION:

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.25.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitter of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5 (h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 as appropriate to control the activities for which it has received the SNUR. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Background

EPA published a proposed SNUR for the chemical 1*H*,3*H*,5*H*-oxazolo [3,4-c] oxazole, dihydro-7a-methyl- in the **Federal Register** of November 2, 1994 at 59 FR 54874. The background and reasons for the SNUR are set forth in the preamble to the proposed SNUR. The proposed SNUR designated exposure to the PMN substance without ocular protection (chemical goggles or equivalent eye protection) and any predictable or purposeful release of the PMN substance to surface water above 500 parts per billion (ppb) as significant new uses. The Agency received no public comment concerning the proposed SNUR. As a result, EPA is promulgating this final SNUR.

IV. Determination of Proposed Significant New Uses

To determine what would constitute significant new uses of this chemical substance, EPA considered relevant information about the toxicity of the substance, likely exposures/releases associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA.

Section 5(a)(2) of TSCA provides that EPA's determination that a chemical substance is a significant new use must be made after a consideration of all relevant factors including:

A. The projected volume of manufacturing and processing of a chemical substance.

B. The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.

C. The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.

D. The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

EPA construes the statute to allow consideration of any other relevant factors, in addition to those enumerated in section 5(a)(2)(A) through (D), because it is not an exclusive list.

V. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the final rule. If uses which commence between the proposal date and the effective date of the final rule were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses identified in this SNUR after the date of the proposed rule will have to cease any such activity before the effective date of this rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of

persons who begin commercial manufacture, import, or processing of a significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the final SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VI. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the public record for this final rule (OPPTS–50611).

VII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50611) which includes information considered by the Agency in developing this rule. The record includes the following information:

1. The economic analysis of this rule.
2. The environmental test data review support document.
3. Issue Summary Report.
4. The **Federal Register** notice pertaining to this rule.

A public version of the record, without any Confidential Business Information, is available in the TSCA Nonconfidential Information Center (NCIC) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA NCIC is located in Rm. NE–B607, 401 M St., SW., Washington, DC.

VIII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the Executive Order defines a ''significant regulatory action'' as an action likely to lead to a rule:

(1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health of safety, or State, local or tribal governments or communities (also referred to as ''economically significant'').

(2) Creating serious inconsistency or otherwise interfering with an action taken or planned by another agency.

(3) Materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not ''significant'' and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has determined that approximately 10 percent of the parties affected by this rule could be small businesses. However, EPA expects to receive few significant new use notices for these substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: May 5, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Accordingly, 40 CFR part 721 is amended as set forth below:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.5540 to subpart E to read as follows:

§ 721.5540 1*H*,3*H*,5*H*-oxazolo [3,4-c] oxazole, dihydro-7a-methyl-.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as 1*H*,3*H*,5*H*-oxazolo [3,4-c] oxazole, dihydro-7a-methyl- (PMN P–91–1324) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(2)(iii) and (a)(3).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (where N = 500 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* The following recordkeeping requirements specified in § 721.125 (a), (b), (c), (d), (e), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 95–12142 Filed 5–17–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 950427119–5314–02; I.D. 051195A]

RIN 0648–AH98

Sea Turtle Conservation: Restrictions Applicable to Shrimp Trawling Activities; Modification of Additional Turtle Excluder Device Requirements Within Certain Statistical Zones

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of temporary requirements; request for comments.

SUMMARY: NMFS is modifying the temporary requirements effective April 30, and published on May 3, 1995, to protect sea turtles from shrimp trawling activities in some portions of the Gulf of Mexico. This modification to the temporary requirements is being made to ease a burdensome requirement on shrimp trawlers while still providing protection for sea turtles. The modification partially rescinds the temporary prohibition on the use of try nets by shrimp trawlers in the areas subject to the temporary requirements, unless the try nets are equipped with NMFS-approved TEDs other than soft or bottom-opening TEDs, by allowing try nets with a headrope length of 12 feet (3.6 m) or less and a footrope length of 15 feet (4.5 m) or less to be used without a TED installed. All other requirements, including the boundary of the affected areas remain unchanged.

DATES: This action is effective May 12, 1995 through 11:59 p.m. (local time) on May 29, 1995. Comments on this action must be submitted by June 12, 1995.

ADDRESSES: Comments on this action and requests for a copy of the environmental assessment (EA) prepared for this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813–570–5312, or Russell Bellmer, 301–713–1401.

SUPPLEMENTARY INFORMATION:

On April 30, 1995 (60 FR 21741; May 3, 1995), temporary requirements were placed on shrimp trawling in nearshore waters along two sections of the Texas and Louisiana coast in order to conserve listed species of sea turtles, especially the severely endangered Kemp's ridley. These requirements were necessitated by the continued high rates of sea turtle strandings occurring along areas of the Texas coast, and the measures implemented were consistent with NMFS' November 14, 1994 Biological Opinion on the shrimp trawl fishery and the NMFS Shrimp Fishery Emergency Response Plan (ERP). The ERP was signed by the Assistant Administrator for Fisheries, NOAA, (AA) on March 14, 1995 and was immediately distributed widely among industry and environmental groups. A notice of availability for the ERP was published on April 21, 1995 (60 FR 19885).

A complete discussion of sea turtle strandings in Texas was contained in the temporary requirements (60 FR 21741; May 3, 1995), and a summary of strandings is provided here. For the 3 consecutive weeks beginning April 9 and ending April 29, strandings in Zone 20 were 3, 3, and 15 turtles per week. Of these 21 turtles, 7 were Kemp's ridleys. In Zone 18 for the same period, 12, 16, and 6 turtles stranded per week. Of these 34 turtles, 28 were Kemp's ridleys. Restrictions to the shrimp fishery went into effect on April 30, 1995, and in the following week strandings fell to 2 turtles, including 1 Kemp's ridley, in Zone 20, but rose to 8 turtles, including 5 Kemp's ridleys in Zone 18. With the exception of Zone 20 during the week following implementation of the restrictions, all these strandings approach or exceed the incidental take levels (ITLs) established for those zones.

The Biological Opinion provides that conservation measures be implemented as mortality levels approach ITLs established in the Incidental Take Statement in order to ensure that shrimping is not likely to jeopardize the continued existence of Kemp's ridley. The Biological Opinion specifically provides that such measures be implemented immediately when sea turtle takings, indicated or documented, reach 75 percent of the established levels. The conservation measures are intended to allow shrimp fishing to continue while reducing the likelihood of further sea turtle strandings. The ERP provides further guidance on the nature and geographic scope of such measures.

A description of the sea turtle stranding events, temporary requirements, and the areas in which they apply are detailed in the temporary requirements (60 FR 21741; May 3, 1995) and are not repeated here.

Pursuant to 50 CFR 227.72(e)(2)(ii)(B)(*1*), try nets of up to 20 feet (6.1 m) in headrope length have been exempted from the TED requirements, because they are only intended for use in brief sampling tows not likely to result in turtle mortality. Turtles are, however, caught in try nets, and either through repeated captures or long tows, try nets can contribute to the mortality of sea turtles. Takes of sea turtles in try nets, including one mortality, have been documented by NMFS, and in the NMFS bycatch observer program from 1992 through 1995, try nets accounted for 43% of the observed turtle captures.

Preliminary Comments

NMFS made the ERP available to all concerned parties for their information and to solicit comments on the ERP. NMFS distributed the ERP widely among shrimp industry and environmental organizations immediately upon the ERP's completion in March, 1995. In addition, formal notice of availability for the ERP was published on April 21, 1995 (60 FR 19885). Furthermore, NMFS widely distributes weekly reports of stranding events and distributed the ERP implementation, in which fishermen were reminded of the specific restrictions that would be implemented if continued, elevated sea turtle strandings occurred. All of the restrictive measures imposed by NMFS in response to elevated sea turtle strandings were identified in the ERP and weekly implementation notices. Nonetheless, while NMFS received general comments regarding the necessity of the ERP, only one comment was received from any segment of the shrimp industry concerning the potential restrictions discussed in the ERP. This commenter objected to the possible restrictions on soft TEDs and asked that NMFS assess alternatives for flap restrictions. The required use of TEDs in try nets was acceptable and the commenter stated that many local fishermen already used TEDs in try nets. Among the general comments, NMFS has also received proposals from several segments of the shrimp fishery which contain alternative means to limit nearshore fishing pressure and resulting levels of turtle capture. NMFS is evaluating these proposals and may revise the ERP to incorporate the alternative conservation measures.

Since the temporary requirements have been implemented, however, NMFS has received numerous comments on this action. These have come primarily by telephone and at a meeting hosted by shrimp industry representatives and attended by the NMFS personnel on May 5, 1995. Although the official comment period for the April 30, 1995 temporary requirements does not end until May 27, 1995, NMFS believes that the overwhelming number of comments regarding a particular aspect of the restrictions warrants immediate agency response.

Many shrimpers have stated that the prohibition on all try nets without TEDs is unreasonable. Try nets are small nets that are intended for very short tows—usually less than 15 minutes—to sample shrimp abundance before or during trawling with the main nets. Shrimp fishermen have complained, however, that NMFS has not provided any alternative to the prohibition that would allow them to monitor their catch rates

and catch composition, forcing them to fish inefficiently, to their own detriment and that of turtles. NMFS now believes that the prohibition of all try nets is burdensome and that an alternative exists that will allow fishermen to work efficiently, while reducing the likelihood of turtle entrapment in shrimp trawl gear.

Alternatives for Try Net Use

Under the existing sea turtle conservation regulations, try nets with a headrope length of 20 feet (6.1 m) or less are exempt from the required use of TEDs. A 20–foot (6.1–m) headrope try net can have a fairly wide spread of 15 to 16 feet (4.5 to 4.8 m), and its mouth may open up several feet (approx. 1 m) off the bottom. By attaching extra webbing called a ''tongue'' or a ''bib'' to the center of the headrope and attaching an additional towing wire to this bib, the try net's mouth can be made to open even higher. These large try nets are certainly capable of capturing sea turtles. Indeed, a 20–foot (6.1–m) try net is little different from the 25– and 30–foot (7.6– and 9.1–m) headrope length nets that are commonly used as main trawl nets on smaller trawlers, and which are subject to TED requirements. The larger try nets are also capable of retaining larger catches, which may provide an incentive to tow them for longer periods, increasing the possibility of lethally taking a sea turtle. NMFS originally allowed the try net TED exemption based on the presumption that try nets would be fished for no more than 20–30 minutes.

As the size of the try net decreases, so does the potential for adversely affecting sea turtles. A small try net, with a headrope length of 12 feet (3.6 m), would only have a spread of about 8–9 feet (2.4–2.7 m) and would only open 1–2 feet (0.3–0.6 m) high. Such a net would also have a very small tail bag to accumulate shrimp catch, and there would be little incentive to use it longer than necessary to monitor shrimp catch rate. NMFS believes that a try net of this size is less likely to capture a sea turtle, and is unlikely to be fished long enough to kill a turtle if it were captured. This size net, however, would still be large enough for shrimp trawlers to monitor their shrimp catch rates.

In order to provide an alternative that will allow fishermen to sample their shrimp catch rates, while providing sea turtles with needed protection from entrapment in shrimp trawl nets, NMFS is partially rescinding the prohibition on the use of try nets without a top-opening, hard TED installed. The temporary prohibition on the use of try nets, unless equipped with NMFS-approved TEDs other than soft or bottom-opening TEDs, as described in the temporary requirements (60 FR 21741; May 3, 1995) is being modified and still apply to try nets with a headrope length greater than 12 feet (3.6 m) or a footrope length greater than 15 feet (4.5 m). However, try nets with a headrope length of 12 feet (3.6 m) or less and a footrope length of 15 feet (4.5 m) or less may be used without a TED installed. Footrope length is defined in 50 CFR 217.12 as ''the distance between the points at which the ends of the footrope are attached to the trawl net, measured along the forwardmost webbing.'' Headrope length is defined in 50 CFR 217.12 as ''the distance between the points at which the ends of the headrope are attached to the trawl net, measured along the forewardmost webbing.'' Any bibs or tongues added to a net would be included in the measurement and add to overall headrope length.

This modification to the temporary requirement affects only the prohibition relating to try nets. The other prohibitions, the affected area, and the effective dates remain unchanged. For clarity, however, all the restrictions in effect, including the one modification, will be set forth in the requirements section below.

Requirements

This action is authorized by 50 CFR 227.72(e)(6). The definitions in 50 CFR 217.12 are applicable to this action, as well as all relevant provisions in 50 CFR parts 217 and 227. For example, § 227.71(b)(3) provides that it is unlawful to fish for or possess fish or wildlife contrary to a restriction specified or issued under § 227.72(e)(3) or (e)(6).

NMFS hereby notifies owners and operators of shrimp trawlers (as defined in 50 CFR 217.12) that, starting May 12, 1995, and ending 11:59 p.m. (local time) on May 30, 1995, fishing by shrimp trawlers in offshore waters, seaward to 10 nm (18.5 km) from the COLREGS line, along 2 sections of the Texas and Louisiana coast, the first bounded between 27° N. lat. and 28° N. lat. and the second bounded between 95°13′ W. long. and 93°20.5′ W. long., is prohibited unless shrimp trawlers comply with the following restrictions to the exceptions for incidental taking in 50 CFR 227.72(e):

1. Use of soft TEDs described in 50 CFR 227.72(e)(4)(iii) is prohibited.

2. Use of hard TEDs with bottom escape openings and special hard TEDs with bottom escape openings is prohibited. Approved hard TEDs and special hard TEDs must be configured with the slope of the deflector bars upward from forward to aft and with the escape opening at the top of the trawl.

3. Use of try nets with a headrope length greater than 12 ft (3.6 m) or a footrope length greater than 15 ft (4.5 m) is prohibited unless a NMFS-approved top-opening, hard TED or special hard TED is installed when the try nets are rigged for fishing. Try nets with a headrope length 12 ft (3.6 m) or less and a footrope length 15 ft (4.5 m) or less are exempt from the TED use requirement in accordance with the specifications of 50 CFR 227.72(e)(2)(ii)(B)(*1*).

4. Use of a webbing flap that completely covers the escape opening in the trawl is prohibited. Any webbing which is attached to the trawl, forward of the escape opening, must be cut to a length so that the trailing edge of such webbing does not approach to within 2 inches (5.1 cm) of the posterior edge of the TED grid. The requirements for the size of the escape opening are unchanged.

All provisions in 50 CFR 227.72(e), including, but not limited to 50 CFR 227.72(e)(2)(ii)(B)(*1*) (use of try nets), 50 CFR 227.72(e)(4)(iii) (approval of soft TEDs), 50 CFR 227.72(e)(4)(i)(F) (position of escape opening), and 50 CFR 227.72(e)(4)(iv)(C) (webbing flap), that do not conform to these requirements are hereby suspended for the duration of this action.

Owners and operators of shrimp trawlers in the area subject to restrictions that they may be required to carry a NMFS-approved observer aboard such vessel(s) if selected to do so by the Director, Southeast Region, NMFS, (Regional Director) upon written notification sent to either the address specified for the vessel registration or documentation purposes, or otherwise served on the owner or operator of the vessel. Shrimp trawlers must comply with the and conditions specified in such written notification.

Additional Conservation Measures

The AA may withdraw or modify the requirement for specific conservation measures or any restriction on shrimping activities if the AA determines that such action is warranted. Notification of any additional sea turtle conservation measures, including any extension of this 30-day emergency action, will be published in the **Federal Register** pursuant to 50 CFR 227.72(e)(6).

Classification

Because neither section 553 of the Administrative Procedure Act (APA), nor any other law requires that general notice of proposed rulemaking be published for this action, and under

section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

This action has been determined to be not significant for purposes of E.O. 12866.

Pursuant to section 553(b)(B) of the APA, the AA finds there is good cause to waive prior notice and opportunity to comment on this action. It is unnecessary because this action is in response to comments received on the temporary requirement published May 3, 1995 (60 FR 21741). It is also impracticable and contrary to the public interest because current restrictions placed upon fishermen are unnecessarily burdensome, and any delay in this action imposes additional unnecessary fishing restrictions.

Because this rule relieves a restriction, under section 553(d) of the APA a 30-day delay in effective date is not required.

The AA prepared an EA for the final rule (57 FR 57348, December 4, 1992) requiring TED use in shrimp trawls and establishing the 30-day notice procedures. An EA has been prepared for this action. Copies of the EA and the supplemental EA are available (see **ADDRESSES**).

Dated: May 12, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–12180 Filed 5–12–95; 3:47 pm]

BILLING CODE 3510–22–F

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50 CFR Part 672

[Docket No. 95020641–5041–01; I.D. 050495A]

Groundfish of the Gulf of Alaska; Vessels Using Hook-and-Line Gear

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the entire Gulf of Alaska (GOA) to directed fishing with hook-and-line gear for all species that compose the ''other hook-and-line gear fishery''. This action is necessary because the bycatch allowance of Pacific halibut apportioned to the ''other hook-and-line gear fishery'' in the GOA for the 1995 fishing year has been caught.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 18, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(f)(1)(ii)(A), the 1995 Pacific halibut bycatch allowance apportioned to the ''other hook-and-line gear fishery,'' which is defined at § 672.20(f)(1)(ii)(B)(3), is 290 metric tons (60 FR 12149, March 6, 1995).

The Director, Alaska Region, NMFS, has determined in accordance with § 672.20(f)(3)(ii) that U.S. fishing vessels participating in the ''other hook-and-line gear fishery'' have caught the entire Pacific halibut bycatch allowance for 1995. Therefore, NMFS is closing the entire GOA to directed fishing with hook-and-line gear for each species and/or species group composing the ''other hook-and-line gear fishery''.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 12, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–12212 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 051595C]

Groundfish of the Bering Sea and Aleutian Islands Area; Sharpchin/Northern Rockfish Species Category in the Aleutian Islands Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for the sharpchin/northern rockfish species category in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the sharpchin/northern rockfish species category total allowable catch (TAC) in the AI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 17, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii) the sharpchin/northern rockfish species category TAC for the AI was established by the final groundfish specifications (60 FR 8479, February 14, 1995) as 4,338 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the sharpchin/northern rockfish species category TAC in the AI soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 4,038 mt, with consideration that 300 mt will be taken as incidental catch in directed fishing for other species in the AI. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for the sharpchin/northern rockfish species category in the AI.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 15, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–12276 Filed 5–15–95; 2:15 pm]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 051595B]

Groundfish of the Bering Sea and Aleutian Islands Area; Greenland Turbot in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Greenland turbot in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the Greenland turbot total allowable catch (TAC) in that subarea.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 15, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Greenland turbot TAC for the BS was established by the notification of 1995 final specifications (60 FR 8479, February 14, 1995) as 3,969 metric tons (mt).

In accordance with § 675.20(a)(8), the Director of the Alaska Region, NMFS (Regional Director), has established a directed fishing allowance of 2,669 mt, with consideration that 1,300 mt will be taken as incidental catch in directed fishing for other species in the BS. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Greenland turbot in the BS.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 15, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–12277 Filed 5–15–95; 2:15 pm]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 051595A]

Groundfish of the Bering Sea and Aleutian Islands Area; Atka Mackerel in the Western Aleutian District

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Atka mackerel in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the final groundfish specification of Atka mackerel in that area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 15, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii) the Atka mackerel total allowable catch (TAC) for the Western Aleutian District was established by the final initial groundfish specifications (60 FR 8479, February 14, 1995) as 14,025 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Atka mackerel TAC in the Western Aleutian District soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 13,025 mt after determining that 1,000 mt will be taken as incidental catch in directed fishing for other species in the Western Aleutian District. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Western Aleutian District.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 15, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–12278 Filed 5–15–95; 2:15 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 96
Thursday, May 18, 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 235

[INS No. 1698–95]

RIN 1115–AD98

Preinspection Services for Aircraft, Vessels, and Trains Outside the United States

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service's (the Service) regulations by expanding the Service's preinspection program to permit preinspection of passengers coming from places other than foreign contiguous territory and adjacent islands. This proposed rule would also permit the preinspection of railroad passengers. These proposed actions will facilitate travel to the United States.

DATES: Written comments must be submitted on or before June 19, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling please reference INS number 1698–95 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Una Brien, Assistant Chief Inspector, Office of Inspections, 425 I Street, NW., Room 7228, Washington, DC 20536, telephone (202) 514–2681.

SUPPLEMENTARY INFORMATION: Preinspection is the procedure whereby the Service conducts, in the host country, inspection of passengers and crewmembers as required by United States immigration and public health laws and regulations for entry into the United States. First established at Toronto, Canada, in 1952, preinspection services are currently provided at 10 different sites. However, current regulations only address preinspection of aircraft and vessels in contiguous territory and adjacent islands (8 CFR part 235.5). This proposed rule would amend current regulations by allowing preinspection in any foreign territory, not just contiguous territory and adjacent islands. This proposed rule also provides for the preinspection of passengers on trains. Since the scope of this rule is primarily administrative in nature, and because these proposed changes will provide a benefit to both the travelling public and the travel industry, the Service would like to implement the program as expeditiously as possible. Therefore, the comment period has been limited to 30 days.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. The Service's inspection and examination of persons in order to determine their admissibility to the United States is required by statute. Preinspection provides inspectional services in foreign airports outside the United States, is instituted at the request of the host government, and is considered a benefit because it facilitates passengers' admission into the United States.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service, certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will not have an impact on family well-being.

List of Subjects in 8 CFR Part 235

Administrative practice and procedures, Air carriers, Aliens, Immigration, Reporting and record keeping requirements.

Accordingly, part 235 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

1. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252.

2. In § 235.5, paragraph (b) is revised to read as follows:

§ 235.5 Preinspection.

* * * * *

(b) *In Foreign territory*. In the case of any aircraft, vessel, or train proceeding directly, without stopping, from a port or place in foreign territory to a Port-of-Entry in the United States, the examination and inspection of passengers and crew required by the Act and final determination of admissibility may be made immediately prior to such departure at the port or place in foreign territory and shall have the same effect under the Act as though made at the destined Port-of-Entry in the United States.

Dated: April 10, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–12271 Filed 5–17–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–71–AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped with Rolls Royce Engines

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 757 series airplanes, that would have required inspection of certain fuse pins, and replacement of certain fuse pins with certain other fuse pins. That proposal was prompted by the development of new corrosion-resistant steel fuse pins. This action revises the proposed rule by including requirements for inspections of refinished straight fuse pins, and replacement of cracked refinished straight fuse pins with certain other straight fuse pins. The actions specified by this proposed AD are intended to prevent cracking of the midspar fuse pins, which may lead to separation of the strut and engine from the wing of the airplane.

DATES: Comments must be received by June 9, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–71–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: Carrie Sumner, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2778; 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–71–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–71–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 757 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 9, 1994 (59 FR 40488). That NPRM would have superseded AD 93–16–08, amendment 39–8665 (58 FR 45041, August 26, 1993), to require inspection of straight fuse pins, replacement of cracked straight fuse pins with either new 15–5PH corrosion-resistant steel fuse pins or like pins, replacement of bulkhead fuse pins with new 15–5PH corrosion-resistant steel fuse pins, and repetitive inspections of newly installed fuse pins. Installation of the new 15–5PH corrosion-resistant steel fuse pins would allow a longer interval for repetitive inspection than was previously provided by AD 93–16–08. That NPRM was prompted by the development of new 15–5PH corrosion-resistant steel fuse pins. Cracking of the midspar fuse pins, if not detected and corrected in a timely manner, could result in separation of the strut and engine from the wing of the airplane.

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

One commenter requests that the proposal be revised to include repetitive inspections of refinished straight fuse pins. The commenter asserts that these pins should be inspected repetitively until cracking is found, at which time they should be replaced with the new 15–5PH fuse pins. The FAA concurs. The FAA's intent was to continue the requirements of AD 93–16–08 to inspect repetitively currently installed refinished straight fuse pins. However, this requirement was inadvertently excluded; therefore, a new paragraph (b) has been added to this supplemental NPRM.

[All paragraphs subsequent to paragraph (b) have been redesignated in this supplemental NPRM to accommodate the new paragraph (b); see discussion, above.]

One commenter requests that the proposed requirement in paragraph (b) to replace the bulkhead fuse pins within 90 days be extended to 3,000 flight cycles. The commenter notes that there have been no reports of cracking or corrosion on 68 bulkhead fuse pins that had accumulated between 4,500 and 6,000 flight cycles. Further, the commenter states that its suggested 3,000-flight cycle compliance time will not adversely affect safety, since test results indicate that these fuse pins will maintain limit load beyond 5,000 flight cycles after the detection of an initial crack. Additionally, the commenter asserts that the fail-safe capability of the strut on Model 757 series airplanes can withstand full limit load with a total failure (i.e., failure of both shear planes) of the midspar fuse pin. Finally, the commenter points out that the proposed 90-day compliance time is inconsistent with that of a similar AD that requires inspections/replacement of the bulkhead fuse pins on Model 747 series airplanes.

The FAA concurs. The FAA has reviewed the test data submitted by this commenter and has determined that extending the compliance time of paragraph (c) of the supplemental NPRM to 3,000 flight cycles will not

adversely affect safety. The FAA finds that the strut of Model 757 series airplanes has fail-safe capability and can withstand full limit load, even with total failure of a midspar fuse pin.

Since issuance of the proposal, the FAA has found that the proposed repetitive inspection interval of 3,000 flight cycles for inspection of the new 15–5PH fuse pins may not coincide with operators' regularly scheduled maintenance visits. The FAA finds that extending the compliance time by 500 additional flight cycles will not adversely affect safety, and will allow the modification to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary. Therefore, paragraphs (a)(2)(ii), (d)(1), and (d)(2)(ii) of the supplemental notice have been revised to specify a repetitive inspection interval of 3,500 flight cycles for inspection of the new 15–5PH corrosion-resistant steel fuse pins. Additionally, the newly added paragraph (b)(2)(iii) of this supplemental NPRM, specifies a repetitive interval of 3,500 flight cycles for inspection of refinished straight fuse pins. [Paragraph (c) of the proposal has been redesignated as paragraph (d) of this supplemental NPRM; see discussion, above.]

Further, since issuance of the proposal, the FAA has found that Boeing Service Bulletin 757–54A0020, Revision 5, dated March 17, 1994 (which is referenced in the proposal as the appropriate source of service information), does not describe procedures for eddy current inspections of the new 15–5PH corrosion-resistant steel fuse pins. However, that service bulletin does describe eddy current inspection procedures for the old style fuse pins, part number 311N5067–1, and the FAA finds that these procedures are also applicable to the new 15–5PH fuse pins. Therefore, paragraphs (a)(2)(ii), (b)(2)(iii), and (d)(2)(ii) of this supplemental NPRM have been revised to reference the procedures described in the service bulletin to perform the eddy current inspections of the new 15–5PH corrosion-resistant steel fuse pins.

The FAA has reviewed and reconsidered the replacement requirements that were proposed in the original NPRM. The FAA finds that confusion may exist concerning whether straight fuse pins may be replaced independently of the other fuse pin on the same strut when only one fuse pin is cracked. It is not the FAA's intent to require replacement of uncracked fuse pins. However, the FAA has determined that it is unacceptable to mix the types of fuse pins on the same strut, since double shear load of the fuse pin depends upon the type of fuse pin. Therefore, a steel fuse pin having part number (P/N) 311N5067–1 may not be installed on the same strut that has a corrosion-resistant steel (CRES) fuse pin having P/N 311N5217–1 installed on that strut. However, each strut must have fuse pins of the same type, which may differ from fuse pins on another strut. A new paragraph (e) has been added to this supplemental notice to clarify the proposed replacement requirement.

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

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

Since these changes expand 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.

There are approximately 306 Model 757 series airplanes equipped with Rolls Royce engines of the affected design in the worldwide fleet. The FAA estimates that 119 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that were previously required by AD 93–16–08, and retained in this supplemental proposal take approximately 8 work hours per fuse pin at an average labor rate is $60 per work hour. There are 4 fuse pins per airplane. Based on these figures, the total cost impact of these inspections on U.S. operators is estimated to be $228,480, or $1,920 per airplane, per cycle. However, since the integrity and strength of the new steel fuse pins permit longer inspection intervals, the cost impact for these inspections would actually be lessened because the proposed inspections are not required to be performed as frequently as currently required by AD 93–16–08.

The proposed replacement would take approximately 56 work hours per fuse pin at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the proposed replacement on U.S. operators is estimated to be $1,599,360, or $13,440 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 FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that this cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full

cost-benefit analysis for this proposed AD would be redundant and unnecessary.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8665 (58 FR 45041, August 26, 1993), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 94–NM–71–AD. Supersedes AD 93–16–08, Amendment 39–8665.

Applicability: Model 757 series airplanes equipped with Rolls Royce 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 (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Inspections accomplished prior to the effective date of this amendment in accordance with the procedures described in Boeing Service Bulletin 757–54A0020, Revision 4, dated May 27, 1993; Revision 3, dated March 26, 1992; or Revision 2, dated October 31, 1991; are considered acceptable for compliance with the applicable inspection specified in this amendment.

To prevent cracking of the midspar fuse pins, which may lead to separation of the strut and engine from the wing of the airplane, accomplish the following:

(a) For airplanes equipped with straight fuse pins, part number (P/N) 311N5067–1: Prior to the accumulation of 5,000 total flight cycles on the straight fuse pin, perform an eddy current inspection to detect cracking in those fuse pins, in accordance with Boeing Service Bulletin 757–54A0020, Revision 5, dated March 17, 1994.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles on the straight fuse pin.

(2) If any cracking is detected, prior to further flight, accomplish the requirements of either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Replace the cracked straight fuse pin with a new straight fuse pin, P/N 311N5067–1, and prior to the accumulation of 5,000 total flight cycles on the newly installed straight fuse pin, perform an eddy current inspection, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles on the newly installed straight fuse pin. Or

(ii) Replace the cracked straight fuse pin with a new 15–5PH fuse pin, P/N 311N5217–1, and prior to the accumulation of 14,000 total flight cycles on the newly installed 15–5PH fuse pin, perform an eddy current inspection to detect cracking in the newly installed pin, in accordance with the procedures described in the service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles on the newly installed fuse pin.

(b) For airplanes equipped with refinished straight fuse pins, P/N 311N5067–1: Perform an eddy current inspection to detect cracking in those fuse pins at intervals not to exceed 1,500 flight cycles on the refinished fuse pins, in accordance with Boeing Service Bulletin 757–54A0020, Revision 5, dated March 17, 1994.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles on the refinished straight fuse pin.

(2) If any cracking is detected, prior to further flight, accomplish the requirements of paragraph (b)(2)(i), (b)(2)(ii), or (b)(2)(iii) of this AD, in accordance with the service bulletin.

(i) Replace the cracked refinished straight fuse pin with a crack-free refinished straight fuse pin, P/N 311N5067–1, and perform an eddy current inspection to detect cracking in the refinished straight fuse pin at intervals not to exceed 1,500 flight cycles, in accordance with the procedures described in the service bulletin. Or

(ii) Replace the cracked refinished straight fuse pin with a new straight fuse pin, P/N 311N5067–1, and prior to the accumulation of 5,000 total flight cycles on the newly installed straight fuse pin, perform an eddy current inspection, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles on the newly installed straight fuse pin. Or

(iii) Replace the cracked refinished straight fuse pin with a new 15–5PH fuse pin, P/N 311N5217–1, and prior to the accumulation of 14,000 total flight cycles on the newly installed 15–5PH fuse pin, perform an eddy current inspection to detect cracking in the newly installed pin, in accordance with the procedures described in the service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles on the newly installed fuse pin.

(c) For airplanes equipped with bulkhead fuse pins, P/N 311N5211–1: Within 3,000 flight cycles after the effective date of this AD, replace the bulkhead fuse pins with 15–5PH fuse pins, P/N 311N5217–1, in accordance with Boeing Service Bulletin 757–54A0020, Revision 5, dated March 17, 1994, and accomplish the requirements of paragraph (d) of this AD.

(d) For airplanes equipped with 15–5PH fuse pins: Prior to the accumulation of 14,000 total flight cycles on the 15–5PH fuse pins, perform an eddy current inspection to detect cracking in those fuse pins, in accordance with the procedures described in Boeing Service Bulletin 757–54A0020, Revision 5, dated March 17, 1994.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles on the fuse pin.

(2) If any cracking is detected, accomplish the requirements of paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.

(i) Prior to further flight, replace any cracked 15–5PH fuse pin with a new 15–5PH fuse pin, P/N 311N5217–1, in accordance with the procedures described in the service bulletin. And

(ii) Prior to the accumulation of 14,000 total flight cycles on the newly installed 15–5PH fuse pin, perform an eddy current inspection to detect cracking in the newly installed pin, in accordance with the procedures described in the service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles on the newly installed fuse pin.

(e) Fuse pins must be of the same type on the same strut. For example, a steel fuse pin

having P/N 311N5067–1 may not be installed on the same strut that has a corrosion-resistant steel (CRES) fuse pin having P/N 311N5217–1 installed on that strut. However, fuse pins on one strut may differ from those on another strut, provided the fuse pins are not of mixed types on the same strut.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with §§ 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 12, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12207 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–18–AD]

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), CL–600–2B16 (CL–601–3A and –3R), and CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–1A11, CL–600–2A12, CL–600–2B16, and CL–600–2B19 series airplanes, that currently requires an inspection to detect cracking in the rudder control quadrant; replacement of any cracked quadrant with a new assembly; and retorquing of the castellated nut, as necessary. This action would require a follow-on inspection of certain rudder control quadrants to detect cracks that start at the inside root radius of the spigot; modification of any cracked quadrant; and eventual modification of certain quadrants. This action also would add airplanes to the applicability of the existing AD. This proposal is prompted by the development of a modification, which, when installed, will positively address the identified unsafe condition. The actions specified by the proposed AD are intended to prevent loss of rudder control due to stress corrosion of the rudder control quadrant.

DATES: Comments must be received by June 19, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–18–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 Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–18–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–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 1, 1993, the FAA issued AD 93–22–04, amendment 39–8729 (58 FR 59161, November 8, 1993), which is applicable to certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), CL–600–2B16 (CL–601–3A and –3R), and CL–600–2B19 (Regional Jet Series 100) series airplanes. That AD requires a one-time ultrasonic or fluorescent penetrant inspection to detect cracking in the rudder control quadrant; replacement of any cracked quadrant with a new assembly; and retorquing of the castellated nut, as necessary. That action was prompted by a report of an in-flight failure of a rudder control quadrant, which resulted from stress corrosion. The requirements of that AD are intended to prevent loss of rudder control.

In the preamble to AD 93–22–04, the FAA indicated that it considered that AD to be interim action, and that further rulemaking action would be considered once final action was identified. Bombardier has now developed a modification that will positively address the unsafe condition described in the AD by providing better resistance of the rudder quadrant against stress corrosion.

Bombardier has issued the following service bulletins, which describe procedures for a one-time ultrasonic inspection of certain rudder control quadrants to detect cracks that start at the inside root radius of the spigot, and modification of any cracked quadrant.

1. Canadair Challenger Service Bulletin No. 600–0637, Revision 1, dated November 15, 1994 (for Model CL–600–1A11 series airplanes);

2. Canadair Challenger Service Bulletin No. 601–0426, Revision 1, dated November 15, 1994 (for Model CL–600–2A12 and –2B16 series airplanes); and

3. Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–011, Revision 'A,' dated September 21, 1993, as revised by Notice of Revision A601R–27–011A–1, dated October 6, 1993, or Notice of Revision A601R–27–011A–2, dated June 14, 1994 (for Model CL–600–2B19 series airplanes).

The first two service bulletins also describe procedures for eventual modification of certain rudder control quadrants. (Bombardier issued Canadair Service Bulletin S.B. 601R–27–015, Revision 'A,' dated October 31, 1994, to specify these procedures for Model CL–600–2B19 series airplanes.) The modification involves removal and disassembly of the quadrant assembly and installation of a modified quadrant assembly.

Transport Canada Aviation, which is the airworthiness authority for Canada, classified these service bulletins as mandatory and issued Canadian airworthiness directive CF–94–23, dated December 1, 1994, in order to assure the continued airworthiness of these airplanes in Canada.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 93–22–04. It would no longer require the inspections currently specified in that AD, but would require instead a one-time ultrasonic inspection of certain rudder control quadrants to detect cracks that start at the inside root radius of the spigot; modification of any cracked quadrant; and eventual modification of certain quadrants. These actions would be required to be accomplished in accordance with the service bulletins described previously.

This proposed AD also would expand the applicability of the existing rule to include additional airplanes that have been identified as subject to the addressed unsafe condition.

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.

The FAA estimates that 212 airplanes of U.S. registry would be affected by this proposed AD.

Accomplishment of the proposed inspection would take approximately 4 work hours per airplane, 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 $50,880, or $240 per airplane.

Accomplishment of the proposed modification would take approximately 20 work hours per airplane, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed modification action on U.S. operators is estimated to be $254,400, or $1,200 per airplane.

Based on the figures discussed above, the total cost impact of this proposed rule on U.S. operators is estimated to be $305,280. 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 removing amendment 39–8729 (58 FR 59161, November 8, 1993), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly Canadair): Docket 95–NM–18–AD. Supersedes AD 93–22–04, Amendment 39–8729.

Applicability: Model CL–600–1A11 (CL–600) series airplanes, serial numbers 1004 through 1085 inclusive; Model CL–600–2A12 (CL–601) series airplanes, serial numbers 3001 through 3066 inclusive; Model CL–600–2B16 (CL–601–3A and –3R) series airplanes, serial numbers 5001 through 5147 inclusive; and CL–600–2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 through 7038 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 (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification,

alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of rudder control, accomplish the following:

(a) Within 45 days after the effective date of this AD, perform an ultrasonic inspection to detect cracks at the inside root radius of the spigot of the rudder quadrant, part number (P/N) 600–92614–1 (original quadrant) or P/N 600–92614–3 (quadrant modified with undercut), in accordance with the procedures specified in Canadair Challenger Service Bulletin No. 600–0637, Revision 1, dated November 15, 1994 (for Model CL–600–1A11 series airplanes); Canadair Challenger Service Bulletin No. 601–0426, Revision 1, dated November 15, 1994 (for Model CL–600–2A12 and –2B16 series airplanes); or Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–011, Revision 'A,' dated September 21, 1993, as revised by Notice of Revision A601R–27–011A–1, dated October 6, 1993, and Notice of Revision A601R–27–011A–2, dated June 14, 1994 (for Model CL–600–2B19 series airplanes); as applicable. A fluorescent penetrant inspection may be accomplished in lieu of the ultrasonic inspection provided that the rudder control quadrant assembly is removed prior to inspection. Accomplishment of the modification required by paragraph (b) of this AD eliminates the need for the inspection required by this paragraph, provided that the modification is accomplished within 45 days after the effective date of this AD.

Note 2: Rudder quadrants having P/N's 600–92614–1 and –3 are part of the rudder quadrants having P/N's 600–92619–1 and –5, respectively.

(1) If any crack is detected, prior to further flight, modify the rudder control quadrant in accordance with Canadair Service Bulletin No. 600–0637, Revision 1, dated November 15, 1994 (for Model CL–600–1A11 series airplanes); Canadair Service Bulletin No. 601–0426, Revision 1, dated November 15, 1994 (for Model CL–600–2A12 and –2B16 series airplanes); or Canadair Service Bulletin S.B. A601R–27–015, Revision 'A,' dated October 31, 1994 (for Model CL–600–2B19 series airplanes); as applicable.

(2) If no crack is detected, no further action is required by paragraph (a) of this AD.

(b) Within 6 months after the effective date of this AD, modify the rudder control quadrant, P/N 600–92619–1 or 600–92619–5, in accordance with Canadair Service Bulletin No. 600–0637, Revision 1, dated November 15, 1994 (for Model CL–600–1A11 series airplanes); Canadair Service Bulletin No. 601–0426, Revision 1, dated November 15, 1994 (for Model CL–600–2A12 and –2B16 series airplanes); or Canadair Service Bulletin S.B. A601R–27–015, Revision 'A,' dated October 31, 1994 (for Model CL–600–2B19 series airplanes); as applicable. Accomplishment of this modification eliminates the need for the inspection required by paragraph (a) of this AD.

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

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

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

Issued in Renton, Washington, on May 12, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12208 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–129–AD]

Airworthiness Directives; British Aerospace Model BAe 146–100A and –200A 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 British Aerospace Model BAe 146–100A and –200A airplanes. This proposal would require modification of the glareshield and certain electrical equipment of the airplane. This proposal is prompted by a report indicating that, if the lift spoilers fail to deploy on landing, the flight crew may not receive any indication that this situation exists. The actions specified by the proposed AD are intended to ensure that the flight crew is advised when the lift spoilers fail to deploy on landing; such failure could result in the airplane overrunning the end of the runway during landing.

DATES: Comments must be received by June 29, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–129–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 Avro International Aerospace, Inc., 22111 Pacific Blvd., Sterling, Virginia 20166. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; 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–129–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–129–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace

Model BAe 146–100A and –200A airplanes. The CAA advises that there is a possibility that, if the airplane's lift spoilers fail to deploy on landing, the flight crew may not be made aware of this situation. There currently is no method or warning installed in the flight deck to alert the flight crew that the lift spoilers have failed to deploy on landing. If the lift spoilers fail to deploy when the airplane lands, and the flightcrew is unaware of it, the airplane could overrun the end of the runway.

British Aerospace has issued Service Bulletin SB.27–70–00913A&B, Revision 7, dated March 21, 1994, which describes procedures for modifying the glareshield and certain electrical equipment of the airplane. The modification involves installing an amber warning light in the glareshield that will illuminate if the lift spoilers fail to deploy on landing. The modification also includes installing new wires, a new printed circuit board (PCB), PCB connector and polarizing key in the PCB rack, and a new relay in circuit breaker panel number two. The modification also entails performing a test of the glareshield warning light and an inhibit and fault monitoring operational test of the lift spoiler. Accomplishment of this modification will provide the flight crew with a warning if the lift spoilers fail to deploy on landing. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom 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 CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the glareshield and certain electrical equipment of the airplane. The actions would be required to be accomplished in accordance with the service bulletin described previously.

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

The FAA estimates that 38 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 21 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $6,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $275,880, or $7,260 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:

British Aerospace Regional Aircraft Limited, AVRO International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Docket 94–NM–129–AD.

Applicability: Model BAe 146–100A and –200A airplanes; as listed in British Aerospace Service Bulletin SB.27–70–00913A&B, Revision 7, dated March 21, 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 ensure that the flight crew is advised when the lift spoilers fail to deploy on landing, accomplish the following:

(a) Within 18 months after the effective date of this AD, modify the glareshield and certain electrical equipment of the airplane by installing an amber warning light in the glareshield that will illuminate if the lift spoilers fail to deploy on landing; perform a test of the glareshield warning light; and perform a lift spoiler inhibit and fault monitoring operational test; in accordance with British Aerospace Service Bulletin SB.27–70–00913A&B, Revision 7, dated March 21, 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, Standardization Branch. ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

(c) Special flight permits may be issued in accordance with §§ 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 12, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12209 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Abandoned Mine Land Reclamation (AMLR) Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Wyoming AMLR plan (hereinafter, the ''Wyoming plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of the addition of new provisions to the Wyoming plan concerning noncoal lien authority and contractor eligibility. The amendment is intended to incorporate the additional flexibility afforded by SMCRA, as amended by the Omnibus Budget Reconciliation Act of 1990, and to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.d.t., June 19, 1995. If requested, a public hearing on the proposed amendment will be held on June 12, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t., on June 2, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Wyoming plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, Wyoming 82601–1918.

Bill Garland, Department of Environmental Quality, Abandoned Mine Land Division, Herschler Building, Third Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002, Telephone: (307) 777–6145.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming AMLR Plan

On February 14, 1983, the Secretary of the Interior approved the Wyoming plan. Information pertaining to the general background, revisions, and amendments to the initial plan submission, as well as the Secretary's findings, the disposition of comments, and the approval of the Wyoming plan can be found in the February 14, 1983, **Federal Register** (48 FR 6536). Subsequent actions concerning Wyoming's plan and plan amendments can be found at 30 CFR 950.30 and 950.35.

II. Proposed Amendment

By letter dated April 21, 1995 (administrative record No. WY–AML–018–8), Wyoming submitted a proposed amendment to its AMLR plan pursuant to SMCRA. Wyoming submitted the proposed amendment at its own initiative to allow the implementation of two initiatives established under Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508). Wyoming proposes to revise its AMLR plan at Wyoming Statute (W.S.) 35–11–1206 (a) and (b) to (1) authorize liens against privately-owned land adversely affected by past coal or mineral mining practices, (2) limit the amount of any lien to the cost of reclamation work or to the amount determined by the appraisal to be the increase in the fair market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal or noncoal mining practices, whichever is less, (3) allow the landowner to petition the district court for the district in which most of the land is located within 60 days of the filing of the lien to determine the increase in the fair market value of the land, and (4) provide that the amount reported to be the increase in the value of the land, but not exceeding the cost of the reclamation work, shall constitute the amount of the lien. Wyoming also proposes that the revisions to W.S. 35–11–1206 (a) and (b) shall take effect on July 1, 1995.

Wyoming proposes to create W.S. 35–11–1209 to (1) prohibit the issuance of contracts under the AMLR program to any construction contractor or professional services contractor if any surface coal mining and reclamation operation owned or controlled by the contractor or any person who owns or controls the contractor has failed to pay its coal reclamation fees or has other types of violations, (2) provide that the term ''ownership or controlling interest'' means as defined in the Federal regulations at 30 CFR 773.5, and (3) provide that the Wyoming AMLR program will implement the provisions of this section for all new contracts awarded after April 1, 1995.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15(a) and 884.14(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable plan approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Wyoming plan.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t., June 2, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER**

INFORMATION CONTACT. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State, not by OSM. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this title since agency decisions on proposed State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 12, 1995.

John Heider,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–12264 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN 0720–AA29

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Clarification of the CHAMPUS Definition of Experimental

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to clarify the CHAMPUS definition of ''experimental'' and describes the process that the Office of CHAMPUS follows in determining when an experimental procedure has moved from the status of experimental to the position of nationally accepted medical practice. This clarification is necessary to ensure the CHAMPUS beneficiary and provider population understand the process the Office of CHAMPUS (OCHAMPUS) follows prior to endorsement by CHAMPUS of a new emerging medical technology, drug, or device for which the safety and efficacy have been proven to be comparable or superior to conventional therapies.

DATES: Written public comments must be received on or before July 17, 1995.

ADDRESSES: Forward comments to the Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Ruth Smith, Program Development Branch, OCHAMPUS, telephone (303) 361–1181.

SUPPLEMENTARY INFORMATION:

A. Discussion of CHAMPUS Policy

Under statutes governing CHAMPUS including 10 U.S.C. 1079, CHAMPUS payments are prohibited for health care services that are ''not medically or psychologically necessary.'' The purpose of this provision, common in health care payment programs, is to prevent CHAMPUS beneficiaries from being exposed to less than fully developed and tested medical procedures and to avoid the associated risk of unnecessary unproven treatment. CHAMPUS regulations and program policies restrict benefits to those procedures for which the safety and efficacy have been proven to be comparable or superior to conventional therapies. In general, the CHAMPUS regulations and program policies exclude cost-sharing of procedures which are experimental or investigational. The evolution of any medical technology or procedure from experimental status to one of national acceptance is often controversial, with those members of the medical community who are using and promoting the procedure arguing that the procedure has national acceptance. In determining whether a procedure is investigational, CHAMPUS uses the following hierarchy of assessment sources:

1. Outcome-based, Phase III trials published in refereed medical literature.

2. Formal technology assessments from nationally recognized technology assessment groups, such as the:

—Agency for Health Care Policy and Research (AHCPR); the
—Emergency Care Research Institute (ECRI); and the
—Food and Drug Administration (FDA).

3. National medical policy organization positions such as the:

—Medical Advisory Panel of the National Blue Cross/Blue Shield Association.

4. National professional medical associations such as those promulgated by the:

—American College of Obstetricians and Gynecologists.

5. National expert opinion organizations such as the

—Diagnostic and Therapeutic Technology Assessment (DATTA) group of the American Medical Association;
—Health Care Financing Administration Technical Advisory Committee; and the
—Office of CHAMPUS Physician Advisory Panel (representing the Uniformed Services Surgeons General). OCHAMPUS has chosen Phase III clinical trials as the test for measuring the safety and efficacy of evolving medical technology procedures. Clinical trials are organized into three phases according to the extent to which a therapy, procedure, drug or device, has progressed in testing. The phase number affixed to a study does not necessarily correspond to the disease stage of patients enrolled in it. For example, in:

Phase I clinical trials, the therapies, procedures, drugs or devices used in this stage of testing have been extensively studied in laboratory and animal tests and are usually now being given to humans for the first time. The aim is to find out how to give a drug or use a procedure, and to make sure that it does not have harmful side effects. Because the side effects in humans are unknown, only a relatively small number of people are allowed to participate.

Therapies, procedures, drugs or devices, that successfully complete Phase I trials then proceed to Phase II clinical trials. Since the therapies, procedures, drugs, or devices were extensively studied in Phase I clinical trials, side effects of each are generally known and more people are included at this phase. Many of the people involved in Phase II clinical trials still have other treatment options available to them if the trial therapy, procedure, drug, or device is not effective for them.

Next, the therapies, procedures, drugs or devices used in Phase II clinical trials move to Phase III clinical trials if each is continuing to demonstrate safety and effectiveness. In this phase the therapy, procedure, drug or device being tested is compared directly with the nationally accepted standard therapy to determine if one is superior to the other, or if one is more effective for specific types or stages of disease. Since reasonable safety and effectiveness have been shown through Phase I and Phase II, many more patients are used in a Phase III clinical trial. Additionally, the patients participating in a Phase III clinical trial usually have not undergone standard treatment. The patients participating in Phase III clinical trials are started on either standard or experimental therapy so the results can be compared. Additionally, instead of focusing on a single agent, some clinical trials study a new drug used in combination with one or more other compounds or other treatments such as surgery or radiation. These clinical trials usually enroll large numbers of people, and often they produce the most dramatic results.

CHAMPUS policy and benefit structure are never based solely on coverage offered by other third party payers, including Medicare, since each operates under different rules and requirements.

B. Need for the Regulation

This proposed rule does not present new agency policy. Rather, it proposes to reaffirm and clarify existing CHAMPUS policy in the body of the CHAMPUS regulation. We propose this primarily in response to a series of U.S. district court decisions concerning one particular experimental treatment, high dose chemotherapy (HDC) with stem cell rescue (SCR) as a treatment for breast cancer (discussed more below), in which the courts held that the CHAMPUS determination regarding this treatment was not sufficiently established to be accepted by the courts. For example, in *Hawkins* v. *Mail Handlers Benefit Plan and CHAMPUS*, Civil No. 1:94CV6, W.D.N.C. (Jan. 28, 1994), the court ruled on a motion for a preliminary injunction filed by a beneficiary of both the Mail Handlers Benefit Plan and CHAMPUS, seeking a court order overruling the exclusion in both plans of coverage for HDC/SCR as a treatment for breast cancer. The court ruled in favor of the Mail Handlers Benefit Plan, but against CHAMPUS based on judgment that the determination that this procedure was experimental was not clearly established by CHAMPUS and was not supported by the beneficiary's evidence.

Similarly, in *Wheeler* v. *Dynamic Engineering Inc., and CHAMPUS*, No. 4.94CV16, E.D.Va. (April 4, 1994), another case of a beneficiary covered by both an employer plan and CHAMPUS who sought a judgment that both should cover HDC/SCR for breast cancer treatment, the court made a distinction between a new company plan that specifically excluded the procedure and the former company plan and CHAMPUS, both of which did not expressly do so. After determining that the former plan was applicable (based on the date the treatment began), the court ruled that neither the plan nor CHAMPUS could properly exclude coverage of the procedure.

OCHAMPUS has carefully reviewed the evidence on HDC/SCR as a treatment for breast cancer. It is our conclusion that it is experimental treatment because on Phase III trials have proven the safety and efficacy of HDC/SCR to be comparable or superior to conventional therapies for breast cancer (and certain other cancers as well), and because formal technology assessment studies have concluded similarly. The CHAMPUS policy regarding the investigational nature of HDC/SCR for breast cancer is based upon four primary sources:

1. The 1988 study entitled ''Public Health Service Reassessment: Autologous Bone Marrow Transplantation'' prepared by the Office of Health Technology Assessment, Agency for Health Care Policy and Research (OHTA/AHCPR) of the Public Health Service, and authored by Harry Handelsman, D.O.; and

2. The American Medical Association Diagnostic and Therapeutic Technology Assessment (AMA DATTA) evaluation of January 1990 entitled ''Autologous Bone Marrow Transplantation 0 Reassessment'' by Elizabeth Brown, M.D.; and

3. The June 1993 study entitled ''Autologous Bone Marrow Transplant and Peripheral Blood Stem Cell Rescue for the Treatment of Breast Cancer'' copyright by ECRI, 5200 Butler Pike, Plymouth Meeting, PA 19462; and

4. The most recent ECRI assessment of ''Autologous Bone Marrow Transplant and Peripheral Blood Stem Cell Rescue for the Treatment of Breast Cancer.'' Summary information on this assessment was published in Health Technology Trends in June 1994. OCHAMPUS received a copy of essentially the same material in press

release form directly from ECRI on June 7, 1994. Based upon the information contained in these press releases, OCHAMPUS has requested the purchase of the completed Health Technology Assessment Report from ECRI, a draft which has already been received.

Since the time the 1988 and 1990 reports mentioned above were initially prepared, OCHAMPUS has performed a continuous review of the refereed medical literature on this topic, and has had numerous confirming discussions with the Office of Health Technology Assessment (OHTA) of the Public Health Service regarding their position. The latest of these discussions confirmed the lack of refereed medical literature that would support CHAMPUS coverage of this procedure for the treatment of breast carcinoma. Therefore, although the initial policy classifying HDC/SCR as investigational under CHAMPUS was based upon literature and technical assessments dating from the 1988–1990 time-frame, OCHAMPUS has continually monitored the development of the literature and the status of ongoing Phase III trials regarding the safety and effectiveness of this form of treatment for breast carcinoma and other carcinomas for which it is not currently authorized as a CHAMPUS benefit. The June 1993 formal assessment by ECRI provides independent reconfirmation of the CHAMPUS position. This independent reconfirmation has been substantially bolstered by the most recent ECRI studies which indicate that ''results from the experimental procedure are not any better than published results for conventional therapy to treat breast cancer,'' and that ''the impetus for this (treatment) is more political than scientific * * * (It) is a treatment that's becoming mandated by popular opinion.'' This most recent information reconfirms, in even stronger terms and with newer studies and literature, the earlier conclusions of previous technology assessments that HDC/SCR is experimental in the treatment of breast cancer. To date there has been no new evidence which would warrant a departure from the original coverage determination to exclude CHAMPUS cost-sharing of this procedure as investigational for the treatment of breast carcinoma. The CHAMPUS position is further supported by the Consensus Conference on Intensive Chemotherapy Plus Hematopoietic Stem Cell Transplantation in Malignacies (Journal of Oncology, Volume 12, Number 1, (January 1994); pages 226–231; (Attachment 5) which states in part:

* * * ''Although there is currently insufficient evidence to justify the use of HDC/plus HSC (Hematopoietic Stem Cell) transplantation outside the setting of clinical trial for any stage of breast cancer, there is ample scientific background for vigorous clinical investigation in this important area * * *''.

Based on the evidence regarding this procedure, which demonstrates that it is experimental, and the series of recent court rulings declining to follow an exclusion not clearly established in the governing instruments of the program, we believe this rule is necessary to reaffirm and clarify CHAMPUS policy on experimental procedures and to specifically list a number of procedures we have determined are experimental.

C. Provisions of the Proposed Rule

The proposed rule describes the criteria we use to identify the experimental nature of procedures, drugs, devices, includes a partial list, and makes provision for promptly treating a drug, device or procedure as no longer experimental when the scientific evidence supports that view and the resultant. Any change to the partial list will be published as a notice in the **Federal Register**.

In emphasizing refereed medical literature as the primary source of persuasive evidence that a particular procedure's safety and efficacy have been proven to be comparable or superior to conventional therapies for widespread use, we also underscore our support for committed efforts to advance medical research. A number of military medical centers are engaged in such research protocols. In addition, we are beginning a new DoD demonstration project, under the authority of 10 U.S.C. 1092, to authorize payments for experimental treatments provided to CHAMPUS beneficiaries under certain government approved phase III clinical protocols. Initially, the demonstration project will apply to clinical trials under approved National Cancer Institute protocols for high dose chemotherapy with stem cell rescue for breast cancer treatment.

D. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any ''significant regulatory action,'' defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have significant impact on a substantial number of small entities.

This proposed rule is not a significant regulatory action under Executive Order 12866. This proposed rule will not involve any significant burden on the CHAMPUS beneficiary or provider population. This proposed rule only clarifies the CHAMPUS definition of experimental and describes the process that OCHAMPUS follows in determining for purposes of benefit coverage when an experimental procedure, drug, or device has moved from the status of experimental to the position of nationally accepted medical practice. This proposed rule does not impose information collection requirements on the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

This is a proposed rule. Comments from all interested parties are solicited.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is proposed to be amended as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.2 is amended in paragraph (b) by revising the definition of ''Experimental'', removing the Note following the definition of ''Experimental'' and adding the definitions for ''Rare diseases'' and ''Unlabelled or off labeled drugs'' in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Experimental. A drug, device, or medical treatment or procedure is experimental or investigational;

(1) If the drug or device cannot be lawfully marketed without approval of the Untied States Food and Drug Administration (FDA) and approval for marketing has not been given at the time the drug or device is furnished to the patient; or

(2) If reliable evidence shows that the drug, device, or medical treatment or procedure is the subject of ongoing Phase I, II, or III clinical trials or is under study to determine its maximum tolerated dose, its toxicity, its safety, its efficacy as compared with the standard means of treatment or diagnosis; or

(3) If reliable evidence shows that the consensus of opinion among experts regarding the drug, device, or medical

treatment or procedure is that further studies or clinical trials are necessary to determine its maximum tolerated dose, its toxicity, its safety, or its efficacy as compared with the standard means of treatment or diagnosis. (See Exclusions and limitations, ''Not in accordance with accepted standards, experimental or investigational'' in § 199.4 for procedures in determining experimental.)

* * * * *

Rare diseases. CHAMPUS defines a rare disease as one which affects fewer than one in 200,000 Americans.

* * * * *

Unlabelled or off labeled drugs. Medications that are otherwise Food and Drug Administration (FDA) approved for general use in humans. The drug must be medically necessary for the treatment of the condition for which it is administered, according to accepted standards of medical practice.

* * * * *

3. Section 199.4 is amended by revising paragraph (g)(15) as follows:

§ 199.4 Basic program benefits.

* * * * *

(g) *Exclusions and limitations.* * * *

* * * * *

(15) *Not in accordance with accepted standards, experimental, or investigational.* Among the services excluded from CHAMPUS program benefits on the grounds that they are not medically or psychologically necessary are services and supplies not provided in accordance with accepted professional medical standards, or related to essentially experimental or investigational procedures or treatment regimens. (See the definition of ''experimental'' in § 199.2.)

(i) *General.* For the purpose of determining experimental:

(A) The term reliable evidence shall mean only:

(*1*) Outcome-based, Phase III trials published in refereed medical literature.

(*2*) Published formal technology assessments.

(*3*) The published reports of national professional medical associations.

(*4*) Published national medical policy organization positions.

(*5*) The published reports of national expert opinion organizations.

(B) The order given in the iteration of sources of evidence in paragraph (g)(15)(i)(A) of this section is in the order of the relative weight to be given to any particular source. Only those reports and articles containing scientifically validated data and published in the refereed medical and scientific literature shall be considered as meeting the requirements of reliable evidence. Specifically not included in the meaning of reliable evidence are reports, articles, or statements by providers or groups of providers containing only abstracts, anecdotal evidence or personal professional opinions. Also not included in the meaning of reliable evidence is the fact that a provider or a number of providers have elected to adopt a drug, device, or medical treatment or procedure as their personal treatment or procedure of choice or standard of practice.

(C)(*1*) Use of drugs and medicines and devices not approved by the FDA for commercial marketing, that is, for general use by humans (even though permitted for testing on human beings) is considered experimental. Drugs grandfathered by the Federal Food, Drug and Cosmetic Act of 1938 may be covered under CHAMPUS as if FDA approved. Certain cancer drugs, designated as Group C drugs (approved and distributed by the National Cancer Institute) and Treatment Investigational New Drugs (INDs), cannot be cost-shared under CHAMPUS because they are not approved for commercial marketing by the FDA. However, medical care related to the use of Group C drugs and Treatment INDs can be cost-shared under CHAMPUS when the patient's medical condition warrants their administration and the care is provided in accordance with generally accepted standards of medical practice. In areas outside the United States, standards comparable to those of the FDA are the CHAMPUS objective.

(*2*) CHAMPUS can consider cost-sharing ''unlabelled or off label'' uses of medications that are otherwise approved by the FDA for general use in humans. Approval for cost-sharing of ''off label or unlabelled'' indications requires review for medical necessity, and also requires demonstrations from medical literature, national organizations, and/or technology assessment bodies that the ''off label or unlabelled'' usage of the drug is safe, effective, and a nationally accepted standard of practice in the medical community.

(D) CHAMPUS benefits for a rare disease are reviewed on a case-by-case basis by the Director, OCHAMPUS, or designee. In reviewing the case, the Director, OCHAMPUS, or designee may consult with any or all of the following sources to determine if the proposed therapy is considered safe and effective:

(*1*) Trials published in refereed medical literature.

(*2*) Formal technology assessments.

(*3*) National medical policy organization positions.

(*4*) National professional associations.

(*5*) Regional expert opinion organizations.

(*6*) Individual and small group expert opinion.

(ii) *Care excluded.* This exclusion includes all services directly related to the experimental or investigational procedure. However, CHAMPUS may cost-share services or supplies when there is no logical or causal relationship between the experimental or investigational procedure and the treatment at issue or where such a logical or causal relationship cannot be established with a sufficient degree of certainty. This CHAMPUS cost-sharing is authorized in the following circumstances:

(A) Treatment that is not related to the investigational or experimental procedure; e.g., medically necessary in the absence of the experimental or investigational treatment.

(B) Treatment which is a necessary follow-on to the experimental or investigational procedure but which might have been necessary in the absence of the experimental or investigational treatment.

(iii) *Examples of experimental procedures.* This paragraph consists of a partial list of experimental or investigational procedures. Such procedures are excluded from CHAMPUS program benefits. This list is not all inclusive. Other experimental procedures, as defined in § 199.2, are similarly excluded, although they do not appear on this partial list. With respect to any procedure included on this partial list, if and when the Director, OCHAMPUS determines that based on the standards established in the definition of ''experimental'' in § 199.2, such procedure is no longer experimental or investigational, the Director will initiate action to remove the procedure from this partial list of experimental procedures. From the date established by the Director as the date the procedure became no longer experimental until the date the regulatory change is made to remove the procedures from the partial list of experimental procedures, the Director, OCHAMPUS will suspend treatment of the procedure as an experimental procedure. Following is the non-inclusive, partial list of experimental procedures, all of which are excluded from CHAMPUS benefits:

(A) Radial keratotomy (refractive keratoplasty).

(B) Cellular therapy.

(C) Histamine therapy.

(D) Stem cell assay, a laboratory procedure which allows a determination to be made of the type and dose of

cancer chemotherapy drugs to be used, based on in vitro analysis of their effects on cancer cells taken from an individual.

(E) Topical application of oxygen.

(F) Immunotherapy for malignant disease.

(G) Prolotherapy, joint sclerotherapy, and ligamentous injections with sclerosing agents.

(H) Transcervical block silicone plug.

(I) Whole body hyperthermia in the treatment of cancer.

(J) Portable nocturnal hypoglycemia detectors.

(K) Testosterone pellet implants in the treatment of females.

(L) Estradiol pellet implants.

(M) Epikeratophakia for treatment of aphakia and myopia.

(N) Bladder stimulators.

(O) Ligament replacement with absorbable copolymer carbon fiber scaffold.

(P) Intraoperative radiation therapy.

(Q) Gastric bubble or balloon.

(R) Single and dual photon absorptiometry for the detection and monitoring of osteoporosis.

(S) Dorsal root entry zone (DREZ) thermocoagulation or microcoagulation neurosurgical procedure.

(T) Brain electrical activity mapping (BEAM).

(U) Topographic brain mapping (TBM) procedure.

(V) Ambulatory blood pressure monitoring.

(W) Bilateral carotid body resection to relieve pulmonary symptoms.

(X) Intracavitary administration of cisplatin for malignant disease.

(Y) Cervicography.

(Z) Ambulatory home monitoring—uterine contractions.

(AA) Sperm evaluation, hamster penetration test.

(BB) Transfer factor (TF).

(CC) Continuous ambulatory esophageal pH monitoring (CAEpHM) is considered investigational for patients under age 12 for all indications, and for patients over age 12 for sleep apnea.

(DD) Adrenal-to-brain transplantation for Parkinson's disease.

(EE) Videofluoroscopy evaluation in speech pathology.

(FF) Herniography.

(GG) Applied kinesiology.

(HH) Hair analysis to identify mineral deficiencies from the chemical composition of the hair. Hair analysis testing may be reimbursed when necessary to determine lead poisoning.

(II) Iridology (links flaws in eye coloration with diseases elsewhere in the body).

(JJ) Small intestinal bypass (jejunoileal bypass) for treatment of morbid obesity.

(KK) Biliopancreatic bypass.

(LL) Gastric wrapping/gastric banding.

(MM) Calcium EAP/calcium orotate and selenium (also known as Nieper therapy)—Involves inpatient care and use of calcium compounds and other non-FDA approved drugs and special diets. Used for cancer, heart disease, diabetes, and multiple sclerosis.

(NN) Percutaneous balloon valvuloplasty for mitral and tricuspid valve stenosis.

(OO) Amniocentesis performed for ISO immunization to the ABO blood antigens.

(PP) Balloon dilatation of the prostate.

(QQ) Helium in radiosurgery.

(RR) Palladium ^{103}Pd) seed brachytherapy.

(SS) Electrostimulation of salivary production in the treatment of xerostomia secondary to Sjorgren's syndrome.

(TT) Interaoperative monitoring of sensory evoked potentials (SEP). To include visually evoked potentials, brainstem auditory evoked response, somatosensory evoked potentials during spinal and orthopedic surgery, and sensory evoked potentials monitoring of the sciatic nerve during total hip replacement. Recording SEPs in unconscious head injured patients to assess the status of the somatosensory system. The use of SEPs to define conceptional or gestational age in preterm infants.

(UU) Autolymphocyte therapy (ALT) (immunotherapy used for treating metastatic kidney cancer patients).

(VV) Radioimmunoguided surgery in the detection of cancer.

(WW) HLA–DNA typing.

(XX) Gait analysis (also known as a walk study or electrodynogram).

(YY) Cryosurgery for liver metastases.

(ZZ) Use of cerebellar stimulators/pacemakers for the treatment of neurologic disorders.

(AAA) Signal-averaged ECG.

(BBB) Intraventricular administration of narcotics.

(CCC) Peri-urethral Teflon injections to manage urinary incontinence.

(DDD) Extraoperative electrocorticography for stimulation and recording in order to determine electrical thresholds of neurons as an indicator of seizure focus.

(EEE) Quantitative computed tomography (QCT) for the detection and monitoring of osteoporosis.

(FFF) Percutaneous transluminal angioplasty in the treatment of obstructive lesions of the carotid, vertebral and cerebral arteries.

(GGG) Endoscopic third ventriculostomy.

(HHH) Holding therapy—Involves holding the patient in an attempt to achieve interpersonal contact, and to improve the patient's ability to concentrate on learning tasks.

(III) In utero fetal surgery.

(JJJ) Light therapy for seasonal depression (also known as seasonal affective disorder (SAD)).

(KKK) Transurethral laser incision of the prostrate (TULIP).

(LLL) Contigen Bard® collagen implant.

(MMM) Dorsal column and deep brain electrical stimulation of treatment of motor function disorder.

(NNN) Chelation therapy, except under specific conditions.

(OOO) All organ transplants *except* heart, heart-lung, lung, kidney, some bone marrow, liver, liver-kidney, corneal, and heart-valve.

(PPP) Implantable infusion pumps, *except* for hepatic artery perfusion chemotherapy for the treatment of primary liver cancer or metastatic colorectal liver cancer.

(QQQ) Services related to the candidiasis hypersensitivity syndrome, yeast syndrome, or gastrointestinal candidiasis (i.e., allergenic extracts of Candida albicans for immunotherapy and/or provocation/neutralization).

(RRR) Treatment of chronic fatigue syndrome.

(SSS) Extracorporeal immunoadsorption using protein A columns for conditions other than acute idiopathic thrombocytopenia purpura.

(TTT) Dynamic posturography (both static and computerized).

(UUU) Laparoscopic myomectomy.

(VVV) Growth factor, including platelet-derived growth factors, for treating non-healing wounds. This includes procuremen®, a platelet-derived wound-healing formula.

(WWW) High dose chemotherapy with stem cell rescue (HDC/SCR) for any of the following malignancies:.

(*1*) Breast cancer.

(*2*) Ovarian cancer.

(*3*) Testicular cancer.

(*4*) Multiple myeloma.

* * * * *

Dated: May 11, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12031 Filed 5–17–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–95–004]

Drawbridge Operation Regulations; Chicago River, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of establishment of negotiated rulemaking committee and first meeting.

SUMMARY: The Coast Guard establishes a negotiated rulemaking committee to develop regulations governing the operation of Chicago owned drawbridges over the Chicago River in Chicago, Illinois and the passage of recreational vessels under those bridges. The committee is established in accordance with the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act.

DATES: The first meeting of the negotiated rulemaking committee will be held on June 5, 1995 between 9:00 A.M. and 5:00 P.M. Additional meetings will be held on June 14, 1995, June 20, 1995, June 28, 1995 and July 12, 1995, at the same times and place, unless otherwise scheduled by the committee.

ADDRESSES: The committee meetings will be held in room 326, Ralph H. Metcalfe Federal Building, 77 West Jackson Street, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Carolyn Malone, Ninth District Bridge Branch, Ninth Coast Guard District, 1240 East Ninth Street, room 2083, Cleveland, Ohio, (216) 522–3993 between the hours of 8:00 A.M. and 3:00 P.M. Should the dates, times or location of any subsequent committee meeting change, recorded information will be provided at the above telephone number outside of those hours.

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of intent (notice) to form a negotiated rulemaking committee on April 10, 1995 (60 FR 18061). The notice discussed the Coast Guard's intention to proceed in accordance with the Negotiated Rulemaking Act of 1990 (Pub. L. 101–648) and establish the Chicago Drawbridge Negotiated Rulemaking Committee (committee) to develop regulations that provide a permanent and acceptable resolution to the issues involved in drawbridge openings for recreational vessels on the Chicago River. Regulations governing the operation of the drawbridges are located at 33 CFR 117.391 and are issued under the authority of 33 U.S.C. 499. The notice also identified interests that would be affected by amendments to the current regulations. The Coast Guard solicited comments on the issues raised in the notice and nominations for membership on the committee. The closing date for comments and nominations was May 8, 1995.

No comments were received on the issues to be considered by the committee. Several nominations for membership were received. Separate discussions were held by the neutral facilitator engaged by the Coast Guard with each of the interests identified in the notice and with others identified during the comment period. As a result, the Coast Guard is establishing the committee and beginning the negotiation process. As required by the Federal Advisory Committee Act (5 U.S.C. App.) (FACA), the committee charter has been approved by the Secretary of Transportation and submitted to the General Services Administration. The following interests are represented on the committee: the City of Chicago, boatyard owners, boaters, commercial interests in Chicago, and the Coast Guard.

The first meeting of the committee will be held in Chicago on June 5, 1995 at the time and location indicated at the beginning of this notice. The purpose of the first meeting is to: (1) Discuss the charter, goals, and mission of the committee; (2) present the issues to be considered by the committee; and (3) approve the organizational protocols by which the committee will operate. At the first session, there will be discussion of the negotiation and rulemaking process and an explanation of the statutory basis for the Coast Guard's drawbridge regulations.

The schedule of additional meetings provided earlier in this notice will be considered by the committee at its first meeting. In order for new regulations to be effective for the Fall 1995 close of the boating season, committee meetings must be concluded by 12 July 1995. Therefore, this schedule may be changed and additional meetings may be held on short notice. Announcements of these meetings will be published in the **Federal Register** if time for meaningful advance notice is available. Information on all meetings of the committee will be available by calling (216) 522–3993 or from the contact person indicated at the beginning of this notice.

Attendance at committee meetings is open to the public, subject to space availability. Persons wishing to present oral statements at a meeting should notify the contact person no later than the day before the meeting. Any member of the public may submit written statements to the committee at any time, also through the contact person.

Dated: May 11, 1995.

Paul J. Pluta,

Captain, United States Coast Guard, Commander, Ninth Coast Guard District, Acting.

[FR Doc. 95–12284 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5208–2]

Inspection and Maintenance Flexibility Amendments

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: This action extends the comment period to the proposed rule published on April 28, 1995 (60 FR 20934). EPA is extending the comment period to June 1, 1995.

DATES: Written comments on the proposed rule must be received no later than June 1, 1995. A public hearing is scheduled for May 17, 1995 and will be held at Weber's Inn at 3050 Jackson Road, Ann Arbor, Michigan 48103, from 9 a.m. through 5 p.m.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–95–08. It is requested that a duplicate copy be submitted to Eugene J. Tierney at the Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. The docket is located at the Air Docket, Room M–1500 (6102), Waterside Mall SW., Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. until 3:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Eugene J. Tierney, Telephone (313) 668–4456.

SUPPLEMENTARY INFORMATION:

Background

EPA announced its intent to amend the I/M Program Requirements in December 1994 and held stakeholders' meetings on January 24, 1995 and January 31, 1995. The proposal creates a second, less stringent enhanced I/M performance standard that could be

used in areas that can demonstrate an ability to meet the 1990 Clean Air Act deadlines for Reasonable Further Progress and attainment while implementing an I/M program that falls below the originally promulgated enhanced I/M performance standard. The proposed action would also revise the high enhanced I/M performance standard to include a visual inspection of the positive crankcase ventilation (PCV) valve on all light-duty vehicles and light-duty trucks from model years 1968 to 1971, inclusive, and of the exhaust gas recirculation (EGR) valve on all light-duty vehicles and light-duty trucks from model years 1972 through 1983, inclusive. The proposal also solicits public comment on whether or not EPA should include revised regulatory language in its final rulemaking which change the population cutoff for basic I/M from 50,000 persons to 200,000 persons. Lastly, the proposal would make clarifying amendments to the I/M requirements for areas undergoing redesignation.

Dated: May 10, 1995.

Mary Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–12175 Filed 5–17–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–64, RM–8618]

Radio Broadcasting Services; Talking Rock, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Funseeker's Network, Inc., requesting the allotment of Channel 261A to Talking Rock, Georgia, as that community's first local transmission service. Channel 261A can be allotted to Talking Rock in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.6 kilometers (8.5 miles) north, in order to avoid a short-spacing to the licensed sites of Station WNNX(FM), Channel 259C, Atlanta, Georgia, and Station WUSY(FM), Channel 264C, Cleveland, Tennessee. The coordinates for Channel 261A at Talking Rock are North Latitude 34–37–54 and West Longitude 84–31–24.

DATES: Comments must be filed on or before July 6, 1995, and reply comments on or before July 21, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: M. Scott Johnson, Lauren S. Drake, Gardner, Carton & Douglas, 1301 K Street, NW, Suite 900, East Tower, Washington, D.C. 20005 (Attorneys for Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–64, adopted May 8, 1995, and released May 15, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW, Room 246, or 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–12219 Filed 5–17–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–63, RM–8617]

Radio Broadcasting Services; Rushville, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Larry K. and Cathy M. Price, requesting the substitution of Channel 223A for Channel 244A at Rushville, Illinois. Channel 223A can be substituted for Channel 244A at Rushville, Illinois, in compliance with the Commission's minimum distance separation requirements at petitioners licensed site with a site restriction of 8.3 kilometers (5.1 miles) northwest of the community. The proposed coordinates for Channel 223A at Rushville are North Latitude 40–08–20 and West Longitude 90–39–26.

DATES: Comments must be filed on or before July 6, 1995, and reply comments on or before July 21, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Larry K. and Cathy M. Price, P.O. Box 196, 123 North Liberty Street, Rushville, Illinois 62681 (Petitioners).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–63, adopted May 8, 1995, and released May 15, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW, Room 246, or 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–12220 Filed 5–17–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–66; RM–8625]

Radio Broadcasting Services; Dayton, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Steven C. Hoffman proposing the allotment of Channel 272A at Dayton, Washington, as the community's second local FM transmission service. Channel 272A can be allotted to Dayton in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.0 kilometers (1.9 miles) southwest to avoid a short-spacings to the construction permit site for Channel 273C3 at Colfax, Washington, and Station KORD(FM), Channel 274C, Richland, Washington. The coordinates for Channel 272A at Dayton are North Latitude 46–17–57 and West Longitude 117–59–52. Since Dayton is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

DATES: Comments must be filed on or before July 6, 1995, and reply comments on or before July 21, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Steven C. Hoffman, 1420 S. 2nd Street, Dayton, Washington 99328 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–66, adopted May 5, 1995, and released May 15, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–12221 Filed 5–17–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD20

Endangered and Threatened Wildlife and Plants; Proposed Special Rule for the Conservation of the Northern Spotted Owl on Non-Federal Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopening of the Comment Period for the Proposed Special Rule.

SUMMARY: On February 17, 1995, the Fish and Wildlife Service (Service) published a proposed special rule, pursuant to section 4(d) of the Endangered Species Act (Act), to replace the blanket prohibitions against incidental take of spotted owls with a narrower, more tailor-made set of standards that reduce prohibitions applicable to timber harvest and related activities on specified non-Federal forest lands in Washington and California. The original deadline for comments on the proposed rule was May 18, 1995. The intent of this notice is to reopen the comment period to July 17, 1995.

DATES: The comment period for written comments is reopened until July 17, 1995.

ADDRESSES: Comments and materials concerning this proposed rule should be sent to Mr. Michael J. Spear, Regional Director, Region 1, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181.

FOR FURTHER INFORMATION CONTACT: Mr. Curt Smitch, Assistant Regional Director, North Pacific Coast Ecoregion, 3704 Griffin Lane SE, Suite 102, Olympia, Washington 98501 (360/534–9330); or Mr. Gerry Jackson, Deputy Assistant Regional Director, North Pacific Coast Ecoregion, 911 N.E. 11th Avenue, Portland Oregon 97232–4181, (503/231–6159).

SUPPLEMENTARY INFORMATION:

Background

The implementing regulations for threatened wildlife generally incorporate the prohibitions of section 9 of the Endangered Species Act of 1973, as amended (Act), for endangered wildlife, except when a ''special rule'' promulgated pursuant to section 4(d) of the Act has been issued with respect to a particular threatened species. At the time the northern spotted owl, *Strix occidentalis caurina,* was listed as a threatened species in 1990, the Service did not promulgate a special section 4(d) rule and therefore, all of the section 9 prohibitions, including the ''take'' prohibitions, became applicable to the species. To replace the blanket prohibitions against take of spotted owls, the Service published a proposed special rule, 50 CFR part 17, on February 17, 1995, (60 FR 9484), in the **Federal Register**, pursuant to section 4(d) of the Act, which proposes a narrower, more tailor-made set of standards that reduce prohibitions applicable to timber harvest and related activities on specified non-Federal forest lands in Washington and California.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: The authority for this action is the Endangered Species Act of 1973, as ammended (16 U.S.C. 1531 *et seq.*)

Dated: May 12, 1995.

Thomas Dwyer,

Acting Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 95–12202 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018-AC96

Endangered and Threatened Wildlife and Plants; Reopening and Extension of Comment Period on Proposed Endangered Status for Four Plants From Vernal Pools and Mesic Areas in Northern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), announces a reopening and extension of the comment period on the proposed determination of endangered status for *Lasthenia conjugens* (Contra Costa goldfields), *Navarretia leucocephala* ssp. *pauciflora* (few-flowered navarretia), *Navarretia leucocephala* ssp. *plieantha* (many-flowered navarretia), and *Parvisedum leiocarpum* (Lake County stonecrop). Written comments on the proposed rule will be accepted until June 19, 1995.

DATES: The comment period, which originally closed on February 17, 1995, was extended by request to April 28, 1995. By additional request, the comment period, which closed on April 28, 1995, is reopened and now closes June 19, 1995. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials concerning this proposal should be sent to Field Supervisor, Sacramento Field Office, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Betty Warne (see **ADDRESSES** section) or at 916/979–2120.

SUPPLEMENTARY INFORMATION:

Background

These four plant species grow in vernal pools and mesic grasslands and are found variously in Lake, Napa, and Solano Counties. The three remaining populations of *Parvisedum leiocarpum* occur on private lands in Lake County. The Five remaining populations of *Lasthenia conjugens* occur in Napa and Solano Counties. The three remaining populations of *Navarretia leucocephala* ssp. *pauciflora* occur in Napa and Lake Counties. The four remaining populations of *Navarretia leucocephala* ssp. *plieantha* occur in Lake County. The four species proposed for listing are imperiled by one or more of the following: Commercial, residential, and agricultural development; hydrological changes in vernal pool and swale habitats; trampling by livestock; road widening; inadequate regulatory protection mechanisms; random stochastic events; off-highway vehicle use; feral pigs; and horseback riding.

On December 19, 1994, (59 FR 65311) the Service published a proposed rule to list *Lasthenia conjugens, Navarretia leucocephala* ssp. *pauciflora, Navarretia leucocephala* ssp. *plieantha,* and *Parvisedum leiocarpum* as endangered under the Endangered Species Act of 1973, as amended. The comment period on the proposal originally closed on February 17, 1995. To accommodate the public hearing, held on April 6, 1995, the Service extended the public comment period until April 28, 1995 (60 FR 14253, March 16, 1995). In response to an oral request made by Mr. Michael Delbar, Lake County Farm Bureau, on March 27, 1995, the Service reopens and further extends the comment period. This extension allows for the collection of additional data during the 1995 field season on the status and distribution of the proposed plants. Written comments may now be submitted until June 19, 1995, to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Betty Warne (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 12, 1995.

Thomas Dwyer,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 95–12203 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 60, No. 96
Thursday, May 18, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 12, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Agricultural Marketing Service

National Research, Promotion, and Consumer Information Programs
Individual or households; Business or other for-profit; 4,617,405 responses; 409,961 hours
Kenneth R. Payne, (202) 720–1115

- National Agricultural Statistic Service

Field Crops Production
Business or other for-profit; Farms; 530,859 responses; 124,767 hours
Larry Gambrell, (202) 720–5778

- Animal and Plant Health Inspection Service

9 CFR Part 166—Swine Health Protection
VS 13–2, VS 13–5, VS 13–16, VS 13–17
Business or other for-profit; Farms; 656 responses; 584 hours
Joseph F. Annelli (301) 734–7767

Extension

- Rural Economic & Community Development

7 CFR 1955–B, Management of Property
Individuals or households; Business or other for-profit; Federal Government; State, Local or Tribal Government; 2,810 responses; 960 hours
Jack Holston, (202) 720–9736

- Forest Service

36 CFR Part 228, Subpart A—Locatable Minerals
FS–2800–5
Individual or households; Business or other for-profit; 2,000 responses; 4,000 hours
Sam Hotchkiss, (202) 205–1535

- Animal and Plant Health Inspection Service

Certificate for Poultry and Hatching Eggs for Export
VS–17–6
Individuals or households; Business or other for-profit; Farms; Federal Government; State, Local or Tribal Government; 21,000 responses; 10,500 hours
Andrea M. Morgan, (301) 734–8383

Reinstatement

- Rural Utilities Service

Accounting Requirements for RUS Telephone Borrowers
Individuals or households; Not-for-profit institutions; 900 responses; 10,800 hours
Robert Purcell, (202) 720–5227

Larry K. Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 95–12262 Filed 5–17–95; 8:45 am]
BILLING CODE 3410–01–M

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the U.S. Plan Variety Protection Application Serial No. 94–00–265 ''Rush Intermediate Wheatgrass,'' is available for licensing and that the United States Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to the University of Idaho. A public notice of release for this variety was held on February 14, 1994.

DATES: Comments must be received by no later than August 16, 1995.

ADDRESSES: Send comments to: USDA–ARS–Office of Technology Transfer, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, Room 416, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: Andrew Watkins of the Office of Technology Transfer at the Beltsville address given above; telephone: 301/504–6786.

SUPPLEMENTARY INFORMATION: The Federal Government's plant variety protection rights to this variety are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention, for the University of Idaho has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety days from the date of this published Notice, ARS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry,
Assistant Administrator.

[FR Doc. 95–12263 Filed 5–17–95; 8:45 am]
BILLING CODE 3410–03–M

Forest Service

Southwest Oregon Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on June 1, 1995 at the Coos Bay Red Lion Hotel, 1313 North Bayshore Drive, Coos Bay, Oregon. The meeting will begin at 9:00

a.m. and continue until 4:30 p.m. Agenda items to be covered include: (1) Summary of the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl; (2) Federal agency and public issues that the Advisory Committee may want to consider; (3) Identification of high priority Advisory Committee work; (4) Open public forum. All Southwest Oregon Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee staff, USDA, Rogue River National Forest, P.O. Box 520, Medford, Oregon 97501, 503–858–2322.

Dated: May 10, 1995.

Jame T. Gladen,

Forest Supervisor.

[FR Doc. 95–12172 Filed 5–17–95; 8:45 am]

BILLING CODE 3410–11–M

Wildcat River Advisory Commission

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wildcat River Advisory Commission will meet at the Jackson Town Hall in Jackson, New Hampshire, on June 14, 1995. The purpose of the meeting is to continue with the development of a Draft River Management Plan for administration of the designated Wild and Scenic Wildcat River. The Wild and Scenic Rivers Act requires the establishment of an advisory commission to advise the Secretary of Agriculture on administration of the river. The public is encouraged to attend the meeting and may provide written comment on the plan to the commissioners c/o the district office.

DATES: The meeting will be held June 14, 1995, at 7:30 p.m.

ADDRESSES: The meeting will be held at the Jackson Town Hall, Route 16B, Jackson, New Hampshire.

Send written comments to David Pratt III, Saco Ranger District, White Mountain National Forest, 33 Kancamagus Highway, Conway, NH 03818.

FOR FURTHER INFORMATION CONTACT: David Pratt III, Saco Ranger District, (603) 447–5448.

Dated: May 9, 1995.

Charles L. Myers,

Acting Forest Supervisor.

[FR Doc. 95–12222 Filed 5–17–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 735]

Approval for Manufacturing Authority (Plastic Food/Beverage Containers) Within Foreign-Trade Zone 9 Honolulu, Hawaii

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

After consideration of the application of the Department of Business, Economic Development & Tourism of the State of Hawaii, grantee of FTZ 9, filed with the Foreign-Trade Zones (FTZ) Board on March 25, 1994, requesting authority on behalf of Pacific Allied Products, Ltd., to manufacture plastic food/beverage containers under zone procedures within FTZ 9 solely for the Hawaiian and export markets, the Board, finding that the requirements of the Foreign-Trade Zones Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the activity proposed in the application for a period of 5 years (until July 1, 2000), subject to extension upon review.

Approval is subject to the FTZ Act and the FTZ Board's regulations, including Section 400.28.

Signed at Washington, DC, this 5th day of May 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 95–12194 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–DS-P

[Order No. 739]

Revision of Grant of Authority Subzone 124C Star Enterprise (Oil Refinery) Convent, Louisiana

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Board (the Board) authorized subzone status at the refinery complex of Star Enterprise in Convent, Louisiana, in 1993, subject to three conditions (Subzone 124C, Board Order 667, 59 FR 60, 1/3/94);

Whereas, the South Louisiana Port Commission, grantee of FTZ 124, has requested pursuant to § 400.32(b)(1)(i), a revision (filed 3/27/95, (A(32b1)–2–95; FTZ Doc. 18–95, assigned 5/2/95) of the grant of authority for FTZ Subzone 124C which would make its scope of authority identical to that recently granted for FTZ Subzone 199A at the refinery complex of Amoco Oil Company, Texas City, Texas (Board Order 731, 60 FR 13118, 3/10/95); and,

Whereas, the request has been reviewed and the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation of the Executive Secretary, and approves the request;

Now Therefore, the Board hereby orders that, subject to the Act and the Board's regulations, including § 400.28, Board Order 667 is revised to replace the three conditions currently listed in the Order with the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000–# 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (FTZ staff report, Appendix B);
—Products for export; and,
—Products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 9th day of May 1995.

Paul L. Joffe,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–12195 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 736]

Approval of Manufacturing Activity Columbus Industries, Inc. (Air Filters) Within Foreign-Trade Zone 138 Columbus, Ohio

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board's regulations require Board approval prior to commencement of new manufacturing/processing activity within existing zone facilities;

Whereas, the Rickenbacker Port Authority, grantee of FTZ 138, has requested authority under § 400.32(b)(1) of the Board's regulations on behalf of Columbus Industries, Inc., to manufacture air filters under zone procedures within FTZ 138, Columbus, Ohio (filed 4/29/94, FTZ Docket A(32b1)–1–94; amended 8/9/94; Doc. 11–95, assigned 3/29/95);

Whereas, pursuant to said provision, the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions in situations where the incoming merchandise for the proposed activity is admitted in foreign-privileged status (§ 400.32(b)(1)(iii));

Whereas, the request, as amended, states that Columbus Industries will pay full duties on all merchandise admitted to the zone for its use in the manufacture of products for the domestic market (e.g., no duty exemption will be claimed for scrap and waste); and

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of § 400.31, and the Executive Secretary has recommended approval;

Now, Therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request, as amended, subject to the Act and the Board's regulations, including § 400.28, and subject to the further requirement that all merchandise admitted to the zone for the Columbus Industries operation shall be placed in privileged foreign status (19 CFR 146.41).

Signed at Washington, DC, this 5th day of May 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–12196 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–DS–P

[Dockets 21–95; 22–95]

Foreign-Trade Zone 168—Dallas-Fort Worth, Texas; Foreign-Trade Zone 196—Fort Worth, Texas; Requests for Expanded Manufacturing Authority Nokia Mobile Phones Manufacturing (USA), Inc. (Telecommunications Products)

Applications have been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone Operating Company of Texas, operator of FTZ 168, and Alliance Corridor, Inc., grantee of FTZ 196, requesting authority on behalf of Nokia Mobile Phones Manufacturing (USA), Inc./Nokia Mobile Phones Trading (USA), Inc. (Nokia), to expand Nokia's authority to manufacture telecommunications products under zone procedures within FTZ 168 and FTZ 196. The applications were submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). They were formally filed on May 8, 1995.

The FTZ Board authorized Nokia to manufacture cellular phones using certain foreign components under zone procedures within FTZ 168 and FTZ 196 in late 1994 (Board Orders 728 and 729, 60 FR 2376, 1/9/95).

Nokia is now seeking authority to manufacture a broader range of telecommunications products at its plants within FTZ 168 and FTZ 196, including mobile/cellular phones, cellular phone systems equipment, office and cellular switching systems, telecommunications network equipment, and related signal and data processing equipment. Many of the components for the finished cellular phones are currently sourced from abroad, including printed circuits, integrated circuits, semiconductors, resistors, capacitors, diodes, crystals, liquid crystal display panels, switches, speakers, antennas, power supplies, transformers, batteries, pagers, leather and plastic cases, rubber and plastic parts, fasteners, iron and steel parts, and packaging materials. Other components that may also be sourced from abroad include signal reception and transmission equipment, sound recording equipment, electric motors, glass envelopes, propylene, cabinets, wire, cable, and computers/components.

Zone procedures would exempt Nokia from Customs duty payments on the foreign components used in export production. On its domestic sales, the company would be able to choose the duty rates that apply to finished products (free-8.7%). The duty rates on components range from duty-free to 15 percent. The applications indicate that savings from zone procedures would help the international competitiveness of Nokia's domestic plants.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the applications and report to the Board.

Public comment on the applications is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 17, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 1, 1995).

Copies of the applications and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 2050 N. Stemmons Freeway, Suite 170, Dallas, TX 75258

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: May 10, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–12197 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 740]

Revision of Grant of Authority, Subzone 116A, Star Enterprise (Oil Refinery); Jefferson/Hardin Counties, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Board (the Board) authorized subzone status at the refinery complex of Star Enterprise in Jefferson/Hardin Counties (Port Arthur area), Texas, in 1993, subject to three conditions (Subzone 116A, Board Order 668, 59 FR 61, 1/3/94);

Whereas, the Foreign-Trade of Southeast Texas, grantee of FTZ 116, has requested pursuant to § 400.32(b)(1)(i), a revision (filed 3/27/95, A(32b1)-3–95; FTZ Doc. 19–95, assigned 5/2/95) of the grant of authority for FTZ Subzone 116A which would make its scope of authority identical to that recently granted for

FTZ Subzone 199A at the refinery complex of Amoco Oil Company, Texas City, Texas (Board Order 731, 60 FR 13118, 3/10/95); and,

Whereas, the request has been reviewed and the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation of the Executive Secretary, and approves the request;

Now Therefore, the Board hereby orders that, subject to the Act and the Board's regulations, including § 400.28, Board Order 668 is revised to replace the three conditions currently listed in the Order with the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000–# 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (FTZ staff report, Appendix B);
—Products for export; and,
—Products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 9th day of May 1995.

Paul L. Joffe,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–12198 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[C–201–003]

Ceramic Tile From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on ceramic tile from Mexico. We have preliminarily determined the total bounty or grant to be 0.48 percent *ad valorem* for all companies during the period January 1, 1993, through December 31, 1993. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem is de minimis.* If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to liquidate, without regard to countervailing duties as indicated above.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 18, 1995.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 1982, the Department published in the **Federal Register** (47 FR 20012) the countervailing duty order on ceramic tile from Mexico. On May 4, 1994, the Department published a notice of ''Opportunity to Request Administrative Review'' (59 FR 23051) of this duty order. We received a timely request for review from the Government of Mexico (GOM) and Ceramica Regiomontana, S.A., (Ceramica).

On June 15, 1994, we initiated the review, covering the period January 1, 1993, through December 31, 1993 (59 FR 30770). The review covers 40 manufacturers/exporters of the subject merchandise and four programs.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provision as they existed on December 31, 1994. However, references to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366 (May 31, 1989) (Proposed Regulations), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the Proposed Regulations were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. *See* 60 FR 80 (Jan. 3, 1995).

Partial Revocation

On May 31, 1994, in its request for administrative review, the GOM submitted a request for partial revocation for 14 companies which included only the agreements required under 19 CFR 355.25(b)(3)(iii). On November 14, 1995, in its submission of the questionnaire response, the GOM submitted company and government certifications as required under 19 CFR 355.25(b)(3)(i) and (ii) to complete its request for partial revocation. After examining the record for each of the 14 companies identified in the requests for revocation, the Department has determined that none of them have met the minimum threshold requirements to be considered for revocation under 19 CFR 355.25(a)(3)(i). These companies did not participate in five consecutive administrative reviews in which they were found not to have received any net subsidy, including the review in which they are requesting revocation, and with no intervening period in which a review of the company was not conducted.

Moreover, under 19 CFR 355.25(b)(3), a company must request revocation in writing and, with its request, submit (1) government and company certifications that the company neither applied for nor received any net subsidy during the period of review and will not apply for or receive any net subsidy in the future; and (2) the agreement concerning revocation described in 19 CFR 355.25(a)(3)(iii). (According to 19 CFR 355.25(a)(3)(iii), producers or exporters must agree in writing to their immediate reinstatement in the order, as long as any producer or exporter is subject to the order, if the Secretary concludes that the producer or exporter, subsequent to the revocation, has received any net subsidy on the merchandise.) In this case, although the companies filed the agreements required under 19 CFR 355.25(a)(3)(iii) at the time of the revocation request, they did not submit government and company certifications required under 19 CFR 355.25(b)(3)(i) and (ii) until November 14, 1995, the deadline for submission of the questionnaire response.

All of the requirements for revocation are fully discussed in *Ceramic Tile From Mexico; Preliminary Results of Countervailing Duty Administrative Review and Intent To Revoke in Part Countervailing Duty Order* (58 FR 31505; June 3, 1993) and *Ceramic Tile From Mexico; Final Results of Countervailing Duty Administrative*

Review and Revocation in Part of the Countervailing Duty Order (59 FR 2823; January 19, 1994). For the reasons stated above, these 14 companies did not meet those requirements and are therefore, not eligible for revocation in this administrative review.

Scope of Review

Imports covered by this review are shipments of Mexican ceramic tile, including non-mosaic, glazed, and unglazed ceramic floor and wall tile. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 6907.10.0000, 6907.90.0000, 6908.10.0000, and 6908.90.0000. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Calculation Methodology for Assessment and Cash Deposit Purposes

We calculated the bounty or grant on a country-wide basis by first calculating the bounty or grant for each company subject to the administrative review. We then weight-averaged the rate received by each company, even those with de minimis and zero rates, using as the weight its share of total Mexican exports to the United States of subject merchandise. We then summed the individual companies' weight-averaged rates to determine the bounty or grant from all programs benefitting exports of subject merchandise to the United States. Since the country-wide rate calculated using this methodology was de minimis, as defined by 19 CFR 355.7, no further calculations were necessary.

Analysis of Programs

I. Programs Conferring Subsidies

A. Programs Previously Found to Confer Subsidies BANCOMEXT Financing for Exporters

Effective January 1, 1990, the Mexican Treasury Department eliminated the Fondo para el Fomento de las Exportaciones de Productos Manufacturados (FOMEX) loan program and transferred the FOMEX trust to the Banco Nacional de Comercio Exterior, S.N.C. (BANCOMEXT). BANCOMEXT offers short-term financing to producers or trading companies engaged in export activities; any company generating foreign currency through exports is eligible for financing under this program. The BANCOMEXT program operates much like its predecessor, FOMEX. BANCOMEXT provides two types of financing, both in U.S. dollars, to exporters: working capital loans (pre-export loans), and loans for export sales (export loans). In addition, BANCOMEXT may provide financing to foreign buyers of Mexican goods and services.

The Department has previously found this program to confer an export subsidy to the extent that the loans are provided at preferential terms (*See Ceramic Tile From Mexico; Preliminary Results of Countervailing Duty Review* (57 FR 5997, February 19, 1992) and *Ceramic Tile From Mexico; Final Results of Countervailing Duty Review* (57 FR 24247, June 8, 1992). In this review the GOM provided no new information or evidence of changed circumstances that would lead the Department to alter that determination.

We found that the annual interest rates BANCOMEXT charged to borrowers for certain loans on which interest payments were due during the review period were lower than commercial rates. The BANCOMEXT dollar-denominated loans under review were granted at annual interest rates ranging from 5.9 percent to 10.0 percent. As discussed in *Certain Steel Products from Mexico; Final Countervailing Duty Determination* (58 FR 37357, July 9, 1993), because loans are funded by BANCOMEXT through commercial banks in dollars and indexed to dollars for repayment, we used a dollar benchmark. As the benchmark for BANCOMEXT pre-export and export dollar-denominated loans granted in 1993, we used the average of the quarterly weighted-average effective interest rates published in the *Federal Reserve Bulletin*, which resulted in an annual benchmark of 7.03 percent in 1993.

We consider the benefits from short-term loans to occur at the time the interest is paid. Because interest on BANCOMEXT pre-export loans is paid at maturity, we calculated benefits based on loans that matured during the review period; these were obtained between August 1992 and October 1993. Interest on BANCOMEXT export loans is paid in advance; we therefore calculated benefits based on BANCOMEXT loans received during the review period.

Three exporters of ceramic tile products used BANCOMEXT pre-export financing and one company used BANCOMEXT export financing. Because we found that the exporters were able to tie their BANCOMEXT loans to specific sales, we measured the benefit only from the BANCOMEXT loans tied to sales of the subject merchandise to the United States. To determine the benefit for each exporter, we multiplied the difference between the interest rate charged to exporters for these loans and the benchmark interest rate by the outstanding principal and then multiplied this amount by the term of the loan divided by 365. We then weight-averaged the benefit received by each company using as the weight its share of total Mexican exports to the United States of the subject merchandise. On this basis, we preliminarily determine the benefit from this program to be 0.0002 percent *ad valorem* for all companies.

PITEX

The Program for Temporary Importation of Products used in the Production of Exports (PITEX) was established by a decree published in the *Diario Oficial* on May 9, 1985, and amended in the *Diario Oficial* on September 19, 1986, and May 3, 1990. The program is jointly administered by the Ministry of Commerce and Industrial Development (SECOFI) and the Customs Administration. Under PITEX, exporters with a proven export record may receive authorization to temporarily import products to be used in the production of exports for up to five years without having to pay the import duties normally imposed on those imports. PITEX allows for the exemption of import duties for the following categories of merchandise used in export production: raw materials, packing materials, fuels and lubricants, machinery used to manufacture products for export, and spare parts and other machinery. The importer must post a bond or other security to guarantee the reexportation of the temporary imports. Because it is only available to exporters, the Department previously found in *Certain Textile Mill Products From Mexico; Final Results of Countervailing Duty Administrative Review* (56 FR 50859, October 9, 1991) and *Ceramic Tile From Mexico; Final Results of Countervailing Duty Administrative Review* (57 FR 24247, June 8, 1992) that PITEX provides countervailable benefits to the extent that it provides duty exemptions on imports of merchandise not physically incorporated into exported products. The GOM provided no new information or evidence of changed circumstances that would lead the Department to alter that determination.

During the review period, four companies used the PITEX program for imports of machinery and spare parts which are not physically incorporated into exported products. To determine the benefit for each exporter, we calculated the duties that should have been paid on the non-physically incorporated items that were imported under the PITEX program during the

review period. We then divided that amount by each company's total exports and weight-averaged the benefit received by each company using as the weight its share of total Mexican exports to the United States of the subject merchandise. On this basis, we preliminarily determine the benefit from this program to be 0.47 percent *ad valorem* for all companies.

NAFINSA Long-Term Loans

Two companies received long-term financing from NAFINSA loans (Nacional Finciera Sociedad Anonima). Until December 31, 1988, NAFINSA operated as a first-tier bank, which is defined as a commercial bank that provides financing directly to the public. Since December 31, 1988, NAFINSA has operated as ''second-tier'' bank granting financing to companies indirectly through the commercial bank, (i.e., first-tier banks). NAFINSA long-term loans have been found to be specific in past proceedings because availability was limited to specific geographical regions of Mexico. *See Bars and Shapes from Mexico Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders* 49 FR 161 (August 17, 1984). The GOM has provided no new information or evidence of changed circumstances to lead us to conclude that this program is not limited to companies in specific regions. Therefore, we preliminarily determine that NAFINSA long-term loans are specific.

Since the GOM did not provide any information on long-term interest rates, we are using a short-term CPP based rate as our benchmark rate in accordance with our practices as set forth in section 355.49(b)(iii) of the Department's regulations. *See Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366, 23384 (May 31, 1989). In past Mexican cases, we have used the *Costo Porcentual Promedio* (CPP), a short-term interest rate, as the basis for our benchmark. We have converted the CPP rate into a benchmark rate using a standard formula that has been used consistently in past Mexican cases. *See Porcelain-on-Steel Cookingware from Mexico; Final Results of Countervailing Duty Administrative Review,* 57 FR 562 (January 7, 1982). Using this methodology, we calculated an annual average benchmark of 29.79 percent for the peso-denominated loans. A comparison between the benchmark rate and the NAFINSA loan rates indicates that these loans are inconsistent with commercial considerations.

To calculate the benefit, we multiplied the difference between the benchmark rate and the interest rate in effect for the NAFINSA loan by the principal outstanding during the review period. We divided the benefit by the firm's total sales during the review period and then weight-averaged the benefit received by each company using as the weight its share of total Mexican exports to the United States of the subject merchandise. On this basis, we preliminarily determine the benefit from this program to be 0.01 percent *ad valorem* for all companies.

II. Programs Preliminarily Found To Be Not Used

We also examined the following programs and preliminarily determined that exporters of the subject merchandise did not apply for or receive benefits under these programs during the review period:

(A) Other BANCOMEXT preferential financing;

(B) Other Dollar-Denominated Financing Programs;

(C) Fiscal Promotion Certificates (CEPROFI);

(D) Import duty reductions and exemptions;

(E) State tax incentives;

(F) Article 15 Loans;

(G) NAFINSA FONEI-type financing; and

(H) NAFINSA FOGAIN-type financing.

Preliminary Results of Review

For the period January 1, 1993, through December 31, 1993, we preliminarily determined the total bounty or grant to be 0.48 percent *ad valorem* for all companies. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis.*

If the final results remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from Mexico exported on or after January 1, 1993, and on or before December 31, 1993.

The Department also intends to instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of zero percent of the f.o.b. invoice price on all shipments of the subject merchandise from all companies, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final date of the publication of the final result of this review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Pursuant to 19 CFR 355.38(c), interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 355.38(c), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, or at a hearing. This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 10, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–12199 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of Application for an Amendment to an Export Trade Certificate of Review, Application No. 90–5A007.

SUMMARY: The Department of Commerce has received an application to amend an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal

government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to determining whether the Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as ''Export Trade Certificate of Review, application number 90–5A007.''

Export Trade Certificate of Review No. 90–00007, was issued to the U.S. Surimi Commission (''USSC'') on August 22, 1990 (55 FR 35445, August 30, 1990) and previously amended on December 12, 1990 (55 FR 53031, December 26, 1990), June 11, 1991 (56 FR 27946, June 18, 1991), May 22, 1992 (57 FR 23078, June 1, 1992), and on August 12, 1993 (58 FR 44504, August 23, 1993).

Summary of the Application

Applicant: United States Surimi Commission (''USSC''), 4200 First Interstate Center, Seattle, Washington 98104–4082.

Contact: Paul MacGregor, Legal Counsel, Telephone: 206/624–5950.

Application No.: 90–5A007.

Date Deemed Submitted: May 5, 1995.

Proposed Amendment: USSC seeks to amend its Certificate to:

1. Add the following companies as ''Members'' within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Alaska Trawl Fisheries, Inc., Edmonds, Washington (controlling entity: Daerim Corporation, Seoul, Korea); and Emerald Seafoods, NW. (controlling entity: Emerald Seafoods, NW., Limited Partnership).

2. Add the following product to Export Trade as defined by § 325.2(j) of the Regulations: White fish meal.

Dated: May 15, 1995.

Jude Kearney,

Deputy Assistant Secretary for Service Industries and Finance.

[FR Doc. 95–12275 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–DR–P

Purdue University, Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–004. *Applicant:* Purdue University, West Lafayette, IN 47907. *Instrument:* Electron Microscope, Model CM200. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 60 FR 9662, February 21, 1995. *Order Date:* July 28, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff

[FR Doc. 95–12200 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

[I.D. 040795A]

Endangered and Threatened Wildlife and Plants; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of additional public hearing.

SUMMARY: On April 18, 1995, NMFS published a notice of availability of a proposed recovery plan for Snake River salmon protected by the Endangered Species Act (ESA). In addition, eleven public hearings were announced. NMFS is announcing one additional public hearing.

DATES: The public hearing is scheduled as follows:

June 21, 1995, 6:30 p.m. to 9:30 p.m., Idaho Falls, ID.

ADDRESSES: The hearing will be held at the following location:

Idaho Falls—Center for Higher Education Bldg., 1776 Science Center Drive, Idaho Falls, ID 83402.

FOR FURTHER INFORMATION CONTACT: Robert Jones, Recovery Plan Coordinator, Environmental and Technical Services Division, NMFS, (503) 230–5400.

Dated: May 11, 1995.

Patricia A. Montanio,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–12181 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–22–F

[Docket No. 950508132–5132–01; I.D. 010995D]

Information Relating to Bowhead Whales; U.S. Implementation of Bowhead Whale Strike Quota

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information; request for comments.

SUMMARY: NOAA is soliciting public comment on the proposed allocation to U.S. natives of the International Whaling Commission (IWC) bowhead whale catch limit.

DATES: Comments must be submitted on or before June 19, 1995.

ADDRESSES: Written comments may be mailed to the Office of International Affairs, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A list of documents reviewed for this action may be obtained upon request, and the documents examined during the comment period during business hours (9 a.m. to 5 p.m.) at this address.

FOR FURTHER INFORMATION CONTACT: Kim Blankenbeker, 301–713–2276.

SUPPLEMENTARY INFORMATION: NOAA is responsible for implementation and enforcement of the Marine Mammal Protection Act (16 U.S.C. 1361–1407), the Endangered Species Act (16 U.S.C 1531–1543), and the Whaling Convention Act (16 U.S.C. 916–9161). In addition, it provides staff support to the

U.S. Commissioner to the IWC and to the IWC Interagency Committee. Consistent with these responsibilities, NOAA develops positions for implementation of the aboriginal/subsistence harvest of bowhead whales under paragraph 13 of the Schedule to the International Convention on the Regulation of Whaling, December 2, 1946, 62 Stat. 1716, T.I.A.S. No. 1849 (entered into force, November 10, 1948).

In order to provide for review and comment by the public of the data upon which the U.S. positions are based, the following information is provided: (1) The IWC catch level available for the U.S. aboriginal/subsistence bowhead whale harvest for 1995–98; (2) a summary of available bowhead scientific information, including estimates of current population level and annual recruitment rates; (3) a summary of information on the nature and extent of aboriginal/subsistence need; (4) the level of aboriginal/subsistence harvest limits that could be implemented domestically; and (5) notice of the availability of those documents reviewed by NOAA and relied on by the Under Secretary of Commerce for Oceans and Atmosphere in making his finding on the range of harvest limits. NOAA is soliciting public comment on the proposed domestic implementation of the IWC bowhead whale catch limit.

1. Catch Level

At the 46th Annual Meeting of the IWC in Puerto Vallarta, Mexico, May 23–27, 1994, the following catch limit was established for aboriginal/subsistence whaling:

> For the years 1995, 1996, 1997, and 1998, the number of bowhead whales landed shall not exceed 204, and the number of bowhead whales struck shall not exceed 68 in 1995, 67 in 1996, 66 in 1997, and 65 in 1998, except that any unused portion of the strike quota for each year shall be carried forward from that year and added to the strike quota of any subsequent years, provided that no more than 10 strikes shall be added to the strike quota for any 1 year.

It was clarified on the floor of the meeting that if 15 of the allowed strikes were not used in 1 year, 10 of those strikes could be carried over to the next year and the remaining 5 strikes could be added to another year.

2. Scientific Information

At the 1994 Annual Meeting of the IWC, an assessment of the status of bowhead whales was completed using a series of relative abundance estimates and an absolute abundance from acoustic and visual survey data collected in 1988. The resulting analysis suggested that the population currently is increasing at 3.1 percent annually (95 percent confidence interval 1.4 percent to 4.7 percent), is at 36 percent of its pre-exploitation abundance (95 percent confidence interval 0.27–0.44), and has a median value for the replacement yield of 199 (95 percent probability interval 97–300). A minimum replacement yield was estimated to be 104 animals per year; 104 is the fifth percentile replacement yield of the replacement yield distribution. Projections of population size under three levels of takes were made, suggesting that the population likely would increase at recent levels of aboriginal catches. Major uncertainties identified included: (1) Completing the analysis of the acoustic survey data from 1993, (2) methods of correcting visual sighting data for distribution away from the sighting location, (3) prior distributions for several input parameters, and (4) the degree of genetic interchange between this stock and other more depleted stocks of bowhead whales.

3. Aboriginal/Subsistence Need

In 1994, in response to a **Federal Register** document soliciting comments on a proposed U.S. position, the Alaska Eskimo Whaling Commission (AEWC) submitted a recalculation of the aboriginal subsistence and cultural need for 9 whaling villages using estimated populations for 1992 provided by the State Demographer of Alaska. Based on the 1992 estimated populations, the calculated need for bowhead whales in those 9 whaling villages was 50.

At the 1994 Annual Meeting of the IWC, the United States sought IWC recognition that the island of Little Diomede has a subsistence and cultural need to land 1 bowhead whale per year. Together with the 50 bowheads needed for the other whaling villages, the total needed is 51. Assuming a target efficiency rate of 75 percent, this would require a quota of 68 strikes.

In setting a limit of 204 bowhead whales landed for 4 years (an average of 51 animals per year), the United States believes that the IWC implicitly acknowledged the subsistence and cultural need of Little Diomede to land 1 bowhead whale per year.

4. Domestic Harvest Range

The IWC management scheme for aboriginal/subsistence whaling provides (in Schedule paragraph 13(a)(2)):

> For stocks below the maximum sustainable yield (MSY) level but above a certain minimum level, aboriginal/subsistence catches shall be permitted so long as they are set at levels which allow whale stocks to move to the MSY level.

Given the above-stated minimum estimate of replacement yields of 104, an aboriginal/subsistence catch can be permitted in 1995.

Therefore, the catch limits for bowhead whales in 1995 shall be such that no more than a total of 68 bowhead whales are struck. For the years 1995 to 1998 combined, the number of bowhead whales landed shall not exceed 204.

Authority: 16 U.S.C. 916, 1361–1407, 1531–43.

Dated: May 11, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–12182 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina meeting to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on Friday, June 2, 1995, at the Adams Mark Inn, Meeting Room, 1200 Hampton Street (Downtown), Columbia, South Carolina. The purpose of the meeting is to release the report, *Perceptions of Racial Tensions in South Carolina;* discuss civil rights progress and/or problems in the State; and discuss future project plans.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 4, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–12223 Filed 5–17–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; Applicable Forms; and OMB Control Number: DoD FAR Supplement, Part 204, Administrative Matters, and Related Clause and Provision at 252.204; DD Forms 2051 and 2051–1; OMB Control Number 0704–0225

Type of Request: Revision

Number of Respondents: 92,120

Responses per Respondent: 1

Annual Responses: 92,120

Average Burden per Response: 43 minutes

Annual Burden Hours: 66,635

Needs and Uses: DoD FAR Supplement, Part 204.404–70(a) prescribes use of the clause at 252.204–7000, which requires contractors to submit a request for approval to release unclassified information outside of the contractor's organization. The information provided by the contractor is reviewed to determine if the specific contract information proposed for release is sensitive or otherwise inappropriate for release for the purposes the contractor has indicated. DoD FAR Supplement 204.603–70 prescribes use of the provision at 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting, which requires a contractor to provide its CAGE code to the Government with submission of its offer, or to advise the Government if it doesn't have a CAGE code, so that one can be provided. The CAGE codes are used by the Government to identify contractors for the purposes of developing computerized acquisition systems or solicitation mailing lists. Use of the CAGE codes permits the Government to exchange data with other contracting activities.

Affected Public: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 15, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12240 Filed 5–17–95; 8:45 am]

BILLING CODE 5000–04–P

Office of the Secretary

Defense Information School Board of Visitors Meeting

AGENCY: Department of Defense, Office of the Assistant to the Secretary of Defense for Public Affairs, American Forces Information Service.

ACTION: Notice of meeting.

SUMMARY: The Defense Information School Board of Visitors will hold its semi-annual meeting at the Defense Information School, Indianapolis, IN. Board members will review issues related to the status of the Defense Information School consolidation and joint-Service training facility under development. The meeting is open to the public.

Dates and Times: June 1, 1995—8:00 a.m. to 11:00 a.m. (first session); 12:15 p.m. to 1:30 p.m. (second session); 1:30 p.m. to 3:55 p.m. (third session); June 2, 1995—8:30 a.m. to 11:15 a.m. (fourth session).

ADDRESSES: All. sessions will be conducted in the main conference room, Defense Information School, Building 400, located on the corner of Wheeler and Rising Roads, Fort Benjamin Harrison, IN.

FOR FURTHER INFORMATION CONTACT: Mr. Wallace N. Guthrie, Jr., Training Directorate, American Forces Information Service, 601 North Fairfax Street, Room 225, Alexandria, VA 22314. Telephone (703) 274–4897.

Dated: May 15, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12241 Filed 5–17–95; 8:45 am]

BILLING CODE 5000–04––M

Defense Science Board Task Force on Unique Surveillance Technologies

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Unique Surveillance Technologies will meet in closed session on May 24–25, 1995, at the Pentagon, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review and evaluate Have Gaze and related surveillance technologies and to assess overall technological maturity, technical and operational issues, potential military utility, and appropriate technology investment.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. § 552b(c) (1) (1988), and that accordingly this meeting will be closed to the public.

Dated: May 5, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 95–12242 Filed 5–17–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Joint Technology Issues

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Joint Technology Issues will meet in closed session on May 30 and June 29, 1995 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will work with the JCS Chairman and Vice Chairman in

support of the Expanded JROC activities. The Task Force should place special emphasis on the application of technology to enhance the effectiveness of the evolving force structure within tight fiscal constraints and should also place a special focus on issues dealing with operations other than war.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: May 15, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12243 Filed 5–17–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21 Century Military Superiority

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority will meet in closed session on August 6–18, 1995 at the Beckman Center, Irvine, California.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will focus on those R&D investments that must be made now so as to assure a technology base in the year 2000 capable of providing U.S. military superiority in the 21st century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: May 15, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12244 Filed 5–17–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Privacy Act of 1974; Amend Record Systems

AGENCY: Marine Corps, Department of the Navy.

ACTION: Amend record system.

SUMMARY: The U.S. Marine Corps proposes to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This notice amends the system of records notice MFD00009, entitled Marine Corps Command Legal Files, last published in the **Federal Register** on February 8, 1995, at 60 FR 7523. The amendment consists of changing the system identifier from MFD00009 to MJA00009.

DATES: The amendment will be effective May 18, 1995.

ADDRESSES: Send comments to the Head, FOIA and Privacy Act Section, Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. B. L. Thompson at (703) 614–4008 or DSN 224–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

This notice amends the system of records notice MFD00009, entitled Marine Corps Command Legal Files, last published in the **Federal Register** on February 8, 1995, at 60 FR 7523. The amendment consists of changing the system identifier from MFD00009 to MJA00009.

Dated: May 8, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12245 Filed 5–17–95; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

[CFDA No.: 84.060A]

Indian Education Formula Grants to Local Educational Agencies; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose: Provides grants to support local educational agencies in their efforts to reform elementary and secondary school programs that serve Indian students in order to ensure that such programs are based on challenging State content standards and State student performance standards used for all students, and are designed to assist Indian students to meet those standards.

Eligible Applicants: Local educational agencies (LEAs) and certain schools funded by the Bureau of Indian Affairs, and Indian tribes under certain conditions.

Deadline for Transmittal of Applications: June 23, 1995. Applications not meeting the deadline will not be considered for funding in the initial allocation of awards. Applications not meeting the deadline may be considered for funding if the Secretary determines, under section 9117(d), Part A of Title IX of the 1994 amendments of the Elementary and Secondary Education Act of 1965 (the Act), as amended, that funds are available and that reallocation of those funds to those applicants would best assist in advancing the purposes of the program. However, the amount and date of an individual award, if any, made under section 9117(d) of the Act may not be the same to which the applicant would have been entitled if the application had been submitted on time.

Deadline for Intergovernmental Review: August 23, 1995.

Applications Available: May 12, 1995.

Available Funds: The appropriation for this program for fiscal year 1995 is $59,686,000, which should be sufficient to fund all eligible applicants.

Estimated Range of Awards: $3,000 to $1,300,000.

Estimated Average Size of Awards: $47,000.

Estimated Number of Awards: 1,200.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, and 86.

For Applications or Information Contact: The Director, Office of Indian Education, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building-Room 4300, Washington, D.C. 20202–6335. Telephone: (202) 260–3774. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 7811.

Dated: May 9, 1995.

Thomas W. Payzant,

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 95–12179 Filed 5–17–95; 8:45 am]

BILLING CODE 4000–01–P

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on October 20, 1993, an arbitration panel rendered a decision in the matter of *Michael Lawyer* v. *Illinois Department of Rehabilitation Services, (Docket No. R-S/92–14).* This panel was convened by the Secretary of the U.S. Department of Education pursuant to 20 U.S.C. 107d–2, upon receipt of a complaint filed by petitioner Michael Lawyer.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Avenue SW., Room 3230, Switzer Building, Washington, D.C. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property.

Background

Michael Lawyer, complainant, is a blind vendor licensed by the Illinois Department of Rehabilitation Services (DORS), which is the State licensing agency under the Randolph-Sheppard Act. Mr. Lawyer began operation of the vending facility at the Cook County Hospital on October 1, 1990.

Mr. Lawyer was given a safe to be used to deposit monies from the facility. The safe subsequently broke, and Mr. Lawyer was advised by DORS that they could not furnish another one and that he would have to replace it. The facility had a rolltop safe that was used by other vendors to deposit their monies at the end of their workday. Instead of replacing the broken safe, the complainant began depositing his monies into this rolltop safe if he had a witness to verify the amount of his deposit. If complainant did not have a witness to verify the amount, he took the money home with him and returned it in the morning. Complainant believed this practice was accepted by his lead manager and carried it out on several occasions, without incident. On February 3, 1992, the lead manager issued complainant $500.00 for use as working capital in order to make change. Mr. Lawyer was to return this money to the lead manager at the end of his workday. Instead of returning the money, complainant took it home, where later that evening he was robbed and the money stolen. Mr. Lawyer was hurt during the struggle and had to be hospitalized for his injuries. A police report was filed that same day. Only after returning home from the hospital did he realize that the money had been stolen.

On March 17, 1992, DORS terminated complainant's license for violation of its rules governing facility money. Chapter IV, Sec. 650.100(m), 89 Ill. Adm. Code, states that facility money, product, equipment, or program assets shall not be removed from the facility by the vendor for personal use and that violation shall result in termination of the vendor's license. Mr. Lawyer contested the decision to revoke his license and was provided a Level II hearing on May 27, 1992, pursuant to DORS rules. The hearing officer found that DORS had properly terminated complainant's license. Mr. Lawyer then appealed the DORS decision to the U.S. Department of Education, and a hearing was convened on July 27, 1993.

Arbitration Panel Decision

The panel unanimously found that complainant did not have permission to remove the money in question from the facility and failed to use an available secure place to safeguard the facility assets. A majority of the panel members found that, although the complainant did not maliciously intend to appropriate the money for personal use, once the facility assets were removed from the facility, complainant took full control and possession of the assets for personal use in violation of Chapter IV, Sec. 650.100(m), 89 Ill. Adm. Code. However, one panel member dissented and held that personal use under the regulations means that the funds had to be used for direct personal gain such as purchasing goods or using the funds in a similar personal manner.

In recognizing that the loss of a vendor's license to a legally blind person with limited opportunity for gainful employment is a very severe penalty, the panel recommended that DORS convene another panel to review complainant's employment record to determine if his license should be returned. It also recommended that if DORS elects to return complainant's license, he should repay the $500.00.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: May 12, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–12178 Filed 5–17–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP95–484–000]

ANR Pipeline Co.; Notice of Application

May 12, 1995.

Take notice that on May 4, 1995, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 filed an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service between ANR, formerly Michigan Wisconsin Pipe Line Company and Transwestern Pipeline Company (Transwestern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that, in Docket No. CP79–422, the Commission authorized an exchange between ANR and Transwestern dated August 15, 1978, as amended. It is stated that the service is designated as Rate Schedule X–89 under Original Volume No. 2 of ANR's FERC Gas Tariff, and Rate Schedule X–15 under Original Volume No. 2 of Transwestern's FERC Gas Tariff. ANR states that, in a letter dated June 16, 1993, Transwestern exercised its right to terminate the service. ANR contends that, on November 14, 1994, Transwestern filed an application in Docket No. CP95–70–000 to abandon, inter alia, exchange service with ANR under its Rate Schedule X–15, which corresponds to ANR's Rate Schedule X–89. Accordingly, ANR requests permission to abandon the above described exchange service. It is stated that no facilities are proposed to be abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 2, 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 ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12188 Filed 5–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–492–000]

Colorado Interstate Gas Co.; Notice of Request Under Blanket Authorization

May 12, 1995.

Take notice that on May 10, 1995, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP95–492–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery facility for service to Utilicorp United, Inc. (Utilicorp), a local distribution company, in Douglas County, Colorado, under CIG's blanket certificate issued in Docket No. CP83–21–000 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.

CIG proposes to construct approximately 3.3 miles of 6-inch loop line on CIG's existing line in Douglas County for deliveries to Utilicorp to accommodate growth in the Castle Rock, Colorado, area. It is stated that CIG would use the proposed delivery point for the delivery of approximately 3,500 Mcf of gas per day transported for Utilicorp under the terms of its Rate Schedule TF–1. It is stated that the volumes to be delivered would not exceed the volumes presently delivered to Utilicorp. The construction cost is estimated at $468,000. CIG states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers and that its tariff does not prohibit the addition of delivery points.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12189 Filed 5–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–491–000]

NorAm Gas Transmission Co.; Notice of Request Under Blanket Authorization

May 12, 1995.

Take notice that on May 9, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No CP95–491–000, a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon and remove an above-ground 2-inch meter station on Line AM–52, Upshur County, Texas, under the blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Section 7(b) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NGT states that it proposes to abandon and remove the 2-inch meter that provides service to one residential farm tap, a customer of Arkla, a division of NorAm Energy Corp. (Arkla). Arkla has consented in writing to the removal of the 2-inch meter. NGT indicates that the estimated cost to remove the meter is $365 and the funds would be generated internally. NGT says that no customers or service will be abandoned. NGT states that it will continue to operate an existing 2-inch regulator to serve that customer, but Arkla will install its own meter to measure the gas delivered. The volumes to be delivered through the tap will be approximately 1 MMBtu on a peak day and 85 MMBtu annually.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12190 Filed 5–17–95; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL MARITIME COMMISSION

Notice of Items Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following items have been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, et seq.). Requests for information, including copies of the collection of information and supporting documentation, should be directed to Bruce Dombrowski, Deputy Managing Director, Federal Maritime Commission, 800 North Capitol Street, N.W., Room 1082, Washington, D.C. 20573, telephone number (202) 523–5800. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the

Federal Register in which this notice appears.

Summary of Items Submitted for OMB Review, 46 CFR 572

FMC requests an extension of clearance for 46 CFR 572, which implements the Shipping Act of 1984 agreement provisions. The Act specifies the mandatory content of certain kinds of agreements, sets forth procedures governing the Commission's disposition of such agreements, and defines the Commission's authorities and responsibilities. The Commission estimates a potential respondent universe of 1,116, which is comprised of 386 effective agreements, 480 carriers, and 250 terminal operators. Annual respondent burden for complying with the regulation is 13,625 manhours; annual recordkeeping requirement is estimated at 2,000 manhours.

Estimated annual cost to the Federal Government is $715,700; estimated annual cost to respondents is $648,170.

46 CFR 560

FMC requests an extension of clearance for 46 CFR 560, which implements the Shipping Act of 1916 agreement provisions. The Act specifies the mandatory content of certain kinds of agreements, sets forth procedures governing the Commission's disposition of such agreements, and defines the Commission's authorities and responsibilities. The Commission estimates a potential respondent universe of 730, which is comprised of 480 common carriers and 250 terminal operators. Based upon past filing practices and historical data, however, it is estimated that this rule will be used by only 10 respondents per year. Annual respondent burden for complying with the regulation is 359.7 manhours; annual recordkeeping requirement is estimated at 24 manhours. Estimated annual cost to the Federal Government is $23,920.00; estimated annual cost to respondents is $13,000.

Form FMC–12

FMC requests an extension of clearance for Form FMC–12, which requires nonattorneys who wish to practice before the Commission to complete the application form. The form is used to evaluate their experience, education, and character in order to maintain a high degree of excellence for practitioners. The Commission estimates an annual respondent universe of 10 nonattorneys, with a total annual respondent burden of 10 manhours. Estimated annual cost to the Federal Government is $770.00; estimated annual cost to respondents is $920.00.

Joseph C. Polking,

Secretary.

[FR Doc. 95–12171 Filed 5–17–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; 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 C.F.R. part 540, as amended:

Cunard Line Limited, 555 Fifth Avenue, New York, N.Y. 10017–2453

Vessel: CROWN DYNASTY

Dated: May 15, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–12254 Filed 5–17–95; 8:45 am]

BILLING CODE 6730–01–M

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 C.F.R. part 540, as amended:

Cunard Line Limited and Crown Dynasty Inc., 555 Fifth Avenue, New York, N.Y. 10017–2453.

Vessel: CROWN DYNASTY

Dated: May 15, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–12255 Filed 5–17–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sun Financial Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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)).

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 to the Reserve Bank indicated for that application 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.

Comments regarding this application must be received not later than June 12, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Sun Financial Corporation, Earth City, Missouri; to acquire 100 percent of the voting shares of Farmers Bank of Stover, Stover, Missouri.

Board of Governors of the Federal Reserve System, May 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12214 Filed 5–17–95; 8:45 am]

BILLING CODE 6210–01–F

Swiss Bank Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to

banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 1, 1995.

A. Federal Reserve Bank of New York, (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Swiss Bank Corporation, New York, New York; to acquire SBC Capital Markets Inc., New York, New York, and thereby indirectly acquire Government Pricing Information System, Inc., New York, New York, and thereby engage in data processing activities, pursuant to § 225.25(5)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12215 Filed 5–17–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 565]

Health Services Research in Occupational Safety and Health; Availability of Funds for Fiscal Year 1995

Introduction

The Centers for Disease Control and Prevention (CDC), the National Institute for Occupational Safety and Health (NIOSH), announces the availability of fiscal year (FY) 1995 funds for research projects relating to health services research in the field of occupational safety and health.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of ''Healthy People 2000,'' see section ''Where to Obtain Additional Information.'')

Authority

This program is authorized under the Occupational Safety and Health Act of 1970, section 20(a) [29 U.S.C. 669(a)] and section 22(e)(7) (29 U.S.C. 671(e)(7)).

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants include domestic and foreign non-profit and for-profit organizations, universities, colleges, research institutions, and other public and private organizations, including State and local governments and small, minority and/or woman-owned businesses.

Availability of Funds

Approximately $1,000,000 is available in FY 1995 to fund approximately five research project grants. It is expected that the average award will be $200,000, ranging from $150,000 to $250,000 in total costs (direct and indirect costs per year). It is expected that the awards will begin on or about September 1, 1995, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Purpose

The purpose of this grant program is twofold. One major purpose is to rationally develop an estimated range of total costs and distribution for the national burden of occupational injuries and illnesses by comprehensively applying existing information (See Program Interests A.1., below). The other major purpose is to conduct more focused research into the systems that prevent, manage, and compensate occupational injuries and illnesses, with particular focus on the experience of the injured worker as he/she comes into contact with components of these systems (See Program Interests 2. to 5., below). It is the intent of this program to support broad research endeavors which will lead to improved understanding and appreciation of the magnitude of the aggregate national economic burden associated with occupational injuries and illnesses, as well as to support more focused research projects which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. Research funded will examine and evaluate quality, outcome and costs of services provided in a variety of settings for healthy and injured workers.

This is the first Request for Assistance (RFA) that NIOSH has issued in the area of Health Services Research. The agency's intention in defining the RFA's objectives broadly is to encourage proposals from applicants with a broad range of research backgrounds, methodological approaches, and institutional affiliations to apply their skills to health services research in occupational health, and to enter into collaborative agreements, and with unions, employers, providers, insurance carriers and other relevant institutions and organizations. NIOSH encourages efforts in which researchers work closely with employers, worker representatives, and relevant government agencies; collaboration with any or all may assist researchers in obtaining access to data, and will increase the likelihood that results of the study will be usable and used by the

parties involved. NIOSH also recognizes, however, that in many situations collaboration may not be possible or advantageous.

Program Interests

a. Content Areas

1. The magnitude and distribution of national costs of occupational injury and illness. The economic and social costs of work-related injury and illness in the United States have not been adequately described or studied. There is programmatic interest in investigations into developing defensible estimates for the national economic burden of occupational injuries and illnesses, as well as into the cost of failure to prevent occupational injury and illness in general, as well as in specific industries and of specific conditions. There is particular interest in developing and applying models to estimate the distribution of these costs.

In most cases involving medical care or lost wages, workers with occupational injuries are entitled to workers compensation benefits. However, little is known of the costs (personal and social, economic and non-economic) of workplace injury and illness cases that do not enter the workers compensation system, or are incompletely compensated by that system. Further study is needed to quantify these costs, and to determine how much, if any, of these costs are borne by injured workers, employers, Federal agencies, State and local government and private philanthropy.

Little is known about the social and economic consequences of being diagnosed with occupational injury or illness. Are workers with occupational conditions discriminated against or likely to suffer from job loss as a result of their condition? Are they at a disadvantage in the job market? Does being labeled with an occupational condition impact their attitude toward their job or their utilization of the health care system?

2. The prevention and treatment of work-related injury and illness through the delivery of occupational medical services Given the number and costs of these conditions, relatively little is known about the system for delivering medical treatment for these conditions. For both emergency and non-emergency services, there is only limited information on the extent, quality, outcome and costs of services provided by employer-based employee health services, private physicians, independent occupational health clinics, and hospital emergency departments. There is programmatic interest in examining the types, activities, and availability of occupational medicine service providers, and their use by employers of differing sizes and in various industries, including groups of workers who are underserved and in need of occupational health and safety.

Ideally, occupational medical services provide more than the treatment of work-related conditions, but are an integral part of the primary and secondary prevention of occupational injury and illness. It is of interest to examine the involvement and effectiveness of different types of providers of occupational medical services (e.g. in-plant medical departments, urgent care centers, local hospitals and group health plans, independent occupational health clinics) in primary prevention activities and how medical providers interact with other occupational safety and health professionals. Similarly, the role and effectiveness of payers for occupational medical services (employers and workers compensation insurance carriers) in encouraging or discouraging injury and illness prevention is of interest.

An alternative model for the provision of occupational health services to groups of employers in the same industry or region is through managed care organizations funded by capitated payments. These provider groups may be linked to employer-based coverage for non-occupational health conditions (sometimes referred to as 24 hour coverage), or may be focused solely on occupational health concerns. There is programmatic interest in examining and evaluating capitated models for the delivery of occupational health services.

3. The experience of the injured worker in the workers compensation system. There are few studies on the quality, cost, access and outcome of the care received by those workers who successfully enter the compensation system. How successful is the system in meeting its goals? Are the financial benefits provided adequate to replace lost earnings and compensate for work-related disability? Are the medical care services provided claimants appropriate and accessible? (For additional background on these and related questions, see: Shor, GM. ''Research and Evaluation in Workers Compensation: An Assessment and An Agenda.'' *Workers' Compensation Monitor.* 1994,7:18- 24.)

The factors that are associated with a case being recognized as work-related and entering the compensation system are not well understood. In particular, additional information is needed on the incentives of the various actors in the interface of medicine and the workplace (e.g. workers and their families, employers, corporate physicians, personal physicians, group health plans and insurance carriers, attorneys) that encourage or discourage an injured worker from receiving workers compensation benefits. Are there groups of workers (defined by health status, age, gender, occupation, skill, language, legal status or other characteristic) who are more or less likely to enter the workers compensation system, and should additional efforts be made to inform groups of injured workers about their rights to compensation?

In an increasing number of States, employers are permitted to select the injured worker's medical care provider. There have been few studies comparing the experience of injured workers in employer-choice States with those of workers in employee-choice States. How do quality, outcome and costs differ in these States? Are there some subsets of workers (defined by health status, wages, skill or other characteristic) who are better served by one approach or the other?

The number and proportion of work injuries treated under workers compensation managed care is rapidly increasing, but there is virtually no published literature evaluating workers compensation managed care programs. How does managed care in workers compensation compare with fee-for-service provision of care, in terms of quality, outcome and cost? How do differences in managed care organization structure and practices impact quality, outcome and cost? How has the trend toward managed care for non-work-related conditions affected the recognition and treatment of work-related conditions. Does workers compensation managed care generate ethical dilemmas for providers, and if so, how can they be resolved?

It has been suggested that integrating or merging the systems to provide medical services for work-related and non-work-related conditions will result in cost savings, although this has been the subject of some debate. In addition, it is not known how these changes might impact workplace-based prevention of occupational injury and illness, since in theory, the experience rating component of workers compensation premiums provides a market-based incentive to prevent injury and illness (although there is also debate over its actual effectiveness). It is of programmatic interest to examine the effects of (1) integration or merger of these medical care delivery systems; and (2) uncoupling of workers

compensation medical benefits from experience rating. Of interest are the impact of these policies on the quality, outcome and cost of care, on indemnity benefits, and on the primary prevention of occupational conditions.

Finally, while it is frequently alleged that fraud is relatively widespread within the workers compensation system, there are few if any studies that address this issue in a rigorous manner. The extent of fraudulent claims and practices is unknown, as are the costs of these activities to workers, employers and the compensation system. Accurate, rigorously-gathered information on the magnitude, costs, and characteristics of workers compensation fraud on the part of claimants, employers, health care providers and carriers are needed in order to better design and target fraud reduction programs.

4. *Development and evaluation of treatment guidelines.* Outcome of treatment of occupational injury and illness, whether or not it is paid for by the workers compensation system, may be measured differently than treatment outcome of non-work-related conditions. In addition to physiological outcome, or outcome as it relates to health status, management and treatment of occupational conditions must consider the impact of the condition and treatment on the worker's post-injury wages and ability of the worker to use their valued skills and knowledge.

Since workers with occupational injury or illness may be index cases for more widespread or prevalent conditions, treatment guidelines should include a primary prevention component. This may involve the provider having contact with the employer, union, or other workers at the workplace from which the index case emerged, and should therefore take into consideration issues of confidentiality and potential discrimination. In developing these guidelines, it is also necessary to address issues of worker education, how information about the nature, prognosis and prevention of the condition is transmitted to the worker.

In the development and evaluation of guidelines for treatment of work-related conditions, consideration should be given to economic and social outcomes in addition to physiologic outcome. To develop and evaluate these guidelines, it may be necessary to consider various ways to conceptualize and measure ''return-to-work,'' beyond merely the end of the period in which an injured worker is not working, and possibly to develop new measures or indices for describing the long-term experience of the injured worker.

5. *Workplace based injury and illness prevention.* Workplace health and safety committees are widely seen as playing an important role in preventing occupational injury and illness. In recent years, several States have enacted legislation mandating these committees. Additional data are needed to evaluate the acceptance of these committees by employers, unions, workers and others; and their functioning and effectiveness. Are they successful in reducing workplace hazards, and, if so, what characteristics contribute to their ability to do so? How successful are other state-mandated hazard prevention programs?

Surveillance programs for injury and illness are widely used as part of larger work related injury and illness prevention programs. There are insufficient data on the effectiveness of these programs, and on the factors that increase these programs' likelihood of success.

Many workers compensation carriers, often through loss-control units, offer hazard prevention consulting services to employers. There is interest in examining the experience of these carriers. In particular, have these programs been evaluated to measure their effectiveness in preventing work-related injury and illness? If so, are there lessons to be drawn for injury and illness prevention in general?

Cost-benefit and cost-effectiveness studies are needed to assess occupational health programs at all levels from direct interventions in the workplace to comprehensive national programs. Such studies should include measuring the impact and costs of Federal or State regulation of workplace hazards. While many economic analyses have been done to project the costs of proposed standards, the actual economic and social impact of regulations that have gone into effect is rarely measured and deserving of study.

B. Methodological Approaches

The purpose of this RFA is to encourage submission of proposals that address some of the questions raised above. Since these questions lend themselves to a variety of quantitative and qualitative methodological approaches, NIOSH encourages applications from researchers in a range of academic disciplines. For example, the development of a comprehensive and defensible estimated range of the national economic burden of occupational injuries and illnesses may involve expertise representing a variety of fields (e.g., health economics, sociology, epidemiology, safety specialists and occupational medicine.) Also, the experience of injured workers in the workers compensation system could be examined quantitatively, using traditional economic or epidemiologic approaches, or could be examined qualitatively, employing techniques generally used by anthropologists or some sociologists. Multi-disciplinary approaches applied to the same issue are encouraged.

NIOSH envisions that some researchers may propose case studies, examining the experience of workers in one industry or workplace, or with a particular work-related condition, while others will propose studies analyzing large sets of data previously collected by compensation systems or carriers, or health insurers. Economic studies might be undertaken of costs of work-related injury, or of regulation, in one industry. In areas where adequate research has already been undertaken, programs that demonstrate the utility of new approaches to injury and illness prevention may be considered.

In many of the areas described, the foundation for analytical research may not exist, and it may be appropriate for researchers to apply for preliminary or descriptive studies that will generate hypotheses for future endeavors. For example, it may be difficult to identify populations of workers with occupational injury or illness who do not enter the workers compensation system. An applicant might propose a preliminary study to determine the number and characteristics of workers who may be work-injured but never applied for compensation by examining one or more provider-based data systems, or by surveying the memberships of one or more community-based organizations.

Research and evaluation methods in occupational health services may also need additional development. An applicant might propose to develop and test a series of quality indicators to be employed in evaluating occupational health services.

Applicants may apply for seed money to develop study protocols and the methodology for future scientific studies to address those questions for which rigorous investigation are needed but that are not easily accomplished. For example, although the application of managed care to workers compensation medical services has undergone a dramatic expansion, few scientific investigations have been conducted on the extent and impact of this growth. A descriptive approach that generates hypotheses might be warranted before proceeding to analytical and evaluation studies.

As noted above, it is an objective of this program to encourage scientists to

apply their skills to health services research in occupational health, and to enter with collaborative agreements with each other, and ''stakeholder'' institutions and organizations. In particular, NIOSH encourages efforts in which researchers work closely with employers, unions, and relevant government agencies in order to assist researchers in obtaining access to data, and to increase the likelihood that study results will be usable and used by the parties involved.

Inclusion of Minorities and Women in Study Population

Applicants are required to give added attention (where feasible and appropriate) to the inclusion of minorities and/or women study populations for research into the etiology of diseases, research in behavioral and social sciences, clinical studies of treatment and treatment outcomes, research on the dynamics of health care and its impact on disease, and appropriate interventions for disease prevention and health promotion. Exceptions would be studies of diseases which exclusively affect males or where involvement of pregnant women may expose the fetus to undue risks. If minorities and/or women are not included in a given study, a clear rationale for their exclusion must be provided.

Evaluation Criteria

1. General

Upon receipt, applications will be reviewed for completeness and responsiveness by CDC/NIOSH. Incomplete applications will be returned to the applicant without further consideration. If CDC/NIOSH staff finds that the application is not responsive to this announcement, it will be returned without further consideration. If the proposed project involves organizations or persons other than those affiliated with the applicant organization, letters of support and/or cooperation must be included.

2. Peer Review

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review group convened by the CDC in accordance with the review criteria stated below. As part of the initial merit review, a process (triage) may be used by the initial review group in which applications will be determined to be competitive or non-competitive based on their scientific merit relative to other applications received in response to this announcement. Applications judged to be competitive will be discussed and be assigned a priority score. Applications determined to be non-competitive will be withdrawn from further consideration and the principal investigator/program director and the official signing for the applicant organization will be promptly notified.

Review criteria for this announcement are as follows:

a. Scientific, technical, or medical significance and originality of proposed research;
b. Appropriateness and adequacy of the experimental approach and methodology proposed to carry out the research;
c. Qualifications and research experience of the Principal Investigator and staff, particularly but not exclusively in the area of the proposed research;
d. Availability of resources necessary to perform the research;
e. Adequacy of plans to include both genders and minorities and their subgroups as appropriate for the scientific goals of the research. Plans for the recruitment and retention of subjects will also be evaluated.

The review group will critically examine the submitted budget and will recommend an appropriate budget and period of support for each scored application.

3. Secondary Review

In the secondary (programmatic importance) review, the following factors will be considered:

a. Results of the initial review;
b. Magnitude of the problem in terms of numbers of workers affected;
c. Severity of the disease or injury in the worker population; and
d. Usefulness to applied technical knowledge in the identification, evaluation, and/or control of occupational safety and health hazards.

4. Funding Decisions

Applicants will compete for available funds with all other approved applications. The following will be considered in making funding decisions:

a. Quality of the proposed project as determined by peer review;
b. Availability of funds; and
c. Program balance among research areas of the announcement.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.262.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadlines

1. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Branch, CDC (see ''Applications'' for the address). It should be postmarked no later than June 19, 1995. The letter should identify the announcement number, name of principal investigator, and specify the priority area to be addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

2. Applications

Applicants should use Form PHS–398 (OMB Number 0925–0001) and adhere to the ERRATA Instruction Sheet for Form PHS–398 contained in the application package. The original and five copies of the application must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E13, Atlanta, GA 30305 on or before July 14, 1995.

3. Deadlines

A. Applications shall be considered as meeting a deadline if they are either:

1. Received at the above address on or before the deadline date; or
2. Sent on or before the deadline date to the above address, and received in time for the review process. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

B. Applications which do not meet the criteria in 3.A.1. or 3.A.2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address and phone number and will need to refer to Announcement 565. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Georgia L. Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E13, Atlanta, GA 30305, telephone (404) 842–6814. Programmatic technical assistance may be obtained from Roy M. Fleming, Sc.D., Associate Director for Grants, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Building 1, Room 3053, Mailstop D30, Atlanta, GA 30333, telephone (404) 639–3343.

Please refer to Announcement 565 when requesting information and submitting an application.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report: Stock No. 017–001–00474–0) or ''Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the ''Introduction'' through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 12, 1995.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–12201 Filed 5–17–95; 8:45 am]

BILLING CODE 4163–19–P

Food and Drug Administration

[Docket No. 95N–0123]

Drug Export; Revia™ (Naltrexone Hydrochloride (HCl)) 50 Milligrams (mg) Film-Coated Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Dupont Merck has filed an application requesting approval for the export of the human drug Revia™ (naltrexone HCl) 50 mg film-coated tablets to Germany.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20857, 301–594–3150.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Dupont Merck, Dupont Merck Plaza, Maple Run, Centre Rd., Wilmington, DE 19805, has filed an application requesting approval for the export of the human drug Revia™ (naltrexone HCl) 50 mg film-coated tablets to Germany. The firm holds an approved new drug application for an uncoated tablet, however, this application is for a new film-coated tablet formulation. This product is used as an adjunctive treatment of opioid dependence in detoxified, formerly opioid dependent individuals, and in a proposed indication as an adjunctive treatment for individuals with alcohol dependence undergoing psychosocial treatment programs. The application was received and filed in the Center for Drug Evaluation and Research on April 17, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 30, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: May 4, 1995.

Gayle R. Dolecek,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–12177 Filed 5–17–95; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Dental Research; Notice of Meeting of NIDR Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on June 7–9, 1995, in the Natcher Building, Conference Room A, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 8:55 a.m. to recess on June 8 and from

9:45 a.m. to 11:00 a.m. on June 9 for program and poster presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 6:00 p.m. until recess on June 7 and from 12:30 p.m. until adjournment on June 9 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Brent Jaquet, Director, Office of Planning, Evaluation, and Communications, NIDR, NIH, Building 31, Room 2C34, Bethesda, Maryland 20892 (telephone: (301) 496–6705) will provide summary of the meeting, roster of committee members and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed above in advance of the meeting.

Dated: May 11, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12192 Filed 5–17–95; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Polysaccharide-Protein Conjugates

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice is in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the invention embodied in U.S. Patent Number 5,204,098 entitled ''Polysaccharide-Protein Conjugates'' and related foreign patent applications to Connaught Laboratories, Inc., of Swiftwater, Pennsylvania. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license will be limited to the field of typhoid vaccines and typhoid Vi-protein conjugates for the prevention of typhoid fever in humans. This prospective exclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The patent describes conjugates of bacterial capsular polysaccharides and carrier proteins, and methods of synthesis, wherein the polysaccharide and protein are linked through a thio derivative of a carboxyl group found on the polysaccharide. The conjugates are useful as vaccines for prevention of disease caused by infection by the bacterial species from which the capsular polysaccharide is derived.

ADDRESSES: Requests for a copy of this patent, inquiries, comments and other materials relating to the contemplated license should be directed to: Robert Benson, Patent Advisor, Office of Technology Transfer, National Institutes of Health, 6011 Executive Blvd., Box 13, Rockville, MD 20852. Telephone: (301) 496–7056, X267; Facsimile: (301) 402–0220. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH on or before July 17, 1995, will be considered.

Dated: May 5, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–12193 Filed 5–17–95; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–3888; FR–3886–N–04]

Homeownership of Single Family Homes Program (HOPE 3); Notice of Fund Availability: Notice of Extension of Application Deadline for Applicants in Oklahoma

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of further extension of deadline.

SUMMARY: This notice provides a further extension of the application submission deadline for the HOPE 3 applicants affected by the destruction of HUD's Office in Oklahoma City, Oklahoma. An extension of this deadline was already published on May 9, 1995, but because of a typographical error, the new deadline was misstated. In addition, because of the destruction of documents due to the Oklahoma City explosion, any applicant that has already submitted an application under the HOPE 3 NOFA to HUD's Office in Oklahoma City should resubmit a copy of its application to the Fort Worth Office, as provided in this notice.

DATES: The application deadline for applicants from Oklahoma will be May 19, 1995, 4:30 Central Time.

FOR FURTHER INFORMATION CONTACT: For applicants in Oklahoma, contact Will Williamson, HOPE 3 Coordinator, phone (817) 885–5887. For general information about this notice, contact Salvatore Sclafani, Program Analyst, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7208, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1283; or (202) 708–2565 (TDD). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: Because of the destruction of the HUD Office in Oklahoma City, Oklahoma, on April 19, 1995, the Department published a notice in the **Federal Register** (60 FR 24646, May 9, 1995) to extend the deadline for the submission of applications for certain programs, including the HOPE 3 Program. The Notice extended the application deadline for HOPE 3 applicants within the State of Oklahoma from April 25, 1995, to May 8, 1995. Because of a typographical error, the fact that some documents may be unaccounted for due to the destruction of documents in the Oklahoma City explosion, and the time required for applicants to resubmit copies of HOPE 3 applications to the Fort Worth Office, the Department has decided to provide an additional extension of time—to May 19, 1995—for HOPE 3 applicants in the State of Oklahoma. Any applicant under the HOPE 3 NOFA that has already submitted an application to the Oklahoma City office is directed to resubmit its application to HUD's Fort Worth Office, as indicated below in this notice. Photocopies of all of the documentation and materials as originally submitted to the Oklahoma City Office will be acceptable, as long as the applicant also provides proof of submission (e.g., postal or Federal Express receipt). Completed applications may not be submitted by fax.

Applicants in Oklahoma who have questions on the preparation of their applications may contact Will Williamson, HOPE 3 Coordinator in HUD's Texas State Office, phone (817) 885–5887. Except as revised by this notice, all other information and requirements applicable to the HOPE 3 NOFA remains as previously published.

Homeownership of Single Family Homes Program (HOPE 3); Notice of Fund Availability, published February 24, 1995, at 60 FR 10446.

Application Due Date: May 19, 1995, 4:30 Central Time (only for submissions from applicants within Oklahoma; all other applicants remain subject to the original April 25, 1995, deadline)

Submit Application To (only applicants within Oklahoma): HUD Texas State Office, Office of Community Planning and Development, P.O. Box 2905, Fort Worth, TX 76113–2905 ATTN: Will Williamson.

Dated: May 12, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 95–12253 Filed 5–17–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–933–95–1320–01; COC 54608]

Notice of Coal Lease Offering By Sealed Bid; COC 54608

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in Routt County, Colorado, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.).

DATES: The lease sale will be held at 11 a.m., Friday, June 23, 1995. Sealed bids must be submitted no later than 10 a.m., Friday, June 23, 1995.

ADDRESSES: The lease sale will be held in the Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, First Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239–3795.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder submitting the highest offer, provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for this tract is $100 per acre or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up bids until a high bid is received. All tie-breaking sealed bids must be submitted with 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Fair market value will be determined by the authorized offer after the sale.

COAL OFFERED: The coal resource to be offered is limited to coal recoverable by underground mining methods in the Wadge seam on the Twentymile Tract in the following lands:

Sixth Principal Meridian
T. 5 N., R. 86 W.,
Sec. 21, N½, and SE¼;
Sec. 22, E½E½, and W½;
Sec. 23, all;
Sec. 26, N½, and N½SW¼;
Sec. 27, W½;
Sec. 28, NE¼, and E½NW¼;
Sec. 33, NE¼NE¼,

The land described contains 2,600 acres, more or less.

Total recoverable reserves are estimated to be 24,300,000 tons. The Wadge seam underground minable coal is ranked as high volatile C bituminous coal. The estimated coal quality for the Wadge seam on an as-received bases is as follows:

Btu	11,745 Btu/lb.
Moisture	7.76%
Sulfur Content	0.48%
Ash Content	8.80%

RENTAL AND ROYALTY: The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR 206.

NOTICE OF AVAILABILITY: Bidding instruction for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the statement and the proposed coal lease are available upon request in person or by mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

Dated: May 9, 1995.

Karen A. Purvis,

Solid Minerals Team Resource Services.

[FR Doc. 95–12225 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–JB–M

[NM–060–1010–00–P (606]

Southeast New Mexico Playa Lakes Coordinating Committee; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Southeast New Mexico Playa Lakes Coordinating Committee Meeting.

DATES: Thursday, June 22, 1995, beginning at 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Leslie M. Cone, District Manager, Bureau of Land Management, 1717 West 2nd Street, Roswell, NM 88201, (505) 627–0242.

SUPPLEMENTARY INFORMATION: The agenda will include presentation of proposed changes to the Playa Lakes Investigation Study Plan by the National Biological Service, National Wildlife Health Center, to the Southeast New Mexico Plays Lakes Coordinating Committee, for approval. A progress report of the ongoing study will also be given. The meeting will be held at the Carlsbad Resource Area Office, 620 E. Greene, Carlsbad, New Mexico. Summary minutes will be maintained in the Roswell District Office and will be available for public inspection during regular business hours (7:45 a.m.–4:30 p.m.) within 30 days following the meeting. Copies will be available for the cost of duplication.

Dated: May 11, 1995

Leslie M. Cone,

District Manager.

[FR Doc. 95–12226 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–FB–M

[CA–940–05–1310–03; CACA 26079]

California: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease CACA 26079 for lands in Fresno and Monterey Counties, California, was timely filed and was accompanied by all required rentals and royalties accruing from December 1, 1994, the date of Termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 USC 188), the Bureau of Land Management is proposing to reinstate the lease effective December 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

Dated: May 9, 1995.

Leroy M. Mohorich,

Chief, Branch of Energy and Mineral Science and Adjudication.

[FR Doc. 95–12227 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–40–M

[WY–920–41–5700; WYW128222]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

May 8, 1995.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW128222 for lands in Johnson County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of the **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW128222 effective January 1, 1995, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 95–12228 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW118068]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

May 8, 1995.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW118068 for lands in Carbon County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW118068 effective November 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 95–12229 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW130848]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

May 9, 1995.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW130848 for lands in Big Horn County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW130848 effective November 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 95–12230 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–22–M

[AZ–024–05–5410–00–A118; AZA–28672]

Notice of Receipt of Conveyance of Mineral Interest Application; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of minerals segregation.

SUMMARY: The private lands described in this notice aggregating approximately 16 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976. The mineral interest will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or preludes appropriate non-mineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Vivian Reid, Land Law Examiner, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027 (602) 780–8090. Serial Number AZA–28672.

Gila and Salt River Base and Meridian, Maricopa County, Arizona

T. 14 N., R. 1 W.,
Sec. 21, Only that portion belonging to Yavapai Hills, Inc., located within the SE¼SE¼

Minerals Reservation—All Minerals

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate upon: issuance of a patent or deed of such mineral interest; upon final rejection of the application; or two years

from the date of publication of this notice, whichever occurs first.

Dated: May 10, 1995.

David J. Miller,

Associate District Manager.

[FR Doc. 95–12231 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–32–M

[AZ–040–7122–00–5514; AZA 28789]

Notice of Proposed Exchange of Lands in Greenlee, Pima, and Cochise Counties, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management is considering a proposal to exchange land pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended. The exchange has been proposed by the Phelps Dodge Corporation and is referred to as the Morenci Exchange Project.

The following described public land is being considered for disposal by the United States:

Gila and Salt River Meridian, Arizona

T. 4 S., 28 E.,
Sec. 12, part of MS4256A.
T. 3 S., R., 29 E.,
Sec. 14, W½E½, NW¼; (mineral estate only)
Sec. 15, all;
Sec. 21, SE¼SW¼, SE¼;
Sec. 21, NE¼, NE¼NW¼, W½NW¼; (mineral estate only)
Sec. 22, N½NE¼, SE¼NE¼; S½;
Sec. 22, SW¼NE¼, NW¼; (mineral estate only)
Sec. 23, S½SW¼, SW¼SE¼;
Sec. 23, NE¼; (mineral estate only)
Sec. 26, lots 1, 2, 3 and 5, W½NE¼, SE¼NE¼, NW¼, NE¼SE¼;
Sec. 27, lots 1–5, inclusive, N½NE¼, SE¼NE¼, NW¼NW¼;
Sec. 28, lots 1–6, inclusive, lot 10, N½NE¼, SW¼NE¼, NE¼NW¼, part of SE¼SE¼SW¼;
Sec. 31, lots 1, 4, 5, and 8, W½E½;
Sec. 32, part of MS3098, part of SW¼SW¼SE¼;
Sec. 35, lots 9–12, inclusive, lots 17 and 18.
T. 4 S., R. 29 E.,
Sec. 1, part of lot 4, part of MS4224A;
Sec. 5, lot 11, part of NW¼NW¼NE¼;
Sec. 6, lots 2, 11 and 21, part of MS 3343, part of SW¼SW¼SW¼;
Sec. 7, lots 8, 15, 16, 19, and 20, part MS4256–A, part of NW¼NW¼NW¼, part of NW¼SW¼NW¼;
Sec. 8, lots 4, 6, and part of lot 7;
Sec. 11, lots 8 and 9;
Sec. 12, lots 11, 12 and 14, part of MS 4245–C;
Sec. 17, part of lot 9, part of NW¼SE¼SW¼;
Sec. 18, part of N½;
Sec. 19, part of lots 8, 9 and 10, lots 18–21, inclusive, part of NE¼NE¼SE¼;
Sec. 20, lots 3 and 9, part of lots 4, 8, and 10, part of SW¼NE¼, part of SW¼SW¼NE¼ and SE¼SE¼NW¼, part of S½NW¼NW¼, part of SE¼NE¼SW¼ and SW¼SW¼.
T. 5 S., R. 29 E.,
Sec. 12, lots 2, 3 and 4, N½N½ of lots 5, 6 and 7, N½NW¼, N½N½S½NW¼.

The areas described aggregate approximately 5,061 acres.

Subject to valid existing rights, the public land identified above has been segregated from appropriation under the public land laws, mineral laws, and mineral leasing laws for a period of five years beginning on December 19, 1994.

In exchange the United States will acquire the following described land from Phelps Dodge Corporation:

Gila and Salt River Meridian, Arizona

T. 19 S., R. 18 E.,
Sec. 9, SE¼NE¼;
Sec. 10, SW¼NW¼, SW¼.
T. 14 S., R. 28 E.,
Sec. 3, E½SW¼, SW¼SW¼, SE¼;
Sec. 7, E½E½, NW¼NE¼, W½SE¼;
Sec. 8, S½SW¼;
Sec. 10, NW¼NW¼.
T. 5 S., R. 29 E.,
Sec. 30, SW¼, W½SE¼;
Sec. 31, NW¼NE¼.

The areas described aggregate approximately 1,200.00 acres.

More detailed information concerning the proposed exchange may be obtained from Scott Evans, Project Manager, Safford District Office, 711 14th Avenue, Safford, Arizona 85546, (520) 428–4040 or, William J. Ruddick, Team Leader, Arizona Exchange Team, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 780–8090.

Interested parties may submit comments concerning the proposed exchange to the District Manager, Safford District Office at the above Safford address. In order to be considered in the environmental analysis of the proposed exchange, comments must be in writing to the District Manager and be postmarked within 45 days after the initial publication of this notice.

Dated: May 9, 1995.

William T. Civish,

District Manager.

[FR Doc. 95–12232 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–32–M

[NV–930–4210–05; N–59504]

Notice of Realty Action: Modified Classification

AGENCY: Bureau of Land Management.

ACTION: Recreation and Public Purpose Lease/Conveyance.

SUMMARY: By publication of this notice Recreation and Public Purpose Classification N–41568–03 is hereby modified to reflect a change in use of the described lands from a public school to a church. The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The Spring Valley Baptist Church proposes to use the land for church facility.

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 17: E½NW¼SE¼NW¼.

Containing 5.00 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will 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 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement 40.00 feet in width along the north boundary and 30.00 foot in width along the east boundary and will include a 20.00 foot spandrel area at the intersection of the two in favor of Clark County for roads, public utilities and flood control purposes.

2. Those rights for electrical and telephone line purposes which have been granted to Nevada Power Company and Sprint Central Telephone Company of Nevada by Permit No. N–58654 the under the Act of October 21, 1976 (43USC1761). Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register,** the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under

the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register,** intereted parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a church facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM following proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a church facility.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register,** The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: May 5, 1995.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 95–12233 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–HC–M

[ID–942–1420–00]

Idaho: Filing of Plats of Survey; Idaho

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., May 10, 1995.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, and the subdivision of section 4, T. 23N., R. 22E., Boise Meridian, Idaho, Group No. 880, was accepted, May 5, 1995.

The plat representing the dependent resurvey of portions of the subdivisional lines, the subdivision of section 33, and a metes-and-bounds survey in section 33, T. 24N., R. 22E., Boise Meridian, Idaho, Group No. 880, was accepted, May 5, 1995.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management.

All inquires concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: May 10, 1995.

Mark Smirnov,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 95–12234 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–GG–M

[ES–960–1420–00; ES–047170, Group 152, Wisconsin]

Notice of Filing of Plat of Survey, Stayed

On Thursday, March 23, 1995 there was published in the **Federal Register**, Volume 60, Number 56, on page 15300 a notice entitled ''Filing of Plat of Survey; Wisconsin. In said notice was a plat depicting the survey of two islands located in Township 8 North, Range 21 East, Fourth Principal Meridian, Wisconsin, accepted March 13, 1995.

The official filing of the plat is hereby stayed, pending consideration of all protests.

Dated: May 4, 1995.

James F. Gegen,

Acting Chief Cadastral Surveyor.

[FR Doc. 95–12235 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–GJ–M

[CA–931–1430–01; CACA 35558]

Proposed Withdrawal; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw approximately 16,560 acres of lands. This notice closes the lands for up to two years from all the public land and mineral laws except conveyances under sec. 701 of the California Desert Protection Act of 1994 (108 Stat.4471). Existing rights are not affected by this withdrawal. Written comments from the public are solicited, and a public meeting will be held on the proposed withdrawal.

DATES: Comments should be received on or before August 16, 1995.

ADDRESSES: Comments should be sent to the California State Director, BLM (CA–931), 2800 Cottage Way, Room E–2845, Sacramento, California 95825 and Park Superintendent, Mojave Sector, 1051 West Avenue M, #201, Lancaster, CA 93534.

FOR FURTHER INFORMATION CONTACT: Nancy Alex, BLM California State Office, 916–979–2858.

SUPPLEMENTARY INFORMATION: On May 11, 1995, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described lands, subject to valid existing right, from settlement, sale, location or entry under the United States land and mineral laws, with the single exception of conveyances to the State of California pursuant to Sec. 701 of the California Desert Protection Act of 1994 (108 Stat. 4471):

Mount Diablo Meridian, California

T. 29 S., R. 37 E.,

All of the following land lying east of the eastern right-of-way boundary of State Highway 14, noted on federal land status records as Serial Nos. CALA 0135202 and CALA 0160522:

Sec. 1; lots 1 to 4 inclusive, S½N½, and S½;
Sec. 2, lots 1 and 2, SE¼NE¼, E½SW¼, and SE¼;
Sec. 11, E½, and E½W½;
Sec. 12;
Sec. 13;
Sec. 14, lots 1, 2, 3, lots 6 to 16, inclusive;
Sec. 22, lots 8 and 9;
Sec. 23, lots 1 to 16, inclusive;
Sec. 24; lots 1 to 16 inclusive; sec. 25;
Sec. 26, N½, NE¼SW¼, NE¼NW¼SW¼, E½SE¼SW¼, and SE¼;
Sec. 35, E½NE¼, and SW¼NE¼.

T. 29 S., R. 38 E.,

All of the following land lying north of the northern right-of-way boundary of the highway known as the Redrock Randsburg Road:

Sec. 4, lots 1 to 4 inclusive, S½N½, and S½;
Sec. 5, lots 1 to 4, inclusive, S½N½, NE¼NE¼SW¼, W½NE¼SW¼, NW¼SW¼, N½SW¼SW¼, NE¼SE¼, E½NW¼SE¼, NW¼NW¼SE¼, E½SW¼SE¼, and SE¼SE¼;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼, and SW¼SE¼SE¼;
Sec. 7, lots 1 to 4, inclusive, NW¼NE¼NE¼, NW¼NE¼, W½SW¼NE¼, E½W½, NE¼NE¼SE¼, S½NE¼SE¼, W½NW¼SE¼, SE¼NW¼SE¼, and S½SE¼;
Sec. 8, NE¼, E½NE¼NW¼, S½NW¼, and S½;
Sec. 9;
Sec. 17;
Sec. 18, lots 1 to 4 inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4 inclusive, E½, and E½W½;
Sec. 20;

Sec. 21;
Sec. 28;
Sec. 29, N½, NE¼SW¼, NE¼NW¼SW¼, S½NW¼SW¼, S½SW¼, and SE¼;
Sec. 30, lots 1, 4, and 6, N½NE¼, E½W½SW¼NE¼, E½SW¼NE¼, W½SE¼NE, NE¼NW¼, S½NE¼SW¼, SE¼SW¼, W½NE¼SE¼, SE¼NE¼SE¼, NW¼SE¼, and S½SE¼;
Sec. 31, lots 1 to 4 inclusive, E½, and E½W½;
Sec. 32;
Sec. 33.

T. 30 S., R. 38 E.,

All of the following land lying north of the northern right-of-way boundary of the highway known as the Redrock Randsburg Road:

Sec. 4, lot 2 of NE¼, and E½ lot 2 of NW¼.
Sec. 6, lot 1 of NE¼, lot 1 of NW¼, lot 2 of NE¼, lot 2 of NW¼, lot 1 of SW¼, lot 2 of SW¼, and SE¼.

The area within the withdrawal contains approximately 16,560 acres.

Congress has mandated all the public lands described above be conveyed to the State of California, subject to valid existing rights, for inclusion in Red Rock Canyon State Park (California Desert Protection Act, 108 Stat. 4471, sec. 701.) The purpose of the proposed withdrawal is to protect the park values of this designated area until the lands can be conveyed to the State of California pursuant to the aforementioned act.

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 California State Director of the Bureau of Land Management.

A public meeting is required to be held regarding the proposed withdrawal. Upon determination by the authorized officer of the location and date of the meeting, a notice of time and place will be published in the **Federal Register** and in a local newspaper 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 2300. Records relating to the application are available for examination in the BLM Public Room, 2800 Cottage Way, Sacramento, CA 95825.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands 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 will be permitted during this segregative period are land uses consistent with the California Desert Conservation Area Plan and permitted by the Memorandum of Understanding between the Bureau of Land Management and the California Department of Parks and Recreation. Existing rights are not affected by this action.

David M. McIlnay

Chief, Branch of Lands

[FR Doc. 95–12205 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–40–P

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for reinstatement approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018–0009) Washington, D.C. 20503, telephone 202–395–7340.

Title: Woodcock Wing Collection Envelope

OMB Approval Number: 1018–0009

Abstract: The Migratory Bird Treaty Act authorizes and directs the Secretary of the Interior to determine to what extent migratory game birds may be hunted. For several species of game birds, including the woodcock, this determination is based primarily on biological information gathered through surveys. Survey cooperators provide data on their harvests and hunting activities, and from each bird taken, they submit one wing for certain biological determinations.

Service Form Number: 3–156A.

Frequency: On occasion.

Description of Respondents: Individuals and households.

Completion Time: The overall reporting burden is estimated to average 4 minutes per response with a response rate average of 5 responses per respondent.

Annual Responses: 2,000.

Annual Burden Hours: 670.

Service Clearance Officer: Phyllis H. Cook, 703–358–1943 Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

Dated: April 14, 1995.

John J. Doggett,

Acting Assistant Director—Refuges and Wildlife.

[FR Doc. 95–12224 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–55–M

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of document availability; request for comments.

Availability of an Environmental Assessment and Receipt of an Application for a Permit to Allow Incidental Take of Threatened and Endangered Species by Murray Pacific Corporation on its Mineral Tree Farm in Lewis County, Washington.

SUMMARY: This notice advises the public that Murray Pacific Corporation (Applicant) has applied to the U.S. Fish and Wildlife Service (FWS) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicant has requested the permit as an amendment to their existing permit (PRT–777837) authorizing incidental take of the northern spotted owl, which was issued on September 24, 1993, and have amended their existing Habitat Conservation Plan (HCP). The application has been assigned permit number PRT–777837. The Applicant has also requested to enter into a consensual agreement with the U.S. National Marine Fisheries Service (NMFS) to address the needs of anadromous salmonids being considered for listing under the Act, and with the FWS to conserve other fish and wildlife species which may be associated with habitats on their Mineral Tree Farm in Lewis County, Washington (Tree Farm). The requested permit would authorize the incidental take of all species presently listed under the Act, that may occur on the Applicant's Tree Farm. The proposed incidental take would occur as a result of timber harvest activities in the various habitat types that occur now, and will occur on the Tree Farm during the term of the proposed permit. The HCP Amendment includes an agreement for the issuance of additional permits for the incidental take of species not presently listed under the Act, but which may become listed during the term of the proposed permit, and which may occur in habitats on the Tree Farm.

The FWS in conjunction with NMFS announce the availability of an Environmental Assessment (EA) for the proposed issuance of the incidental take permit and signing of the agreement. The FWS is taking administrative responsibility for announcing the availability of the aforementioned documents. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA should be received on or before June 19, 1995.

ADDRESSES: Comments regarding the application or EA should be addressed to Mr. Curt Smitch, Assistant Regional Director, U.S. Fish and Wildlife Service, 3773 Martin Way East, Building C—Suite 101, Olympia, Washington 98501. Please refer to permit No. PRT–777837 when submitting comments. Individuals wishing copies of the application or EA for review should immediately contact the above office (360–534–9330).

FOR FURTHER INFORMATION CONTACT: Craig Hansen, U.S. Fish and Wildlife Service, 3773 Martin Way East, Building C- Suite 101, Olympia, WA., 98501; (360) 412–5465. Steve Landino, National Marine Fisheries Service, 3773 Martin Way East, Building C- Suite 101, Olympia, WA., 98501; (360) 412–5469.

SUPPLEMENTARY INFORMATION:

Background

Under section 9 of the Act and its implementing regulations, ''taking'' of a threatened or endangered species, is prohibited. However, the FWS and NMFS, under limited circumstances, may issue permits to take threatened and endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are in 50 CFR 17.32 and in 50 CFR 17.22 for endangered species.

The Applicant proposes to implement an amendment to their HCP for the northern spotted owl that will allow timber harvest on portions of approximately 55,000 acres of their Tree Farm. The Applicant's proposed timber harvest may result in the take, as defined in the Act and its implementing regulations, of listed species. The HCP and permit would be in effect through the year 2094. The application includes an amended HCP and Implementation Agreement.

The Applicant proposes to mitigate for the incidental take of all listed species by maintaining at least 10 percent of the Tree Farm in non-harvestable reserves for the term of the permit. Reserves would be established during a Watershed Analysis process which the Applicant would complete by 2004. The expected result of Watershed Analysis would place a majority of the reserves in riparian zones. In addition, the Applicant would be committed to a variety of special measures intended to mitigate and minimize impacts to the habitat types which occur on the Tree Farm, and specific State and Federal species of concern including the grizzly bear, gray wolf, bald and golden eagles, goshawk, Larch Mountain salamander, Townsend's big-eared bat, long-legged myotis (bat), and others. The Applicant also proposes to mitigate for impacts to anadromous salmonids through habitat conservation measures for these species.

The EA considers the environmental consequences of 5 alternatives, including the proposed action and no-action alternatives. The proposed action alternative is the issuance of a permit under section 10(a) of the Act that would authorize incidental take of all listed species, and signing of the agreement for currently unlisted species, that may occur in the habitats on the Applicant's Tree Farm. The proposed action would require the Applicant to implement their amended Habitat Conservation Plan. Under the no-action alternative, the Applicant would continue to implement their existing northern spotted owl HCP, and additional incidental take permits would not be issued. The third alternative is to maintain approximately 29 percent of the Tree Farm in reserves generated according to Watershed Analysis prescriptions. The fourth alternative is to maintain reserves on about 17 percent of the Tree Farm, and would allow the Applicant to harvest timber on a limited basis in the outer half of riparian reserves. The fifth alternative would place about 5 percent of the Tree Farm in riparian reserves with additional protection on steep slopes with wet talus habitat, the Applicant would commit to and complete further Watershed Analysis by the year 2004, and the Applicant would retain all live conifer and conifer snags greater than 40 inches in diameter at breast height.

Dated: May 12, 1995.

Thomas Dwyer,

Deputy Regional Director, Region 1, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 95–12204 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

National Capital Memorial Commission; Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Tuesday, June 20, 1995, at 1 p.m., at the National Building Museum, Room 312, 5th and F Streets, NW.

The Commission was established by Public Law 99–652, the Commemorative Works Act, for the purpose of preparing and recommending to the Secretary of the Interior, Administrator, General Services Administration, and Members of Congress broad criteria, guidelines, and policies for memorializing persons and events on Federal lands in the National Capital Region (as defined in the National Capital Planning Act of 1952, as amended), through the media of monuments, memorials and statues. It is to examine each memorial proposal for adequacy and appropriateness, make recommendations to the Secretary and Administrator, and to serve as information focal point for those persons seeking to erect memorials on Federal land in the National Capital Region.

The members of the Commission are as follows:

Director, National Park Service
Chairman, National Capital Planning Commission
The Architect of the Capitol
Chairman, American Battle Monuments Commission
Chairman, Commission of Fine Arts
Mayor of the District of Columbia
Administrator, General Services Administration
Secretary of Defense

The purpose of the meeting will be to consider sites for the World War II Memorial. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact the Commission at 202–619–7097. Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the Office of Land Use Coordination, National Capital Region, 1100 Ohio Drive, SW., Room 201, Washington, D.C., 20242.

Dated: May 11, 1995.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 95–12260 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–439X]

Dallas Area Rapid Transit—Abandonment Exemption—in Dallas County, TX

Dallas Area Rapid Transit (DART), a political subdivision of the State of Texas, has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a portion of its line of railroad, known as the Garland Line, between milepost 762.26 and milepost 763.0, in the City of Dallas, Dallas County, TX, a distance of .74 miles.[1]

DART has certified that: (1) No loca1 traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 17, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by May 30, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 7, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Kevin M. Sheys, 1020 19th St., N.W., Suite 400, Washington, DC 20036.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

DART has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 23, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 11, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–12252 Filed 5–17–95; 8:45 am]

BILLING CODE 7035–01–P

[1] DART acquired this line of railroad from the Missouri Pacific Railroad Company (MP) in 1990, with MP retaining trackage rights. MP discontinued its trackage rights through a 1992 relocation of its operations, and later abandoned three miles of trackage (as to which MP had retained ownership) south from the current end of track at milepost 763.0 into Dallas. This right-of-way south of the line is now used as a recreational trail.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Conference Room of the Office of Director of Practice, Suite 600, 801 Pennsylvania Avenue NW., Washington, DC, on Thursday and Friday, June 22 and 23, 1995, from 8:30 a.m. to 5:00 p.m. each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion of future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B) and to review the May 1995 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 1995 pension actuarial examination and the May 1996 basic actuarial examinations will be discussed. In addition, the possibility of having single true/false questions with a lower weighting than other questions on the Pension Examination will be discussed.

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) that the portions of the meeting dealing with the discussion of questions which may appear on future Joint Board examinations and review of the May 1995 Joint Board examination fall within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1:30 p.m. on June 22 and will continue for as long as necessary to complete the discussion, but not beyond 3:00 p.m. This portion of the meeting will be open to the public as space is available. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements are requested to notify the Acting Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Acting Committee Management Officer. Notifications and statements should be mailed no later than June 6, 1995 to Mr. Robert I. Brauer, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, DC 20220.

Dated: May 15, 1995.

Rober I. Brauer,

Acting Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 95–12210 Filed 5–17–95; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF JUSTICE

Notice of Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Notice is hereby given that on May 11, 1995, a proposed consent decree in *United States* v. *ACF Industries, Inc.*, Civ. A. No. 2.95–0360, was lodged with the United States District Court for the Southern District of West Virginia. The complaint in this action seeks recovery of costs and injunctive relief under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 42 U.S.C. §§ 9606, 9607(a). This action involves the ACF Industries Site near Eleanor, West Virginia, a property which the United States acquired by eminent domain in December 1989.

Under the proposed Consent Decree, AFC Industries Inc. will pay $2,000,000 for costs incurred by the United States in performing certain response actions at the Site. The Decree also requires ACF Industries Inc. to perform certain response actions for the Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *ACF Industries, Inc.*, DOJ Reference No. 90–11–2–681.

The proposed consent decree may be examined at the Office of the United States Attorney for the Southern District of West Virginia, 500 Quarrier St., Room 3201, Charleston, West Virginia, offices of the U.S. Army Corps of Engineers Huntington District, 502 Eighth Street, Huntington, West Virginia 25701, and at the Consent Decree Library, 1120 ''G'' Street, NW, 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library at the address listed above. In requesting a copy, please refer to the referenced case and number, and enclose a check in the amount of $16.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environment Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 95–12236 Filed 5–17–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–36; Exemption Application No. D–09798, et al.]

Grant of Individual Exemptions; Amended Profit Sharing Plan and Trust of Walker Products Co., Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Amended Profit Sharing Plan and Trust of Walker Products Co., Inc. (the P/S Plan)

Located in Lincoln, Kansas

[Prohibited Transaction Exemption 95–36; Exemption App. No. D–09798]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of certain farm land (the Land) by the P/S Plan to Mr. Lloyd Walker, a 33⅓% shareholder of the P/S Plan sponsor and a party in interest with respect to the P/S Plan, provided that the following conditions are satisfied:

(1) The sale will be a one-time cash transaction;

(2) The P/S Plan will receive the fair market value of the Land as determined at the time of the sale by an independent, qualified appraiser;

(3) The P/S Plan will pay no expenses associated with the sale; and

(4) The terms of this transaction are at least as favorable to the P/S Plan as an arms-length transaction between unrelated parties.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 20, 1995 at 60 FR 14792/14793.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

The Travelers Separate Account ''R'' (SAR)

Located in Hartford, Connecticut

[Prohibited Transaction Exemption 95–37; App. No. D–09827]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and

the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the past lease (the Lease) of space in an office building located in Cedar Knolls, New Jersey (the Building) from December 22, 1993 until June 24, 1994 by SAR to The Travelers Insurance Company (Travelers), a party in interest with respect to employee benefit plans invested in SAR, provided that the following conditions were satisfied:

(a) All terms and conditions of the Lease were at least as favorable to SAR as those which SAR could have obtained in an arm's-length transaction with an unrelated party at the time the Lease was executed;

(b) The rent paid by Travelers to SAR under the Lease was not less than the fair market rental value of the office space;

(c) LaSalle Partners (LaSalle), acting as a qualified, independent fiduciary for SAR during the time that the Building was owned by SAR, reviewed all terms and conditions of the Lease prior to the transaction, as well as any subsequent modifications to the Lease, and determined that such terms and conditions would be in the best interests of SAR at the time of the transaction;

(d) LaSalle represented the interests of SAR for all purposes under the Lease as a qualified, independent fiduciary for SAR, monitored the performance of the parties under the terms and conditions of the Lease, and took whatever action was necessary to safeguard the interests of SAR with respect to the Lease during the time that the Building was part of SAR's portfolio; and

(e) Travelers pays to all of SAR's contractholders, upon final liquidation of the properties held by SAR, amounts necessary to reimburse SAR for expenses incurred in connection with the tenant improvements made to the office space leased to Travelers prior to the sale of the Building (i.e., $1,363,581), as well as all other amounts required to be paid to SAR's contractholders, pursuant to the terms of the Settlement Agreement arising from *The Travelers Insurance Company* v. *Allied-Signal, Inc. Master Pension Trust, et al.* (Civil No. H–90–870–AHN, USDC D Conn).

EFFECTIVE DATE: This exemption is effective for the period from December 22, 1993 until June 24, 1994.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Proposal) published on January 18, 1995, at 60 FR 3662.

NOTICE TO INTERESTED PERSONS: The applicant represents that some of the employee benefit plans invested in SAR did not receive notice of the pendency of the proposed exemption within the time period specified in the Proposal. The applicant states that these plans were subsequently provided with a separate notice and a copy of the Proposal on or before March 17, 1995. Such plans were advised by the applicant in the separate notice that they had until April 17, 1995 to comment and/or request a hearing on the Proposal. No comments or hearing requests were received by the Department.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Law Offices of Bryson and Berman, P.A. Employees' Pension Plan and Trust (Pension Plan) and Law Offices of Bryson and Berman, P. A. Employees' Profit Sharing Plan and Trust (P/S Plan, collectively; the Plans)

Located in Miami, Florida

[Prohibited Transaction Exemption 95–38; Exemption App. Nos. D–09884 and D–09885]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the two individual accounts (the Accounts) in the Plans of Rodney W. Bryson of two adjacent parcels of vacant land (Lots 3 and 4, collectively; the Lots) to Mr. Rodney Bryson (Mr. Bryson), a trustee of the Plans and a party in interest with respect to the Plans; provided that the following conditions are satisfied:

(a) The sale will be a one-time cash transaction;

(b) The Accounts in this transaction will receive the current fair market value of the Lots established at the time of the sale by an independent qualified appraiser;

(c) The Accounts will pay no expenses associated with the sale; and

(d) The terms of this transaction are at least as favorable to the Accounts as an arms-length transaction between unrelated parties.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 13, 1995 at 60 FR 13472/13473.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 12th day of May, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 95–12183 Filed 5–17–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Astronomical Sciences.

Date and Time: June 8 and 9, 1995, 9 am–5 pm

Place: Room 370, National Science Foundation, 4201, Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Jane Russell, Program Director, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: 703/306–1827.

Purpose of Meeting: To provide advice and recommendations on proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate Global Oscillation Network Group (GONG) proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 15, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12265 Filed 5–17–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Biological Sciences; Committee of Visitors; Meeting

I accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Biological Sciences; Committee of Visitors.

Date and time: June 7–9, 1995.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Scott Collins, Division of Environmental Biology, Room 640, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1479.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decision on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Ecological Studies Cluster in the Division of Environmental Biology.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 15, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12266 Filed 5–17–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Computer and Information Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering.

Date and Time: June 8, 1995; 8:30 a.m. to 5 p.m.; June 9, 1995; 8:30 a.m. to 2:30 p.m.

Place: 4201 Wilson Blvd., Arlington, VA 22230, Room 1235.

Type of Meeting: Open.

Contact Person: Odessa Dyson, Administrative Officer, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice to the Assistant Director/CISE on issues related to long-range planning, to advise NSF on the impact of policies, programs and activities on the CISE community; and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda:

(1) Strategic Planning

(2) Committee of Visitors Reporting (COV)

Dated: May 15, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12267 Filed 5–17–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: June 6, 1995, 8:30 a.m.–5:00 p.m.

Place: Rooms 330, 340, 530, 580, 565, and 970, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Program Directors: Dr. Pius Egbelu, Operations Research and Production Systems, Dr. Warren DeVries, Manufacturing Machines and Equipment, Dr. Christina Gabriel, Integration Engineering, Dr. George Hazelrigg, Engineering Design, and Dr. Kesh Narayanan, Materials Processing and Manufacturing, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1330.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: May 15, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12268 Filed 5–17–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings.

Name and Committee Code: Special Emphasis Panel in Electrical and Communications Systems (#1196).

Date and Time: June 5, 8, 9, 1995.

Place: Room 675, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1339.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the (1) Quantum Electronics, Plasmas, Electromagnetics, (2) Optical Communications Systems, and (3) Solid State and Mircrostructures programs as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning

individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: May 15, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12269 Filed 5–17–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research, Evaluation and Dissemination; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research, Evaluation and Dissemination.

Date and Time: June 5, 1995; 8:30 a.m. to 5 p.m.; June 6, 1995; 8:30 a.m. to 5 p.m.; June 7, 1995; 8:30 a.m. to 5 p.m.; June 8, 1995; 8:30 a.m. to 5 p.m.; June 9, 1995; 8:30 a.m. to 5 p.m.

Place: Rooms 320, 370, and 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Nora Sabelli, Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1651.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Networking Infrastructure for Education Program.

Reason for Closing: Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: May 15, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12270 Filed 5–17–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Company; Turkey Point Unit Nos. 3 and 4; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (NRC) has denied a portion of an amendment request by the Florida Power and Light Company (FPL or the licensee) for an amendment to Facility Operating License Nos. DPR–31 and DPR–41, issued to the licensee for operation of the Turkey Point Plant, Units 3 and 4, located in Dade County, Florida. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on November 9, 1994 (59 FR 55869).

The purpose of the licensee's amendment request was to revise the Technical Specification (TS) to revise the definition of core alterations, allow the personnel airlocks to be open during core alterations and revise a footnote pertaining to opening of certain valves.

The NRC staff has concluded that the portion of the licensee's request regarding the footnote allowing certain valves to be open during core alterations cannot be granted for the reasons stated in letter dated May 11, 1995. The licensee was notified of the Commission's denial of the proposed change by letter dated May 11, 1995.

By June 19, 1995, the licensee may demand a hearing with respect to the denial described above. Any person affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. A copy of any petitions should also be sent to the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated October 20, 1994, and (2) the Commission's letter to the licensee dated May 11, 1995. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Florida International University, University Park, Miami, Florida 33199. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland this 11th day of May, 1994.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–12216 Filed 5–17–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–22026; License No. 37–20746–01 (Revoked) EA 95–090]

Joseph Paolino and Sons, Inc.; Mt. Laurel, New Jersey; Confirmatory Order

I

Joseph Paolino and Sons, Inc. (Licensee) previously held Byproduct Material License No. 37–20746–01 issued by the Nuclear Regulatory Commission pursuant to 10 CFR Part 30. The license authorized the possession and use of sealed sources containing byproduct material (cesium-137 and americium-241) in portable moisture density gauges, in accordance with the conditions specified therein. The license was issued on September 20, 1984 and was revoked by an Order Revoking License for nonpayment of fees on July 30, 1993.

II

The Order Revoking License directed the Licensee to transfer all licensed material that was in its possession to an authorized recipient. The Licensee failed to transfer the material and on August 18, 1994, the NRC issued a Notice of Violation and Revoked License, which was returned unclaimed and resent by messenger service and signed for by the Licensee on October 6, 1994. On December 14, 1994, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty—$3000 and Notification of Consideration of the Imposition of Daily Civil Penalties for unauthorized possession of byproduct material and failure to comply with the Order Revoking License. The Licensee failed to respond to this action and on March 8, 1995, the NRC issued a Notice of Violation and Proposed Imposition of Daily Civil Penalties—$15,000. The Licensee responded and transferred the byproduct material in its possession to an authorized recipient on March 24, 1995. The Licensee did not pay the outstanding civil penalties totaling $18,000.

III

The Notice of Violation and Proposed Imposition of Civil Penalties dated December 14, 1994 and March 8, 1995 are still outstanding. As the parties

desire to resolve all matters pending between them, the Licensee, through its Assistant Secretary, Matthew Paolino, has entered into an agreement with the NRC executed on April 18, 1995. Under the terms of the agreement, the NRC withdraws the civil penalty in the amount of $3,000 proposed by Notice of Violation dated December 14, 1994 and the daily civil penalties in the total amount of $15,000 proposed by Notice of Violation dated March 8, 1995. Under the terms of the agreement, Joseph Paolino and Sons, Inc., Licensee, agrees that for a period of five years from April 18, 1995, (1) neither the Licensee, nor any successor entity, shall apply to the NRC for a license; and (2) neither Joseph Paolino and Sons, Inc. nor a successor entity, shall engage in NRC-licensed activities within the jurisdiction of the NRC for that same period of time.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 186, and 234 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 2.205, and 10 CFR Parts 30, 34, and 150, IT IS HEREBY ORDERED THAT:

1. The NRC withdraws the civil penalty in the amount of $3,000 proposed by Notice of Violation dated December 14, 1994 and the civil penalties in the amount of $15,000 proposed by Notice of Violation dated March 8, 1995.

2. For a period of five years from April 18, 1995:

(a) Neither Joseph Paolino and Sons, Inc., nor any successor entity shall apply to the NRC for a license; and

(b) Neither Joseph Paolino and Sons, Inc., nor any successor entity, shall engage in NRC-licensed activities (including exercising any control over NRC-licensed activities) within the jurisdiction of the NRC for that same period of time.

3. If Joseph Paolino and Sons, Inc., or a successor entity, violates paragraph 2. of this section of the Confirmatory Order, then the remaining unpaid civil penalty amount shall be due and payable by Joseph Paolino and Sons, Inc. or a successor entity, immediately and without further notice.

V

Any person adversely affected by this Confirmatory Order, other than Joseph Paolino and Sons, Inc. or a successor entity, may require a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained. In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings.

VI

On March 24, 1995, the Licensee transferred the byproduct material to Glasgow, Inc., an authorized recipient and the NRC, Region I, has confirmed that transfer. Accordingly, given the Licensee's failure to pay the annual fee for the License, the Licensee's transfer of the byproduct material, and the Licensee's agreement as described in Section III above, License No. 37–20746–01 is hereby terminated.

Dated at Rockville, Maryland this 9th day of May 1995.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 95–12217 Filed 5–17–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, July 13, 1995
Thursday, July 27, 1995
Thursday, August 10, 1995
Thursday, August 24, 1995
Thursday, September 7, 1995
Thursday, September 21, 1995

The meetings will start at 10:45 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These schedule meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members of the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishers for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: May 12, 1995.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 95–12273 Filed 5–17–95; 8:45 am]

BILLING CODE 6325–01–M

Federal Prevailing Rate Advisory Committee; Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, May 25, 1995, has been canceled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415, (202) 606–1500.

Dated: May 12, 1995.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate, Advisory Committee.

[FR Doc. 95–12274 Filed 5–17–95; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–93]

Notice of Determination and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: Barriers to Access to the Auto Parts Replacement Market in Japan

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determination under section 304(a)(1)(A) of the Trade Act of 1974, as amended (Trade Act) (19 U.S.C. 2414(a)(1)(A)); notice of proposed determination of action to be taken under section 304(a)(1)(B) of the Trade Act and notice of public hearing and request for public comment pursuant to section 304(b) of the Trade Act.

SUMMARY: The United States Trade Representative (USTR) has determined pursuant to section 304(a)(1)(A)(ii) of the Trade Act that certain Acts, policies and practices of Japan that restrict or deny suppliers of U.S. auto parts access to the auto parts replacement and accessories market (''after-market'') in Japan are unreasonable and discriminatory and burden or restrict U.S. commerce. The USTR is seeking public comment and will hold a public hearing on June 8 and 9, 1995, regarding the proposed determination pursuant to section 304(a)(1)(B) on the appropriate action under section 301 being considered in response to these acts, policies and practices.

DATES: Written comments on the determination are due by noon, Monday, June 19, 1995. Requests to testify at the hearing must be submitted by noon, Thursday, May 25, 1995. Written testimony is due by noon, Friday, June 2, 1995, and written rebuttals are due by noon, Wednesday, June 21, 1995.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David Burns, Senior Advisor for Japan, (202) 395–5050, or James Southwick, Assistant General Counsel, (202) 395–7203. Questions about the public hearing, written testimony and written comments should be directed to Sybia Harrison, Staff Assistant to Section 301 Committee, (202) 395–3432.

SUPPLEMENTARY INFORMATION: On October 1, 1994, the USTR initiated an investigation pursuant to section 302(b) of the Trade Act to determine whether specific barriers to access to the after-market for auto parts in Japan are unreasonable or discriminatory and burden or restrict U.S. commerce. By **Federal Register** notice dated October 13, 1994 (59 FR 52034), the USTR requested public comment on the issues raised in the investigation. The comment period was subsequently extended by a **Federal Register** notice dated November 10, 1994 (59 FR 56099).

Officials of the Office of the USTR and other United States agencies have conducted extensive consultations with Japanese government officials concerning these market access barriers, but negotiations have failed to resolve the issues under investigation. Consequently, on May 10, 1995, the USTR pursuant to section 304(a)(1)(A)(ii) of the Trade Act determined that certain acts, policies and practices of Japan that restrict or deny suppliers of U.S. auto parts access to the auto parts replacement and accessories market (''after-market'') in Japan are unreasonable and discriminatory and burden or restrict U.S. commerce.

Reasons for Determination

The Japanese market for replacement auto parts is restricted by a complex system that is not reasonable or justifiable. This system channels most repair work to government-certified garages that use very few foreign parts, and the system restricts the development of other garages more likely to carry and use foreign parts. In addition, even minor additions of accessories to motor vehicles require a full vehicle inspection and tax payment, which severely limits opportunities for U.S. automotive accessories suppliers.

The United States pressed Japan for broad reform in the aftermarket. The U.S. proposals did not ask for reduction of safety or environmental standards, but for measures that would allow for substantially more repair work to be performed outside the certified garages, and therefore would open up opportunities for foreign suppliers. The Government of Japan was unwilling to make changes to key elements of the system which restricts opportunities for U.S. and other foreign parts suppliers.

Proposed Determination on Appropriate Action

If the USTR makes an affirmative determination pursuant to section 304(a)(1)(A)(ii) of the Trade Act, pursuant to section 304(a)(1)(B) the USTR also must determine what action, if any, by the United States is appropriate. If the USTR determines that action is appropriate, section 301(b) of the Trade Act directs the USTR to take all appropriate and feasible action to obtain the elimination of the unreasonable or discriminatory act, policy or practice.

Therefore, the USTR proposes to take the following action, pursuant to the authority provided by section 301(c)(1)(B) of the Trade Act:

To impose prohibitive (100 percent *ad valorem*) duties upon luxury-type motor vehicles from Japan. The increased tariffs will apply to the following motor cars and other motor vehicles principally designed for the transport of persons provided for in heading 8703 of the Harmonized Tariff Schedule of the United States (HTS):

(1) Motor vehicles having 4 doors, a wheelbase more than 260 cm (102.4 inches) but not more than 263 cm (103.6 inches), a curb weight more than 1,495 kg (3,295.9 pounds), a height not more than 138 cm (54.3 inches), and a spark-ignition internal combustion reciprocating piston engine with 6 or more cylinders, having a total cylinder capacity exceeding 2,900 cc or a rotary piston engine (provided for in HTS subheadings 8703.23, 8703.24 or 8703.90); and

(2) Motor vehicles having a wheelbase exceeding 266 cm (104.7 inches), a curb weight more than 1,365 kg (3009.3 pounds), a height not more than 145 cm (57 inches), and either a spark-ignition

internal combustion reciprocating piston engine having a total cylinder capacity exceeding 2,900 cc or a rotary piston engine (provided for in HTS subheadings 8703.23, 8703.24 or 8703.90).

The USTR has asked the Customs Service to withhold liquidation of the entries of the goods identified above which are entered, or withdrawn from warehouse for consumption, on or after May 20, 1995. If the proposed duty increases enter into effect, the USTR intends to make these increases effective as of May 20, 1995.

In making this determination, the USTR will consider public comments submitted in accordance with the requirements set forth below.

Public Comment on Proposed Determination; Hearing Participation

In accordance with section 304(b) of the Trade Act, the USTR invites all interested persons to provide written comments on the proposed determination. Comments may address: (1) The appropriateness of subjecting the motor vehicles described above to an increase in duties; (2) the levels at which duties should be set; and (3) the degree to which an increase in duties might have an adverse effect on U.S. consumers. Written comments are due by noon, Monday, June 19, 1995.

The USTR also will consider the written, oral, and rebuttal comments submitted in the context of public hearings held pursuant to section 304(b) of the Trade Act and in accordance with 15 CFR 2006.7 through 2006.9. The hearings will commence at 10 a.m. on Thursday, June 8, 1995, and continue on Friday, June 9, 1995, if necessary. The hearings will be held in Room 100 at the U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Request to Testify: Interested persons wishing to testify orally at the hearings must provide a written request to do so by noon, Thursday, May 25, 1995, to Sybia Harrison, Staff Assistant to the Section 301 Committee, Office of the U.S. Trade Representative, 600 17th Street NW., Washington, DC 20506. Requests to testify must include the following information: (1) Name, address, telephone number, and firm or affiliation of the person wishing to testify; and (2) a brief summary of the comments to be presented. Requests to testify must conform to the requirements of 15 CFR 2006.8(a). After the Chairman of the Section 301 Committee considers the request to present oral testimony, Ms. Harrison will notify the applicant of the time of his or her testimony. Remarks at the hearing will be limited to 5 minutes.

Written Testimony and Rebuttal Briefs: In addition, persons presenting oral testimony must submit their complete written testimony by noon, Friday, June 2, 1995. In order to assure each party an opportunity to contest the information provided by other parties, USTR will entertain rebuttal briefs filed by any party by noon, Wednesday June 21, 1995. In accordance with 15 CFR 2006.8(c), rebuttal briefs should be strictly limited to demonstrating errors of fact or analysis not pointed out in the briefs or hearing and should be as concise as possible.

Requirements for Submissions: Written comments on the proposed determination, written testimony, and rebuttal briefs must be filed in accordance with thr requirements set forth in 15 CFR 2006.8(b). Comments must state clearly the position taken and describe with particularity the supporting rationale, be in English, and be provided in twenty copies to: Chairman, Section 301 Committee, Attn: Auto Parts Investigation, Room 223, USTR, 600 17th St NW., Washington, DC 20506.

Written comments, testimony, and briefs will be placed in a file (Docket 301–93) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Persons wishing to submit confidential business information must certify in writing that such information is confidential in accordance with 15 CFR 2006.15(b), and such information must be clearly marked ''Business Confidential'' in a contrasting color ink at the top of each page on each of the twenty copies and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the Docket open to public inspection. An appointment to review the docket may be made by calling Brenda Webb (202) 395–6186. The USTR Reading room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, and is located in: Room 101, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 95–12344 Filed 5–16–95; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: Michael E. Bartell, (202) 942–8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, D.C. 20549.

Extension

Rule 19d–1; File No. 270–242

Form 10–SB; File No. 270–367

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 extensions for the following rule and form:

Rule 19d–1 prescribes the form and content of notices required to be filed with the Commission by self-regulatory organizations for which the Commission is the appropriate regulatory agency concerning all final disciplinary sanctions, denial of membership and participation or association with a member. It is estimated that 25 respondents will incur a total annual burden of 2,500 hours to comply with this rule.

Form 10–SB may be used by small business issuers for registration pursuant to Section 12 (b) or (g) of the Securities Exchange Act of 1934. It is estimated that 65 respondents will file Form 10–SB annually at a total annual burden of 5,980 hours.

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 the Commission rules and forms to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and the Clearance Officer for the Securities and Exchange Commission, Office of Management and Budget, Project Number 3235–0206 (Rule 19d–1) and 3235–0419 (Form 10–SB), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 9, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12257 Filed 5–17–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35700; File No. SR–MSRB–95–4]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Customer Confirmations

May 10, 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 30, 1995, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change (File No. SR–MSRB–95–4) as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing an amendment to rule G–15(a), on customer confirmations (hereinafter referred to as ''the proposed rule change''). The proposed rule change: (1) Will clarify the current customer confirmation requirements by reorganizing the rule and incorporating previous Board interpretations into the language of the rule; (2) will revise certain requirements in areas where the Board believes that more disclosure is necessary; and (3) will include certain other modifications to the current confirmation disclosure requirements.

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 Board 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 Board 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

(a) Rule G–15(a) states various requirements for the format and content of confirmations to customers. As part of the Board's ongoing customer protection review, the Board has reviewed rule G–15(a), and the written disclosures provided to municipal securities customers. The proposed rule change represents one of several Board efforts to ensure that important information is disclosed to customers.

In response to market developments and regulatory concerns, rule G–15(a) has been subject to numerous amendments and Board interpretive notices since it was adopted in 1977. The proposed rule change will revise certain requirements in areas where the Board believes that more disclosure is necessary. The proposed rule change will clarify the current customer confirmation requirements by reorganizing the rule and incorporating previous Board interpretations into the language of the rule to promote better compliance. Other modifications to the rule's requirements also are proposed to simplify and clarify the requirements and to promote better compliance. The proposed rule change also will respond to recent revisions by the SEC to its Rule 10b–10, the confirmation rule applicable to transactions in securities other than municipal securities, and to its proposed Rule 15c2–13, to require certain disclosures to be made on confirmations for transactions in municipal securities.[2]

Reorganization of Current Rule Including Codification of Interpretations

The proposed rule change will clarify rule G–15(a) by reorganizing the rule and incorporating Board interpretations into the rule. Most requirements are subdivided by subject matter into three broad categories that comprise the content of municipal securities confirmations—terms of the transaction, securities identification, and securities description (listing the various features of the security). Under each category, Board rules and interpretations are organized by specific confirmation requirement. For example, under the securities identification section of the proposed rule change, all existing rules and Board interpretive notices specifying how the interest rate should be expressed on the confirmation for various categories of municipal securities transactions have been codified.[3] This reorganization should assist operations personnel in programming automated systems for generating municipal securities confirmations since it will no longer be necessary to review all previous interpretive notices on confirmations to find those that may address the statement of interest rate for a particular type of municipal security.

Revisions in Customer Confirmation Requirements

The proposed rule change will revise some requirements that the Board feels will strengthen the disclosure and customer protection objectives of the rule while updating the requirements of the customer confirmation.

Disclosure if a security is unrated. In November 1994, the SEC approved amendments to its Rule 10b–10 of the Securities Exchange Act, the confirmation rule applicable to transactions in securities other than municipal securities.[4] At the same time, the SEC deferred consideration of proposed Rule 15c2–13 that would have established certain confirmation requirements applicable to transactions in municipal securities. The SEC's amendments to Rule 10b–10 require, among other things, that dealers disclose if a debt security, other than a governmental security, has not been rated by a nationally recognized statistical rating organization. The SEC also had proposed a similar requirement for municipal SEC confirmations in its proposed Rule 15c2–13. The SEC noted that this disclosure is not intended to suggest that an unrated security is inherently riskier than a rated security; instead, this disclosure is intended to alert customers that they may wish to obtain further information or clarification from their dealer. Previously, the Board indicated in its comment letter to the SEC that, if the SEC determined that such information were needed by investors in debt securities, the Board would amend rule G–15 to include this requirement. The proposed rule change will include this provision in rule G–15(a)(i)(C)(3)(f).

Call provisions. Currently, for many bonds, only a designation of ''callable'' is required by rule G–15(a)(i)(E), along with the following legend provided by

[1] Subsequently, the Board submitted a letter to extend the delay for effectiveness of the rule to 120 days following Commission approval. *See* letter from Marianne I. Dunaitis, Assistant General Counsel, MSRB, to Karl Varner, Staff Attorney, Division of Market Regulation, SEC, dated April 3, 1995.

[2] Securities Exchange Act Release No. 34962 (Nov. 10, 1994), 59 FR 59612, *corrected*, Securities Exchange Act Release No. 34962A (Nov. 25, 1994), 59 FR 60555.

[3] Categories include zero coupon securities, variable rate securities, securities with adjustable tender fees, stepped coupon securities, and stripped coupon securities.

[4] Securities Exchange Act Release No. 34962 (Nov. 10, 1994), 59 FR 59612, *corrected*, Securities Exchange Act Release No. 34962A (Nov. 25, 1994), 59 FR 60555.

rule G–15(a)(iii)(F) which can be indicated ''in a footnote or otherwise:'' ''Call features may exist which could affect yield; complete information will be provided upon request.'' Specifically, rule G–15(a)(i)(I) currently provides that disclosure of the date and price of the first in-whole call is required to be noted on the confirmation only if the security is priced to that call date. In addition, current rule G–15(a)(i)(I) requires that the price or yield calculated for a confirmation must be computed ''to the first in-whole call'' if this produces a lower price or yield than a calculation of price or yield to maturity. The Board's interpretation of December 10, 1980, *MSRB Manual* at ¶ 3571 describes the type of call features that are considered for purposes of these calculations (''pricing calls'').

The proposed rule change, in rule G–15(a)(i)(C)(2)(a), will revise the existing confirmation requirements regarding call features. It requires that the date and price of the next pricing call always be disclosed.[5] It also requires the following notation on the confirmation if any call features exist in addition to the next pricing call—''Additional call features exist that may affect yield; complete information will be provided upon request.'' The proposed rule change in rule G–15(a)(i)(E) will require this notation to be on the front of the confirmation. This substitutes for the current legend requirement, which typically has resulted in call legends being pre-printed on the back of the confirmation.

The Board believes that disclosure of call features is particularly important to customers and that the pre-printed legend on the back of the confirmation was not always effective in alerting customers to the existence of call features. The proposed rule change will put customers clearly on notice as to the presence of call features on the front of the confirmation, including a specific date and price for the next pricing call (one of the most important elements of call information) and the existence of any other call features in addition to this call.

Revenue bonds and additional obligors. Currently, with regard to revenue bonds, dealers are required under rule G–15(a)(i)(E) to disclose the source of revenue on the confirmation only ''if necessary for a materially complete description of the securities.'' The proposed rule change in rule G–15(a)(i)(C)(1)(a) will require dealers to put the primary revenue source for such bonds on the confirmation (*e.g.*, project name) and deletes the language ''if necessary for a materially complete description of the securities.'' The Board believes that requiring disclosure of the primary revenue source of revenue bonds on the confirmation will help ensure that customers receive important information about such bonds.

Additional obligors. Currently, with regard to additional obligors confirmation disclosure of such information currently is required under rule G–15(a)(i)(E) only ''if necessary for a materially complete description of the securities.'' In such instances, the confirmation must disclose the name of any company or other person in addition to the issuer obligated, directly or indirectly, with respect to debt service or, if there is more than one such obligor, the statement ''multiple obligors'' may be shown. The proposed rule change in rule G–15(a)(i)(C)(1)(b) will delete the language ''if necessary for a materially complete description of the securities;'' thus the amendment requires dealers always to identity the additional obligor on the confirmation or indicate ''multiple obligors'' if there is more than one additional obligor. The Board believes this will simplify and clarify the intent of the rule. The proposed rule change also will clarify that, if a letter of credit is used, the identity of the bank issuing the letter of credit must be noted.

Limited tax. Currently, rule G–15(a)(i)(E) provides that the description of the bonds should specify if they are ''limited tax.'' Traditionally, a limited tax bond is a general obligation bond secured by the pledge of a specified tax (usually the property tax) or category of taxes which is limited as to rate or amount. However, the meaning of this ''limited tax'' designation has become ambiguous as various states have implemented a variety of tax limitation measures and the Board is unaware of any clear standards that may be used to separate limited and unlimited tax municipal securities. The proposed rule change accordingly will delete the ''limited tax'' designation requirement.

Dealers acting as agent and receiving ''other remuneration''. Currently, rule G–15(a)(ii) provides that, in agency transactions, remuneration paid by the customer always must be disclosed, but if a dealer receives ''other'' remuneration (*i.e.*, remuneration from a source other than the customer), it is sufficient to indicate that other remuneration was received and that details will be furnished to the customer upon written request. The Board has received inquiries whether the ''discount'' received by a dealer in an inter-dealer transaction undertaken as agent for a customer should be considered as ''other remuneration.'' The proposed rule change in rule G–15(a)(i)(A)(1)(e) will clarify this by stating that in an agency transaction for a customer, if a dealer acquires a bond from another dealer at a discount (*e.g.*, ''net'' price less concession) and the customer pays the ''net'' price, the inter-dealer discount or concession received by the dealer cannot be considered ''other remuneration,'' but rather should be considered remuneration received from the customer. Thus, the proposed rule change will clarify that the amount of the ''discount'' or concession must be disclosed on the confirmation in these agency transactions pursuant to proposed rule G–15(a)(i)(A)(1)(e).

''Ex legal'' delivery designation. Currently, rule G–15(a)(iii)(I)(1) requires that the confirmation must note whether a transaction is ''ex-legal.'' This term refers to the absence of a written copy of the legal opinion to be included with the physical delivery of a bond certificate. This provision was adopted when nearly all deliveries of municipal securities were accomplished with physical deliveries of certificates which included a copy of the legal opinion. With the movement away from physical deliveries and the high percentage of book-entry-only securities in the market, the Board believes that this requirement is no longer necessary and the proposed rule change will delete the ''ex-legal'' delivery designation.

Zero coupon bonds. Currently, rule G–15(a)(v) provides a number of specific confirmation requirements for zero coupon bonds, including disclosure that the interest rate is 0% and, if the securities are callable and available in bearer form, a statement to that effect which can be satisfied by the following legend: ''No periodic payments—callable below maturity value without prior notice by mail to holder unless registered.'' The proposed rule change will retain these requirements.

In addition, the proposed change to rule G–15(a)(i)(A)(6)(h) will require that the amount of any premium paid over accreted value for callable zero coupon bonds be included on confirmations. The accreted value for a zero coupon bond reflects the increase in the security's value as it approaches the maturity date. For zero coupon bonds that are callable, the call price is

[5] The proposed rule change in rule G–15(a)(vi)(F) defines ''pricing call'' as a call feature that represents ''an in-whole call'' of the type that may be used by the issuer without restriction in a refunding. Consistent with the current rule, pricing calls do not include catastrophe calls, that is, calls which occur as a result of events specified in the bond indenture which are beyond the control of the issuer or calls that may operate to call part of an outstanding issue. *See* Interpretation of Nov. 7, 1977, published in *MSRB Manual* (CCH) at ¶ 3571.10.

generally at the accreted value. The Board believes it is important for customers to know that such securities may be affected by an early call and that a premium over the accreted value is being paid in the purchase price. In general, a customer purchasing a typical, interest-paying municipal security understands that a price above ''100'' indicates a premium price and that, if the security contains any call features, such features should be considered carefully. The importance of reviewing call features, however, is not as apparent with callable zero coupon securities, where a customer may not be aware of the relationship between a potential call price and the accreted value of the security being purchased. Accordingly, the proposed rule change will require dealers to disclose on the confirmation any premium paid over the accreted value for callable zero coupon bonds.

Original issue discount securities. Currently, a dealer must disclose on the confirmation whether securities are sold as ''original issue discount'' securities pursuant to rule G–15(a)(iii)(H). The proposed change to rule G–15(a)(i)(C)(4)(c) also will require the dealer to disclose the initial public offering price for the original issue discount security. The Board believes that this information is particularly important to customers since it may be needed for tax reasons also may be important if the security is subject to any early call.

First interest payment date (including if not semi-annual). Currently, rule G–15(a)(III)(A) states that the confirmation shall provide, if it affects the price or interest calculation, the first interest payment date if other than semi-annual. This provision is ambiguous as to whether the first interest payment date must be included on the confirmation in all instances in which there is no regular semi-annual interest payment, or only if the first payment date is necessary for purposes of calculation of final monies. The proposed change to rule G–15(a)(i)(A)(6)(g) will clarify that the first interest payment date is required on the confirmation only in those cases in which it is necessary for the calculation of final money. If would, for example, not be required for transactions in the issue occurring after the first interest payment date.[6]

Yield information. Currently, there is not a specific exemption for statement of yield on transactions in defaulted bonds, bonds that prepay principal and variable rate securities that are not sold on basis of yield to put. The proposed change to rule G–15(a)(i)(A)(5)(d) will include specific exemptions for these types of transactions.

Disclosure regarding CMOs. The SEC's amendment to its Rule 10b–10 provides that the dealer must include a statement on the confirmation indicating that the actual yield of non-municipal collateralized mortgage obligations (''CMOs'') may vary according to the rate at which the underlying receivables or other financial assets are prepaid, and a statement of the fact that information concerning the factors that affect yield (including, at a minimum, estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon the written request of a customer. The proposed change to rule G–15(a)(i)(D)(2) will include a similar provision regarding municipal CMOs.

Modifications and Clarifications to Confirmation Format

Multi-transaction data should not be aggregated on one confirmation. Currently, rule G–15(a) provides that, at or before the completion of a transaction in municipal securities, dealers must provide the customer with a written confirmation of the transaction. The current rule does not specifically indicate that customers should receive a separate confirmation for each transaction. The Board previously has stated that, if a customer purchased from a dealer several different securities of one issuer, it would be inappropriate for the dealer to aggregate on the confirmation the accrued interest for all the bonds acquired or to aggregate yield data and disclose the ''yield to the average life'' rather than providing yield to maturity information for each bond acquired.[7] The proposed change to G–15(a)(ii) will clarify that a separate confirmation should be provided for each municipal securities transaction whenever several transactions are done at one time.

Clarification of confirmation format. The proposed rule change will require that all disclosure, with certain exceptions, be clearly and specifically indicated on the front of the confirmation. To address concerns about the ''crowding'' of information on the front side of the confirmation, the proposed rule change will allow certain requirements to be met by statements on the back of the confirmation, namely: (1) The required legend for zero coupon bonds; (2) the requirement that permits a dealer in agency transactions, rather than naming the person from whom the securities were purchased or to whom the securities were sold, to include a statement that this information will be furnished upon the written request of the customer; and (3) the requirement that permits a dealer, rather than indicating the time of execution, to include a statement that the time of execution will be furnished upon the written request of the customer. In addition, consistent with the SEC's amendment to Rule 10b–10, the amendment will not require the disclosure statement for transactions in municipal collateralized mortgage obligations required in proposed rule change G–15(a)(i)(D)(2) to be on the front of the confirmation.

(b) The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall.

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that the proposed rule change will protect investors and the public interest because it clarifies the current customer confirmation requirements by reorganizing the rule and incorporating previous Board interpretations into the language of the rule and it revises certain requirements in areas where the Board believes more disclosure is necessary.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change, which will have an equal impact on dealers, will have any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

June 1994 Request for Comments

In June 1994, as part of the Board's ongoing customer protection review, the Board requested comments on the proposed rule change, which was designed to clarify the current customer confirmation requirements by reorganizing the rule and incorporating previous Board interpretations into the language of the rule, and which also revised certain requirements where the Board

[6] Of course, the proposed change to rule G–15(a)(i)(C)(2)(e), consistent with current rule G–15(a)(iii)(I), provides if securities pay interest on other than semi-annual basis, a statement of the basis on which interest is paid.

[7] MSRB Interpretation of July 27, 1981, *MSRB Manual* (CCH) ¶¶ 3571.35 and 3571.41.

believed more disclosure was necessary.[8] The draft amendments published for comment were substantially similar to the proposed rule change.[9]

The Board received 12 comment letters from the following:

Automatic Data Processing (''ADP I'')
Beta Systems (''BETA'')
JB Hanauer & Co. (''Hanauer'')
Edward D. Jones & Co. (''Jones'')
Kenny S&P Information Services (''Kenny'')
Liberty Bank and Trust Co. (''Liberty'')
Pershing
Public Securities Association (''PSA'')
Rauscher Pierce Refsnes, Inc. (''Rauscher'')
Regional Municipal Operations Association (''RMOA'')
Securities Industry Software Corp./ Division of ADP (''ADP II'')
Sweeney Cartwright & Co. (''Sweeney'')

In general, the codification and reorganization of the rule received favorable comment, but some commentators raised concerns with certain provisions.

Comments Received

Call provisions. The draft amendment proposed to alter call disclosure on the confirmation in several ways. It would have required that the date and price of the first refunding call always be disclosed. It would have deleted the legend that generally is pre-printed on the back of the confirmation. Instead, if there were any call features in addition to the first refunding call, it would have required that disclosure be made on the front of the confirmation that ''special call features exist.''

Several commentators commented on the Board's proposal to improve the disclosure of call features on the customer confirmation. With regard to the proposed disclosure of the first in-whole call, two commentators believed that such disclosure would be beneficial to investors. Another commentator, however, suggested that the Board may wish to modify the draft language to require the date and price of the ''next'' pricing call, instead of the ''first pricing call, because after the first pricing call has passed, the ''next'' pricing call should be noted on the confirmation. The proposed rule change will incorporate this suggestion.

Some commentators supported the replacement of the current legend ''Call features may exist which could affect yield; complete information will be provided upon request,'' that generally is contained on the back of the confirmation, with the notation on the front of the confirmation that ''special call features exist,'' because they believed that an affirmative statement as to the presence of other call features would be beneficial to investors. In this regard, one commentator suggested the draft legend could be clarified by noting ''other call features exist'' instead of ''special call features exist.''

Other commentators, however, expressed concern because they believed that dealers, if their knowledge of a bond is incomplete, should be able to use the current legend. Another commentator supported deletion of the current legend, but opposed placing an affirmative notation regarding the presence of call features on the front of the confirmation because of the practical difficulties in obtaining call information. However, with regard to the availability of information regarding the presence of these call features, a number of commentators indicated that sufficient data regarding call features is available to support the disclosures being proposed.

The Board continues to believe that disclosure of call features is important to customers and that it is appropriate to improve existing disclosure by requiring an affirmative notation on the front of the confirmation if there are any calls in addition to the first in-whole pricing call. Dealers should have information regarding the presence of call features before they sell municipal securities to their customers and such information appears to be readily available for most municipal securities. Thus, the proposed rule change will delete the current legend that permits dealers to indicate generally in a pre-printed format that other call features may exist.

After reviewing the wide variety of comments on this aspect of the draft amendment, the Board changed the notation ''Special call features exist'' to ''Additional call features exist that may affect yield'' to better reflect the potential types of calls that might exist. The Board believes that this statement will best reflect the potential types of calls that might exist. Additionally, the Board added the second half of the existing legend ''complete information will be provided upon request'' to the notation to ensure that customers recognize that they can request additional information regarding call features.

Revenue bonds. Five commentators opposed the provision of the draft amendment to require that the revenue source for revenue bonds always be disclosed. In general, these commentators noted difficulties describing the revenue source for certain bonds, particularly those with complex sources of revenue or those that have a lengthy list of revenue sources or too complex a funding scheme to allow for full disclosure on a confirmation. Because of confirmation space concerns, one commentator suggested that only the most significant sources of revenue be disclosed on the confirmation. With regard to the availability of information regarding revenue sources, two commentators, however, noted that the project or company name which identifies the revenue source currently is available.

In response to commentators' concerns about the practical difficulties in listing numerous revenue sources, the proposed rule change will require dealers to put only the primary revenue source for revenue bonds on the confirmation (*e.g.,* project name). The Board believes that this information is available and would be helpful to customers.

Limited tax. Several commentators commented on the proposal to delete the ''limited tax'' designation. One supported the deletion of the limited tax designation because it believed that investors should refer to the official statement as a source of such information. However, other commentators questioned whether deletion of this provision would further the Board's objective of improving disclosure to customers. Two such commentators recognized that the meaning of ''limited tax'' is ambiguous in today's markets, but nevertheless suggested the ''limited tax'' should be retained because they believed the ''limited tax'' designation is useful information.

The proposed rule change will delete the ''limited tax'' designation because the Board believes that its meaning has become so ambiguous and so subject to differing views as to its applicability that is of doubtful use to investors. The Board notes, however, that deletion of this provision does not affect a dealer's obligation to disclose all material facts to the customer at the time of the transaction. If a general obligation bond has a limitation on taxes that is material to the investment decision, dealers must

[8] The Board also requested comment on broader issues associated with disclosure to customers and the role of the customer confirmation in providing such disclosure. The Board is not, however, proposing rulemaking in these areas at the present time.

[9] After reviewing comments received, the Board decided not to include in the proposed rule change certain provisions that were included in the draft rule. For example, the Board decided to retain disclosure on the confirmation if municipal securities are available only in book-entry form. The Board also determined not to require that the dated date always be included on the confirmation or that the confirmation indicate if a municipal security was issued without a legal opinion.

ensure that their customers are aware of the relevant facts, at or before the time of the transaction.

Dealers acting as agent and receiving ''other remuneration''. Four commentators commented on the proposal to clarify when it would be sufficient for a dealer to indicate that it received ''other remuneration'' in a transaction and that details will be furnished to the customer upon written request. In general, commentators supported the proposal, but some commentators suggested that the Board provide clarification regarding this provision.

The proposed rule change will clarify when it is appropriate to disclose ''other remuneration'' on the confirmation by providing that in an agency transaction if a dealer acquires a bond from another dealer at discount and the customer pays the ''net'' price, the inter-dealer discount cannot be considered ''other remuneration'' but rather should be considered remuneration received from the customer and disclosed pursuant to proposed rule G–15(a)(i)(A)(6)(f). The Board believes that the clarification included in the proposed rule change should ensure that dealers only disclose ''other remuneration'' in those situations where such a designation is appropriate.

''Ex legal'' delivery designation. Two commentators supported the proposed deletion of the current requirement that the confirmation indicate if a bond certificate is physically delivered without a legal opinion attached. Another commentator recognized that, with the movement away from the delivery of certificates, this provision is seldom noted on a confirmation. Nevertheless, this commentator believed this provision should be retained.

The Board believes that, with the general movement away from the physical delivery of certificates, it is no longer appropriate for the confirmation rule to focus on the physical delivery of a legal opinion. Since the concept of ''ex legal'' has no applicability except in cases involving physical delivery of certificates, the Board believe that, as part of the update of the customer confirmation rule, this provision should be deleted. Of course, even with the deletion of this requirement, given facts and circumstances of a specific transaction, if it was material that a municipal security was delivered without a legal opinion, this fact would have to be disclosed to the customer at or before the execution of the transaction as part of a dealer's duties under rule G–17.

Zero coupon bonds. Numerous commentators commented on the proposed disclosure requirements for zero coupon bonds. One commentator supported the proposed rule change to require disclosure of any premium over accreted value even though it would require additional programming for dealers. Several other commentators, however, opposed the disclosure of any premium over accreted value for transactions in zero coupon bonds. Two commentators believed it would be difficult to obtain this information and another commentator noted that some reprogramming would be required to include this information on the confirmation. One commentator suggested that the Board may wish to consider requiring that the rate of accretion for a zero coupon bond be disclosed on the confirmation because this would be more important to investors than being informed of any premium they paid over accreted value.

The Board originally proposed that the premium over accreted value be disclosed for all zero coupon bonds, but the amendment only requires that this premium be disclosed for zero coupon bonds that are callable. As discussed above, the accreted value of zero coupon bonds reflects the increase in the security's value as it approaches the redemption date, and if the bond is called prior to maturity it generally would be called at a price reflecting that value. The Board believes that requiring dealers to disclose any premium over the accreted value for callable zero coupon bonds is necessary so that customers are provided with sufficient information to assess the transaction. The Board believes that although informing customers of the rate of accretion could be helpful if supplemented with appropriate time of trade disclosure regarding the current accreted value of the bonds, the most appropriate mechanism to ensure that customers understand these possible risks associated with callable zero coupon bonds is to require the bond's accreted value on the confirmation.

Another commentator suggested that the Board consider a different approach because it believed that a discount or premium to the accreted value of a bond is equally important for any callable original issue discount bond (''OID''). This commentator suggested the following statement on confirmations relating to transactions in original issue discount bonds which are callable in part at an accreted value: ''If a premium was paid, a lower yield may result from early call.'' Although the Board does not believe this legend is appropriate for OID municipal securities, the Board does believe that additional information is necessary for such securities, and, as discussed above, the proposed rule change will require that the initial public offering price be disclosed for OID issues.

Additional obligors. Five commentators commented on the provision to require that dealers always be required to disclose information regarding additional obligors. In general, these commentators opposed requiring dealers to provide complete information regarding obligors. One commentator believed that the existence of obligors should be disclosed on the confirmation, but customers should rely on credit ratings to judge the risk factors represented by such obligors because they believe it could be difficult to obtain such information. This commentator also suggested that banks or other providers of letters of credit should be disclosed on the confirmation. Another commentator suggested the official statement should be used as a source if an investor has questions regarding obligors.

The Board believes that it is always important for customers to understand if there are any obligors in addition to the issuer and the Board believes this information should always be placed on the confirmation rather than making customers review official statements. The Board, however, recognizes that it could be difficult in certain instances for dealers to include on the confirmation complete information regarding obligors, if there are numerous obligors. The proposed rule change accordingly will permit dealers in such instances to note ''multiple obligors'' on the confirmation.

Multi-transaction data should not be aggregated on one confirmation. In general, commentators supported this clarification as the believed it will be beneficial for customers to have a separate confirmation for each transaction if they acquire several municipal securities. One commentator, however, suggested that, if a customer executes multiple transactions, the dealer should be able to send a single document that would provide all required information, except that certain information such as purchase/sale and settlement data would not have to be listed for each transaction. The Board does not believe that it is too burdensome for dealers to ensure that the confirmation data for each transaction is complete. Accordingly, the proposed rule change will require a separate confirmation for each transaction.

New sections to clarify confirmation format. The draft amendment as published proposed that all confirmation requirements, except the

zero coupon legend, be clearly and specifically noted on the front of the confirmation. Several commentators supported this format because they believed that disclosing more provisions on the front of the confirmation rather than pre-printed on the back, would be beneficial to customers.

One commentator, however, suggested that dealers be permitted to continue to put two notations on the back of the confirmation. First, for agency transactions, rule G–15(a)(ii)(A) currently provides that the dealer shall indicate on the confirmation either the name of the person from whom the securities were purchased or to whom the securities were sold for the customer or a statement that this information will be furnished upon written request of the customer. Second, rule G–15(a)(i)(G) currently provides that a dealer shall indicate on the confirmation the time of execution or a statement that the time of execution will be furnished upon written request of the customer. The amendment incorporates these suggestions because, in view of concerns regarding confirmation crowding, the Board does not believe these statements are so crucial to a typical customer that it is necessary to include these statements on the front of the confirmation. In addition, consistent with the SEC's amendment to Rule 10b–10, the amendment will not require that the statement regarding factors affecting the yield for municipal CMOs be placed on the front of the confirmation.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Board requests that the Commission delay effectiveness of the proposed rule change until 120 days after approval by the Commission is published in the **Federal Register** to ensure that firms' confirmation practices are in compliance.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR–MSRB–95–4 and should be submitted by June 8, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12185 Filed 5–17–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35709; File No. 10–101]

Self-Regulatory Organizations; Notice of Filing of Application for Registration as a National Securities Exchange by the United States Stock Exchange, Inc., and Amendment No. 1 Thereto

May 11, 1995.

Pursuant to Section 19(a) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(a), notice is hereby given that on March 28, 1995, the United States Stock Exchange, Inc. (''USSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') an application for registration as a national securities exchange. On April 25, 1995, the USSE filed Amendment No. 1 to the Application for Registration.[1] The Commission is publishing this notice to solicit comments on the application from interested persons.

The USSE initially intends to trade the most active issues that meet the proposed Exchange's listing requirements and are now eligible for trading on national securities exchanges, as well as those companies that choose to list on the Exchange. The proposed Exchange would operate through an electronic securities communication and execution facility (the ''System''). Because there would be no physical trading floor, members of the Exchange (''Members'') would enter orders through System terminals, *i.e.*, computer interfaces that have communications capability with the System and are directly linked to the System. The proposed System would combine the display of limit orders and current quotation/last sale information with a matching and execution facility for like-priced orders. Additionally, the System would enable Dealers (*i.e.*, members who meet certain financial and market-making obligations) to perform brokerage and market-making functions on the Exchange, while allowing the Dealers to retain and execute their internal order flow by preferencing the public agency orders for which they act as agent.

The USSE would have Type A Members that are broker-dealers in securities, and one Type B Members that would be the Chicago Stock Exchange, Inc. The Board of Directors would be composed of eight directors elected by the Type A Members (the ''Class A Directors'') and two directors elected by the Type B Members (the ''Class B Directors''). Four of the eight directors elected by the Type A Members would be public directors (''Class A Public Directors''), and four would be representatives of Type A member firms.

You are invited to submit written data, views and arguments concerning the application by June 19, 1995. Such written data, views and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. 10–101.

The USSE's submission explains the operation of the proposed Exchange and its membership structure in more detail. Copies of the submission, all subsequent amendments, all written statements with respect to the application that are filed with the Commission, and all written communications relating to the application 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 at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549.

[1] *See* letter from David Rusoff, Foley & Lardner, to Sharon Lawson, SEC, dated April 19, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12186 Filed 5–17–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35712; File No. SR–NASD–95–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Corporate Financing Underwriting Terms and Arrangements

May 12, 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 May 3, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to Article III, Section 44 of the Rules of Fair Practice. Proposed new language is italicized; proposed deletions are in brackets.

THE CORPORATE FINANCING RULE

Underwriting Terms and Arrangements

Sec. 44

* * * * *

(c) Underwriting Compensation and Arrangements

* * * * *

(6) Unreasonable Terms and Arrangements

* * * * *

(B) Without limiting the foregoing, the following terms and arrangements, when proposed in connection with the distribution of a public offering of securities, shall be unfair and unreasonable:

(i)–(x) (Unchanged)

(xi) for a member or person associated with a member to accept, directly or indirectly, any non-cash sales incentive item including, but not limited to, travel bonuses, prizes and awards, from an issuer or affiliate thereof in excess of [$50] *$100* per person per issuer annually. Notwithstanding the foregoing, a member may provide non-cash sales incentive items to its associated persons provided that no issuer, or an affiliate thereof, including specifically an affiliate of the member, directly or indirectly participates in or contributes to providing such non-cash sales incentive; or

(xii) (Unchanged)

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

Subsection 44(c)(6)(B)(xi) of the Corporate Financing Rule (the ''Rule'') currently prohibits NASD members from receiving non-cash sales incentives from an issuer or its affiliates valued in excess of $50 per person per issuer annually. Such non-cash sales incentives are typically de minimis in nature, such as small souvenir or gift items, provided by issuers to a member or associated persons of a member. The NASD is proposing an amendment to the Rule to raise the permissible level of non-cash sales incentives to $100 per person, annually.

The NASD believes that a dollar amount of $100 is still relatively low and will neither compromise the intent, nor reduce the ability, of the rule to prevent fraudulent acts and practices that might arise in connection with the giving of gifts or payments by issuers and their affiliates as non-cash compensation to members or persons associated with members.

Additionally, the amendment would make the value-limitation provisions of the Rule consistent with similar provisions in Article III, Sections 10 and 34 of the Rules of Fair Practice, with proposed amendments to Sections 26 and 29 now pending SEC approval, and with Rule 350(a) of the New York Stock Exchange (''NYSE''). The amendment to the Rule would provide regulatory consistency and simplify compliance for member firms that are also members of the NYSE.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[1] which require that the rules of the association be designed to prevent fraudulent and manipulative acts and promote just and equitable principles of trade in that the proposed rule change allows for an increase in the dollar limit to a level that is still reasonably de minimis and provides for regulatory consistency with other rules of the NASD and the NYSE.

(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

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 Security, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

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[1] 15 U.S.C. 78*o-3*.

the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 8, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12258 Filed 5–17–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35710; File No. SR–Phlx–95–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Extension of Market Marker Margin Treatment to Certain Market Marker Orders Entered From Off the Trading Floor

May 12, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 1995, Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange subsequently filed Amendment No. 1 on April 3, 1995.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b–4 of the Act, proposes to amend Phlx Rule 1014, Commentary .01, to extend market maker margin treatment to opening orders entered by Phlx Registered Options Traders (''ROTs'') from off the Exchange floor, provided that the greater of 1,000 contracts or 80% of ROT's total transactions on the Exchange in a calendar quarter are executed in person, and not through the use of orders. Phlx ROTs would also be required to execute at least 75% of their quarterly contract volume in assigned options.[4] In addition, the proposal requires that all off-floor orders for which an ROT receives market maker treatment be consistent with such ROT's duty to maintain fair and orderly markets, and, in general, be effected for the purposes of hedging, reducing risk of, or rebalancing open positions of the ROT.

Corresponding amendments to five Floor Procedure Advices (''Advices''), which are administered pursuant to the Exchange's minor rule violation enforcement and reporting plan,[5] are also proposed: B–3, Trading Requirements; B–4, Phlx ROTs Entering Orders from On-Floor and Off-Floor for Execution of the Exchange; B–8, Use of Floor Brokers; B–12, Phlx ROTs and Specialist Entering Orders for Execution on Other Exchanges in Multiply Traded Options; and C–3, Handling Orders of Phlx ROTs and Other Registered Options Market Makers.

First, a new paragraph (b) to Advice B–3, with a separate fine schedule for violations, would contain the heightened trading requirement to receive limited market maker margin treatment for off-floor orders. Violations of Advice B–3(b) would not be subject to a minor rule plan citation and fine, but would be reviewed directly by the Exchange's Business Conduct Committee pursuant to Phlx Rule 960 governing disciplinary proceedings.

In addition, an exception from the general prohibition against placing off-floor orders in market maker accounts would be added to Advice B–4 to permit the proposed treatment for off-floor orders. In order to incorporate this proposal into the Floor Procedure Advice handbook, Advice B–4 would generally parallel the proposed provision in Commentary .01. In addition, Advice B–4 would require an ROT to disclose to a Floor Broker, among other things, that he is entering an off-floor order for his market maker account. Entering an off-floor order in violation of the proposed new paragraph in Advice B–4 would be subject to full disciplinary proceedings and reviewed by the Exchange's Business Conduct Committee.

Advice B–8 is proposed to be amended by limiting its application to the use of floor brokers while an ROT is on the trading floor. Otherwise, an ROT entering an order from off-floor could not comply with the requirement to initial the order ticket.

Advice B–12 governs Phlx traders entering orders in multiply traded options onto another exchange, currently requiring such orders to be entered while the trader is on the Phlx floor. Because off-floor orders for a market maker account will become permissible, Advice B–12 is proposed to be amended to permit the entry of off-floor orders for execution on another exchange in multiply traded options. Such orders, entered pursuant to Rule 1014, Commentary .01, must otherwise comply with the requirements of Advice B–12, including ''clearing the Phlx crowd.''

Lastly, Advice C–3 would be amended to require Floor Brokers to mark an order ticket with the letter ''P'' if an ROT indicates that an off-floor order is to be entered into his market maker account. Fines for violations of Advice C–3 would be administered pursuant to the Exchange's minor rule plan. This proposal would apply to ROTs on both the options floor (equity options and index options) as well as the foreign currency options floor. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, 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

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange proposes to require Phlx ROTs to execute at least 75% of their quarterly trades in-assigned options for purposes of receiving market maker margin treatment for off-floor orders. The Exchange originally proposed to require an ROT to trade at least 50% of his quarterly contract volume in-assigned options. In addition, Amendment No. 1 states that Phlx proposes to delete the fine schedules under the minor rule plan originally proposed to address violations of the heightened trading requirements, because violations of this program are to be reviewed directly by the Business Conduct Committee and are not to be treated as minor rule plan violations. Finally, Phlx proposes to clarify that the phrase ''may exempt one or more classes of options from this calculation'' in Commentary .01 to Phlx Rule 1014, is intended to mean that certain options may not be eligible for off-floor market maker treatment, consistent with the approved provisions of the other exchanges. *See* Letter from Gerald O'Connell, First Vice President, Phlx, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Market Regulation''), Commission , dated March 29, 1995 (''Amendment No. 1'').

[4] *See* Amendment No. 1, *supra* note 3.

[5] The Phlx's minor rule violation enforcement and reporting plan (''minor rule plan''), codified in Phlx Rule 970, contains floor procedure advices with accompanying fine schedules. Rule 19d–1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 19d–1(c)(1) requires prompt filing with the Commission of any final disciplinary actions. However, minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate reporting. Although the Exchange is proposing to amend several advices, only Advice C–3 will contain a minor rule plan fine; hence, the Exchange hereby proposes to amend its minor rule plan by incorporating the proposed changes to Advice C–3.

the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (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

Generally, a trade for the account of a specialist or ROT receives market maker, or good faith, margin,[6] as well as favorable capital treatment,[7] due to the affirmative and negative market making obligations[8] imposed on such floor traders by Exchange and Commission rules. Further, Rule 1014, Commentary .01 states that ROTs are considered ''specialists'' for the purposes of the Act and the rules thereunder, which includes capital and margin rules, respecting option transactions initiated and effected by the ROT on the floor in the capacity of an ROT. Accordingly, transactions initiated on-floor by Phlx ROTs receive this favorable margin treatment. Off-floor opening[9] market maker transactions currently may not qualify for favorable margin treatment under Exchange rules, even if such orders are entered to adjust or hedge the risk of an ROT's positions resulting from on-floor market making activity.

The purpose of the proposed rule change is to extend market maker margin treatment to certain off-floor orders in all Phlx options. A new provision in Rule 1014, Commentary .01 is required, as well as amendments to various advices impacted by the proposal.

The Exchange believes that because an ROT cannot effectively adjust his positions, or hedge and otherwise reduce the risk of his opening transactions, from off the Phlx trading floor without incurring a significant economic penalty, such ROTs must either be physically present on the Exchange floor or face significant risks of adverse market movements when they must necessarily be absent from the trading floor.[10] Because of these costs and risks, the Exchange believes that Phlx ROTs may be prevented from effectively discharging their market making obligations and may be exposed to unacceptable levels of risk.

Accordingly, the proposed rule change is intended to accommodate the occasional needs of ROTs to adjust or hedge positions in their market maker accounts at times when they are not physically present on the trading floor. The Phlx believes the proposed rule change does so without diluting the requirement that such ROT's trading activity must nevertheless fulfill their market making obligations, including contributing to the maintenance of a fair and orderly market on the Exchange.

Phlx Rule 1014, Commentary .03 and Floor Procedure Advice (''Advice'') B–3 currently require ROTs to effect at least 50% of their quarterly contract volume in assigned options. Further, ROTs are required to execute in person and not through the use of orders the greater of 1,000 contracts or 50% of their quarterly contract volume, pursuant to Advice B–3 and Rule 1014(b), Commentary .13. At this time, the Exchange is proposing to amend Rule 1014 to allow ROTs who meet a more stringent in-person, and in-assigned options requirement to receive market maker margin and capital treatment for opening off-floor orders. This proposal does not affect the above-referenced requirement that, notwithstanding an ROT's desire to qualify for favorable margin treatment for off-floor trading, an ROT remains obligated pursuant to Advice B–3 to trade (1) in-person, and not through the use of orders, the greater of 1,000 contracts or 50% of their total transactions each quarter, and (2) at least 50% of their quarterly contract volume in assigned options.

Under the proposal, Phlx ROTs would receive market maker margin treatment for orders entered from off-floor in limited circumstances. Such ROTs would be required to execute in person, and not through the use of orders, the greater of 1,000 contracts or 80% of such ROT's total transactions that quarter. In addition, such off-floor orders must be effected for the purpose of hedging, reducing risk of, rebalancing or liquidating open positions of the ROT. Phlx ROTs would also be required to execute at least 75% of his quarterly contract volume in assigned options.[11] The Exchange notes that ROTs who fail to comply with the proposed requirements in Rule 1014, Commentary .01, shall be subject to disciplinary proceedings under Phlx Rule 960.

In addition to the proposed amendment to Commentary .01 of Rule 1014, the Exchange proposes to amend five Phlx floor procedure advices to cover such off-floor market maker orders. First, new paragraph (b) of Advice B–3 would effectuate the proposed provisions of Commentary .01 by referencing the heightened trading requirement in order to receive favorable margin treatment for off-floor orders. Accordingly, entering an off-floor order for a market maker account without compliance with the ''1,000 contracts or 80%'' requirement shall result in a Rule 960 disciplinary proceeding, which is separate from any violation of Advice B–3(a), which is administered pursuant to the Exchange's minor rule plan.

Second, Advice B–4 is proposed to be amended to create an exception to the prohibition against entering off-floor orders into a market maker account. Generally, Advice B–4 would restate the provisions of Commentary .01 to Rule 1014 that an ROT who has executed the greater of 1,000 contracts or 80% of his total transactions in a calendar quarter in person may enter opening transactions from off the floor on limited occasions for his market maker account if such transactions are for the purpose of hedging, reducing risk of, rebalancing, or liquidating open positions.

Third, by amending the title of Advice B–8, the Phlx intends to limit its effect to situations where an ROT uses a Floor Broker while the ROT is on the Phlx Floor. Because ROTs cannot currently enter off-floor opening orders into a market maker account, the language of this advice presumes that the ROT is on the floor, and, hence, able to comply with the requirements of initialing the order ticket. Because this proposal would permit entering opening orders from off-floor and because an ROT who is off-floor cannot initial and time stamp a ticket, Advice B–8 would now expressly apply, as reflected in the new title, only to on-floor situations. Nevertheless, the requirement that an ROT state whether an order is opening or closing appears in Advice B–4, and the Floor Broker must time stamp the order pursuant to Advice C–2. Thus, off-floor orders should be appropriately designated and handled, despite the inapplicability of Advice B–8.

Fourth, Advice B–12 is proposed to be amended to clarify the margin treatment of orders sent to another exchange in a multiply traded option. Although such orders must currently be initiated from the Phlx floor and must clear the Phlx crowd, the proposed changes would permit off-floor orders to be sent to another exchange. Such orders must nevertheless clear the Phlx crowd. The purpose of this change is to treat orders in multiply traded options, whether

[6] Regulation T of the Federal Reserve Board, Section 220.12.

[7] SEC Rule 15c3–1(b)(1).

[8] *See e.g.*, Phlx Rule 1014 (a) and (c).

[9] Closing transactions do not give rise to issues of margin and capital treatment, because such positions merely reduce or eliminate existing positions.

[10] Certain off-floor orders may be considered on-floor orders. *see* Phlx Rule 1014, Commentary .08.

[11] *See* Amendment No. 1, *supra* note 3.

originating from on or off-floor, the same way for margin purposes, extending limited market maker treatment.

Lastly, Advice C–3 is proposed to be amended to incorporate this extension of specialist margin treatment into the advice enumerating Floor Broker responsibilities. Specifically, Floor Brokers would be required to mark floor tickets where an ROT has indicated that the order is for his market maker account with the letter ''P''. A fine for violations would be administered pursuant to the Exchange's minor rule plan. The Exchange believes that this should assist its surveillance efforts respecting market maker margin for off-floor orders.

The Phlx believes that the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. Specifically, the Phlx believes that the proposal should increase the extent to which ROT trades contribute to liquidity and to the maintenance of the fair and orderly market on the Exchange by providing for a greater degree of in-person trading by ROTs and by enabling such ROTs to better manage the risk of their market making activities. Likewise, the Phlx believes that the corresponding amendments to Phlx advices are intended to incorporate specialist margin treatment for off-floor orders into the provisions governing trading requirements, ROTs entering orders, and Floor Broker responsibilities, consistent with Section 6(b)(5).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

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 Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–95–14 and should be submitted by June 8, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

[FR Doc. 95–12259 Filed 5–17–95; 8:45 am]

BILLING CODE 8010–01–M

[12] 17 CFR 200.30–3(a)(12).

[File No. 1–11254]

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Vermont Pure Holdings, Ltd., Common Stock, $.001 Par Value)

May 12, 1995.

Vermont Pure Holdings, Ltd. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'').

The reasons alleged in the application for withdrawing this Security from listing and registration on the Boston Stock Exchange, Inc. (''BSE'').

The reasons alleged in the application for withdrawing this Security from listing and registration include the following:

According to the Company, the Company originally decided to list the Security on the BSE in connection with the initial public offering by the Company of the Security. The decision to list on the BSE at that time was based on the Company's desire to expedite the formation of an active public market for the Security. However, the Board of Directors has determined that the Company should now withdraw its Security from listing on the BSE. This decision is based on the limited and sporadic trading activity of the Security on the BSE since the date the Security was first listed. The Company's primary trading market has been and continues to be the Nasdaq SmallCap Market. The Company believes that the benefits of remaining listed on the BSE do not outweigh the costs involved in maintaining such listing, since the Nasdaq SmallCap Market represents the primary trading market for the Security.

Any interested person may, on or before June 5, 1995 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–12187 Filed 5–17–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2209]

United States International Telecommunications Advisory Committee; Standardization Sector (ITAC–T) Study Group; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee Standardization Sector (ITAC–T) Study Group (formerly the USNC) will meet on June 6, 1995, 9:30 a.m. to 3 p.m., room 1207 at the U.S.

Department of State, 2201 C Street, N.W., Washington, D.C. 20520.

This meeting of ITAC–T Study Group will include the following agenda items:

1. Report of Utlaut's ad hoc group on Consortia communication with ITU–T Study Groups;
2. Ad Hoc group report for TSAG preparations;
3. Report of Fishman's TSAG correspondence group; and
4. Update of U.S. guidelines for preparatory process.

All of the issues relate to the upcoming 18–22 September 1995 Telecommunications Standardization Advisory Group Meeting.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. If you are not presently named on the mailing list of the Telecommunications Standardization Sector Study Group, and wish to attend please call 202–647–0201 not later than 5 days before the scheduled meetings. Enter from the ''C'' Street Main Lobby. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security).

Dated: May 10, 1995.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunication Standardization.

[FR Doc. 95–12237 Filed 5–17–95; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–042]

Commercial Fishing Industry Vessel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the Commercial Fishing Industry Vessel Advisory Committee. The Committee acts in an advisory capacity to the Secretary of Transportation and the Commandant of the Coast Guard on matters related to the safety of commercial fishing industry vessels.

DATES: Applications should be received no later than July 31, 1995.

ADDRESSES: Persons interested in applying should request an application from Commandant (G–MVI–4), Room 1405, U.S. Coast Guard Headquarters, 2100 Second St., S.W., Washington, D.C. 20593–0001.

FOR FURTHER INFORMATION CONTACT: LCDR Mark D. Bobal, Executive Director, Commercial Fishing Industry Vessel Advisory Committee, (202) 267–2307 or fax (202) 267–1069.

SUPPLEMENTARY INFORMATION: As required by the Commercial Fishing Industry Vessel Safety Act of 1988, the Coast Guard established the Commercial Fishing Industry Vessel Advisory Committee (Committee) to provide advice to the Coast Guard on issues related to the safety of commercial fishing vessels regulated under chapter 45 of Title 46, United States Code which includes uninspected fishing vessels, fish processing vessels or fish tender vessels. The Committee consists of 17 members as follows: Ten members from the commercial fishing industry who reflect a regional and representational balance and have experience in the operation of vessels to which chapter 45 of Title 46, United States Code applies, or as a crew member or processing line worker on an uninspected fish processing vessel; one member representing naval architects or marine surveyors; one member representing manufacturers of equipment for vessels to which chapter 45 applies; one member representing education or training professionals related to fishing vessel, fish processing vessel, or fish tender vessel safety, or professional qualifications; one member representing underwriters that insure vessels to which chapter 45 applies; and three members representing the general public, including whenever possible, an independent expert or consultant in maritime safety and a member of a national organization composed of persons representing owners of vessels to which chapter 45 applies and persons representing the marine insurance industry.

Applications will be considered for five expiring terms in the following categories: (a) Commercial Fishing Industry (three positions); (b) Equipment Manufacturers (one position); and (c) General Public (one position). The membership term is three years. A limited portion of the membership may serve consecutive terms.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. The members of the Committee serve without compensation from the Federal Government, although travel reimbursement and per diem are provided. The Committee normally meets in different seaport cities nationwide, with subcommittee meetings for specific issues on an as-required basis.

Persons selected as ''general public'' members are required to complete a Confidential Financial Disclosure Report, SF 450, on an annual basis. The purpose of the report is to determine compliance with conflict of interest laws. This report will not be disclosed to any requesting person unless release is authorized by law, such as in response to a subpoena filed in an administrative or court proceeding.

Dated: May 10, 1995.

G.N. Naccara,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–12286 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD 95–038]

Towing Safety Advisory Committee; Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the Towing Safety Advisory Committee (TSAC).

DATES: Completed applications and resumes must be received by July 14, 1995. Application forms may be obtained by contacting the Assistant Executive Director at the address below.

ADDRESSES: To request an application either call (202) 267–2997 and give your name and mailing address or write to Commandant (G–MTH–4), U.S. Coast Guard, 2100 Second Street, SW., Room 1304 Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: LTJG Patrick J. DeShon, Assistant Executive Director, TSAC, Commandant (G–MTH–4), U.S. Coast Guard, 2100 Second Street, SW., Room 1304, Washington, DC 20593–0001, (202) 267–2997.

SUPPLEMENTARY INFORMATION: This Committee is a 16 member Federal Advisory Committee that advises the Secretary of Transportation on matters related to shallow-draft inland and coastal waterway navigation and towing safety. The Committee will meet at least twice a year in Washington, DC or another location selected by the U.S. Coast Guard.

The applications will be considered for nine expiring terms as follows: Three

members from the barge and towing industry, reflecting a geographical balance; one member from the offshore mineral and oil supply vessel industry; one member from port districts, authorities or terminal operators; one member from maritime labor; one member from shipping; and two members from the general public.

Those persons applying for a position representing the general public will be required to complete a Confidential Financial Disclosure Report (CFDR) for identification of existing financial conflicts and will not be considered without a CFDR on file. Applicants to the public positions should identify themselves when requesting applications to ensure that a CFDR is forwarded with the other application materials. The completed report must be submitted with their applications and resubmitted each year thereafter if appointed.

To achieve the balance of membership required by the Federal Advisory Committee Act, the U.S. Coast Guard is especially interested in receiving applications from minorities, and women.

Those persons who have submitted previous applications must reapply as no applications received prior to this solicitation will be considered.

Dated: May 10, 1995.

G.N. Naccara,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–12287 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement: City of Kelso, Washington

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 bridge replacement project in Kelso, Washington.

FOR FURTHER INFORMATION CONTACT: Gene Fong, Division Administrator, Federal Highway Administration, 711 South Capitol Way, Suite 501, Olympia, WA 98501, telephone: (360) 753–9413; or Gerald Smith, Regional Administrator, Southwest Region, Washington State Department of Transportation, 4200 Main Street, P.O. Box 1709, Vancouver, WA 98668, Telephone (360) 905–2001; or Bob Gregory, Public Works Director, City of Kelso, 312 Allen Street, P.O. Box A, Kelso, WA 98626, telephone (360) 423–6590.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation and the City of Kelso, will prepare an environmental impact statement (EIS) on a proposal to replace the structurally deficient Allen Street Bridge and improve the Allen Street corridor between SR 5 on the east and Cowlitz Way/SR 4 on the west. The corridor serves the Kelso-Longview community in Cowlitz County.

The project will consist of the replacement of the existing bridge with one 4-lane bridge or two 2-lane bridges, as necessary to satisfy the projected demand and to address existing and anticipated traffic circulation problems. The approach roadways will be widened, if necessary, to accommodate the projected traffic. The bridge and the approaches in the vicinity of the bridge will be raised to separate provide grades separation at the railroad tracks.

This project is considered necessary to increase capacity, improve traffic safety, and address structural and geometric inadequacies of the existing bridge. The Allen Street Bridge now carries up to 25,000 vehicles per day, which is above the usual capacity of a two-lane bridge. It is projected to carry 31,000 vehicles per day in 2015, the design year. It currently performs at a Level of Service (LOS) F during the afternoon peak hour; It would perform at an LOS F, with average speed decreasing to 10 mph in 2015. Just east of the bridge, Allen Street crosses the Burlington Northern Railroad tracks. The high traffic volumes, combined with frequent trains through the area creates the potential for severe accidents at the railroad crossing. Also, the accident rate (3.42 accidents/million vehicle miles) in this section of road is more than double the corresponding rate for State highways in southwest Washington. The bridge is only 24 feet in width with two 12-foot lanes and no shoulders and has a weight limit of 10 tons, which does not meet the standards for this type of facility and traffic conditions.

Alterntives currently under consideration include a No Build alternative, and two build alternatives that would replace the existing bridge and span the railroad tracks. The build alternatives include (1) A one-way couplet system with a two-lane eastbound bridge along the Catline/Vine Street corridor and a two-lane westbound bridge along the Main/Allen Street corridor: (2) A single four-lane bridge with two lanes each direction along the Main/Allen Street corridor. Both build alternatives propose roadway improvements at both of the bridge(s) necessary to provide lane continuity with the new structures.

The following areas of environmental and socio-economic concern have been identified and will be addressed in the environmental document: water quality, air quality, highway noise, visual quality, historic properties, parklands and recreational facilities, land use, anadromous fish species, relocations, economic development, and access to businesses and to a multi-modal terminal. Other issues identified during the scoping and public involvement processes will also be addressed.

Announcements describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. These will also be sent to Indian Tribes, private organizations, and citizens who are known to have interest in this proposal. A scoping meeting will be held in Kelso in late spring of 1995. In addition, other public meetings will be held prior to the release of the Draft EIS on the project. In addition, a public hearing will be held after the release of the Draft EIS to receive public and agency comments on the EIS. Public notice will be given of the time and place of these future meetings and the hearing. The Draft EIS will be available for public and agency review prior to the public hearing.

It is important that the full range of issues related to this proposed action be addressed and that all significant issues be identified. To ensure this, 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 and phone number 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: May 8, 1995.

José M. Miranda,

Environmental Program Manager, Olympia, Washington.

[FR Doc. 95–12238 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–22–M

[FHWA Docket No. 95–15]

National Scenic Byways Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of FHWA interim policy.

SUMMARY: In response to the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) mandate to establish a national scenic byways program, the FHWA announces its interim policy for the National Scenic Byways Program. This interim policy sets forth the criteria for the designation of roads as National Scenic Byways or All-American Roads based upon their scenic, historic, recreational, cultural, archeological, and/or natural intrinsic qualities.

DATES: Comments must be received on or before July 17, 1995.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 95–15, Federal Highway Administration Room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene Johnson, Intermodal Division, Office of Environment and Planning, HEP–50, (202) 366–2071; or Mr. Robert Black, Attorney, Office of Chief Counsel, HCC–31, (202) 366–1359. The address is Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Beginning as early as 1966, the FHWA has participated in several studies relating to establishing national scenic byways programs. The most recent study was completed in 1991 and was conducted in response to a request in the 1990 Department of Transportation Appropriations Act. This study included recommendations for establishing a national scenic byways program, including recommended techniques for maintaining and enhancing the scenic, recreational, and historic qualities associated with each byway. The ISTEA incorporated many of the recommendations from this study and called for the establishment of a national scenic byways program. Section 1047 of the ISTEA, Pub. L. 102–240, 105 Stat. 1914, set up an advisory committee to assist the Secretary of Transportation in establishing a national scenic byways program. The advisory committee was composed of seventeen members: the designee of the Administrator of the FHWA; appointees from the U. S. Forest Service, the National Park Service, the Bureau of Land Management, the Bureau of Indian Affairs, and the U.S. Travel and Tourism Administration of the Department of Commerce; and individuals representing the interests of the recreational users of scenic byways, conservationists, the tourism industry, historic preservationists, highway users, State and local highway and transportation officials, the motoring public, scenic preservationists, the outdoor advertising industry, and the planning professions. The advisory committee was charged with developing minimum criteria for designating highways as scenic byways or all-American roads for purposes of a national scenic byways system. After meeting four times, the advisory committee produced a report that made recommendations on all the facets of a national scenic byway program. The National Scenic Byway Program outlined in this notice follows those recommendations.

The FHWA has awarded grants to States for scenic byway projects under the interim scenic byways program established by ISTEA. The grant funds for the interim program ran out in fiscal year 1994. This notice specifies the type of projects eligible for funding and lists the funding priority for providing grants to the States under the National Scenic Byways Program.

Through this notice, the FHWA is establishing the interim policy for the National Scenic Byways Program. This interim policy sets forth the criteria for the designation of roads as National Scenic Byways or All-American Roads based upon their scenic, historic, recreational, cultural, archeological, and/or natural intrinsic qualities. To be designated as a National Scenic Byway, a road must significantly meet criteria for at least one of the above six intrinsic qualities. For the All-American Roads designation, criteria must be met for multiple intrinsic qualities. Anyone may nominate a road for National Scenic Byway or All-American Road status, but the nomination must be submitted through a State's identified scenic byway agency and include a corridor management plan designed to protect the unique qualities of a scenic byway. The FHWA solicits comments on any part of the policy.

The National Scenic Byways Policy is as follows:

1. Applicability

The policy and procedures of this document apply to any State or Federal agency electing to participate in the National Scenic Byways Program by seeking to have a road or highway designated as a National Scenic Byway or an All-American Road and for any State seeking funds for eligible scenic byways projects. Participation in the national program shall be entirely voluntary.

2. Definitions

a. *Corridor* means the road or highway right-of-way and the adjacent area that is visible from and extending along the highway. The distance the corridor extends from the highway could vary with the different intrinsic qualities.

b. *Corridor Management Plan* means a written document that specifies the actions, procedures, controls, operational practices, and administrative strategies to maintain the scenic, historic, recreational, cultural, archeological, and natural qualities of the scenic byway.

c. *Federal Agency* means the U.S. Forest Service, Bureau of Land Management, National Park Service, and the Bureau of Indian Affairs, and their scenic byways programs.

d. *Federal Agency Scenic Byway* means a road or highway located on lands under Federal ownership which has been officially designated by the responsible Federal agency as a scenic byway for its scenic, historic, recreational, cultural, archeological, or natural qualities.

e. *Intrinsic Quality* means scenic, historic, recreational, cultural, archeological, or natural features that are considered representative, unique, irreplaceable, or distinctly characteristic of an area.

f. *Local Commitment* means assurance provided by communities along the scenic byway that they will undertake actions, such as zoning and other protective measures, to preserve the scenic, historic, recreational, cultural, archeological, and natural integrity of the scenic byway and the adjacent area as identified in the corridor management plan.

g. *Regional Significance* means characteristics that are representative of a geographic area encompassing two or more States.

h. *Scenic Byways Agency* means the Board, Commission, Bureau, Department, Office, etc., that has the responsibility for administering the State's scenic byways program activities. Unless otherwise designated, FHWA will assume that the State Scenic Byways Agency is the State Department of Transportation or State highway agency as recognized in the

administration of title 23, United States Code.

i. *Scenic Byway* means a public road having special scenic, historic, recreational, cultural, archeological, and/or natural qualities that have been recognized as such through legislation or some other official declaration. The terms ''road'' and ''highway'' are synonymous. They are not meant to define higher or lower functional classifications or wider or narrower cross-sections. Moreover, the terms State Scenic Byway, National Scenic Byway, or All-American Road refer not only to the road or highway itself but also to the corridor through which it passes.

j. *State Scenic Byway* means a road or highway under State, Federal, or local ownership that has been designated by the State through legislation or some other official declaration for its scenic, historic, recreational, cultural, archeological, or natural qualities. An Official Declaration is an action taken by a Governor or that of an individual, board, committee, or political subdivision acting with granted authority on behalf of the State.

3. Requirements

a. Any highway or road submitted for designation under the National Scenic Byways Program by State or Federal agencies should be designated as a State scenic byway. However, roads that meet all criteria and requirements for National designation but not State or Federal agencies' designation criteria may be considered for national designation on a case-by-case basis. Any road nominated for the National Scenic Byway or All-American Road designation will be considered to be a designated State scenic byway.

b. A road or highway must safely and conveniently accommodate two-wheel-drive automobiles with standard clearances to be considered for designation as a National Scenic Byway or an All-American Road.

c. Roads or highways considered for National Scenic Byways and All-American Roads designations should accommodate, wherever feasible, bicycle and pedestrian travel.

d. To be considered for the All-American Roads designation, roads or highways should safely accommodate conventional tour buses.

e. A scenic byways corridor management plan, prepared in accordance with Paragraph 9 of this policy, must be submitted in order for any road or highway to be considered for the National Scenic Byway of All-American Road designation.

f. For All-American Roads, there must be a demonstration of the extent to which enforcement mechanisms are being implemented by communities along the highway in accordance with the corridor management plan.

g. Before a road or highway is nominated for designation as an All-American Road, user facilities (e.g. overlooks, food services, etc.) should be available for travelers.

h. An important criteria for both National Scenic Byways and All-American Roads is continuity. Neither should have too many gaps but rather should be as continuous as possible and should minimize intrusions on the visitor's experience.

4. Nomination Process

a. A nomination process will be used as the means by which roads or highways may be recognized for their intrinsic qualities and designated as National Scenic Byways or as All-American Roads. All nominations for National Scenic Byways or All-American Roads must be submitted by the State Scenic Byways Agency (SSBA) to the FHWA. The States will receive written notification of the time period for submitting nominations for designation consideration.

b. Nominations may originate from any local government, including Indian tribal governments, or any private group or individual.

c. Nominations to the program of byways on public lands may originate from the U.S. Forest Service, the National Park Service, the Bureau of Land Management, or the Bureau of Indian Affairs, but must also come through the SSBA, with the State's concurrence.

d. A two-step process may be used for nominations originating with local sponsors to help alleviate unnecessary documentation, time, and expense.

The first step is for local sponsors to submit to the SSBA the documentation necessary for the State to determine if the scenic byway possesses intrinsic qualities sufficient to merit its nomination as a National Scenic Byway or an All-American Road.

The second step is for the remainder of the nomination package to be submitted once the State has determined that the byway is appropriate for nomination.

e. A corridor management plan, prepared in accordance with Paragraph 9 of this policy, must be included as part of all nominations made to the FHWA for National Scenic Byways or All-American Roads designations. The corridor management plan is not required for the preliminary intrinsic quality evaluation identified above in paragraph 4d.

f. A single application may be used by a State to seek the designation of a nominated highway as either a National Scenic Byway, an All-American Road, or as both. A highway nominated for, but failing to meet, the requirements for All-American Road designation will automatically be considered for designation as a National Scenic Byway unless the State requests otherwise.

5. Designation Process

a. Designations of National Scenic Byways and All-American Roads shall be made by the Secretary of Transportation after consultation with the Departments of the Interior, Agriculture, and Commerce, as appropriate.

b. A panel consisting of six to eight experts, designated by FHWA and reflecting a cross-section of the scenic byways community of interests (including experts on intrinsic qualities, tourism, and economic development), may assist in the review of highways nominated as National Scenic Byways and All-American Roads.

6. Designation Criteria

a. National Scenic Byways Criteria

To be designated as a National Scenic Byway, a road or highway must significantly meet at least one of the six scenic byways intrinsic qualities discussed below.

The characteristics associated with the intrinsic qualities are those that are distinct and most representative of the region. The significance of the features contributing to the distinctive characteristics of the corridor's intrinsic quality are recognized throughout the region.

b. All-American Road Criteria

In order to be designated as an All-American Road, the road or highway must meet the criteria for at least two of the intrinsic qualities. The road or highway must also be considered a destination unto itself. To be recognized as such, it must provide an exceptional traveling experience that is so recognized by travelers that they would make a drive along the highway a primary reason for their trip.

The characteristics associated with the intrinsic qualities are those which best represent the nation and which may contain one-of-a-kind features that do not exist elsewhere. The significance of the features contributing to the distinctive characteristics of the corridor's intrinsic quality are recognized nationally.

7. Intrinsic Qualities

The six intrinsic qualities are:

a. *Scenic Quality* is the heightened visual experience derived from the view of natural and manmade elements of the visual environment of the scenic byway corridor. The characteristics of the landscape are strikingly distinct and offer a pleasing and most memorable visual experience. All elements of the landscape—landform, water, vegetation, and manmade development—contribute to the quality of the corridor's visual environment. Everything present is in harmony and shares in the intrinsic qualities.

b. *Natural Quality* applies to those features in the visual environment that are in a relatively undisturbed state. These features predate the arrival of human populations and may include geological formations, fossils, landform, water bodies, vegetation, and wildlife. There may be evidence of human activity, but the natural features reveal minimal disturbances.

c. *Historic Quality* encompasses legacies of the past that are distinctly associated with physical elements of the landscape, whether natural or manmade, that are of such historic significance that they educate the viewer and stir an appreciation for the past. The historic elements reflect the actions of people and may include buildings, settlement patterns, and other examples of human activity. Historic features can be inventoried, mapped, and interpreted. They possess integrity of location, design, setting, material, workmanship, feeling, and association.

d. *Cultural Quality* is evidence and expressions of the customs or traditions of a distinct group of people. Cultural features including, but not limited to, crafts, music, dance, rituals, festivals, speech, food, special events, vernacular architecture, etc., are currently practiced. The cultural qualities of the corridor could highlight one or more significant communities and/or ethnic traditions.

e. *Archeological Quality* involves those characteristics of the scenic byways corridor that are physical evidence of historic or prehistoric human life or activity that are visible and capable of being inventoried and interpreted. The scenic byway corridor's archeological interest, as identified through ruins, artifacts, structural remains, and other physical evidence have scientific significance that educate the viewer and stir an appreciation for the past.

f. *Recreational Quality* involves outdoor recreational activities directly association with and dependent upon the natural and cultural elements of the corridor's landscape. The recreational activities provide opportunities for active and passive recreational experiences. They include, but are not limited to, downhill skiing, rafting, boating, fishing, and hiking. Driving the road itself may qualify as a pleasurable recreational experience. The recreational activities may be seasonal, but the quality and importance of the recreational activities as seasonal operations must be well recognized.

8. De-Designation Process

a. The Secretary of Transportation may de-designate any roads or highways designated as National Scenic Byways or All-American Roads if they no longer possess the intrinsic qualities nor meet the criteria which supported their designation.

b. A road or highway will be considered for de-designation when it is determined that the local and/or State commitments described in a corridor management plan have not been met sufficiently to retain an adequate level of intrinsic quality to merit designation.

c. When a byway has been designated for more than one intrinsic quality, the diminishment of any one of the qualities could result in de-designation of the byway as a National Scenic Byway or All-American Road.

d. It shall be the State's responsibility to assure that the intrinsic qualities of the National Scenic Byways and All-American Roads are being properly maintained in accordance with the corridor management plan.

e. When it is determined that the intrinsic qualities of a National Scenic Byway or All-American Road have not been maintained sufficiently to retain its designation, the State and/or Federal agency will be notified of such finding and allowed 90 days for corrective actions before the Secretary may begin formal de-designation.

9. Corridor Management Plans

a. A corridor management plan, developed with community involvement, must be prepared for the scenic byway corridor proposed for national designation. It should provide for the conservation and enhancement of the byway's intrinsic qualities as well as the promotion of tourism and economic development. The plan should provide an effective management strategy to balance these concerns while providing for the users' enjoyment of the byway. The corridor management plan is very important to the designation process, as it provides an understanding of how a road or highway possesses characteristics vital for designation as a National Scenic Byway or an All-American Road. The corridor management plan must include at least the following:

(1) A map identifying the corridor boundaries and the location of intrinsic qualities and different land uses within the corridor.

(2) An assessment of such intrinsic qualities and of their context.

(3) A strategy for maintaining and enhancing those intrinsic qualities. The level of protection for different parts of a National Scenic Byway or All-American Road can vary, with the highest level of protection afforded those parts which most reflect their intrinsic values. All nationally recognized scenic byways should, however, be maintained with particularly high standards, not only for travelers' safety and comfort, but also for preserving the highest levels of visual integrity and attractiveness.

(4) A schedule and a listing of all agency, group, and individual responsibilities in the implementation of the corridor management plan, and a description of enforcement and review mechanisms, including a schedule for the continuing review of how well those responsibilities are being met.

(5) A strategy describing how existing development might be enhanced and new development might be accommodated while still preserving the intrinsic qualities of the corridor. This can be done through design review, and such land management techniques as zoning, easements, and economic incentives.

(6) A plan to assure on-going public participation in the implementation of corridor management objectives.

(7) A general review of the road's or highway's safety and accident record to identify any correctable faults in highway design, maintenance, or operation.

(8) A plan to accommodate commerce while maintaining a safe and efficient level of highway service, including convenient user facilities.

(9) A demonstration that intrusions on the visitor experience have been minimized to the extent feasible, and a plan for making improvements to enhance that experience.

(10) A demonstration of compliance with all existing local, State, and Federal laws on the control of outdoor advertising.

(11) A signage plan that demonstrates how the State will insure and make the number and placement of signs more supportive of the visitor experience.

(12) A narrative describing how the National Scenic Byway will be positioned for marketing.

(13) A discussion of design standards relating to any proposed modification of the roadway. This discussion should include an evaluation of how the proposed changes may affect on the intrinsic qualities of the byway corridor.

(14) A description of plans to interpret the significant resources of the scenic byway.

b. In addition to the information identified in Paragraph 9a above, corridor management plans for All-American Roads must include:

(1) A narrative on how the All-American Road would be promoted, interpreted, and marketed in order to attract travelers, especially those from other countries. The agencies responsible for these activities should be identified.

(2) A plan to encourage the accommodation of increased tourism, if this is projected. Some demonstration that the roadway, lodging and dining facilities, roadside rest areas, and other tourist necessities will be adequate for the number of visitors induced by the byway's designation as an All-American Road.

(3) A plan for addressing multi-lingual information needs.

Further, there must be a demonstration of the extent to which enforcement mechanisms are being implemented in accordance with the corridor management plan.

10. Funding

a. Funds are available to the States through a grant application process to undertake eligible projects, as identified below in Paragraph 10c, for the purpose of:

(1) Planning, designing, and developing State scenic byways programs, including the development of corridor management plans.

(2) Developing State and Federal agencies' designated scenic byways to make them eligible for designation as National Scenic Byways or All-American Roads.

(3) Enhancing or improving designated National Scenic Byways or All-American Roads.

b. The State highway agency (SHA) shall be responsible for the submission of grant requests to the FHWA. If the SHA is not the identified scenic byways agency, all grant requests must be forwarded from that agency to the SHA for submission to FHWA.

c. Eligible Projects

The following project activities are eligible for scenic byways grants:

(1) *Planning, design, and development of State scenic byway programs.*

This scenic byways activity would normally apply to those States that are about to establish or they are in the early development of their scenic byways programs. All related project activities must yield information and/or provide related work that would impact on the Statewide scenic byways program.

(2) *Making safety improvements to a highway designated as a scenic byway to the extent such improvements are necessary to accommodate increased traffic and changes in the types of vehicles using the highway, due to such designation.*

Safety improvements are restricted to the highway that has been designated as a scenic byway and must be the direct result of increased traffic and/or changes in the types of vehicles using the highway. The safety improvements are only considered eligible when they arise as a result of designation of the highway as a scenic byway. Any safety deficiencies that existed prior to designation of the highway as a scenic byway are not eligible for funding considerations.

(3) *Construction along the scenic byway of facilities for the use of pedestrians and bicyclists, rest areas, turnouts, highway shoulder improvements, passing lanes, overlooks, and interpretive facilities.*

All the related facilities in this category must be constructed within or immediately adjacent to the right-of-way of the scenic byway. The facilities must also be directly related to the scenic byway.

(4) *Improvements to the scenic byway that will enhance access to an area for the purpose of recreation, including water-related recreation.*

All eligible projects in this category must be construction alterations that are made to the scenic byway to enhance existing access to recreational areas. Improvements are generally confined to the right-of-way of the scenic byway. However, the acquisition of additional right-of-way along the byway is permitted when warranted to accommodate access improvements to the byway.

(5) *Protecting historical, archeological, and cultural resources in areas adjacent to the highways.*

Resource protection applies only to those properties that contribute to the qualities for which the highway has been designated as a scenic byway. The properties must be located directly adjacent to the scenic byway. Resource protection includes use restrictions that are in the form of easements. However, the purchase of the resource can be considered eligible only after it has been determined that all other protection measures are unsuccessful. Protection of a resource does not include rehabilitation or renovation of a property.

(6) *Developing and providing tourist information to the public, including interpretive information about the scenic byway.*

All information must be associated with the State's scenic byways. It may provide information relating to the State's total network of scenic byways or it may address a specific byway's intrinsic qualities and/or related user amenities. All interpretive information should familiarize the tourists with the qualities that are important to the highway's designation as a scenic byway. Tourist information can be in the form of signs, brochures, pamphlets, tapes, and maps. Product advertising is not permitted on tourist information that has been developed with grant funds received under the scenic byways program.

d. No grant shall be awarded for any otherwise eligible project that would not protect the scenic, historic, cultural, natural, and archeological integrity of the highway and adjacent area.

11. Scenic Byways and the Prohibition of Outdoor Advertising

As provided at 23 U.S.C. 131(s), if a State has a State scenic byway program, the State may not allow the erection of new signs not in conformance with 23 U.S.C. 131(c) along any highway on the Interstate System or Federal-aid primary system which before, on, or after December 18, 1991, has been designated as a scenic byway under the State's scenic byway program. This prohibition would also apply to Interstate System and Federal-aid primary system highways that are designated scenic byways under the National Scenic Byways Program and All-American Roads Program, whether or not they are designated as State scenic byways.

(Sec. 1047, Pub. L. 102–240, 105 Stat. 1914, 1948, 1996; 23 U.S.C. 131(s); 23 U.S.C. 315; 49 CFR 1.48)

Issued on: May 11, 1995.

Rodney E. Slater,

Administrator, Federal Highway Administration.

[FR Doc. 95–12211 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

May 12, 1995

The Department of Treasury has submitted the following public

information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Financial Management Service (FMS)

OMB Number: 1510–0055
Form Number: SF 5805
Type of Review: Extension
Title: Request for Funds
Description: Information is required to fund respondents who are recipients of Federal Grants and program benefits. The respondents consist of State and local government agencies, municipalities, universities, and health organizations. The information is used solely to direct requested funds to the respondent's accounts at its financial institutions.
Respondents: Federal Government, Business or other for-profit, State, Local or Tribal Governments
Estimated Number of Respondents: 160
Estimated Burden Hours Per Response: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 9,600 hours
Clearance Officer: Jacqueline R. Perry, (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–12246 Filed 5–17–95; 8:45 am]

BILLING CODE 4810–35–P

Public Information Collection Requirements Submitted to OMB for Review

May 11, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0042
Form Number: ATF F 7 (5310.12)
Type of Review: Extension
Title: Application for License, Under 18 U.S.C. Chapter 44, Firearms
Description: This form is used by the public when applying for a Federal firearms license for activities as a dealer, importer, manufacturer, or collector. The information requested on the form establishes eligibility for the license.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents: 35,000
Estimated Burden Hours Per Respondent: 1 hour, 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 43,750 hours

OMB Number: 1512–0043
Form Number: ATF F 8 (5310.11), Part II
Type of Review: Extension
Title: Application for Renewal of Firearms License
Description: This form is filed by the licensee desiring to renew a Federal firearms license beyond the expiration date. It is used to identify the applicant to locate the business premises, type of business conducted, and to determine the eligibility of the applicant.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents: 83,000
Estimated Burden Hours Per Respondent: 20 minutes
Frequency of Response: Other
Estimated Total Reporting Burden: 27,390 hours

OMB Number: 1512–0519
Form Number: ATF F 5300.34
Type of Review: Extension
Title: Questionnaire For Responsible Persons
Description: This form is used by the public when applying for a Federal firearms license as a dealer, importer, or manufacturer. The information requested on the form establishes eligibility for the license used. The form is also used when responsible persons are added to an existing license.
Respondents: Individuals or households
Estimated Number of Respondents: 30,000
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 15,000 hours
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland

Departmental Reports Management Officer.

[FR Doc. 95–12247 Filed 5–17–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

May 9, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0009
Form Number: CF 3495
Type of Review: Extension
Title: Application for Exportation Under Special Bond
Description: Customs Form 3495 is used by importers for articles which may be entered temporarily into the U.S. and are free of duty under bond and which are exported within one year from date of importation.
Respondents: Business or other for-profit
Estimated Number of Respondents: 500
Estimated Burden Hours Per Respondent: 8 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 2,000 hours
Clearance Officer: Laverne Williams, (202) 927–0229, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, N.W., Washington, DC 20229

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–12248 Filed 5–17–95; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

May 11, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0927
Form Number: IRS Form 8390
Type of Review: Revision
Title: Information Return for Determination of Life Insurance Company Earnings Rate Under Section 809
Description: Life insurance companies are required to provide data so the Secretary of the Treasury can compute the: (1) stock earnings rate of the 50 largest stock companies; and (2) average mutual earnings rate. These factors are used to compute the differential earnings rate which will determine the tax liability for mutual life insurance companies.
Respondents: Business or other for-profit
Estimated Number of Respondents/Recordkeepers: 150
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—56 hours, 41 minutes
Learning about the law or the form—3 hours, 28 minutes
Preparing and sending the form to the IRS—4 hours, 34 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 9,706 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building,Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–12249 Filed 5–17–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

May 11, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220. Special Request: In order to conduct the focus group study described below in a timely manner, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by May 24, 1995. To obtain a copy of this survey, please write to the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432
Project Number: PC:V 95–005–G
Type of Review: Revision
Title: Info/California Kiosks Focus Group Study
Description: The IRS currently has six (6) applications residing on kiosks in the state of California. The state effort is known as Info/California and will involve approximately 100 kiosks distributed around the state by the end of May, 1995. The IRS applications are currently information only; however, interactive applications are planned as well. Info/California is serving as a testbed for our research effort in this arena. Results from this project will be useful to guide our participation in the National Kiosk Network project (part of the National Performance Review).
Respondents: Individuals or households
Estimated Number of Respondents: 60
Estimated Burden Hours Per Respondent:
Interview—2 hours
Travel time—1 hour
Frequency of Response: Other
Estimated Total Reporting Burden: 210 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–12250 Filed 5–17–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

May 12, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0010
Form Number: IRS Form W–4
Type of Review: Extension
Title: Employee's Withholding Allowance Certificate
Description: Employees file this form to tell employers (1) the number of withholding allowances claimed, (2) dollar amount they want the withholding increased each pay period, and (3) if they are entitled to claim exemption from withholding. Employers use this information to figure the correct tax to withhold from the employee's wages.
Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government
Estimated Number of Respondents/Recordkeepers: 54,209,079
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—46 min.
Learning about the law or the form—10 min.
Preparing the form—69 min.
Frequency of Response: On occasion

Estimated Total Reporting/ Recordkeeping Burden: 112,754,884 hours

OMB Number: 1545–0051
Form Number: IRS Form 990–C
Type of Review: Extension
Title: Farmers' Cooperative Association Income Tax Return
Description: Form 990–C is used by farmers' cooperatives to report the tax imposed by section 1381. IRS uses the information to determine whether the tax is being properly reported.
Respondents: Business or other for-profit, Farms
Estimated Number of Respondents/ Recordkeepers: 5,600
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—77 hr., 15 min.
Learning about the law or the form—24 hr., 52 min.
Preparing the form—42 hr., 7 min.
Copying, assembling, and sending the form to the IRS—4 hr., 17 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 831,656 hours

OMB Number: 1545–0129
Form Number: IRS Form 1120–POL
Type of Review: Extension
Title: U.S. Income Tax Return for Certain Political Organizations
Description: Certain political organizations file Form 1120–POL to report the tax imposed by section 527. The form is used to designate a principal business campaign committee that is subject to a lower rate of tax under section 527(h). IRS uses Form 1120–POL to determine if the proper tax was paid.
Respondents: Not-for-profit institutions
Estimated Number of Respondents/ Recordkeepers: 6,527
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—15 hr., 32 min.
Learning about the law or the form—6 hr., 23 min.
Preparing the form—15 hr., 18 min.
Copy, assembling, and sending the form to the IRS—2 hr., 25 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 258,730 hours

OMB Number: 1545–0144
Form Number: IRS Form 2438
Type of Review: Extension
Title: Regulated Investment Company undistributed Capital Gains Tax Return
Description: Form 2438 is used by regulated investment companies to figure capital gains tax on undistributed capital gains designated under Internal Revenue Code (IRC) section 852(b)(3)(D). IRS uses this information to determine the correct tax.
Respondents: Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 100
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 hr., 39 min.
Learning about the law or the form—35 min.
Preparing and sending the form to the IRS—45 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 899 hours

OMB Number: 1545–0160
Form Number: IRS Form 3520–A
Type of Review: Extension
Title: Annual Return of Foreign Trust with U.S. Beneficiaries
Description: Section 6048(c) requires that foreign trusts with at least one U.S. beneficiary must file an annual information return on Form 3520–A. The form is used to report the income and deductions of the foreign trust. IRS uses Form 3520–A to determine if the U.S. owner of the trust has included the net income of the trust in its gross income.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 500
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—29 hr., 25 min.
Learning about the law or the form—53 min.
Preparing and sending the form to the IRS—1 hr., 25 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 15,860 hours

OMB Number: 1545–0187
Form Number: IRS Form 4835
Type of Review: Extension
Title: Farm Rental Income and Expenses
Description: This form is used by landowners (or sub-lessors) to report farm income based on crops or livestock produced by the tenant when the landowner (or sub-lessor) does not materially participate in the operation or management of the farm. This form is attached to Form 1040 and the data is used to determine whether the proper amount of rental income has been reported.
Respondents: Individuals or households, Farms
Estimated Number of Respondents/ Recordkeepers: 407,719
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hr., 57 min.
Learning about the law or the form—4 min.
Preparing the form—1 hr., 2 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 1,789,886 hours

OMB Number: 1545–0390
Form Number: IRS Form 5306
Type of Review: Extension
Title: Application for Approval of Prototype or Employer Sponsored Individual Retirement Account
Description: This application is used by employers who want to establish an individual retirement account trust to be used by their employees. The application is also used by persons who want to establish approved prototype individual retirement accounts or annuities. The data collected is used to determine if plans may be approved.
Respondents: Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 600
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—11 hr., 58 min.
Learning about the law or the form—18 min.
Preparing and sending the form to the IRS—30 min.
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 7,662 hours

OMB Number: 1545–0890
Form Number: IRS Form 1120–A
Type of Review: Extension
Title: U.S. Corporation Short-Form Income Tax Return
Description: Form 1120–A is used by small corporations, those with less than $500,000 of income and assets, to compute their taxable income and tax liability. The IRS uses Form 1120–A to determine whether corporations have correctly computed their tax liability.
Respondents: Business or other for-profit, Farms
Estimated Number of Respondents/ Recordkeepers: 285,777
Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending, the form to the IRS
1120	71 hours, 16 minutes	41 hours, 8 minutes	72 hours, 2 minutes	8 hours, 2 minutes.
1120–A	43 hours, 3 minutes	23 hours, 44 minutes	41 hours, 18 minutes	4 hours, 34 minutes.
Sched. D (1120)	6 hours, 56 minutes	3 hours, 31 minutes	5 hours, 39 minutes	0 hours, 32 minutes.
Sched. H (1120)	5 hours, 59 minutes	0 hours, 35 minutes	0 hours, 43 minutes	0 hours, 0 minutes.
Sched. PH (1120)	15 hours, 19 minutes	6 hours, 6 minutes	8 hours, 29 minutes	0 hours, 32 minutes.

Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 32,192,779 hours

OMB Number: 1545–0967
Form Number: IRS Form 8453–F
Type of Review: Extension
Title: U.S. Estate or Trust Income Tax Declaration and Signature for Electronic and Magnetic Media Filing
Description: This form is used to secure taxpayer signatures and declarations in conjunction with electronic and magnetic media filing of trust and fiduciary income tax returns. This form, together with the electronic and magnetic media transmission, will comprise the taxpayer's income tax return (1041).
Respondents: Individuals or households, Business of other for-profit
Estimated Number of Respondents/ Recordkeepers: 1,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 min.
Learning about the law or the form—4 min.
Preparing the form—18 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 810 hours

OMB Number: 1545–1033
Form Number: IRS Form 8453–E
Type of Review: Extension
Title: Employee Benefit Plan Declaration and Signature for Electronic/ Magnetic Media Filing
Description: This form will be used to secure taxpayer signatures and declarations in conjunction with the Electronic Filing of Forms 5500, 5500–C/R, and 5500EZ. These forms, together with the electronic transmission, will comprise the annual information returns.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 50,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 min.
Learning about the law or the form—5 min.
Preparing the form—22 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: Annually
Estimated Total Reporting Burden: 45,000 hours

OMB Number: 1545–1255
Regulation ID Number: INTL–0870–89 NPRM
Type of Review: Extension
Title: Earnings Stripping Under Section 163(j)
Description: Certain taxpayers are allowed to write off the fixed basis of the stock of an acquired corporation rather than use the adjusted basis of the assets of the acquired corporation.
Respondents: Business or other for-profit
Estimated Number of Respondents: 1
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: Annually
Estimated Total Reporting Burden: 1 hour

OMB Number: 1545–1424
Form Number: IRS Form 1099–C
Type of Review: Extension
Title: Cancellation of Debt
Description: Form 1099–C is used for reporting canceled debt, as required by section 6050P of the Internal Revenue Code. It is used to verify that debtors are correctly reporting their income.
Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government
Estimated Number of Respondents: 1,000,000
Estimated Burden Hours Per Respondent/Recordkeeper: 11 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 950,000 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 95–12251 Filed 5–17–95; 8:45 am]
BILLING CODE 4830–01–P

Internal Revenue Service

Tax on Certain Imported Substances (Acrylic Fiber (93% Acrylonitrile, 7% Vinyl Acetate)); Rejection of Petition

AGENCY: Internal Revenue Service (IRS), Treasury.
ACTION: Notice.

SUMMARY: This notice announces the rejection, under Notice 89–61, of a petition requesting that acrylic fiber (93% acrylonitrile, 7% vinyl acetate) be added to the list of taxable substances in section 4672(a)(3).

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On April 14, 1992, a Notice of Receipt of Petitions was published in the **Federal Register** (57 FR 12956) announcing the receipt of a petition submitted by Monsanto Company requesting that acrylic fiber (93% acrylonitrile, 7% vinyl acetate) be added to the list of taxable substances in section 4672(a)(3). Notice 89–61, 1989–1 CB 717, provides that the term *substance* excludes textile fibers and therefore acrylic fiber is not a substance for which a petition may be accepted. Accordingly, the petition is rejected.

Dale D. Goode,
Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).
[FR Doc. 95–12176 Filed 5–17–95; 8:45 am]
BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

College and University Affiliations Program (CUAP): Application Notice for Fiscal Year 1996

ACTION: Notice; Request for proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop a partnership with foreign institution(s) of higher education in the arts, humanities, and social sciences. Proposed projects must be eligible in terms of country(ies)/regions and academic disciplines or themes as described in the section entitled ''Guidelines'' below. Participating institutions exchange faculty and staff for a combination of teaching, lecturing, curriculum development, faculty development, collaborative research, and outreach for periods of one month or longer.

The program awards grants up to $120,000 for a three-year period to defray the cost of travel and per diem with an allowance for educational materials and project administration. Subject to the availability of funding, a minimum of two grants will be awarded for each of the six geographic regions described below (Africa; American Republics; East Asia and Pacific; East/Central Europe and the New Independent States; North Africa, Near East, and South Asia; and Western Europe). The award of grants for North American trilateral projects (described below) will be subject to the final program budget.

Overall grant making and funding 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-Hays Act.

Projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA Projects are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the College and University Affiliations Program and reference number E/ASU–96–01.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Thursday, November 9, 1995. Faxed documents will not be accepted, nor will documents postmarked on November 9, 1995, but received on a later date. It is the responsibility of each applicant to ensure compliance with the deadline.

Approximate program dates: Grants should begin on or about July 1, 1996.

Duration: July 1, 1996–June 30, 1999.

FOR FURTHER INFORMATION CONTACT: Office of Academic Programs; Advising, Teaching, and Specialized Programs Division; College and University Affiliations Program (CUAP), (E/ASU), Room 349, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, phone: (202) 619–5289, fax: (202) 401–1433, e-mail: affiliat@usia.gov, 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 Ms. Sue Borja on all inquiries and correspondence. Prospective applicants should read the complete **Federal Register** announcement before addressing inquiries to the College and University Affiliations Program staff or submitting their proposals. Once the RFP deadline has passed, the College and University Affiliations Program staff 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/ASU–96–01, Office of Grants Management, E/XE, Room 336, 301 4th St., SW., Washington, DC 20547.

Applicants must also submit to E/XE the ''Executive Summary'', ''Proposal'', and ''Budget'' sections (in no more than three files) of each proposal on a 3½'' diskette, formatted for DOS. This material should be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing processing time for grants to a minimum. Please also ensure that the disc is free of viruses.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a nonpolitical 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.

The Agency encourages proposals from eligible Historically Black Colleges and Universities, the members of the Hispanic Association of Colleges and Universities, and other institutions in the U.S. with at least 25% minority (Native American or Native Alaskan; Asian American or Pacific Islander; African American or Black Non-Hispanic; or Hispanic) student enrollment.

Overview

Objectives

The CUAP's *short-term goal* is to provide partial funding of linkages between U.S. and foreign institutions of higher education featuring faculty and staff exchanges for the purpose of teaching, lecturing, faculty development, curriculum development, collaborative research, and outreach.

The program's *long-term goals* are to:

(1) Advance mutual understanding between the U.S. and other countries or regions by supporting linkages which provide true reciprocity and significant mutual benefit.

(2) Diversify and expand international educational exchanges by:

- Ensuring a widespread geographic distribution of grants throughout the U.S. and abroad;
- Targeting academic disciplines and countries/regions which are not otherwise significantly represented in privately funded exchanges;
- Increasing the participation of two-year/community colleges, small four-year schools, and schools with significant (over 25%) minority student enrollments; and
- Complementing the individual lectureships, research and graduate study fellowships, and training programs available under Fulbright and other Agency auspices.

(3) Foster post-secondary institutional academic development by supporting linkages which promise to develop expertise and advance scholarship and teaching.

(4) Encourage U.S. government/private sector cooperation by supporting linkages which provide significant cost sharing from both the U.S. and foreign partner(s).

(5) Encourage long-term impact on all partner institutions by supporting linkages which promise sustainability beyond the three-year grant term.

(6) Further U.S. foreign policy objectives by supporting linkages which correspond to the Agency's geographic and thematic programming priorities.

Guidelines

The ideal and most competitive proposal is reciprocal with mutual goals and benefits for all partner institutions. While the goals and benefits should be mutual, they do not need to be identical for each partner institution or precisely balanced among partner institutions. One-way, technical assistance projects are not acceptable.

The ideal and most competitive proposal includes a series of year-round, faculty and staff exchange visits involving a well-reasoned combination of teaching, lecturing, faculty development, curriculum development, collaborative research, and outreach. These activities must address and support stated project goals, develop expertise, and advance scholarship and teaching. These activities may vary in emphasis within the project. For example, collaborative research may play a lesser role than curriculum development. Library support and development should be included if deemed critical to the success and sustainability of the project.

Exchange visits must be for a minimum of one month, with the exception of planning visits, which may be for a shorter period. A competitive proposal includes a minimum of one, quarter or semester-long visit each year from each of the U.S. and the foreign partner(s). Projects with multiple visits one quarter or semester in length will be more competitive. Visits by the U.S. and foreign project coordinators as well as other key exchanges should be identified and justified in the proposal narrative.

An ideal project builds upon previous contacts and interaction between the proposed partners, such as individual faculty or student exchanges, to help ensure a solid foundation for the linkage. Acceptable proposals must either establish new institutional affiliations or innovate existing partnerships and must not merely extend projects previously funded by the College and University Affiliations Program (formerly the ''University Affiliations Program''), other USIA or U.S. government linkage programs, or other, similar linkage programs. Proposals for feasibility studies to plan affiliations will not be considered.

An ideal and most competitive proposal provides significant institutional support and cost sharing from both the U.S. and foreign institution(s) and promises sustainability beyond the grant term.

The U.S. institution(s) should collaborate with the foreign partner(s) in planning and preparation. When planning the project, U.S. and foreign institutions are strongly encouraged to consult with the Cultural Affairs Officer (CAO) or Public Affairs Officer (PAO) at the appropriate U.S. Information Service (USIS) office at the U.S. Embassy or U.S. Consulate and with the Fulbright Commission, where one exists, in the appropriate country.

U.S. Partner and Participant Eligibility

In the U.S., participation in the program is open to accredited two- and four-year colleges and universities, including graduate schools. Applications from consortia of U.S. colleges and universities are eligible. The lead U.S. institution is responsible for submitting the application and each application from a consortium must be submitted by a member institution with stated authority to represent the consortium. Participants representing the U.S. institution who are traveling under USIA grant funds must be U.S. citizens.

Foreign Partner and Participant Eligibility

Overseas, participation is open to recognized, degree-granting institutions of post-secondary education and internationally recognized and highly regarded independent research institutes. Participants representing the foreign institutions must be citizens, nationals, or permanent residents of the country of the foreign partner and be qualified to hold a valid passport. In the case of a partnership with an institution in one of the New Independent States (NIS), foreign participants with citizenship in any of the NIS are eligible.

Ineligibility

A proposal will be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established herein and in the Solicitation Package;

(2) It is not received by the deadline;

(3) The length of the proposed project is less than three years;

(4) It is not submitted by the U.S. partner;

(5) One of the partner institutions is ineligible;

(6) The foreign geographic location is ineligible;

(7) The project involves a partnership with more than one country with the exception of trilateral projects under the APEC theme within East Asia and North America (U.S./Canada/Mexico) trilateral projects;

(8) The academic discipline/theme is ineligible.

(9) The budget exceeds $120,000 for the three-year project.

Eligible Countries/Regions and Academic Disciplines

The competition is limited to selected countries/regions and certain academic disciplines or themes which represent USIA's geographic and thematic priorities for the College and University Affiliations Program.

A proposal may include more than one eligible academic discipline or theme but should be justified in the proposal narrative. Please note: American studies includes the fields of American History and Civilization, Literature, Social Sciences, and Art.

The program invites proposals for bilateral projects only, involving the U.S. and one foreign country with the following exceptions:

- Proposals submitted for trilateral projects under the APEC (Asia Pacific Economic Cooperation) theme described below under the East Asia and Pacific section.
- Proposals submitted for trilateral projects linking U.S., Canadian, and Mexican institution(s) described below under the North American trilateral exchanges section.

Africa (AF)

Eligibility is open to the following sub-Saharan African countries: Cameroon, Ethiopia, Ghana, Malawi, Mozambique, Namibia, Senegal, South Africa, Zambia, Zimbabwe, and Uganda. Eligible academic disciplines are the social sciences and humanities and those disciplines which focus on the themes of rule of law and democratic institution building: law, political science/government/public policy/public administration, economics/business, journalism/communications, and education.

American Republics (AR)

Eligibility is open to the following countries and academic disciplines: Bolivia, El Salvador, Guatemala, Guyana, Haiti, Honduras, Nicaragua, Panama, Paraguay, Suriname, and Trinidad. Eligible academic disciplines are American studies, historic/cultural

heritage preservation, public administration, environmental studies, and sustainable development.

East Asia and Pacific (EA)

Eligibility is open to the following countries and academic disciplines: Hong Kong (American studies, area studies, humanities, and social sciences), Mongolia (American studies, political science, and social sciences); Papua New Guinea (education, environmental studies, and social sciences); and Thailand (American studies, economics, and sustainable development).

APEC (Asia Pacific Economic Cooperation) Exchanges

Trilateral projects linking an institution in the U.S. with institutions in two other APEC member economies in the East Asia and Pacific region are also eligible. The eligible APEC members are: Australia, Brunei, China, Hong Kong, Indonesia, Japan, Korea, Malaysia, New Zealand, Papua New Guinea, The Philippines, Singapore, Thailand, and Chinese Taipei.

Trilateral APEC proposals must address issues concerned with regional economic growth and development that envision a community of Asia Pacific economies. Proposals must have a regional emphasis that focuses on one or more of the following academic disciplines: economics (emphasis on international economics/trade and investment flows), business administration (emphasis on marketing and international business), and the environment (emphasis on sustained growth and the environment).

East/Central Europe and the New Independent States (EEN)

Eligibility is open to the following countries and academic disciplines: Romania (American studies, environmental studies, urban planning, civic education); Russia excluding institutions in Moscow and St. Petersburg (American studies, environmental studies, educational administration, public administration, library science); Ukraine (law, American studies, environmental studies, library science); Belarus (agricultural economics, environmental studies, educational administration, information sciences); Uzbekistan (public administration, environmental studies, agricultural economics); and Moldova (public administration, market economics, law).

North Africa, Near East, and South Asia (NEA)

Eligibility is open to the following countries/regions and academic disciplines: Jordan (Civic Administration), Syria (Social Sciences), Pakistan (American/area studies), and the West Bank/Gaza (public administration).

Western Europe (WEU)

Eligibility is limited to institutions located in the following geographically or culturally distinct regions in Western Europe: eastern Germany, Northern Ireland, the Basque region of Spain, northern Greece (Macedonia), and southwest Turkey (Izmir). Eligible academic disciplines are American studies and political science.

North America Trilateral Exchanges

Eligibility is open to trilateral projects linking institution(s) in the U.S. with institution(s) in Canada and Mexico. Eligible academic disciplines are the arts, humanities, comparative education and culture, business, trade, economics, and environmental studies.

Visa Requirements

Programs must comply with J–1 exchange visitor visa regulations. Please refer to program specific guidelines in the Solicitation Package (POGI) for further details.

Tax Requirements

Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Health Insurance Requirements

The grant recipient is responsible for enrolling exchange participants in a health and accident insurance plan that meets the basic requirements of the J–1 Visa. Insurance costs for only the foreign exchange participants are an allowable expense under this program. Please refer to program specific guidelines in the Solicitation Package (POGI) for further details.

Travel

The assistance award recipient must arrange all travel through their own travel agent.

Proposed Budget

No funding award will exceed a total of $120,000 for the three-year grant term. Support for direct administrative costs associated with grant activities will not exceed 20% of the total grant amount. All indirect costs are unallowable.

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, line-item budget for the entire project. There must be a summary budget as well as a breakdown, by year, reflecting both the administrative budget and the program budget. Please refer to the Solicitation Package (POGI) for complete formatting instructions rather than the generic budget format detailed in the Proposal Submission Instructions (PSI).

Allowable Costs

(1) International, economy-class airfare for participants. Travel must be on U.S. flag carriers wherever such routes exist.

(2) Domestic, economy-class travel to other academic institutions, libraries for research, and conferences while in the host country, which are directly related to the project.

(3) Per diem for lodging, meals, and incidentals.

(4) Educational materials, excluding computer hardware, not to exceed $12,000 for three years.

(5) One planning trip for one participant per partner institution.

(6) Health insurance for foreign participants only, while on project-related travel to the U.S. Please note: Health insurance is compulsory for all U.S. and foreign participants.

Unallowable Costs

(1) Expenses for student exchanges.

(2) Travel and per diem for dependents.

(3) Any costs for non-U.S. citizens or nationals from U.S. institutions, or citizens of other than the host country representing foreign institutions (except for the New Independent States as stated in the eligibility section above).

(4) Indirect costs.

Please refer to the Solicitation Package for complete budget guidelines.

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 guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to outside academic panels and Agency officers for advisory review. All eligible proposals will be reviewed by the Agency contracts office. proposals will also be reviewed by the appropriate regional

office, i.e., the USIA Office of African Affairs (AF), Office of American Republics Affairs (AR), Office of East Asian and Pacific Affairs (EA), Office of East European and Canadian Affairs (WEU) and the Office of North African, Near Eastern, and South Asian Affairs (NEA) and relevant USIA posts overseas, where appropriate. 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 contracts 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 proposal evaluation:

Academic Review Criteria

Proposals are reviewed by independent academic peer panels, with geographic and disciplinary expertise, which make comments and recommendations to the Agency based on the following criteria:

(1) Reasonable and feasible project objectives which are clearly related to the project plan and activities.

(2) Appropriate and feasible project plans and a detailed schedule which must include a well-reasoned combination of useful and appropriate teaching, lecturing, faculty development, curriculum development, collaborative research, and outreach. Activities should be clearly related to the project objectives, but not necessarily equally emphasized within the proposal.

(3) Inclusion of exchange visits of a length which will further the project goals and activities. Visits of one month or less are kept to a minimum (except planning visits); visits of one academic quarter or semester are strongly preferred.

(4) Promise of the development of expertise and the advancement of scholarship and teaching in the eligible academic disciplines or themes.

(5) Quality of exchange participants' academic credentials, skills, and experience relative to the goals and activities of the project plan (e.g., language skills).

(6) Institutional resources adequate and appropriate to achieve the project's goals. Relevant factors are: the match between partners; the financial and political stability of the institutions; and availability of a critical mass of faculty willing and able to participate.

(7) Evidence of strong institutional commitment by all participating institutions, including demonstration of relevant and successful prior interactions between institutions and an indication of collaborative proposal planning.

(8) Evidence of a strong commitment to internationalization by participating institutions (i.e., developing other international projects and/or building upon past international activities).

(9) An effective evaluation plan which defines and articulates a list of anticipated outcomes clearly related to the project goals and activities and procedures for on-going monitoring ad mid-term corrective action.

Agency Review Criteria

(1) Clear indication that the proposal seeks to establish a truly reciprocal and mutually beneficial institutional affiliation overseas or to innovate an existing affiliation. The benefits do not have to be the same for each partner or precisely balanced, but must be essentially mutual.

(2) Positive assessment of program need, feasibility, and potential impact by the relevant USIA post overseas.

(3) Academic quality, reflected in the academic review panel's comments and recommendations.

(4) Institutional and geographic diversity of the U.S. and overseas institutions (i.e., racial, ethnic, and gender composition of student enrollments; small underrepresented institutions, two-year/community colleges, and institutions in underrepresented geographic locations).

(5) The promise of sustainability and long-term impact which should be reflected in a plan for continued, non-U.S. government support and follow-on activities.

(6) Cost effectiveness (i.e., competitive cost sharing, sufficient number of participant exchanges relative to the project goals and plan).

(7) Institutional track record and ability. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

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 fully appropriated by Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about July 1, 1996. Awards will be subject to periodic reporting and evaluation requirements.

Dated: May 11, 1995.

Dell Pendergrast,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 95–12174 Filed 5–17–95; 8:45 am]

BILLING CODE 8230–01–M

Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on May 17 at the national Foreign Affairs Training Center for 10 a.m.–12:15 p.m. The Commission will be given an overview of the National Foreign Affairs Training Center by Acting Deputy Director Barry Wells. At 11 a.m. the Commission will hold a panel discussion on Public Diplomacy Training. The panelists are Mr. Berry Wells, Acting Deputy Director, National Foreign Affairs Training Center; Mr. Gregory Lagana, Director, Training Division, USIA; and Ms. Diana Weston, Chair, Task Force in Public Affairs Training, Department of State.

FOR FURTHER INFORMATION CONTACT: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting.

Dated: May 12, 1995.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 95–12173 Filed 5–17–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol.60, No. 96

Thursday, May 18, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, May 23, 1995 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEM TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted 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: Wednesday, May 24, 1995 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the Public.

ITEM TO BE DISCUSSED:

Future Meetings.

Correction and Approval of Minutes.

Presidential Primary and General Election Regulations: Draft Final Rules and Explanation and Justification (continued from meeting of May 17, 1995).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 95–12336 Filed 5–16–95; 11:05 am]

BILLING CODE 6715–01–M

Corrections

Federal Register
Vol. 60, No. 96
Thursday, May 18, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL MARITIME COMMISSION

Cancellation of Tariffs of Common Carriers by Water in the Foreign Commerce of the United States for Failure to File Anti-Rebate Certifications

Correction

In notice document 95–11833 beginning on page 25910 in the issue of Monday, May 15, 1995, the heading for Attachment B was inadvertently omitted and should appear as follows:

On page 25912, in the second column, from the bottom of the page the following heading should appear between the tenth and eleventh lines:

Attachment B: Common Carriers by Water and Licensed Ocean Freight Forwarders in the Foreign Commerce of the United States That Have Complied With Requirements of 46 CFR Part 582, Have Canceled Their Tariffs or Have had Their Freight Forwarder Licenses Revoked

BILLING CODE 1505–01–D

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Correction

In notice document 95–11914 appearing on page 25940 in the issue of Monday, May 15, 1995, in the first paragraph, in the next to last line, ''December 56, 1995,'' should read ''December 5, 1995,''.

BILLING CODE 1505–01–D

federal register

Thursday
May 18, 1995

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 1385 et al.
Developmental Disabilities Program; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1385, 1386, 1387 and 1388

RIN 0970–AB11

Developmental Disabilities Program

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families, HHS.

ACTION: Notice of proposed rulemaking

SUMMARY: This rule proposes clarifications and new requirements to implement changes made by the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1990 and the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994.

DATES: To ensure consideration comments must be submitted on or before July 17, 1995.

ADDRESSES: Please address comments to: Commissioner, Administration on Developmental Disabilities, Room 329–D (Regulations), Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

It would be helpful if agencies and organizations submitted copies in duplicate. Two weeks after the close of the comment period, comments and letters will be available for public inspection in Room 309–D, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201, Monday through Friday, 8 a.m. to 4 p.m., telephone (202) 690–5841.

FOR FURTHER INFORMATION CONTACT: John P. Doyle, Director, Administration and Planning Staff, Administration on Developmental Disabilities, Telephone: (202) 690–5504 (Voice), (202) 690–6415 (TDD). These are not toll-free numbers. This document will be made available in accessible formats upon request.

SUPPLEMENTARY INFORMATION:

I. Program History

In 1963, the Mental Retardation Facilities and Construction Act (Pub. L. 88–164) was enacted to plan activities and construct facilities to provide services to persons with mental retardation. This legislation was subsequently amended by the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (Pub. L. 91–517) which constituted the first Congressional effort to address the needs of a group of persons with disabilities designated as developmental disabilities. The 1970 Amendments defined developmental disabilities to include individuals with mental retardation, cerebral palsy, epilepsy and other neurological conditions closely related to mental retardation which originated prior to age 18 and constituted a substantial disability. It also created State Planning Councils to advocate for, plan, monitor and evaluate services for persons with developmental disabilities; and authorized grants for constructing, administering and operating University Affiliated Facilities. The legislation authorizing the Developmental Disabilities program has been revised periodically. The major changes of note included the following:

(1) The 1975 Amendments (Pub. L. 94–103) deleted the construction authority, authorized studies to determine the feasibility of having University Affiliated Facilities establish Satellite Centers, established the Protection and Advocacy System and added a section on ''Rights of the Developmentally Disabled;''

(2) The 1978 Amendments (Pub. L. 95–602) included a functional definition of developmental disabilities;

(3) The Developmental Disabilities Amendments of 1984 (Pub. L. 98–527) added a new emphasis regarding the purpose of the program, to assist States to assure that persons with developmental disabilities receive the care, treatment and other services necessary to enable them to achieve their maximum potential through increased independence, productivity and integration into the community; and

(4) The 1987 Amendments (Pub. L. 100–146) established an annual report to Congress on the Developmental Disabilities program. The Administration on Developmental Disabilities (ADD) compiles this report using information received from the State Planning Councils, the Protection and Advocacy Systems, the University Affiliated Programs and grantees of the Projects of National Significance. Also included in the 1987 Amendments was a special 1990 Report to Congress on the scope and effectiveness of services provided to persons with developmental disabilities by State agencies and an analysis of consumer satisfaction. The State Planning Councils prepared the State Reports to ADD and this information was used as a basis for the Report to Congress.

The Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1990, Pub. L. 101–496, (the Act), extended authorization of appropriations for programs under the Act through Fiscal Year 1993 and made revisions that:

(1) Add to the purpose of the Act the commitment toward enabling all people with developmental disabilities, including those with severe disabilities, to achieve interdependence and inclusion into society;

(2) Strengthen the independence of State Protection and Advocacy systems;

(3) Establish core awards for University Affiliated Programs training projects; and

(4) Broaden the purpose of Projects of National Significance to include supportive living and quality of life opportunities.

The Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994, Pub. L. 103–230, (the Act), extends authorization of appropriations for programs under the Act through Fiscal Year 1996 and made revisions that:

(1) Include findings that emphasize respect for individual dignity, personal preferences, and cultural differences in the provision of services, supports and other assistance, and recognize that individuals with developmental disabilities and their families are the primary decision-makers regarding services, supports, and other assistance they receive;

(2) Ensure that racial and ethnic individuals from diverse backgrounds are fully included at all levels and in all activities authorized under this Act. This includes language regarding unserved and underserved populations and ''culturally competent'' services, supports and other assistance;

(3) Require State Developmental Disabilities Council activities to promote systemic change, capacity building and advocacy;

(4) Clarify the responsibilities of the State Developmental Disabilities Council and the Designated State Agency;

(5) Require the Protection and Advocacy System (P&A) to hire and maintain sufficient numbers and types of qualified staff to carry out the P&A's function;

(6) Protect the confidentiality of client records;

(7) Require development of new program standards for University Affiliated Programs; and

(8) Direct the Secretary to support grants to conduct an investigation on the expansion of part B programs (State Developmental Disabilities Councils) to individuals with severe disabilities other than developmental disabilities.

II. Developmental Disabilities Program

A. Federal Assistance to State Developmental Disabilities Councils

Formula grants are made to each State to support State Developmental Disabilities Councils. The responsibilities of the Councils are to promote, through systemic change, capacity building and advocacy activities; the development of a consumer and family-centered, comprehensive system; and, a coordinated array of services, supports and other assistance. These activities are designed to achieve independence, productivity, integration and inclusion into the community for individuals with developmental disabilities.

B. Protection and Advocacy of the Rights of Individuals With Developmental Disabilities

Formula grants are made to States for the establishment of a system to protect and advocate for the rights of individuals with developmental disabilities. This system must have the authority to pursue legal, administrative and other appropriate remedies to ensure the protection of the rights of individuals with developmental disabilities who are receiving, or who are eligible to receive, treatment or habilitation services.

C. University Affiliated Programs

Grants are made to universities, or to public or nonprofit entities associated with a college or university, to establish University Affiliated Programs (UAPs). Activities of University Affiliated Programs are to be conducted in a culturally competent manner and include: Interdisciplinary pre-service preparation of students and fellows; community service activities which include community training and technical assistance; and the dissemination of subsequent information and research findings.

D. Projects of National Significance

This program provides funding through grants and contracts to public or nonprofit private entities for projects which support national initiatives. Such initiatives include the collection of necessary data; provision of technical assistance to State Developmental Disabilities Councils, protection and advocacy systems and university affiliated programs; and support to other nationally significant activities, such as employment and housing.

III. Discussion of Proposed Regulations

Overall, the proposed regulations have been developed to establish new requirements based on the changes made by two reauthorizations: (1) The Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1990 (Pub. L. 101–496) and (2) the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994 (Pub. L. 103–230).

Key proposed provisions are as follows:

A. Section 1386.20, Designated State Protection and Advocacy System, the current rule has been revised to address requirements concerning the redesignation of the Protection and Advocacy System (1990 Amendments);

B. Section 1386.21, Requirements of the Protection and Advocacy System, the regulations regarding confidentiality of client records has been revised pursuant to section 142(j) (1994 Amendments);

C. Section 1386.23, Periodic reports: Protection and Advocacy System, regulatory language is being proposed to address the statutory requirement for an annual statement of objectives and priorities and a statement of the rationale used to establish such objectives (1990 Amendments);

D. Section 1386.30, State plan requirements, the regulation regarding State Developmental Disabilities Council responsibilities has been revised to address new requirements regarding the development of the State plan and the hiring and supervision of staff (1994 Amendments);

E. The current regulatory language for part 1388 has been revised to include new program standards for University Affiliated Programs (UAPs) (1994 Amendments);

A section-by-section discussion of the changes we are proposing follows:

PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

In § 1385.1, General, the changes being proposed are to replace the reference to Basic State Grant with a reference to Federal Assistance to the State Developmental Disabilities Councils and to change the Protection and Advocacy System reference to ''individuals'' rather than ''persons'' with developmental disabilities.

In § 1385.3 Definitions, editorial changes are being proposed to incorporate the reference to the Administration for Children and Families rather than the Office of Human Development Services. This action is required because the Administration on Developmental Disabilities was made a part of the Administration for Children and Families. A notice was published in the **Federal Register** on April 18, 1991 (See 56 FR 15885). We are also proposing to include a definition of ''Protection and Advocacy System'' to mean the organization or agency designated in a State to administer and operate a protection and advocacy program for individuals with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act, as amended by Pub. L. 103–230 (42 U.S.C. 6041, 6042); and advocacy programs under the Protection and Advocacy for Mentally Ill Individuals Act 1986 (PAIMI Act), as amended (42 U.S.C. 10801 et seq.); the Protection and Advocacy of Individual Rights Program (PAIR), (29 U.S.C. 794e); and the Technology-Related Assistance for Individuals with Disabilities Act of 1988, as amended (29 U.S.C. 2212(e)). Protection and Advocacy System also may be designated by the Governor of a State to conduct the Client Assistance Program (CAP) authorized by section 112 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 732). Finally, the Protection and Advocacy System may provide advocacy services under other Federally funded programs.

Section 1385.4 is amended to re-word ''persons with developmental disabilities'' to ''individuals with developmental disabilities'' in the title and paragraphs (a), (b), and (c). The statutory citation in paragraph's (b) and (c) have been updated to conform with the 1994 Amendments.

The regulations of § 1385.5 Recovery of Federal funds used for construction of facilities and § 1385.7 Waivers have been removed and those sections have been reserved. Such action has been done because section 105, Recovery, has been removed from the Act (1994 Amendments). As indicated in the Senate Report, number 103–120, pages 25 and 26, section 105, Recovery, has been deleted because the Committee understood that all facilities for which part B or part D funds had been used towards construction costs, have been completed for more than 20 years making this section no longer relevant.

We are proposing to revise § 1385.6 by using the term ''individuals with disabilities'' (1994 Amendments). This term is meant to be consistent with ''handicapped person'' as defined under 45 CFR 84.3(j). We are also proposing to include language which clarifies grantee responsibilities regarding affirmative action pursuant to section 109 of the Act (42 U.S.C. 6008) and to reference the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) with respect to

employment of individuals with disabilities.

In § 1385.8, Formula for determining allotments, editorial changes are being proposed, which includes the deletion of the concept of Basic State program which is no longer applicable under the Act. Paragraph (c) is being revised to update references (1994 amendments).

In § 1385.9 (a) and (b), Grants administration requirements, an editorial change is being proposed to update the term Special Project to Projects of National Significance (1987 Amendments). Paragraph (d) addresses the issue of the Department keeping information about individual clients confidential when making audits and examinations and taking excerpts and transcripts of records of grantees and subgrantees. This paragraph is being revised to include a reference to part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments for grants awarded to State Developmental Disabilities Councils, University Affiliated Programs and Projects of National Significance and to remove the reference to the Protection and Advocacy System. We are then proposing a new paragraph (e) to address the new requirement of section 142(j) and the language of Senate Report 120, 103rd Cong., 1st Sess., page 39 (1993). The Report indicated * * *'' that for any audit, report or evaluation required under this Act, the Secretary shall not require the P&A system to ''disclose the identity of, or any personally identifiable information related to, any individual requesting assistance under such program.'' This requirement is consistent with the Rehabilitation Act Amendments of 1992 which contains similar language pertaining to the confidentiality of client records during Federal reviews of P&A systems. The Committee does not intend to limit the monitoring responsibilities of the Administration on Developmental Disabilities to assure that P&A systems are in compliance with the Act.'' In paragraph (e)(1) the regulation indicates that for any audit, report or evaluation required under the Act, the Secretary shall not require the Protection and Advocacy system to ''disclose the identity of, or any personally identifiable information related to, any individual requesting assistance under such program.'' In paragraph (e)(2) the proposed regulation indicates that if an audit, monitoring review, evaluation, or other investigation by the Department produces evidence that the system has violated the Act or the regulations, the system will bear the burden of proving its compliance. The System's inability to establish compliance because of the confidentiality of records will not relieve it of this responsibility. The eligible system may elect to obtain a release from all individuals requesting or receiving services at the time of intake or application. The release shall state that only information directly related to client and case eligibility will be subject to disclosure to officials of the Department.

ADD is particularly interested in receiving comments on the regulations being proposed in paragraph (e)(2).

PART 1386—FORMULA GRANT PROGRAMS

In part 1386, subpart A—Basic requirements, we are proposing in § 1386.1, General, that the reference to the Basic State grant program be deleted because there is no statutory basis for this language and the reference to the State Developmental Disabilities Councils be included in its place. We are proposing additional language in § 1386.2(b)(1), Obligation of funds, that would implement an expanded definition of obligation given in section 125(c) of the Act (42 U.S.C. 6025(c)), as amended (1994 Amendments), regarding State Interagency Agreements. We are proposing several technical changes to paragraphs (c)(1) and (2). In paragraph (1), we are proposing to replace the phrase Protection and Advocacy ''office'' to Protection and Advocacy ''System'' and reference ''individuals'' with developmental disabilities rather than ''persons'' with developmental disabilities. In paragraph (2), we are proposing to reword the phrase ''developmentally disabled persons'' to ''individuals with developmental disabilities'' (1994 Amendments); to replace the reference to Basic State Grants with the legislative language for Part B—Federal Assistance to State Developmental Disabilities Councils (1994 Amendments); and reword the last sentence for consistency with the regulatory language contained in § 1386.2(a) regarding the Federal fiscal year.

In part 1386, subpart B, the heading has been revised to read ''State System for Protection and Advocacy of the Rights of Individuals with Developmental Disabilities.'' This revision clarifies how this program is referenced. Accordingly, we are proposing editorial changes in the regulations to reflect this change.

We are proposing a new § 1386.19, Definitions, to include definitions for subpart B, § 1386.20 and § 1386.21. ADD is proposing a definition of ''designating official'' to clarify who has the responsibility in the State to designate the Protection and Advocacy System under section 142 of the Act (§ 1386.20(a)). Addition of this definition will permit us to simplify the wording of several provisions relating to protection and advocacy agencies. We are then proposing the following definitions of terms used in the proposed regulations in § 1386.21(c)(1) and (3), (§ 142(a)(2)(B)) and (§ 142(a)(2)(I)): ''full investigations'' means the access to clients, public and private facilities and entities and their staff, and the records regarding the operation of the institution that is necessary for a reasonable person to make an informed decision about whether the alleged or suspected abuse is taking place or has taken place; ''probable cause'' means a reasonable ground for belief that an individual or group of individuals with developmental disabilities may now be subject to or have been subject to abuse or neglect; and ''record of an individual with a developmental disability'' includes reports prepared or received by any staff of a facility rendering care or treatment, or reports prepared by an agency or staff person charged with investigating reports of incidents of abuse or neglect, injury or death occurring at such facility that describes incidents of abuse, neglect, injury, or death occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.

For reasons of consistency, we are proposing to revise the heading of § 1386.20 to read, Designated State Protection and Advocacy System rather than Designated State Protection and Advocacy Office.

We are proposing a change in § 1386.20(a) to include the proposed term ''designating official'' as defined in § 1386.19.

We also are proposing to revise § 1386.20(d) to address the procedure to be followed in order for a State to designate a new agency to administer and operate the Protection and Advocacy system pursuant to section 142(a)(4) of the Act, (42 U.S.C. 6042(a)(4)). State Protection and Advocacy agencies are responsible for administering and operating State advocacy systems. These systems must be independent of State public and private service systems, provide information and referral, and have the authority to pursue legal, administrative and other appropriate remedies to ensure the protection of the rights of individuals with developmental disabilities and individuals with mental

illness. (See sections 102(2), 103 and 105 of the Protection and Advocacy for Mentally Ill Individuals Act of 1986, as amended (42 U.S.C. 10802(2), 10803 and 10805). ''The term 'eligible system' means the system established in a State to protect and advocate the rights of persons with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act.'' Therefore, the Protection and Advocacy System provides services to both individuals with developmental disabilities and to individuals with mental illness. The purpose of these proposed requirements is to ensure that a Protection and Advocacy System is only redesignated to a new agency for reasons which constitute good cause. The action giving rise to good cause should be of a substantial nature.

Redesignation for good cause may include, but is not limited to, eliminating longstanding or pervasive inefficiency. However, merely technical or minor shortcomings will not support such a finding. Further, in order to qualify as good cause, the allegation must be made in good faith, which means that it was not made for the purpose of frustrating the accomplishment of the goals of the Act, these regulations, the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10801 et seq.), the Protection and Advocacy of Individual Rights Program (29 U.S.C. 794(e), the Technology-Related Assistance for Individuals With Disabilities Act of 1988, as amended (29 U.S.C. 2212(e)), and any other Federal advocacy program that is administered by the State Protection and Advocacy System. The Administration on Developmental Disabilities encourages Governors and Protection and Advocacy agencies to consult with one another and seek resolution before involving the public. In § 1386.20(d)(1), we are proposing to provide current Protection and Advocacy agencies and the public a period of no less than 45 days concurrently to respond to notices given of the intention to redesignate the Protection and Advocacy agency. In developing the regulations we are proposing timeframes for notices which are considered timely and are similar to those used in other activities required by Federal regulations. We are also proposing to revise the requirements for contents of the public notice provided for in paragraph (d)(2) by requiring that it include the following new or revised requirements:

(1) The Federal requirements for the Protection and Advocacy System for individuals with developmental disabilities (section 142 of the Act); and, where applicable, the requirements of the Protection and Advocacy for Individuals with Mental Illness Act of 1986, as amended (42 U.S.C. 10805 and 10821); the Protection and Advocacy of Individual Rights Program (29 U.S.C. 794(e) and the Client Assistance Program (29 U.S.C. 732), of the Rehabilitation Act of 1973, as amended; the Technology-Related Assistance for Individuals With Disabilities Act of 1988, as amended by Pub.L. 103–218 (Protection and Advocacy contracts and grants); or any other Federal advocacy program that is administered by the State Protection and Advocacy System;

(2) The goals and function of the State's Protection and Advocacy System including the current Statement of Objectives and Priorities;

(3) The name and address of the agency currently designated to administer and operate the Protection and Advocacy System; and an indication of whether the agency also operates other Federal advocacy programs;

(4) A description of the current Protection and Advocacy agency and the system it administers and operates including, as applicable, descriptions of other Federal advocacy programs it operates;

(5) A clear and detailed explanation of the good cause for the proposed redesignation;

(6) A statement suggesting that interested persons may wish to write the current State Protection and Advocacy agency to obtain a copy of its response to the notice initiating the redesignation. Copies shall be provided in accessible formats to individuals with disabilities upon request;

(7) The name of the new agency proposed to administer and operate the Protection and Advocacy System under the Developmental Disabilities program. This agency will be eligible to administer other Federal advocacy programs;

(8) A description of the system which the new agency would administer and operate, including a description of all other Federal advocacy programs the agency would operate; and

(9) The timetable for assumption of operations by the new agency and the estimated costs of any transfer and start-up operations.

We are proposing that the public notice must include information on the requirements for all other Federal Protection and Advocacy Programs which are currently administered by the P&A agency and are subject to redesignation as well as the Protection and Advocacy System for individuals with developmental disabilities. The rationale for this requirement is that a redesignation of the Protection and Advocacy agency for individuals with developmental disabilities under section 142 of the Act also has an impact on other Federal Protection and Advocacy Programs. Federal legislation makes the State's designated Protection and Advocacy agency for individuals with developmental disabilities eligible to receive funding for operating the other Federal advocacy programs listed above. Redesignation of the Developmental Disabilities agency may result in the redesignation of the other programs. Therefore, the regulation seeks to insure that individuals with other disabilities, their families and representatives have an opportunity to make informed comments on the proposed redesignation. The other new requirements for the notice are being included so that members of the public can become fully informed about the reasons for and consequences of the redesignation.

In paragraph (d)(3) we are requiring that copies of the notice of proposed redesignation must be made generally available to individuals with developmental disabilities and individuals with mental illness who live in residential institutions through posting or some other means. The need for notice is to ensure that individuals who reside in institutional settings also are informed of the reasons for and the consequences of the proposed redesignation. The notice could be accomplished by mailing a copy of the original notice to such facilities and requesting that it be made available to residents through posting. This notice also could be sent to other advocacy groups for individuals with disabilities in the State. This new requirement is based on the intimate connection between the Protection and Advocacy program serving individuals with developmental disabilities and the Protection and Advocacy program serving individuals with mental illness. Also, we are proposing in paragraph (d)(3) that the public notice must be in a format accessible to individuals with developmental disabilities or their representatives, e.g., tape, diskette (section 142(a)(4)(B) of the Act).

In paragraph (d)(4), we are proposing that after the expiration of the 45-day public comment period required by paragraph (d)(1), the designating official must conduct a public hearing on the redesignation proposal. After consideration of all public and agency comments, the designating official must give notice of the final decision to the currently designated agency and the public through the same means used

under paragraph (d)(3). If the notice to the currently designated agency states that the redesignation will take place, it must also inform the agency of its right to appeal this decision to the Assistant Secretary, Administration for Children and Families. The redesignation shall not be effective until 10 working days after notifying the current Protection and Advocacy agency or, if the agency appeals, until the Assistant Secretary has considered the appeal.

We are proposing new requirements in § 1386.20(e) to address the procedures by which a Protection and Advocacy agency which has been redesignated may appeal the designation to the Assistant Secretary. The Assistant Secretary will consult with administrators of Federal advocacy programs that will be directly affected by the proposed redesignation in making a final decision on the appeal, including the Center for Mental Health Services, the Rehabilitation Services Administration, the National Institute on Disability and Research, and any other Federal agencies which administer advocacy programs that will be directly affected by the proposed redesignation.

The Administration on Developmental Disabilities is particularly interested in receiving comments on this area.

In § 1386.21(a) we are proposing to update the reference from the Basic Support Program to the State Developmental Disabilities Council. In paragraphs (b) (1) and (2) we are proposing to revise the regulations to incorporate the prohibition of compelled disclosure of information in client records pursuant to section 142(j) of the Act, as amended (1994 Amendments). This includes a reference to Federal law in the final sentence of paragraph (b)(1) that is consistent with the intent of the existing regulation, which is to allow parents or legal guardians access to a client's record except when such access is legally prohibited.

We are proposing regulations in a new paragraph (c)(1) to indicate that the Protection and Advocacy System must have access to records of an individual with a developmental disability as provided by section 142(a)(2)(I) of the Act and the authority necessary to conduct full investigations of abuse and neglect on the Protection and Advocacy System's determination of probable cause or if the incidents are reported to the System as provided by section 142(a)(2)(B).

Questions have arisen over whether P&As are required to have authority to obtain records of individuals who are no longer living. The required authority for access to records of persons with developmental disabilities is described in section 142(a)(2)(I). This provision includes a requirement for authority to access records of persons who, by reason of mental or physical condition, are unable to authorize the System's access to such records, and are without a legal guardian or conservator, or for whom the legal representative is the State; and about whom the System has had a report of abuse or neglect or as the result of monitoring or other activities has probable cause to believe such individual has been subject to abuse or neglect. Section 142(f) defines ''record'' to include reports of deaths occurring in a facility prepared by an agency or staff person charged with investigating the event. Based on these provisions, ADD is proposing to reference, in paragraph (c)(1) the P&A's authority to access records of persons with developmental disabilities who are no longer living.

ADD understands that P&As undertake investigations of incidents of abuse and neglect based on media reports, general investigations, inspection reports or other credible information regarding abuse and neglect. P&As also may use information gained through telephone calls or informal complaints by residents, staff, relatives or friends. The proposed regulations are intended to confirm the authority of P&As to rely on such information as grounds for investigations of incidents of abuse and neglect either because they are reports of incidents, or because they constitute ''probable cause.'' Some facilities have claimed that P&As must make individual-specific findings of probable cause before they may investigate. The definition of probable cause includes ''the reported existence of conditions or problems that are usually associated with abuse and neglect.''

In paragraph (c)(2) we are proposing Protection and Advocacy Systems must have trained staff to conduct full investigations of suspected instances of abuse and neglect or if the incidents are reported to the System. In paragraph (c)(3) we are proposing to require that Protection and Advocacy Systems have authority to have access at reasonable times and locations to residents of any private or public facility that is providing services, support, and other assistance to such residents. This requirement is based on section 142(a)(2)(H) of the statute. In addition, the proposed paragraph (c)(3) requires that Protection and Advocacy Systems have authority to access at reasonable times and locations staff of private or public facilities when investigating incidents of abuse and neglect. This requirement is based upon section 142(a)(2)(B). ADD views the authority for access to staff of facilities as a necessary part of the authority to investigate incidents of abuse and neglect.

Also, the Administration on Developmental Disabilities wants to address the concerns raised by P&As that their authority continues to be challenged in the areas of access to records and determining probable cause tied to abuse and neglect cases. The statutory definition of ''record,'' which appears at section 142(f) and is reiterated in the proposed § 1386.19, encompasses the records a facility would have on an individual with a developmental disability, and reports which were prepared by investigators in connection with incidents of abuse or neglect. We believe this definition must be interpreted liberally in order to ensure proper exercise of the authority to investigate incidents of abuse and neglect which P&As must have under section 142(a)(2)(B). ADD also believes that it is critical to this investigative function that Systems be given access to records promptly. Undue delay can prevent a System from intervening to prevent further abuse or neglect.

The Act and the proposed regulations refer to the authority of P&As to determine probable cause in connection with investigation of incidents of abuse and neglect. The Agency is concerned that in the exercise of their required authority under section 142(a)(2)(B) to investigate incidents based on probable cause that P&As not be unduly hampered. The Act does not require a judicial or other third party determination of whether probable cause exists. In the ordinary situation, a belief by P&A staff that an individual may be subject to or has been subject to abuse or neglect should be sufficient to establish probable cause. In order to clarify the meaning of probable cause, we have proposed a definition in § 1396.19.

In paragraph (c)(4), we are proposing that the Protection and Advocacy Systems must be authorized to keep confidential the names and identity of individuals who furnish information that forms the basis for a determination that probable cause exists. We believe that disclosure of this information would compromise the effectiveness and integrity of the investigation and could expose sources and already vulnerable clients to retaliation. Moreover, such disclosure would likely provide a disincentive to other potential informants to come forward in the future.

The Administration on Developmental Disabilities recognizes that the requirement in the proposed regulation for access to private institutions may be problematic, especially relating to existing State law and rights of access to records and privacy issues. Therefore, we are particularly interested in receiving comments on the possible impact of these provisions on Protection and Advocacy Systems, State Governments and private institutions.

A new paragraph (d) is being added which addresses the issue of a Protection and Advocacy System restricting the use of appropriate remedies on behalf of individuals with developmental disabilities through litigation or legal action pursuant to section 142(a)(2)(A)(i) and (h)(1) of the Act (1994 Amendments). We are adding a new paragraph (e) to address section 142(a)(2)(J) of the Act regarding hiring freezes, reductions in force, or prohibitions on staff travel. For paragraph (f) we are proposing that a Protection and Advocacy System may exercise their authority under State law where the authority exceeds the authority required by the Developmental Disabilities Act. However, the Protection and Advocacy System must have at least the authority required under the Act, and may have additional authority granted by the State.

Section 1386.22 is being added to establish a new section for the Protection and Advocacy Systems regarding Public Notice of Federal Onsite Review pursuant to section 142(k) of the 1994 Amendments. Prior to any Federal review of the State program, a 30 day notice and an opportunity for public comment must be provided. As this activity is an on-going administrative function, such notice will not be given through the **Federal Register**.

In § 1386.23, Periodic reports: Protection and Advocacy System, we are proposing to revise the title from ''system'' to ''agency''. Also, we are deleting the current language contained in paragraph (a) regarding assurances of compliance as such records are on file. Paragraph (a) now proposes regulations regarding the submission of the Protection and Advocacy annual report. We are proposing that the report submitted by the Protection and Advocacy agency be submitted by January 1 of each year in a format designated by the Secretary to ensure uniform reporting on the activities and accomplishments carried out under the system during the previous year for the Report to Congress. An Information Collection Request for Reinstatement will be submitted to OMB. In § 1386.23(b) editorial changes are being proposed regarding the financial report to incorporate a reference to the Administration for Children and Families rather than the Office of Human Development Services. This Information Collection is an approved OMB document. We are proposing to include new requirements in paragraphs (c) and (d) to address the annual statement of objectives and priorities of the Protection and Advocacy system pursuant to section 142(a)(2)(C) of the Act (42 U.S.C. 6042(a)(2)(C)) and section 107(b) of the Act (42 U.S.C. 6006(b)). ADD will be submitting an Information Collection Request to OMB. ADD is particularly interested in receiving comments on the public review and comment process for this report because we want to make sure that individuals with developmental disabilities and their families influence the development and are aware of the Protection and Advocacy priorities so they know what they can expect from the Protection and Advocacy System.

In § 1386.24 Non-allowable costs for the Protection and Advocacy System, we are revising paragraph (a) to replace ''persons'' with developmental disabilities to ''individuals'' with developmental disabilities in (a)(1) and renumbering current paragraph (b) as (a)(2). We are proposing a new paragraph (b) on attorneys fees being considered as program income and as such, must be used to further the objectives of the program pursuant to section 142(h)(2) of the Act (1990 and 1994 Amendments).

The Administration on Developmental Disabilities encourages a Protection and Advocacy System to use program standards for self-evaluations and peer consultations to identify the need for technical assistance or other quality enhancement intervention. Performance standards include all applicable statutory and regulatory requirements as well as standards of quality developed in collaboration with a committee of representatives of State Protection and Advocacy Systems.

In part 1386, subpart C will read—State Plan for Assisting in the Development of a Comprehensive System of Services and Supports for Individuals with Developmental Disabilities. We are proposing to revise the title to more accurately reflect how the provision of service related activities and supports are tied to the State Plan (1994 Amendments).

In § 1386.30, State plan requirements, we are proposing to revise and include new regulatory language to clarify the respective roles and responsibilities of the State Developmental Disabilities Council and the Designated State Agency. Pursuant to section 124(c)(3) of the Act (42 U.S.C. 6024(c)(3)), we are proposing language in § 1386.30(a) to require that the development and submission of the State plan is the responsibility of the State Developmental Disabilities Council and that the State Developmental Disabilities Council will consult with the Designated State Agency before submitting the State plan to ensure that the State plan is not in conflict with applicable State laws. Paragraph (a) also indicates that the designated State agency shall provide assurances and support services to the Council pursuant to section 124(d)(3)(A) (42 U.S.C. 6024(c)(3)) of the Act.

We are proposing to revise paragraph (c)(1) to delete the language ''administration of the plan'' and indicate that the State plan must identify the program unit(s) within the Designated State Agency responsible for providing assurances and fiscal and other support services. We are then proposing in paragraph (c)(3) to include language that the State Plan must address how the Developmental Disabilities network in the State (i.e., Developmental Disabilities Councils; Protection and Advocacy System and University Affiliated Program(s)) is working with the disabilities community to bring about broad systems change to benefit individuals with developmental disabilities, and, where applicable, the ways in which individuals with other disabilities may benefit as well. The current State Plan guideline has OMB approval. ADD will prepare an Information Collection Request to OMB based on the new requirements of the 1994 Amendments. We are proposing to include new regulatory language in § 1386.30(e) to address section 124(c)(4)(A)—Demonstration of New Approaches (1994 Amendments). The State Plan may provide for funding of projects to demonstrate new approaches to enhance the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities. Such projects are not to exceed three years in duration and may include assistance in developing strategies for securing funds for continuation of the project from sources other than funds received under the Act. This requirement is based on our experience in administering the Developmental Disabilities Program. We are then proposing to rename current paragraphs (e) to (f) in § 1386.30. We are

removing the regulation on individual habilitation plan pursuant to the 1994 Amendments and moving human rights (current (e)(3) to the new (f)(2)). We are proposing a new paragraph (3) to address the accessibility of buildings used in connection with activities assisted under the Plan to ensure that individuals with disabilities are able to participate in the work of the Council. In § 1386.30(f)(4) we are proposing new language to address the responsibility of the State Developmental Disabilities Council regarding budgeting, staff hiring and supervision and staff assignment pursuant to section 124(c) (8), (9), and (10)) of the Act (42 U.S.C. 6024(c) (8), (9), and (10)). Of particular note, we are clarifying that the intended meaning of the phrase in the statute, ''consistent with state law'' means that the hiring of State Developmental Disabilities Council staff must be done in accordance with State personnel policies and procedures, except that a State shall not apply hiring freezes, reduction in force, prohibitions on staff travel, or other policies, to the extent that such policies would impact staff or functions funded with Federal funds and would prevent the Council from carrying out its functions under the Act.

In § 1386.31, Plan submittal and approval, we are proposing to add a new paragraph (a) in response to section 122(d)(1) of the Act (1994 Amendments) on a public review and comment process on the State Plan. We subsequently renumbered the current paragraphs and revised paragraph (b) to reference a ''final State Plan'' or ''amendment(s)'' to incorporate the public comment process.

In § 1386.32, Periodic Reports: Basic State grants, we are proposing to revise the title to read § 1386.32 Periodic reports: Federal assistance to State Developmental Disabilities Councils (1994 Amendments). In § 1386.32(a) an editorial change is being made to reference the Administration for Children and Families. ADD will submit an Information Collection Reinstatement Request to OMB for this requirement. In § 1386.32(b) we are proposing to revise the regulatory language to reference the Annual Program Performance Report (annual report requirements pursuant to section 107(a) of the Act (42 U.S.C. 6006(a)), thus requiring a format designated by the Secretary. Use of a uniform format will facilitate Council reporting, ADD data collection and analysis, and preparation of the Secretary's Annual Report to Congress. ADD will prepare an Information Collection Reinstatement Request to OMB for this requirement.

In § 1386.33, Protection of employee's interests, we are revising paragraph (a) to update the statutory references to section 122(c)(5)(K) of the Act (1994 Amendments) and to replace the phrase ''alternative community living arrangements'' to ''community living activities.'' In a new § 1386.34, entitled ''Designated State Agency'', we propose regulations in response to section 124(d)(2)(D) of the Act (1994 Amendments) on the redesignation of the Designated State Agency and the right to appeal by non-State agency members of the State Developmental Disabilities Council to the Assistant Secretary. (The Secretary has delegated the authority to hear such appeals to the Assistant Secretary for Children and Families.) We are proposing an editorial change to the heading of § 1386.35 to read, ''Allowable and non-allowable costs for Federal assistance to State Developmental Disabilities Councils'' and an editorial change to paragraph (b)(1) to change the word ''persons'' to ''individuals''. We are then proposing to add a new paragraph (d) to clarify implementation of the non-Federal share requirements. We are also proposing an editorial change to the heading of § 1386.36 to read, ''Final disapproval of the State plan or plan amendments'' and in paragraph (e) an editorial change is being proposed to incorporate the reference to the Assistant Secretary for Children and Families rather than the Assistant Secretary for Human Development Services. Finally, we are proposing a new § 1386.37, Public Notice of Federal Onsite Review for the State Developmental Disabilities Councils. This requirement complements § 1386.22, Public Notice of Federal Onsite Review for the Protection and Advocacy Systems. ADD wants to ensure that individuals with developmental disabilities are aware and have an opportunity to comment on the actions of the Council. Prior to a Federal review of the State program a 30 day notice and an opportunity for public comment must be provided. As this activity is an on-going administrative function, the notice is not being given through the **Federal Register**.

The Administration on Developmental Disabilities encourages State Developmental Disabilities Councils to use program standards in self-evaluations and peer consultations to identify the need for technical assistance or other quality enhancement intervention. Performance standards include all applicable statutory and regulatory requirements as well as standards of quality developed in collaboration with a committee of representatives of State Developmental Disabilities Councils.

In part 1386, subpart D—Practice and Procedure for Hearings Pertaining to States' Conformity and Compliance with Developmental Disabilities State Plans, Reports and Federal Requirements, we are proposing an editorial change in § 1386.80 Definitions, to incorporate the reference to the Administration for Children and Families rather than the Office of Human Development Services; clarify that the term ''Presiding officer'' means anyone designated by the Assistant Secretary to conduct any hearing held under this subpart; and include a definition of the term ''payment or allotment'' for subpart D. The term ''payment or allotment'' is being introduced into the regulations in order to ensure uniformity in the terminology used in subpart D to refer to assistance provided to States under Part B or C of the Act. In § 1386.85, Filing and service of papers, in paragraph (a) the phrase ''HDS Hearing Clerk'' is being replaced with ''designated individual'' to incorporate Administration for Children and Families procedures. As part of the notice of hearing, the Assistant Secretary will designate an individual to receive all papers filed in connection with a proceeding under subpart D.

In § 1386.90, Notice of hearing or opportunity for hearing, we are making editorial changes which include: the full reference to the State Developmental Disabilities Council; changing the Protection and Advocacy Office to the Protection and Advocacy System; and reference the designated official rather than official for the Protection and Advocacy System. In § 1386.92, Place, we are including language on accessibility regarding the place of the hearing. In § 1386.93, Issues at hearing, we are making an editorial change to paragraph (c)(2)(i) by deleting the (i). Also, the reference to ''the report of the description of the State protection and advocacy system'' in paragraphs (c)(2) and (d) are being deleted because the Act no longer requires such a report. In paragraph (c)(2), we are substituting references to ''the activities of the State's protection and advocacy system'' and providing that a ''document explaining changes in the activities of the State's Protection and Advocacy System on which the State and the Assistant Secretary have settled must be sent to the parties.'' In paragraph (d), we are clarifying the reference to the State plan under part B of the Act and adding a reference to the activities of the State's Protection and Advocacy System.

In § 1386.94, Request to participate in hearing, the following changes are being proposed in paragraphs (a), (b)(2) and (c)(1). The full reference of the State Developmental Disabilities Council is being included along with updating the language to reference the Protection and Advocacy program as a ''System'' rather than an ''Office.'' The wording ''HDS Hearing Clerk'' is being replaced with ''designated individual.'' We are proposing editorial changes in § 1386.101, Authority of presiding officer, in paragraphs (a)(11) and (c). Also, we are updating the references in § 1386.111 Decisions following hearing, paragraphs (c) and (d) and § 1386.112 Effective date of decision by the Assistant Secretary, paragraphs (a) and (b) to reflect amendments to the Act and to make other editorial changes. The references to ''report for the State Protection and Advocacy system'' are being deleted because the Act no longer requires such a report. In its place we are substituting references to ''the activities of the State's Protection and Advocacy System'' in §§ 1386.111(c)(1) and 1386.112(b). The terms ''Federal financial participation,'' ''the State's total allotment,'' ''further payments,'' ''payments,'' ''allotment'' and ''Federal funds'' in § 1386.111(c) and § 1386.112 (a) and (b) are being replaced by the term ''payment or allotment'' which will be defined in the proposed revision of § 1386.80. In § 1386.111(c)(1), we are changing the reference to ''sections 122, 127 and 142'' to ''sections 122, 127 or 142.'' This change is necessary because the provision applies to hearings held under any of the three provisions and not only to hearings held under all three provisions. In § 1386.111(c)(2), we are substituting a reference to section 127 for the current reference to section 135, which has been removed from the Act. We are also substituting a reference to section 129 for the current reference in § 1386.111(d) to section 138.

In § 1386.112(a), we are substituting a reference to section 122 for the reference to section 135, which has been removed from the Act. Section 122 is the correct reference because the provision covers hearings relating to the conformity of State plans with Federal requirements. In § 1386.112(b), we are substituting references to sections 127 and 142 for the current references to sections 113 and 133, which have been removed from the Act. Section 127 is the correct reference because the provision covers hearings relating to the State's compliance with the requirements of the State plan.

PART 1387—PROJECTS OF NATIONAL SIGNIFICANCE

We are proposing to revise regulatory language in Part 1387—Projects of National Significance, § 1387.1, General requirements. In paragraph (a), we propose to change the phrase ''the developmentally disabled,'' to ''individuals with developmental disabilities'' as indicated in the 1994 Amendments. Regarding the announcement on proposed priorities, paragraph (b) requires a statutory update (1994 Amendments). In paragraph (d), we are proposing language to more clearly define the type of project ADD would consider for funding with this limited amount of discretionary money. We are proposing that Projects of National Significance, other than technical assistance and data collection, must be exemplary and innovative models and have potential for replication at the local level as well as nationally, or otherwise meet the goals of Part E of the Act.

PART 1388—UNIVERSITY AFFILIATED PROGRAMS

We are proposing to revise regulatory language in Part 1388—The University Affiliated Programs by updating the standards (section 153(b) of the Act—1994 Amendments). The current standards for UAPs were published in the **Federal Register** on November 20, 1987. As stated in the Conference Report on S. 1284, the description of the purpose and scope of UAPs has been revised to incorporate updated concepts about these university-based programs. ''The description of UAPs recognizes the fact that UAPs are located in, or affiliated with universities, and, as such, provide an important foundation for higher education's response to the needs of individuals with developmental disabilities and their families. UAPs contribute to and reflect the overall mission of their host universities, and seek to ensure that the activities, resources, and expertise of the university are responsive to individuals with developmental disabilities and their families, advocacy organizations, and service systems and providers.'' Therefore, ADD is proposing to revise the standards to reflect this new description of UAPs (section 151 of the Act—Purpose and Scope of Activities, 1994 Amendments). The standards will continue to ''reflect the special needs of all individuals with developmental disabilities who are of various ages'' as required in section 153(b).

The proposed program criteria are the basic requirements that a UAP must meet if it is to receive a grant under this program. They relate to: (1) The mission of the UAP; (2) the governance and administration of the program; (3) preparation of personnel; (4) services and supports regarding community training and technical assistance (direct services-optional); and (5) dissemination of information and research findings. For each area, there is an introductory statement found at paragraph (a) and the program criteria begin with paragraph (b). Compliance with the program criteria is a prerequisite for the minimum funding level of a university affiliated program. However, compliance with the program criteria does not, by itself, constitute an assurance of funding. The Administration on Developmental Disabilities is particularly interested in receiving comments on the proposed program criteria.

Also, the Administration on Developmental Disabilities will be issuing draft Guidelines, at a later date, to provide examples of Indicators of Conformance with the Program Criteria. These indicators would illustrate the types of measures which could be used to demonstrate that the program criteria have been achieved. The Administration on Developmental Disabilities plans to use the indicators of conformance as a technical assistance/partnership model with University Affiliated Programs to further program outcomes.

We are proposing to revise § 1388.1 Definitions, to indicate what is now meant by ''program criteria'' and are deleting the definitions for ''qualitative criteria'' and ''measurements of program outcome''. In addition, we are defining other terms as used in part 1388. For example, ''accessible'', ''capacity building'' and ''collaboration''. Section 1388.2 Program criteria—purpose remains unchanged. We are deleting all the current regulatory language of § 1388.3 Program criteria—administration, § 1388.5 Program criteria—training, § 1388.6 Program criteria—technical assistance, and § 1388.7 Program criteria—information dissemination. Of particular note, regarding the dissemination of information, we are proposing that materials disseminated by the UAP must be available in formats accessible to individuals with a wide range of disabilities, e.g., audiotape and computer disk. We are proposing changes to the current regulations found in § 1388.4 Program criteria—services. Section 1388.6 Program criteria—services and supports, paragraph (c), will now cover Direct Services. These regulations are optional because the requirement that UAP's provide direct

services is now optional pursuant to section 151 of the Act (1994 Amendments). As the 1994 Amendments deleted the authority for Satellite Centers, § 1388.8 Use of program criteria for Satellite Centers is being deleted and reserved. Finally, we are revising the current regulations, § 1388.9 Peer Review to incorporate changes from the 1994 Amendments (section 153(f)(2)). Paragraph (a) describes the purpose of the peer review. The reference to Satellite Centers has been deleted and the provision of including on-site visits or inspection as necessary has been included. Paragraph (b) has been revised to simply state that applications for funding opportunities under part D, Section 152 of the Act, must be evaluated through the peer review process. In paragraph (c), language is being revised regarding the composition of the panel which is to be composed of non-Federal individuals who, by experience and training, are highly qualified to assess the comparative quality of applications for assistance.

Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

The NPRM proposes to amend current regulation to implement changes made by the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1990 (Pub. L. 101–496 and by the 1994 Amendments (Pub. L. 103–230). The regulations propose to provide guidance on redesignation of the Protection and Advocacy System and the appeal process; include regulations on the Protection and Advocacy annual statement of objectives; address State Developmental Disabilities Council responsibilities and those of the Designated State Agency; set new program standards for the University Affiliated Program; and make other clarifying, technical, and conforming changes.

We estimate that these regulations will not result in additional costs to the Federal government, the States, universities and any other organizations to which they may apply.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act (5 U.S.C. Ch.6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a ''significant economic impact on a substantial number of small entities'', we prepare an analysis describing the rule's impact on small entities. The primary impact of these regulations is on the States, which are not ''small entities'' within the meaning of the Act. However, they will affect small private institutions providing services to individuals with developmental disabilities. This impact will be minimal in that the institutions will simply be subject to review at no cost when a complaint is made against them. For these reasons, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub.L. 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirement contained in a proposed or final rule.

This proposed rule contains a new information collection requirement at § 1386.23(c), an annual statement of objectives and priorities of the Protection and Advocacy system pursuant to section 142(a)(2)(C) of the Act (42 U.S.C. 6042(a)(2)(C)). As required, ADD will submit this new information collection requirement to OMB for review. The other sections (listed below) which are being amended in this proposed rule contain information collection requirements, some are already approved by OMB, while others will require reinstatement to OMB due to requirements from the 1994 Amendments. Organizations and individuals desiring to submit comments on the new information collection requirement should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3002), Washington, DC 20503. ATTN: Desk Officer for HHS/ACF.

REPORTING AND RECORDKEEPING REQUIREMENTS IN PART 1386 OF THE NPRM

Sec. No.	Impact	OMB No.	Annual number of respondents	Annual burden hours
1386.23(a)	Existing (OMB approval expired, re-approval to be requested)	0980–0160	56	2,240
1386.23(b)	Existing	0348–0039	56	112
1386.23(c)	New	N/A	56	2,800
1386.30(c)	Existing	0980–0162	56	5,600
1386.32(a)	Existing (OMB approval expired, re-approval to be requested)	0980–0212	672	2,912
1386.32(b)	Existing (OMB approval expired, re-approval to be requested)	0980–0172	55	4,400

There will be no specified format for the submittal of the State plan and assurances required in § 1386.30. States may select any format they wish as long as they meet the requirements in the Act and these regulations.

Recordkeeping and Reporting requirements for Part 1387 and part 1388 will be satisfied with the submission of an acceptable grant application. The discretionary programs, Projects of National Significance (part 1387) and University Affiliated Programs (part 1388) use the OMB approved Standard Form 424 series, Application for Federal Assistance and Budget Information.

List of Subjects

45 CFR Part 1385

Disabled, Grant programs/education, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 1386

Disabled, Administrative practice and procedure, Grant programs/education,

Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 1387

Disabled, Grant programs/education, Grant programs/social programs.

45 CFR Part 1388

Colleges and universities, Grant programs/education, Grant programs/social programs, satellite center, university affiliated program.

(Catalog of Federal Domestic Assistance Program, Nos. 93.630 Developmental Disabilities Basic Support and 93.631 Developmental Disabilities—Projects of National Significance, and 93.632 Developmental Disabilities—University Affiliated Program)

Approved: April 25, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

For the reasons set forth in the preamble, subchapter I, chapter XIII, of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

SUBCHAPTER I—THE ADMINISTRATION ON DEVELOPMENTAL DISABILITIES, DEVELOPMENTAL DISABILITIES PROGRAM

PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

1. The authority citation for part 1385 continues to read as follows:

Authority: 42 U.S.C. 6000 et seq.

2. Section 1385.1 is amended by revising paragraphs (a) and (b) and republishing the introductory text to read as follows:

§ 1385.1 General.

Except as specified in § 1385.4, the requirements in this part are applicable to the following programs and projects:

(a) Federal Assistance to State Developmental Disabilities Councils;

(b) Protection and Advocacy of the Rights of Individuals with Developmental Disabilities;

* * * * *

3. Section 1385.3 is amended by revising the definitions of ADD and Commissioner and adding alphabetically a definition for ACF, and Protection and Advocacy System, to read as follows:

§ 1385.3 Definitions.

* * * * *

ACF means the Administration for Children and Families within the Department of Health and Human Services.

* * * * *

ADD means the Administration on Developmental Disabilities, within the Administration for Children and Families.

Commissioner means the Commissioner of the Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services or his or her designee.

* * * * *

Protection and Advocacy System means the organization or agency designated in a State to administer and operate a protection and advocacy program for individuals with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act, as amended by Pub. L. 103–230 (42 U.S.C. 6041, 6042); and advocacy programs under the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (PAIMI Act), as amended, (42 U.S.C. 10801 et seq.) the Protection and Advocacy of Individual Rights Program (PAIR), (29 U.S.C. 794(e); and the Technology-Related Assistance for Individuals With Disabilities Act of 1988, as amended (29 U.S.C. 2212(e)). Protection and Advocacy System also may be designated by the Governor of a State to conduct the Client Assistance Program (CAP) authorized by section 112 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 732). Finally, the Protection and Advocacy System may provide advocacy services under other Federal programs.

* * * * *

4. Section 1385.4 is revised to read as follows:

§ 1385.4 Rights of individuals with developmental disabilities.

(a) Section 110 of the Act, Rights of Individuals with Developmental Disabilities (42 U.S.C. 6009) is applicable to the programs authorized under the Act, except for the Protection and Advocacy System.

(b) In order to comply with section 122(c)(5)(G) of the Act (42 U.S.C. 6022(c)(5)(G)), regarding the rights of individuals with developmental disabilities, the State must meet the requirements of 45 CFR 1386.30(e)(3).

(c) Applications from university affiliated programs or for projects of national significance grants must also contain an assurance that the human rights of individuals assisted by these programs will be protected consistent with section 110 (see section 153(c)(3) and section 162(c)(3) of the Act).

§ 1385.5 [Removed and reserved]

5. Section 1385.5, *Recovery of Federal funds used for construction of facilities* is removed and reserved.

6. Section 1385.6 is revised to read as follows:

§ 1385.6 Employment of individuals with disabilities.

Each grantee which receives Federal funding under the Act must meet the requirements of section 109 of the Act (42 U.S.C. 6008) regarding affirmative action. The grantee must take affirmative action to employ and advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. This obligation is in addition to the requirements of 45 CFR part 84, subpart B, prohibiting discrimination in employment practices on the basis of disability in programs receiving assistance from the Department. Recipients of funds under the Act also may be bound by the provisions of the Americans with Disabilities Act (Pub. L. 101–336, 42 U.S.C. 12101 et seq.) with respect to employment of individuals with disabilities. Failure to comply with section 109 of the Act may result in loss of Federal funds under the Act. If a compliance action is taken, the State will be given reasonable notice and an opportunity for a hearing as provided in subpart D of 45 CFR part 1386.

§ 1385.7 [Removed and reserved]

7. Section 1385.7 *Waivers,* is removed and reserved.

8. Section 1385.8 is amended by revising the introductory text to read as follows:

§ 1385.8 Formula for determining allotments.

The Commissioner will allocate funds appropriated under the Act for the State Developmental Disabilities Councils and the Protection and Advocacy Systems on the following basis:

* * * * *

9. Section 1385.9 is amended by revising the first sentence of paragraph (a); revising paragraphs (b), (c), and (d) and adding a new paragraph (e) to read as follows:

§ 1385.9 Grants administration requirements.

(a) The following parts of title 45 CFR apply to grants funded under parts 1386

and 1388 of this chapter and to grants for Projects of National Significance under section 162 of the Act (42 U.S.C. 6082).

* * * * *

(b) The Departmental Appeals Board also has jurisdiction over appeals by grantees which have received grants under the University Affiliated program or for Projects of National Significance. The scope of the Board's jurisdiction concerning these appeals is described in 45 CFR part 16.

(c) The Departmental Appeals Board also has jurisdiction to decide appeals brought by the States concerning any disallowances taken by the Commissioner with respect to specific expenditures incurred by the States or by contractors or subgrantees of States. This jurisdiction relates to funds provided under the two formula programs—part B of the Act—Federal Assistance to State Developmental Disabilities Councils and part C of the Act—Protection and Advocacy of the Rights of Individuals with Developmental Disabilities. Appeals filed by States shall be decided in accordance with 45 CFR part 16.

(d) In making audits, examinations, excerpts and transcripts of records for the State Developmental Disabilities Councils, the University Affiliated programs, and the Projects of National Significance grantees and subgrantees, as provided for in 45 CFR part 74 and part 92, the Department will keep information about individual clients confidential to the extent permitted by law and regulations.

(e) (1) In making any periodic audit, report, or evaluation of the performance of the Protection and Advocacy System, the Secretary does not require the Protection and Advocacy System to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under the program.

(2) However, notwithstanding paragraph (e)(1) of this section, if an audit, monitoring review, evaluation, or other investigation by the Department produces evidence that the System has violated the Act or the regulations, the System will bear the burden of proving its compliance. The System's inability to establish compliance because of the confidentiality of records will not relieve it of this responsibility. The eligible system may elect to obtain a release from all individuals requesting or receiving services at the time of intake or application. The release shall state that only information directly related to client and case eligibility will be subject to disclosure to officials of the Department.

PART 1386—FORMULA GRANT PROGRAMS

10. The authority citation for part 1386 continues to read as follows:

Authority: 42 U.S.C. 6000 et seq.

Subpart A—Basic Requirements

11. Section 1386.1 is revised to read as follows:

§ 1386.1 General.

All rules under this subpart are applicable to both the State Developmental Disabilities Councils and the Protection and Advocacy System.

12. Section 1386.2 is amended by revising paragraphs (b)(1) and (c) to read as follows:

§ 1386.2 Obligation of funds.

* * * * *

(b) (1) A State incurs an obligation for acquisition of personal property or for the performance of work on the date it makes a binding, legally enforceable, written commitment, or when the State Developmental Disabilities Council enters into an Interagency Agreement with an agency of State government for acquisition of personal property or for the performance of work.

* * * * *

(c) (1) The Protection and Advocacy System may elect to treat entry of an appearance in judicial and administrative proceedings on behalf of an individual with a developmental disability as a basis for obligating funds for the litigation costs. The amount of the funds obligated must not exceed a reasonable estimate of the costs, and the way the estimate was calculated must be documented.

(2) For the purpose of this paragraph, litigation costs means expenses for court costs, depositions, expert witness fees, travel in connection with a case and similar costs and costs resulting from litigation in which the agency has represented an individual with developmental disabilities (e.g. monitoring court orders, consent decrees), but not for salaries of employees of the Protection and Advocacy System. All funds made available for Federal Assistance to State Developmental Disabilities Councils and to the Protection and Advocacy System obligated under this paragraph are subject to the requirement of paragraph (a) of this section. These funds, if reobligated, may be reobligated only within a two year period beginning with the first day of the Federal fiscal year in which the funds were originally awarded.

§ 1386.4 [Removed and reserved]

13. Section 1386.4, *Eligibility for services* is removed and reserved.

14. The heading of subpart B is revised to read as follows:

Subpart B—State System for Protection and Advocacy of the Rights of Individuals With Developmental Disabilities

15. A new § 1386.19 is added to include definitions as follows:

§ 1386.19 Definitions.

As used in §§ 1386.20 and 1386.21 of this part the following definitions apply:

Designating official means the Governor, or other State official, who is empowered by the Governor or State legislature to designate the State official or public or private agency to be accountable for the proper use of funds by the State Protection and Advocacy System.

Full investigations means the access to clients, public and private facilities and entities and their staff, and the records regarding the operation of the institution that is necessary for a reasonable person to make an informed decision about whether the alleged or suspected abuse is taking place or has taken place.

Probable cause means a reasonable ground for belief that an individual or group of individuals with developmental disabilities may now be subject to or have been subject to abuse or neglect. The reported existence of conditions or problems that are usually associated with abuse and neglect will be Probable Cause.

Record of an individual with a developmental disability includes reports prepared or received by any staff of a facility rendering care or treatment, or reports prepared by an agency or staff person charged with investigating reports of incidents of abuse or neglect, injury or death occurring at such facility that describes incidents of abuse, neglect, injury, or death occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.

16. Section 1386.20 is amended by revising the heading; revising paragraphs (a), (d), and (e); and adding a new paragraph (f) to read as follows:

§ 1386.20 Designated State Protection and Advocacy System.

(a) The designating official must designate the State official or public or private agency to be accountable for the proper use of funds and conduct of the State Protection and Advocacy System.

* * * * *

(d)(1) Prior to any redesignation of the agency which administers and operates the State Protection and Advocacy System, the designating official must give notice of the intention to make the redesignation to the agency currently administering and operating the State Protection and Advocacy System by registered or certified mail. The designating official must also publish a public notice of the proposed action. The agency and the public shall have a reasonable period of time, but not less than 45 days to respond to the notice.

(2) The public notice must include:

(i) The Federal requirements for the Protection and Advocacy system for individuals with developmental disabilities (section 142 of the Act); and, where applicable, the requirements of the Protection and Advocacy for Individuals with Mental Illness Act of 1986, as amended, (42 U.S.C. 10805 and 10821); the Protection and Advocacy of Individual Rights Program (29 U.S.C. 794(e) and the Client Assistance Program (29 U.S.C. 732), of the Rehabilitation Act of 1973, as amended; the Technology-Related Assistance for Individuals Act of 1988, as amended by Pub.L. 103–218 (Protection and Advocacy contracts and grants); or any other Federal advocacy program that is administered by the State Protection and Advocacy System.

(ii) The goals and function of the State's Protection and Advocacy System including the current Statement of Objectives and Priorities;

(iii) The name and address of the agency currently designated to administer and operate the Protection and Advocacy System; and an indication of whether the agency also operates other Federal advocacy programs;

(iv) A description of the current Protection and Advocacy agency and the system it administers and operates including, as applicable, descriptions of other Federal advocacy programs it operates;

(v) A clear and detailed explanation of the good cause for the proposed redesignation;

(vi) A statement suggesting that interested persons may wish to write the current State Protection and Advocacy agency at the address provided in paragraph (d)(2)(iii) of this section to obtain a copy of its response to the notice required by paragraph (d)(1) of this section. Copies shall be provided in accessible formats to individuals with disabilities upon request.

(vii) The name of the new agency proposed to administer and operate the Protection and Advocacy System under the Developmental Disabilities program. This agency will be eligible to administer other Federal advocacy programs.

(viii) A description of the system which the new agency would administer and operate, including a description of all other Federal advocacy programs the agency would operate; and

(ix) The timetable for assumption of operations by the new agency and the estimated costs of any transfer and start-up operations.

(3) The public notice, as required by paragraph (d)(1) of this section, must be in a format accessible to individuals with developmental disabilities or their representatives, e.g., tape, diskette. The designating official or entity must provide for publication of the notice of the proposed redesignation using the State register, State-wide newspapers, public service announcements on radio and television, or any other legally equivalent process. Copies of the notice must be made generally available to individuals with developmental disabilities and mental illness who live in residential facilities through posting or some other means.

(4) After the expiration of the public comment period required in paragraph (d)(1) of this section, the designating official must conduct a public hearing on the redesignation proposal. After consideration of all public and agency comments, the designating official or entity must give notice of the final decision to the currently designated agency and the public through the same means used under paragraph (d)(3) of this section. If the notice to the currently designated agency states that the redesignation will take place, it also must inform the agency of its right to appeal this decision to the Assistant Secretary, Administration for Children and Families. The redesignation shall not be effective until 10 working days after notifying the current Protection and Advocacy agency or, if the agency appeals, until the Assistant Secretary has considered the appeal.

(e)(1) Following notification pursuant to paragraph (d)(4) of this section, the Protection and Advocacy agency which is the subject of such action may appeal the redesignation to the Assistant Secretary. To do so, the Protection and Advocacy agency must submit an appeal in writing to the Assistant Secretary within 10 working days of receiving official notification under paragraph (d)(4) of this section, with a separate copy sent by registered or certified mail to the designating official or entity which made the decision concerning redesignation.

(2) In the event that the agency subject to redesignation does exercise its right to appeal under paragraph (e)(1) of this section, the designating official or entity must give public notice of the Assistant Secretary's final decision regarding the appeal through the same means utilized under paragraph (d)(3) of this section within 10 days of receipt of the Assistant Secretary's final decision under paragraph (e)(6) of this section.

(3) The designating official or entity within 10 working days from the receipt of a copy of the appeal must provide written comments to the Assistant Secretary (with a copy sent by registered or certified mail to the Protection and Advocacy agency appealing under paragraph (e)(1) of this section), or withdraw the redesignation. The comments must include a summary of the public comments received in response to the public notice concerning the proposed redesignation under paragraph (d)(2) of this section, the results of the hearing provided for under paragraph (d)(4) of this section, and may provide any additional relevant information.

(4) In the event that the designating official withdraws the redesignation while under appeal pursuant to paragraph (e)(1) of this section, the designating official must notify the Assistant Secretary, and the current agency, and must give public notice of his or her decision through the same means utilized under paragraph (d)(3) of this section.

(5) As part of their submission under paragraph (e)(1) or (e)(3) of this section, either party may request, and the Assistant Secretary may grant, an opportunity for an informal meeting with the Assistant Secretary at which representatives of both parties will present their views on the issues in the appeal. The meeting will be held within 20 working days of the submission of written comments by the designating official or entity under paragraph (e)(2) of this section. The Assistant Secretary will promptly notify the parties of the date and place of the meeting.

(6) Within 30 days of the informal meeting under paragraph (e)(5) of this section, or, if there is no informal meeting under paragraph (e)(5) of this section, within 30 days of the submission under paragraph (e)(3) of this section, the Assistant Secretary will issue to the parties a final written decision on whether the redesignation was for good cause. Redesignation for good cause may include, but is not limited to, eliminating longstanding or pervasive inefficiency and correcting unacceptable performance. The Assistant Secretary will consult with

Federal advocacy programs that will be directly affected by the proposed redesignation in making a final decision on the appeal.

(f)(1) Within 30 days after the redesignation becomes effective under paragraph (d)(4) of this section, the designating official must submit an assurance to the Assistant Secretary that the newly designated Protection and Advocacy agency meets the requirements of the statute and the regulations.

(2) In the event that the Protection and Advocacy agency subject to redesignation does not exercise its rights to appeal within the period provided under paragraph (e)(1) of this section, the designating official must provide to the Assistant Secretary documentation that the agency was redesignated for good cause. Such documentation must clearly demonstrate that the Protection and Advocacy agency subject to redesignation was not redesignated for any actions or activities which were carried out under section 142 of the Act, these regulations or any other Federal advocacy program's legislation or regulations.

17. Section 1386.21 is revised to read as follows:

§ 1386.21 Requirements of the Protection and Advocacy System.

(a) In order for a State to receive Federal financial participation for Protection and Advocacy activities under this subpart, as well as the State Developmental Disabilities Council activities (subpart C), the Protection and Advocacy System must meet the requirements of section 142 of the Act (42 U.S.C. 6042) and that system must be operational.

(b) The client's record is the property of the Protection and Advocacy agency which must protect it from loss, damage, tampering, or use by unauthorized individuals. The Protection and Advocacy agency must:

(1) Keep confidential all information contained in a client's records, which includes, but is not limited to, information contained in an automated data bank. For purposes of any periodic audit, report, or evaluation required under the Act, the Secretary shall not require a program to disclose the identify of, or any other personally identifiable information related to, any individual requesting assistance under such program. This regulation does not limit access by parents or legal guardians of minors unless prohibited by State or Federal law, court order or the rules of attorney-client privilege;

(2) Have written policies governing access to, storage of, duplication of, and release of information from the client's record; and

(3) Obtain written consent from the client, if competent, or his or her guardian, before it releases information to individuals not otherwise authorized to receive it.

(c) (1) A Protection and Advocacy System must have access to records of an individual with a developmental disability, including a person who is no longer living, as provided by section 142(a)(2)(I) of the Act and the authority necessary to conduct full investigations of abuse and neglect on the Protection and Advocacy System's determination of probable cause or if the incidents are reported to the System.

(2) A Protection and Advocacy System must have trained staff to conduct full investigations of abuse and neglect upon the System's determination of probable cause or if the incidents are reported to the System.

(3) Protection and Advocacy Systems must have authority to have access at reasonable times and locations to residents of any private or public facility that is providing services, supports, and other assistance to such residents as provided in section 142(a)(2)(H) of the Act. Systems must also have authority to have access at reasonable times and locations to staff of private or public facilities when investigating incidents of abuse and neglect under the authority required in section 142(a)(2)(B).

(4) Protection and Advocacy systems must be authorized to keep confidential the names and identity of individuals who report incidents of abuse and neglect and individuals who furnish information that forms the basis for a determination that probable cause exists.

(d) A Protection and Advocacy System shall not implement a policy or practice restricting the remedies which may be sought on the behalf of individuals with developmental disabilities or compromising the authority of the Protection and Advocacy System to pursue such remedies through litigation, legal action or other forms of advocacy.

(e) A State shall not apply hiring freezes, reductions in force, prohibitions on staff travel, or other policies, to the extent that such policies would impact staff or functions funded with Federal funds and would prevent the system from carrying out its mandates under the Act.

(f) A Protection and Advocacy System may exercise its authority under State law where the authority exceeds the authority required by the Developmental Disabilities Assistance and Bill of Rights Act, as amended. However, State law must not diminish the required authority of the Protection and Advocacy System.

18. Section 1386.22 is added to read as follows:

§ 1386.22 Public notice of Federal onsite review.

Prior to any Federal review of the State program, a 30 day notice and an opportunity for public comment must be provided. Reasonable effort shall be made by the appropriate Regional Office to seek comments through notification to major disability advocacy groups, the State Bar, other disability law resources, the State Developmental Disabilities Council and the University Affiliated Program, for example, through newsletters and publications of those organizations. The findings of public comments may be consolidated if sufficiently similar issues are raised and they shall be included in the report of the onsite visit.

19. Section 1386.23 is revised to read as follows:

§ 1386.23 Periodic reports: Protection and Advocacy System.

(a) By January 1 of each year the Protection and Advocacy System shall submit an Annual Program Performance Report as required in section 107(b) of the Act, in a format designated by the Secretary.

(b) Financial status reports must be submitted by the Protection and Advocacy Agency according to a frequency interval specified by the Administration for Children and Families. In no case will such reports be required more frequently than quarterly.

(c) By August 15 of each year, the Protection and Advocacy System shall submit an Annual Statement of Objectives and Priorities for the coming fiscal year as required under section 142(a)(2)(C) of the Act. It shall include:

(1) The rationale for the Statement;

(2) A budget for the System's operations for the next fiscal year;

(3) Documentation of the process and outcome of soliciting public input as described in paragraph (d) of this section;

(4) An explanation of how public comments were reflected either in the Statement of Objectives and Priorities or were not reflected, and if not, why;

(5) A description of how the Protection and Advocacy System operates and how it coordinates the Protection and Advocacy program for individuals with developmental disabilities with the following Federal Advocacy programs: Protection and Advocacy of Individual Rights program

(PAIR) and Client Assistance Program, (CAP), (Rehabilitation Act), the Long Term Care Ombudsman program (Older Americans Act), the Protection and Advocacy System for Mentally Ill Individuals program (PAIMI), (Protection and Advocacy for the Mentally Ill Act), Assistive Technology Protection and Advocacy Projects (Technology-Related Assistance for Individuals with Disabilities Technical Assistance Act) and State Developmental Disabilities Council and UAP advocacy activities. This description must address the System's intake process, internal and external referrals of eligible clients, duplication and overlap of services and eligibility, streamlining of advocacy services, collaboration and sharing of information on service needs and development of Statements of Objectives and Priorities for the various advocacy programs; and

(6) A description of the procedures used for informing individuals with developmental disabilities, their families, disability organizations, the State Bar Association, other disability law resources and the public of the Protection and Advocacy's priorities and services including use of referrals to other sources of legal advocacy.

(d) Each fiscal year, the Protection and Advocacy Agency shall:

(1) Obtain formal public input on its Statement of Objectives and Priorities;

(2) At a minimum, publish a proposed Statement of Objectives and Priorities for the next fiscal year in a publication of general distribution and make it accessible to individuals with developmental disabilities and their representatives, allowing at least 45 days from the date of publication for comment;

(3) Provide to the State Developmental Disabilities Council and the University Affiliated Program a copy of the proposed Statement of Objectives and Priorities for comments concurrently with the public notice;

(4) Address any comments received through the public input and any input received from the State Developmental Disabilities Council and the University Affiliated Program in the final Statement submitted to the Department; and

(5) Address how the State developmental disabilities network (the Protection and Advocacy System; State Developmental Disabilities Council; and the University Affiliated Program) will collaborate with each other and with public and private entities outside the developmental disabilities network.

(Information collection requirements regarding the report referenced in paragraph (a) will require an Information Collection Re-approval Request to be prepared by ADD. Previous Office of Management and Budget control number was 0980–0160. The requirements under paragraph (b) are approved under control number 0348–0039 by the Office of Management and Budget. Information collection requirements contained in paragraph (c) are new requirements pursuant to section 142(a)(2)(C) and section 107(b) of the Act. This information will require Office of Management and Budget approval).

20. Section 1386.24 is amended by revising paragraph (a), redesignating paragraph (b) as (a)(2); and adding a new paragraph (b) to read as follows:

§ 1386.24 Non-allowable costs for the Protection and Advocacy System.

(a) Federal financial participation is not allowable for:

(1) Costs incurred for activities on behalf of individuals with developmental disabilities to solve problems not directly related to their disabilities and which are faced by the general populace; and

(2) * * *

(b) Attorneys fees are considered program income pursuant to Part 74—Administration of Grants and Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and must be added to the funds committed to the program and used to further the objectives of the program. This requirement shall apply to all attorneys fees, including those received after the project period in which they were earned.

21. The heading of subpart C is revised to read as follows:

Subpart C—State Plan for Assisting in the Development of a Comprehensive System of Services and Supports for Individuals With Developmental Disabilities

22. Section 1386.30 is amended by revising paragraphs (a) and (c)(1); redesignating paragraph (e) as (f); revising newly redesignated paragraphs (f) (2), (3), and (4); and adding new paragraphs (c)(3) and (e) to read as follows:

§ 1386.30 State Plan requirements.

(a) In order to receive Federal financial assistance under this subpart, each State Developmental Disabilities Council must prepare and must submit to the Secretary and have in effect a State Plan which meets the requirements of sections 122 and 124 of the Act (42 U.S.C. 6022 and 6024) and these regulations. The development of the State Plan and applicable annual amendments, is the responsibility of the State Developmental Disabilities Council. The State Developmental Disabilities Council will provide opportunities for public input during planning and development of the State Plan. In addition, the State Developmental Disabilities Council will consult with the Designated State Agency before the State Plan is submitted to the Secretary to ensure that the State Plan is not in conflict with applicable State laws. The Designated State Agency shall provide support services as requested by and negotiated with the Council.

* * * * *

(c) * * *

(1) Identify the program unit(s) within the Designated State Agency responsible for providing assurances and fiscal and other support services.

* * * * *

(3) Describe how the Developmental Disabilities network in the State (i.e., Developmental Disabilities Council, Protection and Advocacy System, and University Affiliated programs(s)) is working with the disabilities community to bring about broad systems change to benefit individuals with developmental disabilities, and, where applicable, the ways in which individuals with other disabilities may benefit as well.

* * * * *

(e) The State Plan may provide for funding of projects to demonstrate new approaches to enhance the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities. Such projects are not to exceed three years in duration and may include assistance in developing strategies for securing funds for continuation of the project from sources other than funds received under the Act.

(f) The State Plan must contain assurances that:

* * * * *

(2) The human rights of individuals with developmental disabilities will be protected consistent with section 110 of the Act (42 U.S.C. 6009).

(3) Buildings used in connection with activities assisted under the Plan must meet all applicable provisions of Federal and State laws pertaining to accessibility, fire, health and safety standards.

(4) The State Developmental Disabilities Council shall follow the requirements of section 124(c)(8), (9) and (10) regarding budgeting, staff hiring and supervision and staff assignment. Budget expenditures must be consistent with applicable State laws

and policies regarding grants and contracts and proper accounting and bookkeeping practices and procedures. In relation to staff hiring, the clause ''consistent with State law'' means that the hiring of State Developmental Disabilities Council staff must be done in accordance with State personnel policies and procedures, except that a State shall not apply hiring freezes, reductions in force, prohibitions on staff travel, or other policies, to the extent that such policies would impact staff or functions funded with Federal funds and would prevent the Council from carrying out its functions under the Act.

(Information collection requirements contained in paragraph (a) are approved by the Office of Management and Budget under control number 0980–0162. ADD will prepare an Information Collection Request to OMB based on the new requirements of the 1994 Amendments.)

23. Section 1386.31 is amended by redesignating the current paragraphs (a), (b), (c), and (d) as (b), (c), (d) and (e); adding a new paragraph (a); and revising the newly redesignated paragraph (b) as follows:

§ 1386.31 State Plan submittal and approval.

(a) The public review process for the State Plan required by Section 122(d)(1) of the Act shall include at least:

(1) Issuance of a public notice, announcing from the Governor or the Governor's designee, the availability of the proposed State Plan or State Plan amendment. The notice shall be published in formats accessible to individuals with disabilities (e.g., tape, diskette) and the general public, and shall provide a 45 day period for public review and comment.

(2) Provisions for addressing and incorporating significant comments or suggestions about the proposed State Plan. Councils will consider and respond to suggestions which call for elimination, substitution, or addition of a Plan goal or objective. Councils will also respond to questions or comments about the use of Federal funds or other resources.

(3) Upon completion of the tasks required by paragraphs (a) (1) and (2) of this section and submission of a State Plan to the Regional Office, issuance of a second public notice, also in formats accessible to individuals with disabilities (e.g., tape, diskette) and the general public, on the availability of the State Plan or Plan amendments. Councils may use the second public notice as the vehicle for responding to questions or comments referred to in paragraph (a)(2) of this section.

(b) The final State Plan and, where applicable, State Plan amendments, must be submitted to the appropriate Regional office of the Department 45 days prior to the fiscal year for which it is applicable. Unless State law provides differently, the State Plan and amendments or related documents must be approved by the Governor or the Governor's designee as may be required by any applicable Federal issuance.

* * * * *

24. Section 1386.32 is revised to read as follows:

§ 1386.32 Periodic reports: Federal assistance to State Developmental Disabilities Councils.

(a) The Governor or the appropriate State financial officer must submit financial status reports on the programs funded under this subpart according to a frequency interval which will be specified by the Administration for Children and Families. In no case will such reports be required more frequently than quarterly.

(b) By January 1 of each year an Annual Program Performance Report must be submitted, as required in section 107(a) of the Act (42 U.S.C. 6006a), in a format designated by the Secretary.

(Information collection requirements contained in paragraphs (a) and (b) have expired and will require an Information Collection Re-approval Request to be prepared by ADD. Previous Office of Management and Budget control number for paragraph (a) was 0980–0212 and for paragraph (b) was 0980–0172. The Information Collection Request for Re-approval concerning the reports will be modified pursuant to the 1994 Amendments).

25. Section 1386.33 is amended by revising paragraph (a) as follows:

§ 1386.33 Protection of employee's interests.

(a) Based on section 122(c)(5)(K) of the Act (42 U.S.C. 6022(c)(5)(K), the State plan must provide for fair and equitable arrangements to protect the interest of all institutional employees affected by actions under the plan to provide community living activities. Specific arrangements for the protection of affected employees must be developed through negotiations between the appropriate State authorities and employees or their representatives. Fair and equitable arrangements must include procedures that provide for the impartial resolution of disputes between the State and an employee concerning the interpretation, application, and enforcement of protection arrangements. The State must inform employees of the State's decision to provide for community living activities.

* * * * *

26. Section 1386.34 is added to read as follows:

§ 1386.34 Designated State Agency.

(a) If the State Developmental Disabilities Council requests a review by the Governor (or legislature) of the Designated State Agency, the Council must provide documentation of the reason for change and recommend a preferred Designated State Agency.

(b) After the review is completed, a majority of the non-State agency members of the Council may appeal to the Assistant Secretary for a review of the designation of the designated State agency if the Council's independence as an advocate is not assured because of the actions or inactions of the designated State agency.

(c) The following steps apply to the appeal of the Governor's (or legislature's) determination of the Designated State Agency.

(1) Prior to an appeal to the Assistant Secretary, Administration for Children and Families, the State Developmental Disabilities Council, at the request of the non-State Agency members, must give a 30 day written notice, by certified mail, to the Governor (or legislature) of the majority of non-State members' intention to appeal the designation of the Designated State Agency.

(2) The appeal must clearly identify the grounds for the claim that the Council's independence as an advocate is not assured because of the actions or inactions of the designated State agency.

(3) Upon receipt of the appeal from the State Developmental Disabilities Council, the Assistant Secretary will notify the State Developmental Disabilities Council and the Governor (or legislature), by certified mail, that the appeal has been received and will be acted upon within 60 days. The Governor (or legislature) shall within 10 working days from the receipt of the Assistant Secretary's notification provide written comments to the Assistant Secretary (with a copy sent by registered or certified mail to the Council) on the claims in the Council's appeal. Either party may request, and the Assistant Secretary may grant, an opportunity for an informal meeting with the Assistant Secretary at which representatives of both parties will present their views on the issues in the appeal. The meeting will be held within 20 working days of the submission of written comments by the Governor (or legislature). The Assistant Secretary will promptly notify the parties of the date and place of the meeting.

(4) The Assistant Secretary will review the issue(s) and provide a final written decision within 60 days following receipt of the State Developmental Disabilities Council's appeal. If the determination is made that the Designated State Agency should be redesignated, the Governor (or legislature) must provide written assurance of compliance within 45 days from receipt of the decision.

(5) During any time of this appeals process the State Developmental Disabilities Council may withdraw such request if resolution has been reached with the Governor (or legislature) on the designation of the Designated State Agency. The Governor (or legislature) must notify the Assistant Secretary in writing of such an occurrence.

27. Section 1386.35 is amended by revising the heading and paragraph (b)(1) and adding new paragraphs (d), (e), and (f) to read as follows:

§ 1386.35 Allowable and non-allowable costs for Federal assistance to State Developmental Disabilities Councils.

* * * * *

(b) * * *

(1) Costs incurred by institutions or other residential or non-residential programs which do not comply with the Congressional findings with respect to the rights of individuals with developmental disabilities in section 110 of the Act (42 U.S.C. 6009).

* * * * *

(d) For purposes of determining aggregate minimum State share of expenditures, there are three categories of expenditures:

(1) Expenditures for priority area projects carried out directly by the Council and Council staff, as described in section 125A(a)(2) of the Act, requiring no non-Federal aggregate participation;

(2) Expenditures for priority area projects in poverty areas but not carried out directly by the Council and Council staff, as described in section 125A(a)(1) of the Act, requiring a minimum of 10 percent non-Federal aggregate participation; and

(3) All other expenditures, requiring a minimum of 25 percent non-Federal aggregate participation.

(e) As a consequence of paragraph (d) of this section, the minimum aggregate non-Federal expenditure required under the Act is calculated as the sum of:

(1) One-ninth of Federal expenditures for projects in poverty areas, such projects not being directly carried out by the Council and Council staff; and

(2) Plus one-third of all other Federal expenditures except those supporting priority area activities directly carried out by the Council and Council staff.

(f) The non-Federal expenditures must support activities authorized by the Act and approved by the Council, but may include non-Federal support for implementation activities pursuant to section 125A(a)(2) of the Act, as well as functions of the designated State agency.

28. Section 1386.36 is amended by revising the section heading and paragraph (e) to read as follows:

§ 1386.36 Final disapproval of the State plan or plan amendments.

* * * * *

(e) A State has filed its request for a hearing with the Assistant Secretary within 21 days of the receipt of the decision. The request for a hearing must be sent by certified mail to the Assistant Secretary. The date of mailing the request is considered the date of filing if it is supported by independent evidence of mailing, otherwise the date of receipt shall be considered the date of filing.

29. Section 1386.37 is added to read as follows:

§ 1387.37 Public notice of Federal onsite review.

Prior to any Federal review of the State Developmental Disabilities Council, a 30 day notice and an opportunity for comment will be provided. Reasonable effort will be made by the appropriate Regional Office to seek comments through notification to major disability groups, the State Protection and Advocacy agency and the University Affiliated Program, for example, through newsletters and publications of those organizations. The findings of public comments may be consolidated if sufficiently similar issues are raised and they will be included in the report of the onsite visit.

Subpart D—Practice and Procedure for Hearings Pertaining to States' Conformity and Compliance With Developmental Disabilities State Plans, Reports and Federal Requirements

30. Section 1386.80 is revised to read as follows:

§ 1386.80 Definitions.

For purposes of this subpart:

Assistant Secretary means the Assistant Secretary for Children and Families (ACF) or a presiding officer.

ADD means Administration on Developmental Disabilities, Administration for Children and Families.

Presiding officer means anyone designated by the Assistant Secretary to conduct any hearing held under this subpart. The term includes the Assistant Secretary if the Assistant Secretary presides over the hearing.

Payment or Allotment means an amount provided under Part B or C of the Developmental Disabilities Assistance and Bill of Rights Act. This term includes Federal funds provided under the Act irrespective of whether the State must match the Federal portion of the expenditure. This term shall include funds previously covered by the terms ''Federal financial participation,'' ''the State's total allotment,'' ''further payments,'' ''payments,'' ''allotment'' and ''Federal funds.''

31. Section 1386.85 is amended by revising paragraph (a) to read as follows:

§ 1386.85 Filing and service of papers.

(a) All papers in the proceedings must be filed with the designated individual in an original and two copies. Only the originals of exhibits and transcripts of testimony need be filed.

* * * * *

32. Section 1386.90 is revised to read as follows:

§ 1386.90 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Assistant Secretary to the State Developmental Disabilities Council and the Designated State Agency, or to the State Protection and Advocacy System or designated official. The notice must state the time and place for the hearing, and the issues which will be considered. The notice must be published in the **Federal Register**.

33. Section 1386.92 is revised to read as follows:

§ 1386.92 Place.

The hearing must be held on a date and at a time and place determined by the Assistant Secretary with due regard for convenience, and necessity of the parties or their representatives. The site of the hearing shall be accessible to individuals with disabilities.

34. Section 1386.93 is amended by revising paragraphs (c)(2) and (d) to read as follows:

§ 1386.93 Issues at hearing.

* * * * *

(c) * * *

(2) Prior to the removal of an issue, in whole or in part, from a hearing involving issues relating to the conformity with Federal requirements under Part B of the Act, of the State plan or the activities of the State's Protection

and Advocacy System, the Assistant Secretary must provide all parties other than the Department and the State (see § 1386.94(b)) with the statement of his or her intention to remove an issue from the hearings and the reasons for that decision. A copy of the proposed State plan provision or document explaining changes in the activities of the State's protection and advocacy system on which the State and the Assistant Secretary have settled must be sent to the parties. The parties must have an opportunity to submit in writing within 15 days their views as to, or any information bearing upon, the merits of the proposed provision and the merits of the reasons for removing the issue from the hearing.

(d) In hearings involving questions of noncompliance of a State's operation of its program under Part B of the Act with the State plan or with Federal requirements or compliance of the State's Protection and Advocacy System with Federal requirements, the same procedure set forth in paragraph (c)(2) of this section must be followed with respect to any report or evidence resulting in a conclusion by the Assistant Secretary that a State has achieved compliance.

* * * * *

35. Section 1386.94 is amended by revising paragraphs (a), (b)(2), and (c) to read as follows:

§ 1386.94 Request to participate in hearing.

(a) The Department, the State, the State Developmental Disabilities Council, the Designated State Agency, and the State Protection and Advocacy System, as appropriate, are parties to the hearing without making a specific request to participate.

(b) * * *

(2) Any individual or group wishing to participate as a party must file a petition with the designated individual within 15 days after notice of the hearing has been published in the **Federal Register**, and must serve a copy on each party of record at that time in accordance with § 1386.85(b). The petition must concisely state:

(i) Petitioner's interest in the proceeding;

(ii) Who will appear for petitioner;

(iii) The issues the petitioner wishes to address; and

(iv) Whether the petitioner intends to present witnesses.

* * * * *

(c)(1) Any interested person or organization wishing to participate as amicus curiae must file a petition with the designated individual before the commencement of the hearing. The petition must concisely state:

(i) The petitioner's interest in the hearing;

(ii) Who will represent the petitioner, and

(iii) The issues on which the petitioner intends to present argument.

(2) The presiding officer may grant the petition if he or she finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues.

(3) An amicus curiae may present a brief oral statement at the hearing at the point in the proceedings specified by the presiding officer. It may submit a written statement of position to the presiding officer prior to the beginning of a hearing and must serve a copy on each party. It also may submit a brief or written statement at such time as the parties submit briefs and must serve a copy on each party.

36. Section 1386.101 is amended by revising paragraphs (a)(11) and (c) to read as follows:

§ 1386.101 Authority of presiding officer.

(a) * * *

(11) If the presiding officer is a person other than the Assistant Secretary, he or she shall certify the entire record, including recommended findings and proposed decision, to the Assistant Secretary;

* * * * *

(c) If the presiding officer is a person other than the Assistant Secretary, his or her authority is to render a recommended decision with respect to program requirements which are to be considered at the hearing. In case of any noncompliance, he or she shall recommend whether payments or allotments should be withheld with respect to the entire State plan or the activities of the State's Protection and Advocacy System, or whether the payments or allotments should be withheld only with respect to those parts of the program affected by such noncompliance.

37. Section 1386.111 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1386.111 Decisions following hearing.

* * * * *

(c) If the Assistant Secretary concludes:

(1) In the case of a hearing pursuant to sections 122, 127, or 142 of the Act, that a State plan or the activities of the State's Protection and Advocacy System does not comply with Federal requirements, he or she shall also specify whether the State's payment or allotment for the fiscal year will not be authorized for the State or whether, in the exercise of his or her discretion, the payment or allotment will be limited to the parts of the State plan or the activities of the State's Protection and Advocacy System not affected by the noncompliance.

(2) In the case of a hearing pursuant to section 127 of the Act that the State is not complying with the requirements of the State plan, he or she must also specify whether the State's payment or allotment will not be made available to the State or whether, in the exercise of his or her discretion, the payment or allotment will be limited to the parts of the State plan not affected by such noncompliance. The Assistant Secretary may ask the parties for recommendations or briefs or may hold conferences of the parties on these questions.

(d) The decision of the Assistant Secretary under this section is the final decision of the Secretary and constitutes ''final agency action'' within the meaning of 5 U.S.C. 704 and the ''Secretary's action'' within the meaning of section 129 of the Act (42 U.S.C. 6029). The Assistant Secretary's decision must be promptly served on all parties and amici.

38. Section 1386.112 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1386.112 Effective date of decision by the Assistant Secretary.

(a) If, in the case of a hearing pursuant to section 122 of the Act, the Assistant Secretary concludes that a State plan does not comply with Federal requirements, and the decision provides that the payment or allotment will be authorized but limited to parts of the State plan not affected by such noncompliance, the decision must specify the effective date for the authorization of the payment or allotment.

(b) In the case of a hearing pursuant to sections 127 or 142 of the Act, if the Assistant Secretary concludes that the State is not complying with the requirements of the State plan or the activities of the State's Protection and Advocacy System do not comply with Federal requirements, the decision that further payments or allotments will not be made to the State, or will be limited to the parts of the State plan or activities of the State's Protection and Advocacy System not affected, must specify the effective date for withholding payments of allotments.

* * * * *

PART 1387—PROJECTS OF NATIONAL SIGNIFICANCE

39. The authority citation for part 1387 continues to read as follows:

Authority: 42 U.S.C. 6000 *et seq.*

40. Section 1387.1 is being amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 1387.1 General requirements.

(a) All projects funded under this part must be of national significance and serve or relate to individuals with developmental disabilities to comply with section 162 of the Act.

(b) Based on section 162(d), proposed priorities for grants and contracts will be published in the **Federal Register** and a 60 day period for public comments will be allowed.

* * * * *

(d) Projects of National Significance, other than technical assistance and data collection grants, must be exemplary and innovative models and have potential for replication at the local level as well as nationally or otherwise meet the goals of part E of the Act.

41. Part 1388 is revised to read as follows:

PART 1388—THE UNIVERSITY AFFILIATED PROGRAMS

Sec.
1388.1 Definitions.
1388.2 Program criteria—purpose.
1388.3 Program criteria—mission.
1388.4 Program criteria—governance and administration.
1388.5 Program criteria—preparation of personnel.
1388.6 Program criteria—services and supports.
1388.7 Program criteria—dissemination.
1388.8 [Reserved].
1388.9 Peer review.

Authority: 42 U.S.C. 6063 *et seq.*

§ 1388.1 Definitions.

For purposes of this part:

Accessible means UAPs are characterized by their program and physical accommodation and their demonstrated commitment to the goals of the Americans with Disabilities Act.

Capacity Building means that UAPs utilize a variety of approaches to strengthen their university and their local, State, regional and National communities. These approaches include, but are not limited to such activities as: (1) Enriching program depth and breadth, for example, recruiting the dental school to participate in the UAP; (2) acquiring additional resources, for example, grants, space, and volunteer manpower; and (3) carrying out systems changes, for example, promoting community-based programming for persons with developmental disabilities across all ages.

Collaboration means that the UAP cooperates with a wide range of persons, systems, and agencies, whether they utilize services of the UAP or are involved in UAP planning and programs. These entities include individuals with developmental disabilities and family members, as well as the Developmental Disabilities Network, advocacy and other disability groups, university components, generic and specialized human service agencies, State agencies and citizen and community groups. An example of this cooperation is the Consumer Advisory Committee, a required element in each UAP.

Culturally competent manner means provision of services, supports, or other assistance in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language and behaviors of individuals who are receiving services, and that has the greatest likelihood of ensuring their maximum participation in the program.

Diverse network means that although each UAP has the same mandates under the Act, the expression of these common mandates differs across programs. Each UAP must implement these mandates within the context of their host university, their location within the university, the needs of the local and State community, the cultural composition of their State, their resources and funding sources, and their institutional history. These factors converge to create a network of unique and distinct programs, bound together by common mandates but enriched by diverse composition.

Interdisciplinary training means the use of individuals from different professional specialties for UAP training and service delivery.

Lifespan approach means that UAP activities address the needs of individuals with disabilities who are of various ages.

Mandated core functions means the UAP must perform: (1) Interdisciplinary preservice preparation; (2) community service activities (community training and technical assistance); and (3) activities related to dissemination of information and research findings.

Program criteria means a statement of the Department's expectation regarding the direction and desired outcome of the University Affiliated Program's operation.

State-of-the-art means that UAP activities are of high quality (using the latest technology), worthy of replication (consistent with available resources), and systemically evaluated.

§ 1388.2 Program criteria—purpose.

The program criteria will be used to assess the quality of the University Affiliated Programs (UAP). The overall purpose of the program criteria is to assure the promotion of independence, productivity, integration and inclusion of individuals with developmental disabilities. Compliance with the program criteria is a prerequisite for a UAP to receive the minimum funding level of a UAP. However, compliance with the program criteria does not, by itself, assure funding.

§ 1388.3 Program criteria—mission.

(a) *Introduction to mission*: The purpose and scope of UAP activities must be consistent with the Act as amended and include the provision of training, service, technical assistance and dissemination of information in a culturally competent manner. UAPs must include in their activities the underserved, and provide for meaningful participation of individuals from diverse racial and ethnic backgrounds. UAP principles and operations must be consistent with the UAP's mission statement. (The concept of ''diverse network'' as defined in § 1388.1 of this part applies to paragraphs (b), (f), (g), and (h) of this section.)

(b) The UAP must develop a written mission statement that reflects its values and the goals of the university in which it is located. The UAP's goals, objectives and activities must be consistent with the mission statement.

(c) The UAP's mission and programs must reflect a life span approach, incorporate an interdisciplinary approach and include the active participation of individuals with developmental disabilities and their families.

(d) The UAP programs must address the needs of individuals with developmental disabilities, including individuals with developmental disabilities who are unserved or underserved, in institutions, and on waiting lists.

(e) The UAP's goals, objectives, and activities must incorporate and demonstrate culturally competent services and practices, which are in response to local culture and needs.

(f) The UAP's mission must reflect its unique role as a bridge between university programs, individuals with developmental disabilities and their families, service agencies and the larger community.

(g) The UAP's goals, objectives, and activities must use capacity building strategies to address State needs.

(h) The UAP's goals, objectives, and activities must reflect interagency collaborations and strategies to effect systemic change within the university and in State and local communities and service systems.

§ 1388.4 Program criteria—governance and administration.

(a) Introduction to governance and administration: The UAP must be associated with, or an integral part of, a university. (The concept of ''diverse network'' as defined in § 1388.1 of this part applies to paragraphs (b), (c), (d), (i), and (l) of this section.)

(b) The UAP must have a written agreement or charter with the university that specifies the UAP designation as an official university component, the relationships between the UAP and other university components, the university commitment to the UAP, and the UAP commitment to the university.

(c) Within the university, the UAP must maintain the autonomy and organizational structure required to carry out the UAP mission and provide for the mandated activities.

(d) The UAP must be responsible to report directly to a University administrator who will represent the interests of the UAP within the University.

(e) The University must demonstrate its support for the UAP through the commitment of financial and other resources.

(f) UAP senior professional staff must hold faculty appointments in appropriate academic departments of the host or an affiliated university, consistent with university policy.

(g) UAP faculty and staff must represent the broad range of disciplines and backgrounds necessary to implement the full inclusion of individuals with developmental disabilities in all aspects of society, consonant with the spirit of the Americans with Disabilities Act, (ADA).

(h) The UAP must meet the requirements of section 109 of the Act (42 U.S.C. 6008) regarding affirmative action. The UAP must take affirmative action to employ and advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices.

(i) The management practices of the UAP, as well as the organizational structure, must promote the role of the UAP as a bridge between the University and the community. The UAP must actively participate in community networks and include a range of collaborating partners.

(j) The UAP's Consumer Advisory Committee must meet regularly. The membership of the Consumer Advisory Committee must reflect the racial and ethnic diversity of the State or community in which the UAP is located. The deliberations of the Consumer Advisory Committee must be reflected in UAP policies and programs.

(k) The UAP must maintain collaborative relationships with the State Developmental Disabilities Council and the Protection and Advocacy System. In addition, the UAP must be a member of the State Developmental Disabilities Council and participate in Council meetings and activities, as prescribed by the Act.

(l) The UAP must maintain collaborative relationships and be an active participant with the UAP network and individuals, organizations, State agencies and Universities.

(m) The UAP must demonstrate the ability to leverage resources.

(n) The UAP must have adequate space to carry out the mandated activities.

(o) The UAP physical facility and all program initiatives conducted by the UAP must be accessible to individuals with disabilities as provided for by Section 504 of the Rehabilitation Act and Titles II and III of the Americans with Disabilities Act.

(p) The UAP must integrate the mandated core functions into its activities and programs and must have a written plan for each core function area.

(q) The UAP must have in place a long range strategic planning capability to enable the UAP to respond to emergent and future developments in the field.

(r) The UAP must utilize state-of-the-art methods, including the active participation of individuals, families and other consumers of programs and services to evaluate programs. The UAP must refine and strengthen its programs based on evaluation findings.

§ 1388.5 Program criteria—preparation of personnel.

(a) Introduction to preparation of personnel: UAP interdisciplinary training programs at the preservice level prepare personnel concerned with developmental disabilities.

(b) Interdisciplinary training programs must be based on identified personnel preparation needs centered around a conceptual framework with identified outcomes.

(c) The interdisciplinary training process, as defined by the UAP, must reflect a mix of students from diverse academic disciplines/academic programs and cultures that reflect the diversity of the community. Faculty represent a variety of backgrounds and specialties, including individuals with disabilities and family members, and a variety of learning experiences, as well as reflecting the cultural diversity of the community. Trainees must receive credit as appropriate for participation in UAP training programs.

(d) Preservice training must be integrated into all aspects of the UAP, including community training and technical assistance, direct services (if provided), and dissemination.

(e) Trainees must be prepared to serve in a variety of roles, including advocacy and systems change. The UAP must encourage graduates to work in varied situations, settings, or jobs.

(f) The UAP must influence University curricula to prepare personnel who, in their future career in a broad range of social and community roles, will contribute to the accommodation and inclusion of individuals with developmental disabilities, as mandated in the Americans with Disabilities Act.

(g) The UAP core curriculum must incorporate cultural diversity and demonstrate cultural competence. Trainees must be prepared to address the needs of individuals with developmental disabilities and their families in a culturally competent manner.

§ 1388.6 Program criteria—services and supports.

(a) Introduction to services and supports: The UAP engages in a variety of system interventions and may also engage in a variety of individual interventions.

(b) UAP community training and technical assistance activities must use capacity building strategies to strengthen the capability of communities, systems and service providers.

(c) Direct Services (Optional)

(1) A UAP must integrate direct services and projects into community settings. These services may be provided in a service delivery site or training setting within the community including the university. Direct service projects may involve interdisciplinary student trainees, professionals from various disciplines, service providers, families and/or administrators. Direct services must be extended, as appropriate, to include adult and elderly individuals with developmental disabilities.

(2) Services and projects provided in community-integrated settings are to be:

(i) Scheduled at times and in places that are consistent with routine activities within the local community; and

(ii) Interact with and involve community members, agencies, and organizations.

(3) The bases for the services or project development must be:

(i) A local or universal need that reflects critical problems in the field of developmental disabilities; or

(ii) An emerging, critical problem that reflects current trends or anticipated developments in the field of developmental disabilities.

(4) State-of-the-art and innovative practices include:

(i) Services and project concepts and practices that facilitate and demonstrate independence for the individual, community integration, productivity, and human rights;

(ii) Practices that are economical, accepted by various disciplines, and highly beneficial to individuals with developmental disabilities, and that are integrated within services and projects;

(iii) Innovative cost-effective concepts and practices that are evaluated according to accepted practices of scientific evaluation;

(iv) Research methods that are used to test hypotheses, validate procedures, and field test projects; and

(v) Direct service and project practices and models that are evaluated, packaged for replication and disseminated through the information dissemination component.

§ 1388.7 Program criteria—dissemination.

(a) Introduction to dissemination: The UAP disseminates information and research findings, including the empirical validation of activities related to training, services and supports, and contributes to the development of new knowledge.

(b) The UAP must be identified to the community as a resource for information, produce a variety of products to promote public awareness and visibility of the UAP, and facilitate replication of best practices.

(c) Specific target audiences must be identified for dissemination activities and include individuals with developmental disabilities, family members, service providers, administrators, policy makers, university faculty, researchers, and the general public.

(d) UAP dissemination activities must be responsive to community requests for information and must utilize a variety of networks, including State Developmental Disabilities Councils, Protection and Advocacy Systems, other University Affiliated Programs, and State service systems to disseminate information to target audiences.

(e) The process of developing and evaluating materials must utilize the input of individuals with developmental disabilities and their families.

(f) The values of the UAP must be reflected in the language and images used in UAP products.

(g) Dissemination products must reflect the cultural diversity of the community.

(h) Materials disseminated by the UAP must be available in formats accessible to individuals with a wide range of disabilities, and appropriate target audiences.

§ 1388.8 [Reserved]

§ 1388.9 Peer review.

(a) The purpose of the peer review process is to provide the Commissioner, ADD, with technical and qualitative evaluation of UAP applications, including on-site visits or inspections as necessary.

(b) Applications for funding opportunities under Part D, section 152 of the Act, must be evaluated through the peer review process.

(c) Panels must be composed of non-Federal individuals who, by experience and training, are highly qualified to assess the comparative quality of applications for assistance.

[FR Doc. 95–11910 Filed 5–17–95; 8:45 am]

BILLING CODE 4184–01–P

federal register

Thursday
May 18, 1995

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.

United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions; Implementation; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173 and 178

[Docket HM–215A; Amdt. Nos. 171–132, 172–140, 173–242, and 178–107]

RIN 2137–AC42

Implementation of the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; editorial revisions and response to petitions for reconsideration.

SUMMARY: On December 29, 1994, RSPA published a final rule which amended the Hazardous Materials Regulations to maintain alignment with corresponding provisions of international standards. Recent changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions or ICAO TI), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) necessitated amendments to domestic regulations to provide consistency with international transport requirements and to facilitate the transport of hazardous materials in international commerce. This final rule corrects errors in that final rule and responds to petitions for reconsideration.

DATES: *Effective:* This final rule is effective October 1, 1995. The effective date for the final rule published under Docket HM–215A on December 29, 1994 (59 FR 67390) remains October 1, 1995.

Compliance: However, compliance with the regulations is authorized from January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Beth Romo or John Gale, Office of Hazardous Materials Standards (202) 366–4488, Hazardous Materials Safety, 400 Seventh Street SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On December 29, 1994 (59 FR 67390), RSPA published a final rule under Docket HM–215A to maintain alignment with corresponding provisions in international standards, based on recent changes to the International standards. Since publication of the final rule, RSPA has received seven petitions for reconsideration, as well as other correspondence identifying errors. This document incorporates editorial and technical revisions to the final rule based on the merit of petitions and other revisions that RSPA has determined are necessary to correct or clarify the final rule.

Section-by-Section Review

Part 171

Section 171.14. This section was rewritten in the final rule to remove certain obsolete compliance dates for Docket HM–181 requirements and to add new transition dates for provisions adopted under Docket HM–215A. In paragraph (a)(2)(i), which delays compliance with new placard specifications until October 1, 2001, the phrases ''placards specified in the December 21, 1990 final rule'' and ''for highway transportation only'' were inadvertently omitted. RSPA did not intend to exclude placards specified in the December 21, 1990 final rule, nor to expand the scope of this transition provision to other modes; therefore, the phrases ''or placards specified in the December 21, 1990 final rule'' and ''for highway transportation only'' are reinstated in paragraph (a)(2).

Paragraph (b) introductory text, paragraph (b)(1) and paragraph (b)(2) are revised to clarify that amendments contained in this document supersede changes made in the December 29, 1994 final rule. RSPA has received numerous inquiries concerning the effective date for compliance with the latest requirements in the ICAO Technical Instructions and the IMDG Code. A Competent Authority Approval was issued on December 29, 1994, which authorizes shipments entering the U.S. by air or vessel to comply with either the 1993–1994 or 1995–1996 ICAO TI and either Amendment 26 or Amendment 27 of the IMDG Code until October 1, 1995. For export shipments, each destination country should be consulted for delayed implementation dates.

Part 172

Section 172.101: The Hazardous Materials Table. In the Hazardous Materials Table (HMT), several editorial changes are made in response to petitions for reconsideration and agency initiatives. The entry in the HMT for ''Benzaldehyde'' is revised by placing a ''+'' in the first column which fixes the hazard class for this material at Class 9. The entry ''n-Butyl isocyanate'' is revised to correctly identify the material as a Hazard Zone B inhalation hazard material. Aircraft quantity limitations for ''Cyanogen bromide'' are revised for consistency with the ICAO TI. The ''D'' in the first column for PETN is removed. Special Provision 45 is removed from ''Methyl Trichloroacetate'' and correctly assigned to the entry ''Methacrylic acid, inhibited''. The entry for ''Maneb, stabilized *or* Maneb preparations, stabilized'' is revised by correctly referencing Special Provision 54 in Column (7).

RSPA received one petition for reconsideration and numerous inquiries requesting that the shipping name ''Azodicarbonamide'' be added to the HMT. Clarification on the applicability of the HMR to certain formulations of azodicarbonamide also was requested. This shipping name was proposed but, based on the merit of comments, was not adopted in the final rule. In the final rule, RSPA stated that this entry was ''superfluous'' in light of the new classification scheme for self-reactive materials. However, the petitioner correctly pointed out that this is not consistent with international standards and, without this proper shipping name, packagings containing this material which are imported into the U.S. would need to be remarked before being reshipped. Therefore, RSPA is adding the shipping name ''Azodicarbonamide'' to the HMT. In addition, based on this petition for reconsideration, RSPA is adding Special Provision 38, which incorporates the requirements of Special Provision 215 of the UN Recommendations for azodicarbonamide. This special provision clarifies that azodicarbonamide with a Self-accelerated decomposition temperature (SADT) of 75° C or greater is not a self-reactive material.

The entries for certain pesticides described as having a ''*flash point less than 23 degrees C*'' are revised by removing Packing Group III provisions. Based on packing group criteria provided in § 173.121, Packing Group III materials in Class 3 cannot have a flash point less than 23 degrees C; therefore, Packing Group III provisions are unnecessary.

Several entries are revised by adding, removing, or revising special provisions in Column (7). For the entries, ''Jet perforating guns, charged oil well, without detonator,'' classed in Divisions 1.1D and 1.4D, Special Provision 55 is added. To provide consistency with revised § 173.185, Special Provisions 18 and A12 assigned to ''Lithium batteries, contained in equipment'' are removed from that entry and Special Provision 29 is revised. In addition, quantity limitations for passenger and cargo only

aircraft are adjusted to reflect these revisions.

Appendix B to § 172.101. In the List of Marine Pollutants as revised in the final rule, the severe marine pollutant designation ''PP'' is removed for the entry for ''Diethylbenzenes (mixed isomers)'' and is added for the entry ''Copper metal powders''.

Section 172.102. As discussed above, based on a petition for reconsideration, RSPA is adding Special Provision 38, which incorporates the requirements of Special Provision 215 of the UN Recommendations for azodicarbonamide. This special provision clarifies that azodicarbonamide with an SADT of 75° C or greater is not a self-reactive material. Also as discussed above, RSPA is removing Special Provisions 18 and A12 and revising Special Provision 29 for lithium batteries. In addition, RSPA is correcting Special Provision 35 to clarify that if a material assigned this special provision does not meet Division 6.1, but does meet another hazard class, it is subject to the HMR. This is consistent with international standards. Special Provision 51 is revised to indicate the quantity limitations of propellant for the different divisions for model rocket motors, and Special Provisions 55 and 56 are added to clarify that jet perforating guns with detonators must be approved and must incorporate a safety device.

Section 172.204. The certification in paragraph (a)(2) is revised to reflect the exact language contained in international standards.

Section 172.402. A footnote to the subsidiary labeling table in paragraph (a)(2) is revised to clarify that only a Class 3 Packing Group III material with a flash point at or above 38° C (100° F) being transported by highway or rail is excepted from the requirement to apply a subsidiary Class 3 label.

Part 173

Section 173.23. A new paragraph (g) is added to allow the continued use of non-bulk packagings conforming to the pre-HM–215A requirements of Subparts L and M of Part 178. This will permit authorized packagings marked with minimum, rather than nominal, thickness and not permanently marked on the bottom to remain in service.

Section 173.24. Newly adopted provisions in paragraphs (c)(1) and (d)(2), authorizing the use of UN standard packagings manufactured outside the U.S., are revised to clarify that these packagings are not subject to the specification requirements in Part 178.

Section 173.28. The requirement to mark packagings with the month leakproofness testing was performed is removed in paragraph (b)(2)(ii). This is consistent with the reconditioning marking requirement in § 178.503(c)(1)(iii), revised in the final rule to require only marking the year of reconditioning.

In the final rule, in the footnote to the table in paragraph (b)(4), RSPA adopted minimum thicknesses of 0.80 mm and 1.10 mm as the required minimum thicknesses of the steel in the side and head, respectively, of a drum. The Association of Container Reconditioners (ACR) petitioned RSPA to restore the minimum thickness requirements to 0.82 mm (0.032 inch) and 1.09 mm (0.043 inch), which were the minimum thickness requirements adopted in the December 1990 final rule under Docket HM–181. The ACR expressed concern that a 1995 or later drum bearing a ''0.80'' thickness marking could be a drum for which the minimum thickness is 0.8 mm but more likely could be a drum marked as nominal 0.8 mm for which the minimum thickness is actually 0.73 mm. In such a case, the drum marked as nominal 0.8 mm could not be reused or reconditioned. Conversely, the Steel Shipping Container Institute (SSCI) asked RSPA to revise the footnote to indicate a minimum thickness of 0.73 mm (0.029 inch) body and 1.01 mm (0.040 inch) head, which is the minimum for a nominal thickness of 0.80 mm and 1.10 mm, respectively. SSCI believes that use of nominal thickness would allow for consistent use of UN markings as a guide to reconditioning.

After studying both petitions, as well as the history of this footnote, RSPA has concluded that what were believed to be inconsequential differences in rounding techniques have led to the current situation. In adopting the footnote to the table in the December 1990 final rule, RSPA intended to allow drums with minimum head and body thicknesses corresponding to the minimum thicknesses for 18 and 20 gauge steel. This decision was based on the merit of comments to Notice 87–4 [May 5, 1987; 52 FR 16482] contending that steel drums used in the U.S. with 18 gauge body and 20 gauge heads have proven to be adequate for transportation and reuse. (The Notice proposed a 1.0 mm minimum thickness for both body and head for reuse.) RSPA did not intend to authorize significantly thinner drums by rounding the minimum thickness from 0.82 to 0.8 mm and understands the problems that may result from drums marked ''0.8.''

RSPA is not prepared to reduce the required minimum thickness to 0.73 mm, as SSCI suggested, because there is no assurance that drums with such a thickness can be reused safely. Based on the merits of comments, RSPA believes that a minimum body thickness of 0.82 mm and a minimum head thickness of 1.09 mm are the most appropriate minimum thicknesses to maintain the desired level of safety, and the footnote is revised accordingly. Because the metric measurement is the regulatory standard and the U.S. customary measurement is provided for information only, RSPA is removing the equivalent measurements in inches in the footnote to preclude further confusion. To determine an equivalent measurement in U.S. customary units, a conversion table is provided in § 171.10.

Three petitioners asked RSPA to reconsider the exception for certain plastic drums from leakproofness testing before each reuse. The Society of Plastics Industry (SPI) claimed that by adopting this provision in the final rule without specifically proposing an exception for plastic drums in the NPRM, RSPA had not provided adequate notice and opportunity to comment. Another petitioner, the Association of Container Reconditioners, also noted that adoption of the exception from leakproofness testing before reuse for certain plastic drums was ''improper, having been without required notice under the Administrative Procedure Act.''

Section 553(b)(3) of the Administrative Procedures Act (APA) states that:

> General notice of proposed rule making shall be published in the **Federal Register** * * *. The notice shall include— * * * (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

5 U.S.C. 553(b)(3).

Section 553(c) requires that after notice has been given as required under section 553(b)(3):

> * * * the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments * * *.

5 U.S.C. 553(c).

Petitioners argued that the final rule extending the exception from leakproofness testing to plastic drums differed so substantially from the proposed amendment regarding leakproofness testing that they essentially were denied notice and an opportunity to comment, as required under section 553 (b)(3) and (c). However, in the Notice of Proposed

Rulemaking (NPRM) published on July 18, 1994 (59 FR 36488), RSPA stated

> Based on the merits of a petition for rulemaking (P–1133), a new paragraph [178.37](b)(7) would be added to waive retesting requirements for certain packagings used in limited operations prior to each reuse * * *. RSPA is proposing similar provisions in new paragraph (b)(7) for certain packagings to be reused without leakproof testing. Packagings would be limited to stainless steel, monel, or nickel drums (*or other packagings approved by the Associate Administrator for Hazardous Materials Safety*) * * *. *Other packagings could qualify only if approved by the Associate Administrator for Hazardous Materials Safety.*

(Emphasis added.)

Based on this statement, 34 commenters requested that the agency extend the exception from leakproofness testing to plastic drums as well as those made of stainless steel, monel or nickel.

Although section 553(b)(3) requires that a Notice of Proposed Rulemaking (NPRM) contain ''either the terms or substance of the proposed rule or a description of the subjects and issues involved,'' it does not require an agency to publish in advance every precise proposal which it may ultimately adopt as a rule. *Daniel International Corporation* v. *Occupational Safety and Health Review Commission and the Secretary of Labor,* 656 F.2d 925 (4th Cir. 1981) citing *Spartan Radiocasting Co.* v. *F.C.C.*, 619 F.2d 314 (4th Cir. 1980) and *California Citizens Band Association* v. *U.S.*, 375 F.2d 43 (9th Cir. 1967), cert. denied, 389 U.S. 844, 88 S. Ct. 96 (1967). This is particularly true when proposals are adopted in response to comments from participants in the rulemaking proceeding, as is the case in this instance. The ''requirement of submission of a proposed rule for comment does not automatically generate a new opportunity for comment merely because the rule promulgated differs from the rule proposed, partly at least in response to submissions.'' *Daniel International Corporation v. Occupational Safety and Health Review Commission and the Secretary of Labor,* 656 F.2d at 932, citing *International Harvester Co.* v. *Ruckelshaus,* 478 F.2d 615, 632 (D.C. Cir. 1973). ''A contrary rule would lead to the absurdity that an agency could learn from comments on its proposals only at the peril of starting a new procedural round of commentary.'' *Id.* at 932, citing *International Harvester* at 632, n. 51.

As in *Daniel International,* the change in RSPA's requirement was made in response to comments to the NPRM. And, although the NPRM that was the subject of *Daniel International* did not indicate that a change in application of the standard at issue was contemplated, the court nevertheless found that the filing of numerous comments on the issue suggested that the notice was adequate. The court noted that to hold otherwise would penalize the agency for benefitting from comments received and further bureaucratize the process. *Id.* at 932. In this instance, RSPA specifically stated twice that it would consider extending the leakproofness testing exception to other packagings upon request. These statements were sufficient to generate 34 comments requesting that RSPA extend the leakproofness testing exception to plastic drums. Therefore, the NPRM gave sufficient notice and an opportunity to comment on the issue of exceptions for leakproofness testing.

In its petition, in addition to the claim that RSPA violated the APA, SPI charged that adoption of this exception ''could be viewed as an arbitrary and capricious abandonment of RSPA's public safety responsibility.'' However, in a petition for reconsideration to HM–181 submitted in 1991 by the Plastic Drum Institute (PDI), a division of SPI, the PDI noted that ''plastic drums, for example, do not have a seamed type of construction that can contribute to seepage types of leakage.'' Furthermore, a comment to the proposed HM–181 rule cited a PDI report stating that ''in 1986, the release from these (Specification 34 plastic) drums was less than .003% of the total drum shipments. Of the total gallons lost, the amount was less than .0005% of the total volume shipped.'' Therefore, RSPA does not agree that plastic drums that have demonstrated a very low frequency of leakage without leakproofness testing before each reuse should be subject to such testing. SPI's petition for reconsideration is, therefore, denied.

RSPA has received numerous requests to clarify provisions in the exception from leakproofness testing before reuse of certain metal and plastic drums. Of particular concern is the phrase ''distribution chain controlled by the offeror'' in paragraph (b)(7)(iii). The exception is intended to apply only to a drum which is in dedicated service; i.e., the drum is refilled with the same material or a material compatible with that previously contained in the drum, only the original filler may refill the drum before offering it for transportation, and the drum may only be transported in a transport vehicle or freight container that does not contain any material offered by anyone other than the filler of the drums. The drums may be transported to an unspecified number of destinations, as long as they are not refilled by anyone other than the original filler. Otherwise, they must be leakproofness tested before they are refilled. Paragraph (b)(7) is revised to clarify the intent of the exception.

Section 173.62. One petitioner requested that RSPA reconsider the decision not to adopt a domestic shipping description for jet perforating guns, with detonator. The petitioner had requested that the description be added to the final rule. RSPA rejected the request stating ''US006 only allows detonators to be transported with, not in, detonators.'' The petitioner, however, noted that in the NPRM published under Docket HM–166X [August 7, 1991; 56 FR 37505] RSPA stated it was revising packing method US006 to permit the transport of jet perforating guns with detonators attached. RSPA stands corrected. The HMR currently does allow, with safety features, the transport of jet perforating guns with detonators attached when approved in accordance with § 173.56. Therefore, RSPA is adding domestic shipping descriptions (Divisions 1.1D and 1.4D) for jet perforating guns with detonators attached. RSPA is adding special provisions to these description to clarify that the device must be approved in accordance with § 173.56 and it must incorporate a safety device. RSPA also is clarifying the shipping descriptions for jet perforating guns without detonators by adding a special provision that makes it clear that this item must be approved in accordance with § 173.56. In addition, in the paragraph (c) Table of Packing Methods, packing method E–142 is revised to correctly reference appropriate packaging requirements and exceptions.

Section 173.150. Paragraph (d)(2) is revised for clarity and consistency with international provisions which except from regulation alcoholic beverages in *inner* packagings having a capacity of five liters or less. The final rule authorized ''packagings'' of five liters or less, but did not specify ''inner packagings''. This error is corrected in this document.

Section 173.185. Paragraphs (e)(6), (h)(1), and (j) are revised to clarify certain provisions adopted under the final rule. Paragraph (e)(6) is revised to indicate that the limit of 500 g of lithium or lithium alloy in strong inner packagings is for each inner packaging. Paragraph (h)(1), which addresses cells and batteries for disposal, clarifies that the 12 g limit per cell applies to the cell when new. Paragraph (j) is revised to emphasize that provisions for transport for testing purposes do not apply to

lithium cells and batteries contained in equipment.

Sections 173.224 and 173.225. Several editorial changes are made to the Self-Reactive Materials Table in § 173.224 and the Organic Peroxide Table in § 173.225, based on petitions for reconsideration and agency initiative.

Section 173.306. Based on a provision in the UN Recommendations, RSPA proposed and incorporated a hot water bath test for aerosol containers in paragraph (a)(3)(v). By adopting provisions identical to those contained in the UN Recommendations, RSPA failed to remove wording referring to certain non-specification plastic aerosol containers. The final rule made no revisions to paragraphs (a)(3) and (a)(3)(ii), which specify only metal containers. Based on a request to clarify these provisions, RSPA is amending paragraph (a)(3)(v) to remove all references to plastic containers.

Part 178

Section 178.503. In paragraph (e)(3), the example of a UN marking for reconditioned packagings is revised to indicate that only the last two digits of the year the packaging was reconditioned are required as part of the marking.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered to be a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. The original regulatory evaluation of the final rule was reexamined but was not modified because the changes made under this rule will result in minimal economic impact on industry.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain covered subjects and are not substantively the same as Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(A) The designation, description, and classification of hazardous materials;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(E) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This final rule concerns classification, packaging, labeling, marking, shipping documentation, and manufacture of packaging for hazardous material. Therefore, this final rule preempts State, local, or Indian tribe requirements that are not substantively the same as Federal requirements on these subjects.

Section 5125(b)(2) of title 49 U.S.C. provides that when DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be October 1, 1995. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

This rule revises certain provisions incorporated into the Hazardous Materials Regulations based on changes introduced in the seventh and eighth revised editions of the UN Recommendations, the 1993–1994 and 1995–1996 ICAO Technical Instructions, and Amendments 26 and 27 to the IMDG Code. It applies to offerors and carriers of hazardous materials and facilitates the transportation of hazardous materials in international commerce by providing consistency with international requirements. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The requirements for information collection have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act 0f 1980 (Pub. L. 96–511) under OMB control number 2137–0034 for shipping papers and 2137–0557 for approvals.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicles safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 171, 172, 173 and 178 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.14, as revised at 59 FR 67407, on December 29, 1994, a new sentence is added after the first sentence of paragraph (b) introductory text to read as follows:

§ 171.14 Transitional provisions for implementing requirements based on the UN Recommendations.

* * * * *

(b) * * * A final rule published in the **Federal Register** on May 18, 1995, effective October 1, 1995, further amended the December 29, 1994 final rule. * * *

* * * * *

§ 171.14 [Amended]

3. In addition, in § 171.14, as revised at 59 FR 67407, the following changes are made:

a. In paragraph (a)(2)(ii), the wording ''September 30, 1991, may be used in place of '' is revised to read ''September 30, 1991 or placards specified in the December 21, 1990 final rule may be used, for highway transportation only, in place of''.

b. In paragraph (b) introductory text, at the end of the last sentence, the wording ''as amended in the final rule published in the **Federal Register** on May 18, 1995 is added.

c. In paragraph (b)(1), the wording ''December 29, 1994, final rule'' is revised to read ''December 29, 1994 final rule, as amended in the May 18, 1995 final rule''.

d. In paragraph (b)(2) introductory text, the wording ''by the December 29, 1994, rule,'' is revised to read ''by the December 29, 1994 rule, as amended by the May 18, 1995 rule,''.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

4. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

5. In § 172.101, as amended at 59 FR 67408, the Hazardous Materials Table is amended by removing or adding in alphabetical order the following entries to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

SECTION 172.101.—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail-car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*	*		*		*		*			*		*
	Arsenical pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
	*	*		*		*		*			*		*
	[REMOVE]	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	*	*		*		*		*			*		*
	Benzoic derivative pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
	*	*		*		*		*			*		*
	[REMOVE]	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40

SECTION 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Nonbulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*	*			*	*		*			*		*
	Bipyridilium pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
	*	*			*	*		*			*		*
	[REMOVE]												
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	*	*			*	*		*			*		*
	Carbamate pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
	*	*			*	*		*			*		*
	[REMOVE]												
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	*	*			*	*		*			*		*
	Copper based pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
	*	*			*	*		*			*		*
	[REMOVE]												
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	*	*			*	*		*			*		*
	Dithiocarbamate pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
	*	*			*	*		*			*		*
	[REMOVE]												

SECTION 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Nonbulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	*	*		*		*		*			*		*
	Mercury based pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
	*	*		*		*		*			*		*
	[REMOVE]												
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	*	*		*		*		*			*		*
	Organochlorine pesticides liquid, flammable, toxic, *flash point less than 23 degrees C.*	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
	*	*		*		*		*			*		*
	[REMOVE]												
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	*	*		*		*		*			*		*
	Organophosphorous pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
	*	*		*		*		*			*		*
	[REMOVE]												
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	

SECTION 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Nonbulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*	*			*	*		*			*		*
	Pesticides, liquid, flammable, toxic, (flash point less than 23 degrees C).	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
	*	*			*	*		*			*		*
	[REMOVE]												
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	
	*	*			*	*		*			*		*
	Phenoxy pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
	*	*			*	*		*			*		*
	[REMOVE]												
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	*	*			*	*		*			*		*
	Phenyl urea pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
	*	*			*	*		*			*		*
	[REMOVE]												
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	*	*			*	*		*			*		*
	Phthalimide deriviative pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
	*	*			*	*		*			*		*
	[REMOVE]												

SECTION 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail-car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	*	*		*		*		*			*		*
	Substituted nitrophenol pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
	*	*		*		*		*			*		*
	[REMOVE]												
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	*	*		*		*		*			*		*
	[ADD]												
	*	*		*		*		*			*		*
	Azodicarbonamide.	4.1	UN3242	II	FLAMMABLE SOLID.	38	151	212	240	Forbidden.	Forbidden.	D	12, 61, 74
	*	*		*		*		*			*		*
D	Jet perforating guns, charged oil well, with detonator.	1.1D	NA0124	II	EXPLOSIVE 1.1D.	D55, 56	None	62	None	Forbidden.	Forbidden.	A	24E
D	Jet perforating guns, charged oil well, with detonator.	1.4D	NA0494	II	EXPLOSIVE 1.4D.	55, 56.	None	62	None	Forbidden	Forbidden	B	

§ 172.101 [Amended]

6. In addition, in § 172.101, in the Hazardous Materials Table, as amended at 59 FR 67408, the following changes are made:

a. For the entry ''Benzaldehyde'', in Column (1), a ''+'' is added.

b. For the entry ''n-Butyl isocyanate'', in Column (7), Special Provisions ''1'', ''B30'', ''B72'' and ''T44'' are removed and Special Provisions ''2'', ''B32'', ''B74'' and ''T45'' are added in their place; and in Column (8B), the reference ''226'' is revised to read ''227''.

c. For the entry ''Cotton'', in Column (4), the identification number ''NA1365'' is added.

d. For the entry ''Cotton, wet'', in Column (4), the identification number ''UN1365'' is added.

e. For the entry ''Coumarin deriviative pesticides, liquid, toxic, flammable, *flashpoint less than 23 degrees C*'', the wording ''*flashpoint less than*'' is revised to read ''*flash point not less than*''.

f. For the entry ''Cyanogen bromide'', in Column (9A), the wording ''Forbidden'' is revised to read ''1 kg'', and in Column (9B) the wording ''Forbidden'' is revised to read ''15 kg''.

g. For the entry ''Isopentane, *see* n-Pentane'', in Column (2), the wording ''n-Pentane'' is revised to read ''Pentane''.

h. For the entry ''Jet perforating guns, charged *oil well, without detonator*'', Special Provision ''55'' is added in Column (7), and for the entry ''Jet perforating guns, charged, *oil well, without detonator*'', Special Provision ''55,'' is added in Column (7) before ''114''.

i. For the entry ''Lithium batteries, contained in equipment'', in Column

(7), Special Provisions ''18'' and ''A12'' are removed; in Column (9A) the word ''Forbidden'' is removed and the wording ''5 kg'' is added in its place; and in Column (9B), the wording ''See A12'' is removed and the wording ''5 kg'' is added in its place.

j. For the entry ''Lithium battery'', in Column (9A), the wording ''Forbidden'' is removed and the wording ''5 kg'' is added in its place.

k. For the entry ''Maneb stabilized or Maneb preparations, stabilized *against self-heating*'' in Column (7), Special Provision ''53'' is revised to read ''54''.

l. For the entry ''Methacrylic acid, inhibited'', in Column (7), Special Provision ''45,'' is added before ''T8''.

m. For the entry ''Methyl trichloroacetate'', in Column (7), Special Provision ''45,'' is removed.

n. For the entry ''Pentaerythrite tetranitrate, wetted *or* Pentaerythritol tetranitrate, wetted, *or* PETN, wetted *with not less than 25 percent water, by mass,* or Pentaerythrite tetranitrate, *or* Pentaerythritol tetranitrate *or* PETN, desensitized *with not less than 15 percent phlegmatizer by mass*'' the ''D'' in Column (1) is removed.

Appendix B to § 172.101 [Amended]

7. In Appendix B to § 172.101, as amended at 59 FR 67485, in the List of Marine Pollutants, the following changes are made:

a. For the entry ''Copper metal powder'', in Column (1), ''PP'' is added.

b. For the entry ''Diethylbenzenes (mixed isomers)'', in Column (1), ''PP'' is removed.

8. In § 172.102, in paragraph (c)(1), Special Provision 18 is removed, Special Provision 29 is revised, Special Provision 51, as added at 59 FR 67485, is revised, and Special Provisions 38, 55 and 56 are added; and in paragraph (c)(2), Special Provision A12 is removed, to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

29 Lithium cells and batteries and equipment containing or packed with lithium cells and batteries which do not comply with the provisions of § 173.185 of this subchapter may be transported only if they are approved by the Associate Administrator for Hazardous Materials Safety.

* * * * *

38 If this material shows a violent effect in laboratory tests involving heating under confinement, the labeling requirements of Special Provision 53 apply, and the material must be packaged in accordance with packing method OP6B in § 173.225 of this subchapter. If the SADT is higher than 75° C, the technically pure substance and formulations derived from it are not self-reactive materials.

* * * * *

51 This description applies to items previously described as ''Toy propellant devices, Class C'' and includes reloadable kits. Model rocket motors containing 30 grams or less propellant are classed as Division 1.4S and items containing more than 30 grams of propellant but not more than 62.5 grams of propellant are classed as Division 1.4C.

* * * * *

55 This device must be approved in accordance with § 173.56 of this subchapter by the Associate Administrator for Hazardous Materials Safety.

56 A means to interrupt and prevent detonation of the detonator from initiating the detonating cord must be installed between each electric detonator and the detonating cord ends of the jet perforating guns before the charged jet perforating guns are offered for transportation.

* * * * *

§ 172.102 [Amended]

9. In addition, in § 172.102(c)(1), as amended at 59 FR 67485, Special Provision 35 is amended by removing the wording ''are not subject to the requirements of this subchapter'' and adding in its place ''do not meet the definition of Division 6.1''.

10. In § 172.204, paragraph (a)(2) is revised to read as follows:

§ 172.204 Shipper's certification.

(a) * * *

(2) ''I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labelled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations.''

* * * * *

§ 172.402 [Amended]

11. In § 172.402, as amended at 59 FR 67490, in paragraph (a)(2), in the footnotes following the table, the footnote identified as ''*'' is revised to read ''Required for all modes, except for a material with a flash point at or above 38° C (100°F) transported by rail or highway''.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

12. The authority citation for Part 173 continues to read as follows:

Authority: 49 App. U.S.C. 5101–5127; 49 CFR 1.53.

13. In § 173.23, a new paragraph (g) is added to read as follows:

§ 173.23 Previously authorized packaging.

* * * * *

(g) A non-bulk packaging manufactured, tested, marked, and certified on or before September 30, 1996, in accordance with the applicable provisions of subparts L and M of part 178 of this subchapter in effect on September 30, 1995, may be used as authorized by this subchapter if the packaging conforms to all requirements applicable at the time of manufacture. In addition, such a packaging may be reused as authorized by § 173.28 without a nominal thickness marking, if it conforms to the minimum thickness criteria prescribed in § 173.28(b)(4).

§ 173.24 [Amended]

14. In § 173.24, as amended at 59 FR 67491, the following changes are made:

a. In paragraph (c)(1), the wording ''(including U.N. standard packagings manufactured in the United States)'' is revised to read ''(but not including UN standard packagings manufactured outside the United States)''.

b. In paragraph (d)(2) introductory text, the wording ''used as an authorized packaging'' is revised to read ''used and is considered to be an authorized packaging''.

15. In § 173.28, as amended at 59 FR 67491, paragraph (b)(7)((iii) is redesignated as paragraph (b)(7)(iv), a new paragraph (b)(7)(iii) is added and paragraph (b)(7) introductory text, paragraph (b)(7)(i) and paragraph (b)(7)(ii) are revised, to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

* * * * *

(b) * * *

(7) Notwithstanding the provisions of paragraph (b)(2) of this section, a packaging otherwise authorized for reuse may be reused without being leakproofness tested with air provided the packaging—

(i) Is refilled with a material which is compatible with the previous lading:

(ii) Is refilled and offered for transportation by the original filler;

(iii) Is transported in a transport vehicle or freight container under the exclusive use of the refiller of the packaging; and

* * * * *

§ 173.28 [Amended]

16. In addition, in § 173.28, the following changes are made:

a. In paragraph (b)(2)(ii), in the first sentence, the wording ''month and'' is removed.

b. In paragraph (b)(4), as revised at 59 FR 67491, in Footnote 1 following the table, the wording ''0.80 mm (0.03 inch) body and 1.10 mm (0.043 inch) heads'' is revised to read ''0.82 mm body and 1.09 mm head''.

17. In § 173.62, in paragraph (b), the Explosives Table is amended by adding the following entry in appropriate alpha-numerical sequence to read as follows:

§ 173.62 Specific packaging requirements.

* * * * *

(b) * * *

EXPLOSIVES TABLE

Identification No.	Packing methods
[ADD]. NA0494	US006

* * * * *

§ 173.62 [Amended]

17a. In addition, in § 173.62, as amended at 59 FR 67492, in paragraph (c) ''Table of Packing Methods'', for the entry ''E–142'', in Column (4), ''40, D11, D39'' is revised to read ''41, D9, D11''.

§ 173.150 [Amended]

18. In § 173.150, as amended at 59 FR 67508, in paragraph (d)(2), the wording ''a packaging of five liters'' is revised to read ''an inner packaging of five liters''.

§ 173.185 [Amended]

19. In § 173.185, as revised at 59 FR 67509, the following changes are made:

a. In paragraph (e)(6), at the end of the first sentence, after the word ''alloy'', the wording ''per inner packaging'' is added.

b. In paragraph (h)((1), after the word ''Cells'', the wording '', when new,'' is added.

c. In paragraph (j), in the first sentence, after the wording ''testing purposes,'' the wording ''when not contained in equipment,'' is added.

20. In § 173.224, as revised at 59 FR 67511, at the end of the paragraph (b) table, a new Note 3 is added to read as follows:

§ 173.224 Packaging and control and emergency temperatures for self-reactive materials.

* * * * *

(b) * * *

Self-Reactives Materials Table

* * * * *

Notes:

* * * * *

3. The emergency and control temperatures must be determined in accordance with § 173.21(f).

§ 173.224 [Amended]

21. In addition, in § 173.224, as revised at 59 FR 67511, in the table in paragraph (b), the following changes are made:

a. For the entries ''Azodicarbonamide formulation type B'', ''Azodicarbonamide formulation type C'' and ''Azodicarbonamide formulation type D'', in Column (7), ''3'' is added.

b. For the entry ''2,2¹=Azodi(isobutyronitrile)'', in Column (1), ''2,2¹'' is revised to read ''2,2'''', and in Column (6), the emergency temperature ''45'' is revised to read ''+45''.

c. For the entry ''2,2¹=Azodi(2-methylbutyronitrile)'', in Column (1), ''2,2¹'' is revised to read ''2,2'''''.

d. For the entries ''1,1=Azodi(hexahydrobenzonitrile)'', ''Benzene-1,3-disulphohydrazide, as a paste'', ''Benzene sulphohydrazide'', ''4-(Benzyl(ethyl)amino)-3-ethoxybenzenediazonium zinc chloride'', and ''3=Chloro-4=Diethylamino-benzenediazonium zinc chloride'', in Column (2), the identification number ''3236'' is revised to read ''3226'' each place it appears.

e. For the entry ''4-Methylbenzenesulphonylhydrazide'', in Column (2), the identification number ''3226'' is removed and replaced with the identification number ''3236''.

f. In the Notes following the paragraph (b) table, in Note 2, the wording ''substance type C'' is revised to read ''substance type B''.

§ 173.225 [Amended]

22. In § 173.225, as amended at 59 FR 67513, in the Organic Peroxides Table in paragraph (b), the following changes are made:

a. For the first entry for ''tert-Butyl monoperoxymaleate *as a paste*'', ID Number ''UN3108'', in Column (8), Note ''21'' is removed.

b. For the second entry for ''tert-Butyl monoperoxymaleate *as a paste*'', in Column (2), the ID Number ''UN3010'' is removed and replaced with the ID Number ''UN3110'', and in Column (8), Note ''21'' is removed and replaced with Note ''7''.

c. In the entry for ''tert-Butyl peroxydiethylacetate *and* tert-Butyl peroxybenzoate'', in Column (6), the entry ''OP7'' is revised to read ''OP7A'', and the ''A'' in Column (7a) is removed.

d. For the entry ''tert-Butyl peroxyneodecanoate *as a paste*'' the phrase ''*as a paste*'' is removed and replaced with the phrase ''*as a stable dispersion in water*'' and, in Column (8), Note ''21'' is removed and the entry is placed in alphabetical order.

e. For the entry ''tert-Butyl peroxyneodecanoate *as a paste (frozen)*'', in Column (8), Note ''21'' is removed.

f. For the second entry for ''p-Menthyl hydroperoxide'', in column (4a), the concentration percent ''≤44'' is revised to read ''>44''.

g. In Note 1, at the end of the table, after ''is authorized'', the wording ''for liquids and OP8B is authorized for solids'' is added.

h. In Note 9, reference to the section ''§ 173.225(e)(3)(c)(ii)'' is removed and replaced with reference to ''§ 173.225(e)(3)(ii)''.

i. In Footnote 12, the words ''type C,'' are removed and replaced with the words ''type B,''.

§ 173.306 [Amended]

23. In § 173.306, as amended at 59 FR 67517, on December 29, 1994, in paragraph (a)(3)(v), the following changes are made:

a. In the second sentence, the wording ''or if the containers are made of plastic material which softens at this test temperature,'' is removed.

b. In the last sentence, the wording ''except that a plastic container may be deformed through softening provided that it does not leak.'' is removed and the comma following the word ''occur'' is replaced with a period.

PART 178—SPECIFICATIONS FOR PACKAGINGS

24. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 178.503 [Amended]

25. In § 178.503, as amended at 59 FR 67520, on December 29, 1994, in paragraph (e)(3), the illustration is revised as follows:

BILLING CODE 4910–60–P

BILLING CODE 4910–60–C

Issued in Washington, DC on May 10, 1995, under authority delegated in 49 CFR part 1.

Ana Sol Gutiérrez,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 95–11971 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–60–P

federal register

Thursday
May 18, 1995

Part IV

Department of the Interior

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe: Mattaponi Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[K00360–95–35420]

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) (formerly 25 CFR 54.9(a)) notice is hereby given that the Mattaponi Tribe (Mattaponi Indian Reservation), Route 2, Box 310, West Point, Virginia 23181, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on April 4, 1995, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.9(a) (formerly 54.8(d) of the Federal regulations), interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, N.W., Washington, D.C. 20240, Phone: (202) 208–3592.

Dated: May 3, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–12289 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
May 18, 1995

Part V

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of correction.

SUMMARY: In notice document 95–9820 beginning on page 19822 in the issue of Thursday, April 20, 1995, make the following correction:

On Page 19822, in the second column, in the third line from the bottom should read ''Between the Upper Skagit Indian Tribe and the State of Washington executed on January 26, 1995.''

DATES: This action was effective as of publication date of April 20, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: May 8, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–12288 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
May 18, 1995

Part VI

Department of Labor

Employment and Training Administration

Department of Education

Office of Vocational and Adult Education; School-to-Work Opportunities Act; State Implementation Grants; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; School-to-Work Opportunities Act; State Implementation Grants

AGENCIES: Department of Labor and Department of Education.

ACTION: Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995 and Notice of final selection criteria and a definition of administrative costs for School-to-Work Opportunities State Implementation Grants (State Implementation Grants) to be made in fiscal year 1995 and in succeeding years.

SUMMARY: The Departments of Labor and Education jointly invite applications for new awards in FY 1995. The Departments also announce final selection criteria to be used in evaluating applications submitted under the State Implementation Grants competition in FY 1995 and in succeeding years, authorized under section 212 of the School-to-Work Opportunities Act of 1994 (the Act). State Implementation Grants will enable States to implement their plans for statewide School-to-Work Opportunities systems. Such systems will offer young Americans access to programs designed to prepare them for a first job in high-skill, high-wage careers, and for further education and training. The Departments also announce a definition for the term ''administrative costs'' that will apply to State Implementation Grants funded under the Act.

DATES: The closing date for receipt of applications is June 19, 1995.

SUPPLEMENTARY INFORMATION:

Background

The Departments of Labor and Education are reserving funds appropriated for FY 1995 under the Act (Pub. L. 103–329) for a competition for State Implementation Grants authorized under section 212 of the Act.

This notice contains a definition of the term ''administrative costs'' and the selection criteria that will be used in evaluating applications submitted in response to this year's competition.

Invitation for Application for New Awards

Purpose of Program: These funds will serve as ''venture capital'' to allow States to build comprehensive School-to-Work Opportunities systems which provide all youth with high-quality education that integrates school-based learning, work-based learning and connecting activities, prepares young Americans for success in high-skill, high-wage careers, and increases their opportunities for further education and training.

Eligible Applicants: All States that did not receive a State Implementation Grant in FY 1994, the District of Columbia, and Puerto Rico are eligible for Implementation Grants under this competition. In accordance with the School-to-Work Opportunities Act, the Governor must submit the application on behalf of the State.

Deadline for Transmittal of Applications: The closing date for receipt of applications is June 19, 1995, at 2 p.m. (Eastern Time). Telefacsimile (FAX) applications will not be honored.

Availability of Applications: Application packages will be mailed directly to both the Governor and the State School-to-Work Development Grant contact of each eligible applicant, as listed above. Applications will be mailed to applicants, via overnight mail, within one day of the publication of this notice in the **Federal Register**. Any other party interested in receiving a copy of the application package should contact: School-to-Work Office, 400 Virginia Avenue, S.W., Room 100–C, Washington, D.C. 20024. Telephone: (202) 401–6222.

Available Funds: Approximately $86,000,000 (funding for the first twelve months).

Estimated Range of Awards: The Departments expect the minimum award to be approximately $1.5 million and the maximum award to be approximately $20 million. The Departments wish to emphasize that, in accordance with sections 212, 213, 214, and 216 of the Act, the actual amount of each award made under this competition will depend on such factors as the scope and quality of the State plan and application, the number of projected participants in programs operating within each State's School-to-Work Opportunities system, and the State's youth population. Therefore, the Departments strongly encourage applicants to consider these factors, the estimated average grant award amount, and the amount of awards made to the first eight Implementation States in deciding what funds to request. Applicants are discouraged from requesting significantly more funds than States with similar numbers of school-age youth received last year without a strong programmatic basis for doing so. (Information on last year's awards is contained in the application package.)

Estimated Average Size of Awards: $4.5 million.

Estimated Number of Awards: Up to 20.

Note: The Departments are not bound by any estimates in this notice.

Project Period: Up to 5 years (5 twelve-month grant periods).

Applicable Regulations: 29 CFR Parts 33, 93, 95, 96, 97, 98. The selection criteria and definition published in this notice, as well as the instructions contained in the application package and the eligibility and other requirements specified in the Act, apply to this competition.

For Additional Information Contact: Ms. Laura Cesario, U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, 200 Constitution Avenue NW., Room S–4203, Washington, D.C. 20210. Telephone: (202) 219–7300, extension 21 (this is not a toll-free number). 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.

Reference: SGA # DAA—007.

Implementation Grant Competition

Analysis of Comments and Changes

On March 10, 1995, the Departments of Labor and Education published a notice of proposed selection criteria and a proposed definition of the term ''administrative costs'' for this competition and competitions in succeeding years in the **Federal Register** (60 FR 13312–13315). In response to the invitation to comment, 55 parties submitted comments. An analysis of the comments received in response to the publication of that notice and of the changes made to the selection criteria and definition since publication of the notice of proposed criteria and proposed definition is published as an appendix to this notice.

School-to-Work Opportunities State Implementation Grants

Definition

All definitions in the Act apply to School-to-Work Opportunities systems funded under this and future State Implementation Grant competitions. Since the Act does not contain a definition of the term ''administrative costs'' as used in section 217 of the Act, the Departments will apply the following definition to this and future

competitions for State Implementation Grants:

The term ''administrative costs'' means the activities of a State or local partnership that are necessary for the proper and efficient performance of its duties under the School-to-Work Opportunities Act and that are not directly related to the provision of services to participants or otherwise allocable to the system's allowable activities listed in section 215(b)(4) and section 215(c) of the Act. Administrative costs may be either personnel costs or non-personnel costs, and direct or indirect. Costs of administration shall include, but not be limited, to:

A. Costs of salaries, wages, and related costs of the grantee's staff engaged in:

- Overall system management, system coordination, and general administrative functions;
- Preparing program plans, budgets, and schedules, as well as applicable amendments;
- Monitoring of local initiatives, pilot projects, subrecipients, and related systems and processes;
- Procurement activities, including the award of specific subgrants, contracts, and purchase orders;
- Developing systems and procedures, including management information systems, for assuring compliance with the requirements under the Act;
- Preparing reports and other documents related to the Act; and
- Coordinating the resolution of audit findings.

B. Costs for goods and services reqiured for administration of the system;

C. Costs of system-wide management functions; and

D. Travel costs incurred for official business in carrying out grant management or administrative activities.

Selection Criteria

Under the School-to-Work Opportunities Implementation Grant competition, the Departments will use the following selection criteria in evaluating applications and will utilize a two-phase review process. In the first phase, review teams, including peers, will evaluate applications using the selection criteria and the associated point values. In the second phase, review teams, including peers, will visit high-ranking States to gain additional information and further assess State plans. The following selection criteria will apply to both review phases. The Departments will base final funding decisions on information obtained during the site visits, the ranking of applications as a result of the first-phase review, and such other factors as replicability, sustainability, innovation, and geographic balance and diversity of program approaches.

Selection Criterion 1: Comprehensive Statewide System

Points: 35.

Considerations: In applying this criterion, reviewers will consider:

A. *20 points.* The extent to which the State has designed a comprehensive statewide School-to-Work Opportunities plan that—

- Includes effective strategies for integrating school-based and work-based learning, integrating academic and vocational education, and establishing linkages between secondary and postsecondary education;
- Is likely to produce systemic change in the way youth are educated and prepared for work and for further education, across all geographic areas of the State, including urban and rural areas, within a reasonable period of time.
- Includes strategic plans for effectively aligning other statewide priorities, such as education reform, economic development, and workforce development into a comprehensive system that includes the School-to-Work Opportunities system and support its implementation at all levels—State, regional and local;
- Ensures that all students will have a range of options, including options for higher education, additional training and employment in high-skill, high-wage jobs; and
- Ensures coordination and integration with existing local education and training programs and resources, including those School-to-Work Opportunities systems established through local partnership grants and Urban/Rural Opportunities grants funded under Title III of the School-to-Work Opportunities Act, and related Federal, State, and local programs.

B. *15 points.* The extent to which the State plan demonstrates the State's capability to achieve the statutory requirements and to effectively put in place the system components in Title I of the School-to-Work Opportunities Act, including—

- The work-based learning component that includes the statutory mandatory activities and that contributes to the transformation of workplaces into active learning components of the education system through an array of learning experiences, such as mentoring, job-shadowing, unpaid work experiences, school-sponsored enterprises, supported work experiences, and paid work experiences;
- The school-based learning component that will provide students with high level academic skills consistent with academic standards that the State establishes for all students, including, where applicable, standards established under the Goals 2000: Educate America Act:
- A connecting activities component to provide a functional link between students' school and work activities and employers and educators; and
- A plan for an effective process for assessing students' skills and knowledge required in career majors, and the process for issuing portable skill certificates that are benchmarked to high quality standards such as those the State establishes under the Goals 2000: Educate America Act, and for periodically assessing and collecting information on student outcomes, as well as a realistic strategy and timetable for implementing the process.

Selection Criterion 2: Commitment of Employers and Other Interested Parties

Points: 15.

Considerations: In applying this criterion, reviewers will consider:

- The extent to which the State has obtained the active involvement of employers and other interested parties listed in section 213(d)(5) of the Act, such as locally elected officials, secondary schools and postsecondary educational institutions (or related agencies), business associations, industrial extension centers, employees, labor organizations or associations of such organizations, teachers, related services personnel, students, parents, community-based organizations, rehabilitation agencies and organizations, registered apprenticeship agencies, local vocational educational agencies, vocational student organizations, State or regional cooperative education associations, and human service agencies, as well as State legislators.
- Whether the State plan demonstrates an effective and convincing strategy for continuing the involvement of employers and other interested parties in the statewide system, such as the parties listed in section 213(d)(5) of the Act, as well as State legislators.
- The extent to which the State plan proposes to include private sector representatives as joint partners with educators in the oversight and governance of the overall School-to-Work Opportunities system.

• The extent to which the State has developed strategies to provide a range of opportunities for employers to participate in the design and implementation of the School-to-Work Opportunities system, including membership on councils and partnerships; assistance in setting standards, designing curricula and determining outcomes; providing worksite experience for teachers; helping to recruit other employers; and providing worksite learning activities for students, such as mentoring, job-shadowing, unpaid work experiences, supported work experiences, and paid work experiences.

Selection Criterion 3: Participation of All Students

Points: 15.

Considerations: In applying this criterion, reviewers will refer to the definition of the term ''all students'' in section 4(2) of the Act and consider:

• The extent to which the State will implement effective strategies and systems: to provide all students with equal access to the full range of program components specified in sections 102 through 104 of the Act and related activities such as recruitment, enrollment and placement activities; and to ensure that all students have meaningful opportunities to participate in School-to-Work Opportunities programs.

• Whether the plan identifies potential barriers to the participation of any students, and the degree to which the plan proposes effective ways of overcoming these barriers.

• The degree to which the State has developed realistic goals and methods for assisting young women to participate in School-to-Work Opportunities programs leading to employment in high-performance, high-paying jobs, including nontraditional jobs and has developed realistic goals to ensure an environment free from racial and sexual harassment.

• The feasibility and effectiveness of the State's strategy for serving students from rural communities with low population densities.

• The State's methods for ensuring safe and healthy work environments for students, including strategies for encouraging schools to provide students with general awareness training in occupational safety and health as part of the school-based learning component, and for encouraging employers to provide risk-specific training as part of the work-based learning component.

Note: Experience with the FY 1994 School-to-Work Opportunities State Implementation Grant applications has shown that many applicants do not give adequate attention to designing programs that will serve school dropouts and programs that will serve students with disabilities. Therefore, the Departments would like to remind applicants that reviewers will consider whether an application includes strategies to specifically identify the barriers to participation of dropouts and students with disabilities and proposes specific methods for effectively overcoming such barriers and for integrating academic and vocational learning, integrating work-based learning and school-based learning, and linking secondary and postsecondary education for dropouts and students with disabilities. Applicants are reminded that JTPA Title II funds may be used to design and provide services to students who meet the appropriate JTPA eligibility criteria.

Selection Criterion 4: Stimulating and Supporting Local School-to-Work Opportunities Systems

Points: 15.

Considerations: In applying this criterion, reviewers will consider:

• The effectiveness of the State's plan for ensuring that local partnerships include employers, representatives of local educational agencies and local postsecondary educational institutions (including representatives of area vocational education schools, where applicable), local educators (such as teachers, counselors, or administrators), representatives of labor organizations or nonmanagerial employee representatives, and students, and others such as those included in section 4(11)(B).

• The extent to which the State assists local entities to form and sustain effective local partnerships serving communities in all parts of the State.

• Whether the plan includes an effective strategy for addressing the specific labor market needs of localities that will be implementing School-to-Work Opportunities systems.

• The effectiveness of the State's strategy for building the capacity of local partnerships to design and implement local School-to-Work Opportunities systems that meet the requirements of the Act.

• The extent to which the State will provide a variety of assistance to local partnerships, as well as the effectiveness of the strategies proposed for providing this assistance, including such services as: Developing model curricula and innovative instructional methodologies, expanding and improving career and academic counseling services, and assistance in the use of technology-based instructional techniques.

• The effectiveness of the State's strategy for providing staff development to teachers, employers, mentors, counselors, related services personnel, and others who are critical to successful implementation of School-to-Work Opportunities systems for all youth.

• The ability of the State to provide constructive assistance to local partnerships in identifying critical and emerging industries and occupational clusters.

Selection Criterion 5: Resources

Points: 10.

Considerations: In applying this criterion, reviewers will consider:

• The amount and variety of other Federal, State, and local resources the State will commit to implementing its School-to-Work Opportunities plan, as well as the specific use of these funds, including funds for JTPA Summer and Year-Round Youth programs and Perkins Act programs.

• The feasibility and effectiveness of the State's long-term strategy for using other resources, including private sector resources, to maintain the statewide system when Federal resources under the School-to-Work Opportunities Act are no longer available.

• The extent to which the State is able to limit administrative costs in order to maximize the funds spent on the delivery of services to students, as required in section 214(b)(3)(B) of the Act, while ensuring the efficient administration of the School-to-Work Opportunities system.

Criterion 6: Management Plan

Points: 10.

Considerations: In applying this criterion, reviewers will consider:

• The adequacy of the management structure that the State proposes for the School-to-Work Opportunities system.

• The extent to which the State's management plan anticipates barriers to implementation and proposes effective methods for addressing barriers as they arise.

• Whether the application includes an evaluation plan containing feasible, measurable goals for the School-to-Work Opportunities system, based on performance measures contained in section 402(a) of the Act.

• The extent to which the evaluation plan includes an effective method for collecting information relevant to the State's progress in meeting its goals, and is likely to assist the State to meet its School-to-Work Opportunities system objectives, to gauge the success of the system in achieving those objectives, to continuously improve the system's effectiveness, and to contribute to the review of results across all States.

• Whether the plan includes a feasible workplan for the School-to-Work Opportunities system that

includes major planned objectives over a five-year period.

Additional Priority Points

As required by section 214(a)(1) and (a)(2) of the Act, the Departments will give priority to applications that demonstrate the highest level of concurrence among State partners with the State plan, and to applications that require paid, high quality work-based learning experiences as an integral part of the School-to-Work Opportunities system by assigning additional points—above the 100 points described in the criteria—as follows:

1. *Highest Levels of Concurrence—5 Points*

Up to 5 points will be awarded to applications that can—

- Fully demonstrate that each of the State partners listed in section 213(b)(4) concurs with the State School-to-Work Opportunities plan, and that the State partners' concurrence is backed by a commitment of time and resources to implement the plan.

2. *Paid, High-Quality Work-Based Learning—10 Points*

Up to 10 points will be awarded to applications that demonstrate that the State—

- Has developed effective plans for requiring, to the maximum extent feasible, paid, high-quality work experience as an integral part of the State's School-to-Work Opportunities system, and for offering the paid, high-quality work experiences to the largest number of participating students as is feasible; and
- Has established methods for ensuring consistently high quality work-based learning experiences across the State.

Program Authority: 20 U.S.C. 6101 *et seq.*

Dated: May 15, 1995.

Doug Ross,

Assistant Secretary for Employment and Training, Department of Labor.

Augusta Kappner,

Assistant Secretary for Vocational and Adult Education, Department of Education.

Appendix—Analysis of Comments and Changes

Definition of Administrative Costs

Comment: Three commenters suggested that public relations and evaluation were functions so central to the States' ability to implement systemic change that they should be excluded from the definition of administrative costs. One of the commenters also recommended excluding monitoring and developing systems for assuring compliance, for the same reason. One of these commenters suggested that first-year costs to establish these activities might be excluded, while maintaining the activities in future years could be charged to administrative costs.

Discussion: The Departments agree that marketing (referred to as ''public relations'' in the notice of proposed selection criteria) and evaluation are key State system-building functions. Developing and maintaining a comprehensive statewide system will require change on the part of a great many organizations and individuals and the development of extensive partnerships at the State and local levels. Communicating the need for such change and challenging different groups to get involved—marketing—is an activity that is essential to achieving a School-to-Work Opportunities system. In addition, the evaluation function is especially critical because of the need for an ongoing process of measuring system effectiveness. The Departments believe, however, that monitoring and establishing compliance systems are activities more appropriately charged to the administrative cost category. The Departments expect that States will be providing extensive assistance to local partnerships to build their capacity to develop and implement local School-to-Work systems that meet the requirements of Title I. This process of forming and sustaining partnerships, which is addressed under Criterion 4, should be designed to help prevent compliance problems.

Changes: The activities related to marketing and evaluation against stated objectives have been deleted from the list of activities that must be included in the administrative cost category.

Restructuring Criteria

Comment: One commenter suggested restructuring the six criteria around the two major responsibilities of a State under School-to-Work Opportunities: (1) Developing and guiding a comprehensive statewide system; and (2) supporting the local School-to-Work Opportunities system. This commenter also recommended that the areas for which additional points could be awarded (''Highest Levels of Concurrence'' and ''Paid, High-Quality Work Experience'') should, instead, be incorporated into one of the other criteria.

Discussion: The Departments agree that distributing the criteria around the two major responsibilities identified might be a useful alternative way to structure the criteria. However, other than repositioning the bullets, the recommendation did not include changing or deleting any of the bullets. In addition, the Departments do not agree that the areas for which additional points may be awarded could be incorporated into one of the selection criteria. Section 214 of the School-to-Work Opportunities Act of 1994 (the Act) requires that priority be given to applications that demonstrate the highest levels of concurrence among State partners and to applications that require paid, high-quality work experience. Subsuming these areas within other selection criteria is not consistent with the priority required by the Act. On balance, the Departments are confident that the current structure of the selection criteria adequately reflects the elements of a comprehensive State School-to-Work Opportunities system.

Changes: None.

Selection Criterion 1: Comprehensive Statewide System (A)

Postsecondary Involvement

Comment: One commenter stated that the criteria did not address possible duplication of effort between School-to-Work Opportunities systems and programs established in public educational institutions, such as local community colleges. This commenter was concerned that localities might limit community college involvement, while favoring programs funded under the Department of Labor's Job Training Partnership Act. The commenter stated that the notice should include points for applications that promote the participation of local postsecondary institutions and community colleges, and also ''should address local secondary school participation.''

Discussion: The School-to-Work initiative is designed to unify categorical programs into coherent and comprehensive systems, and the Departments believe that the law and the notice adequately address duplication of effort. Coordination with, and integration of existing programs, including those in place in community colleges, is a key feature of School-to-Work Opportunities systems. An approved State plan must include strategies for effectively linking secondary and postsecondary education and the plan must describe coordination with programs funded under a range of authorities, including the Adult Education Act, the Perkins Act, the Elementary and Secondary Education Act (ESEA), and the Higher Education Act (see section 213(d)(6) of the Act). State partnerships must include State agency officials responsible for postsecondary education, and the notice awards priority points to applications that demonstrate partners' full concurrence with the School-to-Work Opportunities plan. Under Criterion 2: ''Commitment of Employers and Other Interested Parties,'' applicants must describe the State's efforts to obtain and maintain the substantive participation of a range of stakeholders. In response to several comments, Criterion 2 has been changed to explicitly list the examples of interested parties as given in section 213(d)(5) of the Act, including secondary schools and postsecondary educational institutions, so that applicants are reminded of the range of organizations that might contribute to the effectiveness of the School-to-Work Opportunities system. Also in response to comments, Selection Criterion 4: ''Stimulating and Supporting Local School-to-Work Opportunities Systems'' now lists the required members of local partnerships as given in the Act, including local educational agencies and local postsecondary institutions, and applications must show how the State will assist communities in developing effective local partnerships. Given these specifications, the final notice makes it more explicit that only applications that demonstrate the genuine involvement of local secondary schools, community colleges, and other postsecondary institutions in their School-to-Work systems, will be competitive. While the Departments support State and

local flexibility in deciding which networks form the most appropriate base from which to expand School-to-Work Opportunities systems, the Departments also believe it is highly unlikely that an effective system can be built with only limited, selective participation of the stakeholders mentioned in the Act. In response to the comment about the need to address local secondary school participation, the Departments wish to stress that any application that under Criterion 1 B fails to present a convincing plan for institutional change in secondary schools statewide, will not be competitive.

Changes: None.

Preparation for Entry Into Four-Year Colleges

Comment: One commenter was concerned that comprehensive School-to-Work Opportunities systems would be associated with vocational education; the commenter believed vocational education is negatively viewed as yielding few academic skills, limiting postsecondary options, and limiting access to careers that require postsecondary education. The commenter believed that Criterion 1 should require reviewers to consider the extent to which plans ensure that all students graduating from secondary school will be ''eligible'' to enter four-year colleges.

Discussion: School-to-Work Opportunities systems must prepare learners for a range of education, employment and training options, as discussed throughout the Act and highlighted in the notice of proposed selection criteria in the first, second and fourth bullets of Criterion 1. School-to-Work aims at developing a lifelong continuum of learning and work experience, rather than targeting a specific type of institution or course of study. The Departments agree with the commenter on the need to emphasize to parents, students, and other stakeholders that School-to-Work Opportunities systems will not limit, but rather enhance, all students' capacity to master concepts and successfully enter and complete four-year degree programs. Since they utilize new methods of teaching, learning, assessing and demonstrating student achievement, School-to-Work Opportunities systems will also require flexibility and support from employers and four-year institutions for new methods of measuring student performance, such as skill certificates and portfolios. Although the Departments do not believe that a specific reference to ''eligibility'' for four-year colleges is necessary, they wish to stress that the success of student transitions will depend in part on the commitment of employers and postsecondary institutions to develop and accept new measures of student performance resulting from educational reform.

Changes: None.

K-Adult Continuum

Comment: One commenter suggested that language be added to support a State School-to-Work Opportunities plan that addresses all students, from K-Adult.

Discussion: The Departments believe that the criteria, as written, address life-long learning in many respects. Reviewers will evaluate the extent to which a State's implementation plan integrates education and training programs and resources, including those which serve adults, such as postsecondary, continuing education, existing worker training and registered apprenticeship programs. Also, the Departments expect that a State's partnership will include a range of entities (see sections 213(b)(4) and 213(d)(5) of the Act), many of which relate directly to adult learners and workers. Finally, the most comprehensive plans for education reform will be strongly tied to related statewide initiatives such as economic development and workforce development, with School-to-Work as the framework for a K-Life continuum. Therefore, the Departments anticipate that the most competitive applications will address life-long learning implicitly in the implementation plan, or will achieve this integration in the long term.

Changes None.

Focus on Communities With High Concentrations of Poor and Disadvantaged Youth

Comment: One commenter suggested that the second bullet of Criterion 1 A, which refers to the State's plan for systemic change, include specific mention of communities with high concentrations of poor and disadvantaged youth.

Discussion: The Departments believe that Criterion 1 A, by considering the extent to which the School-to-Work Opportunities system is likely to encompass and produce change in all areas statewide, addresses the inclusion of communities with high concentrations of poor and disadvantaged youth. Applications that do not outline convincing strategies and timelines for achieving comprehensive statewide coverage will be less competitive than those that do. In addition, the second bullet in the now-revised Criterion 4 places further weight on the State's plan to actively assist local partnerships in expanding the system to reach communities in all parts of the State. Reviewers will evaluate whether there are gaps in the strategy for implementing the School-to-Work Opportunities system throughout the State and score the application accordingly.

Changes: None.

Apprenticeship Training

Comment: One commenter expressed the view that apprenticeship training be included in Criterion 1 A with education reform, economic development, and workforce development, as statewide priorities in the establishment of a comprehensive system. The commenter also believed that the work-based learning component in Criterion 1 B should include, as a potential learning experience, early entry into apprenticeship training.

Discussion: In Criterion 1, ''education reform,'' ''economic development,'' and ''workforce development'' are broad terms that are intended to include a variety of programs and activities that may be part of a State's strategic priorities. The Departments believe that apprenticeship training is likely to be a key component in many comprehensive workforce development strategies; however, they do not want to suggest that any specific program must be part of a State's workforce development initiative. In regard to the suggestion that early entry into apprenticeship training be included in the bullet on work-based learning on Criterion 1 B, the Departments agree that early entry into an apprenticeship program can be an appropriate objective for a School-to-Work Opportunities program. Section 215(b) (4) (K) of the Act includes, as an allowable activity for local partnerships receiving subgrants from States, the creation or expansion of school-to-apprenticeship programs in cooperation with registered apprenticeship agencies and apprenticeship sponsors. However, the extent to which apprenticeship training is utilized as a work-based learning experience in a statewide system is most suitably determined by the State.

Changes: None.

System Change for Youth With Disabilities

Comment: Several commenters recommended requiring special plans to demonstrate how School-to-Work Opportunities programs will be coordinated with ''systems change grants'' and other related activities under the Individuals with Disabilities Education Act (IDEA). In order to ensure participation by youth with disabilities, these commenters suggested that Criterion 1 A be revised to specifically reference IDEA transition projects or Systems Change for Youth with Disabilities.

Discussion: Achieving comprehensive reform will require States to coordinate and integrate a great number and variety of State initiatives having related goals. The Departments agree that the lessons learned from initiatives and programs that are related to School-to-Work should be incorporated into the State's comprehensive plan. The fifth bullet under Criterion 1 A is intended to encourage States to review the many related Federal, State and local programs and initiatives and develop strategies for creating mutually supportive strategies.

Changes: None.

Selection Criterion 1: Comprehensive Statewide System (B)

Emphasis on Coordination With Goals 2000

Comment: Several commenters expressed concern about the relationship between School-to-Work and the Goals 2000: Educate America Act. The commenters emphasized the voluntary nature of States' participation in Goals 2000 activities, and believed that the notice linked academic and skills standards too closely to these activities rather than focusing more broadly on statewide education reform initiatives. Conversely, one commenter stated that the criteria did not highlight strongly enough the importance of the State's role in developing curricula and instructional methodologies consistent with academic and skill standards such as those established under Goals 2000, nor in ensuring that students achieve these standards. One commenter noted that the use of the past tense in referring to standards ''established'' under Goals 2000 implies that States have submitted standards for certification by The National Education

Standards and Improvement Council. (The Council is provided for under Goals 2000, but has not been formed.) One commenter believed that the Goals 2000 standards apply only to traditional academic subject areas, disregarding core standards and performance measures for vocational and technical education already being developed by States under the Perkins Act, and separating academic performance from performance related to workforce-development. This commenter stated that a reference in Criterion 2 to employer involvement in the development of standards was the only linkage to the performance-based system being built under the Perkins Act.

Discussion: The Departments wish to clarify that participation in activities under both Goals 2000 and School-to-Work is strictly voluntary, and that participation in Goals 2000 is in no way a condition for receiving a School-to-Work Opportunities Implementation Grant. However, in the case of States that have chosen to participate in Goals 2000, the Departments will consider whether plans developed under School-to-Work and Goals 2000 are coordinated and mutually reinforcing. A major focus of Criterion 1 is the need to integrate School-to-Work into the State's overall agenda for education reform or restructuring. The Departments intend to emphasize the need for high, statewide standards against which to develop curriculum, measure the quality of integrated school-based and work-based learning and instruction, assess learner performance, and certify proficiency. The notice refers to standards developed under Goals 2000 as an example of such State-developed and validated measures. In response to the comment that Goals 2000, and, by association, this notice, disregards significant work already undertaken through the Perkins Act, the Departments would point out that under Goals 2000, participating States must coordinate their improvement plans both with any School-to-Work efforts and with strategies to integrate academic and vocational instruction as outlined in the Perkins Act. (See Goals 2000, section 306(j) and (1).) The School-to-Work Opportunities Act defines the integrated work-based and school-based components as incorporating, to the extent possible, all aspects of the industry, and providing academic, vocational, technical and production skills as well as general workplace competencies (see sections 4(1), 101 and 102 of the Act). Whether education reform and standards development occur independent from, or in relation to, the Goals 2000 initiative, it is important that the School-to-Work Opportunities plan unfold in the context of a systematic vision for improving education in the State.

Changes: None.

Need To Include Sections of the Act in the Notice

Comment: One commenter believed that the criteria should more exactly reiterate definitions and key components contained in the Act in section 4 (''Definitions'') and Title I, sections 101–104 (''General Program Requirements'' and basic program components), with specific points assigned for elements such a those described in section 213 (d) (''State Plan'') of the Act. The commenter also suggested that the Departments restore language, included in the Act but omitted from the final bullet of Criterion 1 B, linking career majors to the assessment and certification of skills. In the opinion of the commenter, the exclusion of this reference from the criterion altered the meaning of this section.

Discussion: While the Departments concur with the commenter on the importance of these provisions, they do not believe it is necessary to restate in the notice most of the legislative language emphasized by the commenter, or that it is necessary to assign points for every statutory requirement. The notice advises States that applications must meet all the requirements of the Act, reiterates that all definitions in the Act apply to systems funded under the State Implementation Grant competitions, and emphasizes, under Criterion 1, the need for State plans to demonstrate consistency with all statutory requirements and with all system components in Title I of the Act. Therefore, the Departments strongly encourage applicants to refer to the Act as well as the criteria in developing School-to-Work Opportunities plans which reflect the full intent of the law. The Departments wish to assure the commenter that panelists reviewing the applications are selected for their understanding of the School-to-Work Opportunities Act, are required to participate in a carefully designed orientation, and must score applications based on the criteria, in conjunction with the requirements of the Act. The Departments agree with the commenter that the bullet relating to assessment and certification of skills would be strengthened and clarified by including a reference to career majors, as given in section 213(d)(16) of the Act.

Changes: The final bullet in Criterion 1 B now includes the language of section 213(d)(16) of the Act regarding the State's process for assessing skills and knowledge required in career majors.

Distribution of Points

Comment: One commenter questioned the distribution of points in this section, and believed that Criterion 1 B, under Comprehensive Statewide System, should receive more weight than 15 out of 100 points. Another commenter recommended that the points assigned to Criterion 3, ''Participation of All Students,'' be increased from 15 to 20.

Discussion: In response to this comment, the Departments gave careful consideration to the distribution of points among the selection criteria, and have concluded that the distribution provided for in the notice results in the most appropriate balance among the criteria.

Changes: None.

Supported Work

Comment: One commenter recommended adding supported work activities or experiences to several criteria to highlight what can be done at the work site to assist students with disabilities.

Discussion: The Departments agree that supported work activities, that provide individualized support to assist persons with severe disabilities in becoming equal participants in the competitive labor force, can be appropriate elements of the work-based learning component.

Changes: in Criterion 1 B, the phrase ''supported work activities'' has been added to the list of learning experiences that may be included in work-based learning. In addition, in Criterion 2, the term ''supported work experiences'' has been added to the list of opportunities for employers' participation.

Selection Criterion 2: Commitment of Employers and Other Interested Parties

Key Stakeholders

Comment: Many commenters were concerned that by not specifically referencing organized labor as a party that should be actively involved in the development of the State system, as employers and State legislators are referenced, labor's contribution to the School-to-Work Opportunities initiative would be diminished. Various commenters also indicated that teachers, vocational rehabilitation agencies, JTPA service providers, community-based organizations, private non-profits, parents, and/or consumers should be explicitly identified as key stakeholders in the State system since the inclusion of these entities is as vital to the development of the system as that of employers.

Discussion: While the proposed criterion referenced section 213(d)(5) of the Act, which, in turn, explicitly lists the parties the State may involve in the creation of a statewide School-to-Work Opportunities system, the Departments agree that it would be helpful to identify expressly in the first bullet of Criterion 2 all of the parties referred to in section 213(d)(5). In this way, the criterion does not appear to exclude any of the entities that have significant contributions to make to the establishment of a comprehensive School-to-Work Opportunities system. Although the Departments believe that labor organizations have unique contributions to make to the design and implementation of School-to-Work Opportunities systems, Criterion 2 retains State flexibility to determine the involvement of specific interested parties listed in section 213(d)(5) of the Act. The Departments concur with the rationale expressed by several commenters that developing high-quality work-based learning experience requires the commitment of front-line workers as well as top-level managers and CEOs. Applicants are encouraged to utilize labor organizations and other key parties toward this aim.

Changes: Selection Criterion 2 has been changed to recognize all the entities listed in section 213(d)(5) of the Act.

Involvement of Teachers

Comment: One commenter believed that the involvement of teachers should be augmented beyond being listed among ''other interested parties.'' This commenter recommended that teachers be designated as required sponsors of any grant application. This commenter, as well as one other, believed that applicants that articulate

convincing strategies to ensure effective and sustained teacher involvement at both the State and local levels should receive additional points.

Discussion: The Departments strongly encourage State teams to involve teachers at every stage of system development and implementation. A School-to-Work Opportunities system that does not effectively incorporate the needs, beliefs, and capabilities of classroom educators will not be able to reach the comprehensiveness required of system implementation. Additionally, strategies for building upon the current practices within a State will not be realistic or complete without the input of teachers. Although the Departments believe that teachers have unique contributions to make to the design and implementation of School-to-Work Opportunities systems, Criterion 2 retains State flexibility to determine the involvement of specific interested parties listed in section 213(d)(5) of the Act. Also, consistent with section 213(b)(4) of the Act, the Departments do not believe it is appropriate to mandate teacher sponsorship of the grant application. Finally, it is noteworthy that the importance of teachers' participation in School-to-Work Opportunities systems is further conveyed by the specific reference to teachers within the definition of ''local partnership,'' in section 4(11)(A) of the Act. That section provides that local partnerships must include, among others, ''local educators (such as teachers, counselors, or administrators) * * *''

Changes: As stated above, Criterion 2 now includes reference to each entity listed in section 213(d)(5) of the Act. Selection Criterion 4 has been changed to add, as its first bullet, the ability of the State to ensure that local partnerships include all of the entities listed in section 4(11)(A) of the Act.

Consultation With Organized Labor

Comment: Several commenters supported the addition of a requirement that the State directly consult with the State AFL–CIO in order to coordinate organized labor involvement at both the State and local levels. Many commenters supported this concept by requesting that the Departments require States to define a particular role for organized labor, tie this requirement to Criterion 2, and assign points to the requirement. Lastly, one commenter believed that it would be appropriate to include a special note requesting that States develop distinctive strategies to utilize organized labor.

Discussion: The Departments agree that organized labor is a key contributor to the development and implementation of comprehensive School-to-Work Opportunities systems. As many commenters suggested, labor organizations have significant contributions to make in a variety of aspects of such systems—from designating workplace mentors and helping to ensure safe work environments to the establishment of realistic skill standards. The Act thoroughly delineates who must collaborate in the development of a statewide system, as stated in section 213(b)(4) of the Act, which includes representatives of the private sector, as well as the other interested parties who are encouraged to be involved, as stated in section 213(d)(5) of the Act which includes ''labor organizations or associations of such organizations.'' The Departments do not believe that it is appropriate to mandate additional requirements beyond those contained in the Act or to define a role for any stakeholder group; however, strong applications will be those that represent the greatest amount of collaboration among stakeholders. Applicants are reminded that labor organizations or nonmanagerial employee representatives are required members of local partnerships in the School-to-Work Opportunities system, and, in response to another comment, Criterion 4 now identifies all required members of local partnerships.

Changes: None.

Bureau of Apprenticeship and Training Involvement

Comment: One commenter suggested that States designate a Federal Bureau of Apprenticeship and Training (BAT) representative as a State partner in order to avoid any duplication of effort between established apprenticeship programs and School-to-Work activities being developed as a result of the Act. The commenter referenced the Act's specificity with regard to non-duplication of effort.

Discussion: Section 213(d)(5) of the Act, referenced in Criterion 2, includes registered apprenticeship agencies as entities that States may actively and continually involve in the development and implementation of statewide systems. The term ''registered apprenticeship agency'' is defined under section 4(13) of the Act to mean ''the Bureau of Apprenticeship and Training in the Department of Labor or a State apprenticeship agency recognized and approved by the Bureau of Apprenticeship and Training as the appropriate body for State registration or approval of local apprenticeship programs and agreements for Federal purposes.'' Since Criterion 2 has been changed to identify all entities listed in section 213(d)(5) of the Act, and since the Act includes the Bureau of Apprenticeship and Training in its definition of ''registered apprenticeship agency,'' the Departments believe that the criteria adequately allow for the inclusion of the Bureau of Apprenticeship and Training in State system-building activities.

Changes: None.

Selection Criterion 3: Participation of All Students

Participation of Target Groups

Comment: Many commenters suggested ways to emphasize the participation of a particular target group or groups included in the definition of ''all students.'' Some commenters recommended requiring specific strategies or plans for one or more of the target groups. Some believed that the ''Note'' on students with disabilities and dropouts was helpful, but that the concept of developing strategies for students with disabilities and school dropouts would be strengthened if it were added as a separate consideration in Criterion 3. One commenter wanted to add a ''Note'' reminding applicants of the importance of nontraditional employment for women in School-to-Work and asking for identification of barriers and methods for overcoming them. One commenter suggested an alternative method for addressing the participation of all students. The commenter was concerned that assigning 15 points to a criterion that included all types of students might permit continuation of historical exclusionary practices because applicants could provide strong strategies for some students, but not include others and still be awarded high marks on this criterion.

While most of the comments relating to participation of target groups recommended requiring specific strategies for a particular target group, one commenter did not want to focus on any special group. This commenter believed that the strength of the School-to-Work Opportunities Act is that it is designed for all students, and that the system itself is the solution for different groups.

Recommendations for where in the notice changes should be made included Criteria 1, 3 and 4. Although most commenters wanted States to be required to provide more specific attention to a particular group in Criterion 3, several suggested adding language to the fourth bullet in Criterion 1A in order to correct past histories of exclusion or to help raise State awareness that the range of options should be available to a specific target group or groups. One commenter recommended adding language to Criterion 4 that would encourage States to help local systems use technology-based instructional techniques for students with disabilities. Another commenter recommended replacing Criterion 3 with what was referred to as a ''threshold criterion.''

Discussion: Criterion 3 requires a State to describe its strategies for effectively ensuring opportunities for all students to participate, and to identify ways of overcoming barriers to the participation of any students. The additional considerations in this criterion for young women and for students from rural communities with low population densities reflect the required content of the State plan, as described in section 213(d) of the Act. Balancing the design of a system that serves all students with the need for targeted strategies for some students is one of the most difficult aspects of implementing the School-to-Work Opportunities initiative. Like the Act, Criterion 3 refrains from requiring applicants to design specific programs for each specific group of students. Rather, the focus is on building a system for all students. The Departments agree that to receive the maximum points on Criterion 3 applicants must not neglect the needs of any students, and must convincingly describe how the State's School-to-Work Opportunities system will provide the same options and produce the same results for all participating students, while recognizing that groups of students have different needs and, therefore, that specific strategies may be required for the target groups listed in the definition of ''all students.'' Applications that fail to address the critical needs of each category of student and fail to develop effective strategies based on identified student needs will not be as competitive as applications that have

comprehensive and effective strategies for all students. To be competitive, States that have not fully established all components of the strategies devised for all students, should have at least a timetable for putting all aspects of their strategies in place within a reasonable period of time. Finally, the Departments do not agree that Criterion 3 should be replaced with a threshold criterion or an eligibility requirement or that either of these would be consistent with the Act.

Changes: A reference to the definition of ''all students'' in section 4 of the Act has been added to Criterion 3 in order to remind applicants of the scope of the term.

Define ''All Students''

Comments: Several commenters suggested that a definition of the term ''all students'' be added in the Definitions section of the Notice or that the specific student categories be defined. The commenters believed that the notice of final priority and selection criteria for the FY 1994 competition was clearer about the definition and that the significance of the requirement for ''all students'' needed to be emphasized.

Discussion: The final competition for State Implementation Grants in 1994 was announced prior to passage of the School-to-Work Opportunities Act. Consequently, it was necessary last year to provide more detailed information and definitions in the Notice—anticipating the School-to-Work Opportunities legislation—while ensuring consistency with Cooperative Demonstration authority of the Carl D. Perkins Vocational and Applied Technology Education Act, under which the FY 1994 State Implementation Grant awards were funded. For this second round of competitions, all definitions and requirements of the Act apply. However, the Departments agree that it would be helpful to remind applicants that the definition of the term ''all students'' applies to this competition.

Changes: A reference to the definition of ''all students'' in section 4(2) of the Act has been included in Criterion 3.

Equal Access

Comment: Two commenters recommended that Criterion 3 be expanded to include language requiring equal access to program components for all students. One of these commenters also recommended that Criterion 3 should require equitable representation of all students and equal access at the inception of the grant. The equal access language in Title I of the Act was considered by the commenter to be the cornerstone to ensuring participation of all students.

Discussion: Section 101 of the Act defines the general program requirements for all School-to-Work Opportunities systems and requires that they ''provide students with equal access to the full range of such program components (including both school-based and work-based learning components) and related activities, such as recruitment, enrollment, and placement activities, except that nothing in the Act shall be construed to provide any individual with an entitlement to services under this Act.'' As noted elsewhere in this Appendix, applicants were reminded in the notice of proposed selection criteria, and will be reminded in the final application package, that applications must meet all requirements of the Act. However, the Departments agree that the requirement for equal access is so central to the purpose of School-to-Work Opportunities, that applicants should be reminded that programs must provide equal access to the full range of program components to all students.

In regard to the comment suggesting that equal access be required from the inception of the grant, the Departments believe that some States may have an effective plan for a comprehensive School-to-Work Opportunities system even if all components of their plans, including their strategy for ensuring equal access to the full range of School-to-Work Opportunities program components, would not be fully operational at the beginning of the Implementation Grant period. However, in order to be competitive, a State should be able to: (1) Demonstrate an effective strategy for assisting all students to take advantage of the opportunities to fully participate in a School-to-Work Opportunities program that meets the requirements of Title I, and (2) describe the timetable for fully implementing the strategy.

Changes: Language from section 101(5) of the Act relating to equal access has been added to Criterion 3.

Monitoring

Comment: Several commenters recommended that State be asked to provide specific detail on how they plan to monitor the safe and healthy work environments that are required under section 601 of the Act. Some of these same commenters believed that joint labor-management safety committees and the State AFL–CIO should be consulted in designing the monitoring mechanisms.

Discussion: Under Criterion 3, reviewers will consider the State's methods for ensuring safe and healthy work environments for students. Many activities may be a part of a State's strategy for ensuring that students are provided safe and healthy work environments, including risk assessment, assignment of responsibility for safety, and monitoring. However, although the Departments do not believe it is appropriate for them to define the components of the strategy that all States must use to ensure safe and healthy work environments, the bullet has been modified to clarify that State strategies should include both school-based and work-based components.

Furthermore, while the Departments agree that labor-management safety committees would be in an excellent position to provide assistance in designing monitoring mechanisms, the School-to-Work Opportunities Act provides States with flexibility to develop and implement School-to-Work Opportunities systems that best fit the needs of the State, while meeting the requirements of the Act. Who is involved in designing pieces of the State's system will be determined by the State and local partners.

Changes: The final bullet of Criterion 3 has been modified to encourage safety training to be included in both the school-based and work-based components.

Work Environment Free From Harassment

Comment: One commenter recommended that States be required to explain how they will ensure that student work environments are free from racial and sexual harassment.

Discussion: The Departments agree that providing environments for students that are free from racial and sexual harassment is an important aspect of School-to-Work. Section 213(d)(14) of the Act directs States to describe the State's goals and methods for addressing the issues of participation in School-to-Work programs by young women. That section also requires States to describe their ''goals to ensure an environment free from racial and sexual harassment.'' The purpose of publishing the ''Notice of proposed selection criteria'' was to provide an opportunity for comment on the criteria that reviewers would use in evaluating applications; it was not to repeat the entire contents of the State plans, as defined in section 213(d). However, the Departments agree with the commenter on the importance of the efforts of States and local partnerships to ensure that students are provided with work environments, free from racial and sexual harassment.

Changes: The phrase from section 213(d)(14) of the Act, ''and has developed realistic goals to ensure an environment free from racial and sexual harassment,'' has been added to the third bullet under Criterion 3.

Focus on Communities With High Concentrations of Poor and Disadvantaged Youth

Comment: One commenter suggested that the section that deals with the State's strategy for serving students from rural communities with low population densities include a specific reference to communities with high concentrations of poor and disadvantaged youth.

Discussion: Since Criterion 3 considers the extent to which the School-to-Work Opportunities system is designed to reach all students, the Departments believe the notice adequately addresses the inclusion of such communities in the State's plan for implementing systemic change across all geographic areas of the State. Disadvantaged students are specifically noted in the Act's definition of ''all students.'' (See section 4(2).) Applications that do not outline convincing strategies for including all students in the School-to-Work Opportunities system will be less competitive than those that do.

Changes: None.

Alternative Assessments

Comment: Several commenters noted the importance of providing flexibility in assessment processes. Some of these commenters suggested adding considerations to Criterion 3 that encourage the development of alternative assessment techniques and alternative methods of meeting skill benchmarks that do not penalize students for a deficit related to the assessment technique being utilized.

Discussion: The Act provides flexibility for States to design School-to-Work Opportunities systems that respond to the unique needs and opportunities of each

State. The State plan that is part of the application for a State Implementation grant must include a description of the State's processes for assessing skills and knowledge required in career majors and for awarding skill certificates. In addition, under Criterion 3, reviewers will assess the extent to which the applicant has identified barriers to the participation of any students.

Changes: None.

Selection Criterion 4: Stimulating and Supporting Local School-to-Work Opportunities Systems

Stakeholder Involvement at the Local Level

Comment: Two commenters suggested that States be asked to describe their efforts to involve organized labor at the local level, including recommended strategies for local areas to address labor market needs and build the capacity of their local partnerships by involving labor organizations during the early stages of initiative development. An additional commenter asked that States be required to ensure that local partnerships include students and community-based organizations in the development of local School-to-Work Opportunities systems.

Discussion: Section 4(11)(A) of the Act states that local partnerships must include: employers, representatives of local educational agencies and local postsecondary educational agencies (including representatives of area vocational education schools, where applicable), local educators (such as teachers, counselors, or administrators), representatives of labor organizations or nonmanagerial employee representatives, and students. In addition, section 215(c)(2) of the Act lists conducting ''outreach activities to promote and support collaboration, in School-to-Work Opportunities programs, by businesses, labor organizations, and other organizations'' as an activity in which the State may become involved in carrying out the statewide School-to-Work Opportunities system. Bearing these points in mind, the Departments believe that the most competitive State applications will contain strategies for local areas that promote high levels of local partnership collaboration and that can effectively demonstrate an awareness of a local partnership's capability for inclusion of all parties necessary for local initiative implementation and correlation to the statewide system.

Changes: Selection Criterion 4 now includes, as its first bullet, the ability of the State to ensure that local partnerships include all of the entities listed in section 4(11)(A) of the Act.

Staff Development

Comment: Two commenters requested that staff development be included in Criterion 4. One commenter focused on requiring States to set aside resources and develop a long-term plan for providing staff development activities to all staff members within secondary schools. The other commenter indicated that State applications should be assessed based upon their efforts to provide training for teachers, employers, mentors, counselors, and other staff that includes specialized training directed toward preparing women, minorities, and individuals with disabilities for jobs in high-skill, high-wage industries.

Discussion: The Departments agree with both commenters and believe that the most competitive State applications will include strategies for providing staff development for all who are involved in the provision of School-to-Work activities for youth. Section 213(d)(7) of the Act expressly requires that States articulate strategies for training teachers, employers, mentors, counselors, related services personnel, and others, including specialized training to prepare staff to effectively support special student populations such as women, minorities, and individuals with disabilities. Two other sections in the Act, section 104 (with regard to the connecting activities component) and section 215(b)(4) (with regard to allowable activities under State subgrants), underscore the training of teachers, mentors, and others as vital components of any School-to-Work Opportunities initiative. Since the Act so strongly emphasizes the critical importance of staff development in the implementation of statewide systems, and further emphasizes the need for staff development at the local level, the Departments are adding explicit language that compels reviewers to consider the extent to which states have provided for staff development for all staff involved in the provision of School-to-Work activities for youth.

Changes: Selection Criterion 4 now includes an additional bullet that considers the effectiveness of the State's strategy for providing staff development to those who are critical to successful implementation of School-to-Work Opportunities systems for all youth.

Criterion 6: Management Plan

Evaluation

Comment: Several commenters were concerned that an evaluation plan was not specifically required in State applications. The commenters indicated that the presence of a concrete plan for research and evaluation would help gauge a State's ability to measure the success of, and to continuously improve, its School-to-Work Opportunities system. Several commenters pointed out that the resulting information could be used to systematically assess the impact of School-to-Work systems, avoid duplication, identify issues, challenges and best practices, and provide models for replication. One commenter recommended that grantees collect data on the number of exiting participants who are gaining employment and/or entering and completing post-secondary education or training. One commenter stated that performance measures are more than a management issue, and should be considered under Criteria 1 and 4.

Discussion: The Departments believe that States should have the flexibility to design evaluations appropriate to State needs and goals, but they agree on the importance of a plan that presents how a State will collect and analyze information related to the performance measures in section 402 of the Act, as well as any other factors the State deems necessary. Since the Departments are required to conduct an evaluation of all systems funded under the Act, information on the impact of School-to-Work will be gathered. (See sections 401–404.) The Departments believe that the notice sufficiently emphasizes the significance of performance measures. However, the Departments agree with the commenters that Criterion 6 should relate performance measures and data collection methods to a systematic evaluation plan. Reviewers will consider first, whether such a plan is in place, second, the extent to which it is likely to meet State objectives, third, the extent to which it will be used to gauge the success of, and continuously improve, the State's School-to-Work system, and fourth, the extent to which the State's evaluation plan is likely to contribute to the review of results across all States.

Changes: Criterion 6 has been changed to add the words ''evaluation plan'' as the vehicle for including measurable goals, and to include in the bullet the ability of the evaluation plan to meet State objectives, continuously improve the State system, and contribute to the review of results across all States.

Addressing Potential Barriers

Comment: One commenter proposed involving organized labor to address the potential barrier of providing all students with work-based learning experiences. The commenter believed that the early inclusion of ''member employers of organized labor'' would ensure full participation of students in the School-to-Work Opportunities initiative.

Discussion: The Departments encourage States to involve representatives of organized labor and others in addressing such potential barriers as providing all students with work-based learning experiences. As stated in reference to Criterion 2, the Departments have agreed to identify each of the entities listed in section 213(d)(5) of the Act as stakeholders important to the implementation of the statewide School-to-Work Opportunities system. The Departments encourage the utilization of each of these entities, including organized labor, in identifying and addressing potential barriers to student participation and view the change to Criterion 2 as addressing this commenter's concerns as well.

Changes: None.

Additional Priority Points [1]—Highest Levels of Concurrence

Highest Levels of Concurrence

Comment: Three commenters made recommendations for change to the section of the Notice on additional priority points for Highest Levels of Concurrence. One commenter requested that, in addition to awarding priority points for concurrence of the State partners, a penalty for nonconcurrence should be applied. Another commenter believed that five additional priority points for this criterion was not appropriate because the basis for assigning the additional points was not clear, and it would be difficult for reviewers to differentiate between perceived and actual collaboration. Another commenter believed that this section should be revised to encourage States to utilize staff who are

qualified to deliver services to special population groups.

Discussion: In response to the first comment, the Departments note that reviewers may add a maximum of 5 points for applications that demonstrate that all State partners listed in section 213(b)(4) concur with the plan and have committed time and resources to implementing it. Applications that do not fully demonstrate such concurrence will receive less than 5 points, which is, in effect, a penalty for nonconcurrence, as the commenter suggested. Regarding the second suggestion, the Departments note that the basis for awarding 5 additional points for ''Highest Levels of Concurrence'' is adequately described. To assist reviewers in differentiating between perceived collaboration and actual collaboration, applicants must show how the concurrence of each partner is actualized through a commitment of time and resources. Regarding the third suggestion, section 214(a) of the Act specifies that priority is to be given for concurrence with the State plan by those organizations listed in section 213(b)(4) that are required to collaborate in the development of the application. This section of the Act is a recognition that system-wide change cannot occur unless the State officials with the authority and resources for related education and training programs fully commit to system-wide change. How effectively local School-to-Work Opportunities programs or activities are *delivered* is a consideration in several other criteria, including Criteria 3, 4, and 6.

Changes: None.

Additional Priority Points [2]—Paid, High Quality Work-Based Learning

Difficulty of Rural States in Meeting Priority

Comment: Several commenters were concerned that this section would favor urban, industrialized States over rural non-industrialized States because the former have greater numbers of employers able to provide paid work experiences. While one commenter agreed with placing some emphasis on paid, high-quality work-based learning, most of these commenters pointed out that rural States have limited access to employers due to factors such as geographic isolation, predominance of small businesses, and a smaller base of non-hazardous industry. Two commenters noted that the Act describes paid work experience as a preferred, but not mandatory, activity of School-to-Work Opportunities systems, indicating that a ten-point priority for this factor exceeds the intent of the law. Other commenters noted that many rural School-to-Work Opportunities systems will rely mainly on school-sponsored enterprises, school-based simulations and unpaid work-based learning, and that students also benefit from these experiences. One commenter suggested that more information be provided in this section on what constitutes high-quality work-based learning. One commenter suggested that points be reduced under this section, and additional points be awarded for rural School-to-Work strategies under Criterion 3.

Discussion: The Departments are committed to a fair and equitable review of all applications, and recognize that, in order to be successful, a School-to-Work Opportunities system must take into account the unique needs and conditions of the State by which it has been designed. The Departments agree that unpaid work experiences and alternatives such as school-sponsored enterprises are highly valuable in providing students with the opportunity to gain and apply skills. This priority does not require paid work experience for every student, but emphasizes paid work experience in the work-based learning component, and rewards applications which demonstrate innovative strategies and high levels of effort in this area. The Departments wish to clarify that this section will not place rural States at a disadvantage, since points awarded will reflect comprehensiveness in developing the work-based learning component and attempting to maximize paid work experiences, rather than the relative number of students involved in paid work experiences. Reviewers rank each State's application against the criteria, not against other applications. In assigning points under this priority, reviewers will consider the quality of an individual State's plan given what is feasible for that State, as described in the application. Therefore, the extent to which an application presents what is possible and appropriate for the State, as well as the State's level of effort in obtaining paid work experiences and/or designing high-quality alternatives which are accessible systemwide, will determine the number of points awarded. Rural States that present this information thoroughly and convincingly may score higher in this section than urban States that do not demonstrate initiative in developing the work-based component.While the Departments encourage applicants to review section 103(a) of the Act for a definition of high-quality work-based learning, they do not believe this definition needs to be restated in the priority.

Changes: None.

Invitation to Comment

30 Day Submission

Comment: Several commenters opposed the Departments' decision to require States to submit their applications within 30 days of the publication of the notice of final selection criteria. Generally, these commenters believed that 60 days, rather than the proposed 30 days, would allow enough time for States to involve and obtain support from all of the necessary stakeholders in the submission of the State application. Three commenters added that the proposed submission time prevents full consultation with regional or local stakeholders located throughout the State (particularly large States). Commenters further noted that the proposed 30 day submittal deadline limits the ability of State educational agencies and others who may have dissenting comments to provide them, disregards the fact that May is a difficult time to obtain comments from classroom teachers, and would nonetheless be unsuccessful in granting awards prior to the beginning of the 1995 school year.

Discussion: While the Departments understand the requests by some States for additional time to submit their applications, they strongly maintain that, as stated in the notice of proposed criteria, the 30 day submittal time is sufficient for States that are prepared for comprehensive system implementation. Furthermore, the involvement of necessary stakeholders in the endorsement of the State application's key components should either already be established or be well underway and would not likely be increased with the addition of 30 days. Lastly, the establishment of the Departments' *State Planning Guide for a Comprehensive System*, distributed shortly after the publication of the proposed criteria, provided States with an opportunity to evaluate their current progress and assess the status of all system components.

Changes: None.

[FR Doc. 95–12332 Filed 5–17–95; 2:50 pm]

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Federal Register

Vol. 60, No. 96

Thursday, May 18, 1995

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Federal Register

Index, finding aids & general information	**202–523–5227**
Public inspection announcement line	**523–5215**
Corrections to published documents	**523–5237**
Document drafting information	**523–3187**
Machine readable documents	**523–4534**

Code of Federal Regulations

Index, finding aids & general information	**523–5227**
Printing schedules	**523–3419**

Laws

Public Laws Update Service (numbers, dates, etc.)	**523–6641**
Additional information	**523–5230**

Presidential Documents

Executive orders and proclamations	**523–5230**
Public Papers of the Presidents	**523–5230**
Weekly Compilation of Presidential Documents	**523–5230**

The United States Government Manual

General information	**523–5230**

Other Services

Data base and machine readable specifications	**523–4534**
Guide to Record Retention Requirements	**523–3187**
Legal staff	**523–4534**
Privacy Act Compilation	**523–3187**
Public Laws Update Service (PLUS)	**523–6641**
TDD for the hearing impaired	**523–5229**

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FEDERAL REGISTER PAGES AND DATES, MAY

21033–21424 1
21425–21698 2
21699–21972 3
21973–22246 4
22247–22454 5
22455–24534 8
24535–24760 9
24761–25118 10
25119–25600 11
25601–25838 12
25839–25982 15
25983–26338 16
26339–26666 17
26667–26822 18

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6778 25266
6792 21423
6793 21696
6794 21971
6795 22247
6796 22453
6797 25839
6798 25841
6799 26337
6800 26339

Executive Orders:
12959 24757
12613 (Revoked in part by E.O. 12959) 24757
12957 (Revoked in part by E.O. 12959) 24757
12960 of May 12, 1995 26647

Administrative Orders:
Presidential Determinations:
No. 95–18 of April 21, 1995 22447
No. 95–19 of April 21, 1995 22449
No. 95–20 of May 1, 1995 22245
Notices:
May 10, 1995 25599

5 CFR

Ch. XXI 22249
185 22249
532 ..... 22455, 26341
630 22455
890 ..... 21590, 26667
1603 24535

Proposed Rules:
591 25150
870 21759
871 21759
872 21759
873 21759
874 21759

7 CFR

6 21425
28 21033
75 21034
110 25119
354 24535
400 21035
404 26669
457 25601
704 22456
723 22458
911 24537
915 24537
958 24539
981 26342
989 ..... 26344, 26346
998 26348
1036 22255
1410 22456
1464 ..... 21036, 22458
1468 22460
1494 21037
1924 24540
1980 26350

Proposed Rules:
29 25624
278 25625
1007 25014
1099 25628
1205 21999
1910 25629
1944 25629
1951 25629
1965 25629
3200 25594
3411 25594

8 CFR

3 26351
103 21979
208 21973
210 21973
212 26676
214 21979
240 21973
242 21973
245 26676
245a 21039, 21973
247a 21973
248 26676

Proposed Rules:
1 24573
13 24573
103 ..... 24573, 25856
208 24573
235 26696
242 24573
299 25856

9 CFR

78 24547
85 26353
92 ..... 25119, 26355
94 ..... 21428, 25120
98 ..... 25119, 26355
113 24547

Proposed Rules:
50 26377
51 26377
77 26377
78 26377
92 25151
98 25151
101 26381
112 24584

113 .....24584, 26381, 26384
308.....22311, 25869
310.....22311, 25869
318.....22311, 25869
320.....22311, 25869
325.....22311, 25869
326.....22311, 25869
327.....22311, 25869
381.....22311, 25869

10 CFR

2.....22461, 24549
11.....26355
19.....24549
20.....24549, 25983
25.....26355
30.....24549
32.....24549
40.....24549
50.....24549
51.....22461, 24549
54.....22461
60.....24549
61.....24549
70.....24549
71.....24549
72.....24549
73.....24549
74.....24549
76.....24549
150.....24549
Proposed Rules:
50.....22010
73.....24803

12 CFR

25.....22156
203.....22156, 22223
228.....22156
265.....22256
308.....24761
345.....22156
563e.....22156
707.....21699, 25121
Proposed Rule:
Ch. XVII 25174
1710.....25162

13 CFR

123.....22495
Proposed Rule:
122.....22311

14 CFR

25.....26357
39 .....21041, 21429, 21976, 21977, 21979, 22496, 22498, 22499, 22501, 24553, 24762, 25122, 25124, 25604, 25606, 25608, 25610, 25611, 25985, 26683
71 .....21433, 21434, 21700, 24555, 24556, 26594
91.....25980
97 .....25125, 25127, 25128
121.....24765
1215.....25843
1245.....21042
Proposed Rules:
39 .....21053, 21054, 21056, 21470, 21471, 21772, 21774, 22011, 22013, 24587, 24589, 25869, 26003, 26005, 26007, 26697, 26700, 26702
71 .....21473, 21776, 24592, 24593, 24594, 24595, 25175, 25871, 26384, 26385
91.....25554

15 CFR

730.....25268
732.....25268
734.....25268
736.....25268
738.....25268
740.....25268
742.....25268
744.....25268
746.....25268
748.....25268
750.....25268
752.....25268
754.....25268
756.....25268
758.....25268
760.....25268
762.....25268
764.....25268
766.....25268
768.....25268
770.....25268
772.....25268
774.....25268
799.....25480
Proposed Rules:
292.....25872

16 CFR

Proposed Rules:
444.....24805

17 CFR

1.....25988
5.....25988
31.....25988
202.....26604
211.....24968
228.....26604
229.....26604
230.....26604
232.....26604
239.....26604
240.....26604
270.....26604
274.....26604

18 CFR

2.....22257, 22503
34.....22503
35.....22257, 22503
41.....22503
131.....22503
292.....22503
294.....22503
382.....22503
385.....22503

19 CFR

7.....21043
11.....21043
12.....21043
18.....21043
19.....21043
24.....21043
54.....21043
101.....21043
102.....21043
111.....21043
114.....21043
123.....21043
128.....21043
132.....21043
134.....21043
141.....21043
145.....21043
146.....21043
148.....21043
151.....21043
152.....21043
177.....21043
181.....21043
191.....21043
353.....25130
355.....25130
Proposed Rules:
10.....22312
12.....22312
101.....25176
102.....22312
134.....22312
177.....22312
162.....21778

20 CFR

217.....21982
232.....22261
344.....22261
625.....25560
641.....26574
Proposed Rules:
416.....26387
702.....22537
703.....22537

21 CFR

5.....24766
172.....21700
178.....22269
520.....26359
522.....26359
Proposed Rules:
173.....21474
310.....21590
500.....24808
582.....24808
589.....24808

22 CFR

94.....25843

24 CFR

200.....21936
203.....21936
3500.....24734
Proposed Rules:
Ch. IX.....21058
950.....24597
990.....24597

26 CFR

1.....21435, 25140
Proposed Rules:
1 .....21475, 21482, 21779
301.....24811, 24813

28 CFR

Proposed Rules:
2.....26010

29 CFR

89.....26574
100.....22269
2619.....25843
2676.....25843
Proposed Rules:
452.....26388
1926.....22539
2200.....21058

30 CFR

906.....25846
935.....25140, 25613
944.....21435
Proposed Rules:
250.....25178
931.....22332
934.....21484
935.....25660
946.....25185
950.....26704

31 CFR

247.....25990

32 CFR

706 .....22505, 22507, 22508, 22509, 22510, 22511
Proposed Rules:
199.....26705

33 CFR

100.....21982, 24557
110.....21983
117.....26686
164.....24767
165 .....24557, 24558, 26687, 26688
Proposed Rules:
84.....24598
100.....25187
117 .....22014, 24599, 26710
165.....25189, 26012
183.....25191
322.....21061

34 CFR

690.....21438
Proposed Rules:
200.....21400
201.....21400
203.....21400
205.....21400
212.....21400

36 CFR

Proposed Rules:
242.....24601
701.....26392

37 CFR

1 .....21043, 21438, 25615
10.....21438
201.....25995
202.....21983

38 CFR

20.....25850
Proposed Rules:
3.....22016, 25877
17.....25191
21.....21486

39 CFR

111.....22270
Proposed Rules:
3001.....22017

40 CFR

9.....25492, 26510
52 .....21440, 21442, 21445, 21447, 21451, 21453, 21455, 21456, 21702, 21703, 21706,

21707, 21713, 21717, 22240, 22241, 22274, 22277, 22283, 22284, 22285, 22287, 22289, 22512, 22515, 22518
70.....21720, 25143
72.....26510
75.....26510, 26560
80.....21724
81 .....21456, 22289, 25146
82 .....21682, 24676, 24970
131.....22228, 22229
180 .....24782, 24784, 24785, 24788, 26360, 26361, 26626
185.....26361
186.....26361
228.....25147
260.....25492
261.....25492, 25619
262.....25492
264.....25492
265.....25492
266.....25492
268.....25492
270.....25492
271.....22524, 24790
273.....25492
302.....25619
721.....26690
Proposed Rules:
51.....26710
52 .....21487, 21488, 21489, 21490, 21780, 21781, 21783, 22334, 22335, 22336, 22337, 22540, 22541, 24813
70.....26013
72.....26559
75.....26559
81 .....21490, 22336, 22337
82.....21490, 25010
156.....21965
170 .....21944, 21948, 21953, 21955, 21960
180 .....21725, 21728, 21731, 21733, 21734, 21736, 21784
185 .....21736, 21786, 24815
186.....24815
228.....25192
300.....21491, 21786
439.....21592

41 CFR

201–23.....22019
201–24.....22019

42 CFR

2.....22296
6.....22530
406.....22533
421.....21048

43 CFR

Public Land Orders:
7138.....21984
7139.....22535
7140.....24560
7141.....24792
7142.....25149
Proposed Rules:
11.....24604

44 CFR

64.....21739
65 .....26363, 26364, 26365, 26367
67.....26368
Proposed Rules:
67.....26393

45 CFR

96.....21332
205.....26373
224.....26373
233.....26373
238.....26373
239.....26373
240.....26373
282.....26373
1010.....26374
1050.....26374
1060.....26374
1061.....26374
1064.....26374
1067.....26374
1068.....26374
1069.....26374
1070.....26374
1076.....26374
1397.....26000
Proposed Rules:
1385.....26774
1386.....26774
1387.....26774
1388.....26774

46 CFR

15.....24763
50.....24767
52.....24767
56.....24767
58.....24767
61.....24767
111.....24767
381.....24560
Proposed Rules:
25.....24748
28.....24748
30.....24748
31.....24748
35.....24748
37.....24748
40.....24748
54.....24748
55.....24748
56.....24748
61.....24748
70.....24748
71.....24748
72.....24748
76.....24748
78.....24748
79.....24748
90.....24748
91.....24748
95.....24748
97.....24748
99.....24748
106.....24748
150.....24748
154.....24748
174.....24748
188.....24748
189.....24748

47 CFR

2.....21048
15.....21984
24.....26375
73 .....22298, 22535, 22536, 25851, 25852
76.....21464
90.....21984, 21987
97.....26000
Proposed Rules:
25.....24817
32.....26402
73 .....22021, 22022, 22541, 24606, 25879, 26018, 26402, 26711, 26712
90.....22023
95.....25193
97.....25194, 25661

48 CFR

502.....21467
506.....21467
513.....21467
552.....21467
926.....22298
952.....22298
970.....22298
1503.....21993
1505.....21993
1513.....21993
1514.....21993
1515.....21993
1522.....21993
1525.....21993
1542.....21993
1552.....21993
1852.....22095
5452.....21992
Proposed Rules:
32.....25794
45.....22442
52.....22442
219.....22035

49 CFR

171.....26796
172.....26796
173.....26796
178.....26796
219.....24765
382.....24765
390.....26001
552.....26002
554.....26002
571.....24562, 24797
573.....26002
576.....26002
577.....26002
654.....24765
821.....25620
1002.....22303
1011.....22303
1160.....22303
1161.....22303
1162.....22303
1163.....22303
Proposed Rules:
214.....22542
383.....24820
571.....25880
1121.....22035

50 CFR

217 .....21741, 25620, 26691
222.....25620
227 .....21741, 25620, 26691
649.....21994
651.....21994
652.....25853
661.....21746
663.....22303, 24572
672 .....24800, 25623, 26694
675 .....22306, 24800, 25149, 26694, 26695
676.....22307
678.....21468
Proposed Rules:
10.....24686
17 .....25882, 26712, 26713
100.....24601
216.....22345
217.....25663
222.....25663
227.....25663
285.....25665
625.....21491
640.....21493
649.....25194
650.....25194
651.....25194
659.....26403
671.....22542, 25677
672.....22542, 25677
673.....24822
675.....22542, 25677
676.....22542, 25677