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Wednesday
May 24, 1995

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

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 35

[Docket No. 95–08]

RIN 1557–AB44

Agricultural Loan Loss Amortization

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is removing its rule governing agricultural loan loss amortization, effective January 1, 1999. This action is another component of the OCC's Regulation Review Program, which is intended to update and streamline OCC regulations and to reduce unnecessary regulatory costs and other burdens. This action is needed to eliminate the rule when it becomes obsolete.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew T. Gutierrez, Attorney, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

The OCC is removing 12 CFR part 35, effective January 1, 1999, as a component of its Regulation Review Program. The goal of the Regulation Review Program is to review all of the OCC's rules to revise, streamline, and simplify them, and to eliminate provisions that do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities.

Title VIII of the Competitive Equality Banking Act of 1987, Pub. L. 100–86, 101 Stat. 635 (1987), added 12 U.S.C. 1823(j) in an attempt to alleviate some of the financial pressures then facing agricultural banks. In particular, 12 U.S.C. 1823(j) permits an agricultural bank to amortize over a period not to exceed seven years: (1) any loss on a qualified agricultural loan that the bank would otherwise be required to show on its annual financial statement for any year between December 31, 1983, and January 1, 1992; and (2) any loss resulting from the reappraisal of property that the bank owned or acquired between January 1, 1983, and January 1, 1992, in connection with a qualified agricultural loan. The OCC implemented this statutory provision by promulgating 12 CFR part 35 with a temporary rule published on November 2, 1987 (52 FR 41959), and a final rule published on July 28, 1988 (53 FR 28373).

Because the statute requires that a loss occur on or before December 31, 1991, to qualify, and that the amortization period may not exceed seven years, the program becomes obsolete on January 1, 1999. Reflecting this fact, 12 CFR 35.3(b) requires that loans under the program must be fully amortized by December 31, 1998.

On February 8, 1995, the OCC proposed to remove 12 CFR part 35, effective January 1, 1999, in order to obviate the need for regulatory action in the future (60 FR 7467). The OCC received two comment letters on the proposed rule, both of which supported the proposed action. Consequently, the OCC is issuing this final rule to remove 12 CFR part 35, effective January 1, 1999. Prior to that date, an annotation to 12 CFR part 35 will indicate the effective date for removal of the part.

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This final rule has no material impact on national banks, regardless of size.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Paperwork Reduction Act

The collection of information contained in 12 CFR 35.7 has been approved by the Office of Management and Budget (OMB) under OMB Control Number 1557–0186. This final rule will remove as unnecessary, for the reasons set forth in the preamble, that collection of information effective January 1, 1999.

Unfunded Mandates Act of 1995

The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

List of Subjects in 12 CFR Part 35

Accounting, Agriculture, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, and under the authority of 12 U.S.C. 93a and 1823(j), chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 35—[REMOVED]

1. Part 35 is removed effective January 1, 1999.

Dated: May 18, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–12648 Filed 5–23–95; 8:45 am]

BILLING CODE 4810–33–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 615, and 618

RIN 3052–AB53

Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under parts 614, 615, 618 on April 24, 1995 (60 FR 20008). The final regulation repeals several regulations

concerning loan policies and operations, funding, and miscellaneous items as well as two Agency prior-approval requirements. These repeals are part of an ongoing effort by the FCA to reduce unnecessary regulatory burdens on Farm Credit System institutions. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 24, 1995.

EFFECTIVE DATE: The regulation amending 12 CFR parts 614, 615, 618 published on April 24, 1995 (60 FR 20008) is effective May 24, 1995.

FOR FURTHER INFORMATION CONTACT:

W. Eric Howard, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Richard A. Katz, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a) (9) and (10)).

Dated: May 19, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–12741 Filed 5–23–95; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–48–AD; Amendment 39–9238; AD 95–11–04]

Airworthiness Directives; Aerospatiale Model ATR42–200, –300, and –320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–200, –300, and –320 series airplanes, that requires modification of the wiring in the elevator controls and the pitch trim dissymmetry monitoring equipment. This amendment is prompted by a report of loss of a propeller and engine gearbox, which resulted in damage to the fuselage. There has also been a report that a modification was implemented in the elevator control cables during manufacture, which reduced the maximum physical separation between the elevator controls and the monitoring equipment. The actions specified by this AD are intended to prevent reduced controllability of the airplane in the event that debris from an engine burst or propeller failure were to strike the fuselage and sever the elevator flight controls.

DATES: Effective June 23, 1995.

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

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonee, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–200, –300, –320 series airplanes was published in the **Federal Register** on July 20, 1994 (59 FR 36998). That action proposed to require modification of the wiring in the elevator controls and the pitch trim dissymmetry monitoring equipment.

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

The manufacturer requests that reference to a certain incident involving a Model ATR42–300 series airplane be deleted from the Discussion section of the preamble of the proposed rule. The manufacturer states that the incident did not result in any damage to flight controls and, therefore, should not be referred to in the final rule. The FAA acknowledges that, since the incident was apparently not connected with the flight controls, deletion of the reference to the incident would be appropriate. However, since the Discussion section of the preamble of the proposal does not reappear in the final rule, no change to the final rule is necessary.

Another commenter requests that the compliance time to perform the modification be extended from the proposed 3 months to 12 months. The commenter states that investigation has shown that only 4% of all affected operators have found any defective propellers. The commenter states that detection of this small percentage of defective propellers does not justify the urgency of a 3-month compliance time. The FAA concurs with the commenter's request to extend the compliance time for the modification requirements. The FAA's intent was that the modifications be performed during a regularly scheduled maintenance visit for the majority of the affected fleet, when the airplanes would be located at a base where special equipment and trained personnel would be readily available, if necessary. Based on the information supplied by the commenter, the FAA now recognizes that 12 months corresponds more closely to the interval representative of most of the affected operators' normal maintenance schedules. Paragraph (a) of the final rule has been revised to reflect a compliance time of 12 months. The FAA does not consider that this extension will adversely affect safety.

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 added to this final rule to clarify this long-standing requirement.

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

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.

The FAA estimates that 110 airplanes of U.S. registry will be affected by this AD, that it will take approximately 49 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $323,400, or $2,940 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95–11–04 Aerospatiale: Amendment 39–9238. Docket 94–NM–48–AD.

Applicability: Model ATR42–200, –300, and –320 series airplanes, as listed in Aerospatiale Service Bulletins ATR42–27–0068 and ATR42–27–0069, both dated January 25, 1994; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify the wiring in the elevator controls and the pitch trim dissymmetry monitoring equipment, in accordance with Aerospatiale Service Bulletin ATR42–27–0068 or ATR42–27–0069, both dated January 25, 1994; as applicable.

(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.

(d) The modification shall be done in accordance with Aerospatiale Service Bulletin ATR42–27–0068, dated January 25, 1994; or Aerospatiale Service Bulletin ATR42–27–0069, dated January 25, 1994; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonee, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 23, 1995.

Issued in Renton, Washington, on May 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12443 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–190–AD; Amendment 39–9237; AD 95–11–03]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires replacement of the existing pressure relief valve in the potable water system with a non-adjustable, single setting valve. This amendment is prompted by reports of potable water tanks that ruptured and resulted in damage to the passenger compartment. The actions specified by this AD are intended to prevent injury to the crew and passengers and damage to the passenger compartment due to an explosive failure of the potable water tank.

DATES: Effective June 23, 1995.

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

ADDRESSES: The service information referenced in this AD may be obtained

from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2788; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on December 15, 1994 (59 FR 64629). That action proposed to require replacement of the existing pressure relief valve in the potable water system with a non-adjustable, single setting valve.

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

Two commenters support the rule.

The Air Transport Association of America (ATA), on behalf of several of its members, supports the proposed rule, but requests that the proposed compliance time of 6 months be extended to 12 months. ATA states that the 6-month compliance time would require several members to ''special schedule'' their maintenance planning in order to accomplish the proposed replacement of the pressure relief valve in the potable water system. The FAA does not concur with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of replacing the pressure relief valve within a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. The manufacturer has advised that an ample number of required parts will be available for the replacement of the pressure relief valve for the U.S. fleet within the proposed compliance period. Additionally, the replacement actions required by this AD are uncomplicated and do not require special scheduling; the inspection could be accomplished during an ''A'' check, which occurs every one or two weeks. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Since issuance of the Notice, Boeing has issued Revision 1, dated March 2, 1995, of Boeing Alert Service Bulletin 747–38A2105. This alert service bulletin changes airplane grouping by putting all Model 747 SP series airplanes in Group 3, and changes the part numbers of the valves required for Group 1 and Group 2 airplanes. Revision 1 does not increase the scope of the work required. Therefore, the FAA has revised the final rule to reflect the latest revision to the service bulletin as the appropriate source of service information.

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

There are approximately 983 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 205 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $120 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $73,800, or $360 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

39.13 [Amended]

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

95–11–03 Boeing: Amendment 39–9237. Docket 94–NM–190–AD.

Applicability: Model 747 series airplanes, line positions 1 through 1013 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 (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent explosive failure of the potable water tank, which could cause damage to the

passenger compartment and result in injury to the crew and passengers, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace the existing pressure relief valve in the potable water system with a non-adjustable, single setting valve, in accordance with Boeing Alert Service Bulletin 747–38A2105, Revision 1, dated March 2, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

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

(d) The replacement shall be done in accordance with Boeing Service Bulletin 747–38A2105, Revision 1, dated March 2, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 23, 1995.

Issued in Renton, Washington, on May 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12444 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–ANE–07]

Amendment to Class E Airspace; Claremont, NH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace at Claremont Municipal Airport, Claremont, NH, to provide adequate controlled airspace for the new GPS Runway 29, Standard Instrument Approach Procedure (SIAP). This action will add an extension running easterly from the basic radius of the Claremont, NH, Class E airspace that extends from 700 feet above the surface.

EFFECTIVE DATE: 0901 UTC, July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph A. Bellabona, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7536; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION:

History

On March 28, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by increasing the Class E airspace in the vicinity of Claremont Municipal Airport, Claremont, NH (60 FR 15885). The proposed action would provide adequate controlled airspace for the new GPS runway 29, Standard Instrument Approach Procedure at Claremont Municipal Airport, Claremont, NH, by adding to the basic radius of Class E airspace extending upward from 700 feet above the surface, airspace within 2 miles on each side of the 094° bearing from the Claremont Nondirectional Beacon (NDB) extending from the 5.5-mile radius to 15.3 miles east of the Claremont NDB. The proposed action would not affect that airspace within the Springfield, VT, Concord, NH, and Lebanon, NH, Class E areas.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979; and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963, Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9b, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANE NH E5 Claremont, NH [Revised]

Claremont NDB

(Lat. 43°22′10″ N, long. 72°22′16″ W)

That airspace extending upward from 700 feet above the surface within a 5.5 mile radius of the Claremont NDB; and within 2 miles on each side of the 094° bearing from the Claremont NDB, extending from 5.5-mile radius to 15.3 miles east of the Claremont NDB; excluding that airspace within the Springfield, VT, Concord, NH, and Lebanon, NH, Class E areas.

* * * * *

Issued in Burlington, Massachusetts, on May 10, 1995.

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 95–12758 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 1270

[Docket No. 93N–0453]

Human Tissue for Transplantation and Human Reproductive Tissue: Scientific and Regulatory Issues and Perspectives; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Human Tissue for Transplantation and Human Reproductive Tissue: Scientific and Regulatory Issues and Perspectives.'' The purpose of this workshop is to provide an opportunity for continued discussion of the regulation of human tissue for transplantation as outlined by FDA in an interim rule that published in the **Federal Register** of December 14, 1993. The workshop will include discussions of other related issues, including regulating reproductive tissue.

DATES: The public workshop will be held on Tuesday and Wednesday, June 20 and 21, 1995, 8:30 a.m. to 5:30 p.m. Preregistration is requested by Friday, June 9, 1995.

ADDRESSES: The public workshop will be held at the National Institutes of Health, Bldg. 45, Natcher Auditorium, 9000 Rockville Pike, Bethesda, MD. There is no registration fee.

FOR FURTHER INFORMATION CONTACT:

Regarding information on registration: Julie Furman, KRA Corp., 1010 Wayne Ave., suite 850, Silver Spring, MD 20910, 301–495–1591, or FAX 301–495–9410.

Regarding information on this document: Marty A. Wells, Center for Biologics Evaluation and Research (HFM–305), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–0967.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 14, 1993 (58 FR 65514), FDA published an interim rule on human tissue intended for transplantation. This interim rule requires certain infectious disease testing, donor screening, and recordkeeping to help prevent the transmission of acquired immune deficiency syndrome (AIDS) and hepatitis through human tissue used in transplantation. The regulations in the interim rule became effective upon publication.

The objectives of the public workshop are to: (1) Promote an understanding of related public health issues based on scientific knowledge; (2) provide an opportunity for discussion of current donor screening and testing practices for human tissue for transplantation and human reproductive tissue; (3) identify the practices and procedures of the procurer, processor, distributor, and user of human tissue for transplantation and human reproductive tissue and their interactions; and (4) examine the existing state and industry approaches to the regulation of human tissue for transplantation and human reproductive tissue.

The workshop will consist of plenary and breakout sessions that will include the following topics: (1) Donor screening; (2) infectious disease testing and inactivation methods; (3) voluntary standards; (4) assessment of industry practices related to tracking; (5) interactions with organ procurement organizations and procurement coordination practices; and (6) state regulatory approaches and industry practices.

Dated: May 19, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–12763 Filed 5–19–95; 3:29 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–95–017]

Safety Zone Regulations; Portland Rose Festival Fireworks Display, Willamette River, Portland, OR

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Cost Guard is establishing a safety zone for the Portland Rose Festival Fireworks Display which is scheduled to be held in Portland, Oregon, on June 2, 1995. The safety zone will be located on the Willamette River between the Morrison and Hawthorne Bridges from river mile 12.8 to river mile 13.1. This safety zone is needed to protect persons, facilities, and vessels from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on June 2, 1995, at 8:45 p.m. (PDT) and terminates on June 2, 1995, at 11:10 p.m. (PDT), unless sooner terminated by the Captain of the Port. If inclement weather causes the fireworks display to be postponed, this regulation will be effective on June 4, 1995, from 8:45 p.m. (PDT) to 11:10 p.m. (PDT), unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LTJG C.A. Roskam, c/o Captain of the Port Portland, 6767 N. Basin Ave, Portland, Oregon 97217–3992, (503) 240–9338.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is necessary to ensure the safety of structures and vessels operating in the area of the fireworks display. Due to the complex planning and coordination involved, the event sponsor, the Portland Rose Festival Association, was unable to provide the Coast Guard with notice of the final details until 30 days prior to the date of the event. Therefore, sufficient time was not available to publish the proposed rule in advance of the event or to provide a delayed effective date. Following normal rulemaking procedures in this case would be impracticable.

Drafting Information

The principal persons involved in drafting this document are LTJG C.A. Roskam, Project Officer for the Captain of the Port of Portland, OR, and LCDR J.C. Odell, Project Counsel, Thirteenth Coast Guard District Legal Office.

Background and Purpose

The event requiring this regulation is a fireworks display sponsored by the Portland Rose Festival Association, as part of the Portland Rose Festival in the Portland, Oregon, area. The fireworks display is scheduled to begin on June 2, 1995, at 9:45 p.m. (PDT). If the fireworks display cannot be held on June 2, 1995, because of inclement weather, it will be rescheduled for June 4, 1995, at 9:45 p.m. (PDT).

During the fireworks display, spectator vessels may attempt to approach the fireworks launching barge at close range. If allowed to do so, these vessels and the persons onboard them may be exposed to potential damage, fire, and personal injury due to sparks, falling debris, and unexploded fireworks.

In order to protect the safety of life and property on the navigable waters during this event, the Coast Guard is establishing a safety zone around the fireworks launching barge on the waters of the Willamette River from river mile 12.8 to river mile 13.1 between the Morrison and Hawthorne Bridges. Entry into this zone will be prohibited unless authorized by the captain of the Port. This safety zone will be enforced by representatives of the Captain of the Port Portland. The Captain of the Port may be assisted by other federal agencies.

Regulatory Evaluation

This temporary final 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 proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the entry into the safety zone will only be restricted for less than 3 hours on the day of the event. The entities most likely to be affected by this action are commercial tug and barge operators on the Willamette River. Most of these entities are aware of the fireworks display and the safety zone, and they can schedule their transits accordingly. If safe to do so, the representative of the Captain of the Port assigned to enforce this safety zone may authorize commercial vessels to pass through the safety zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C, 601 *et seq.*), the Coast Guard must consider whether this final 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 outlined in the Regulatory Evaluation above, the Coast Guard expects the impact of this final rule to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final 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 final rule in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this final rule and has concluded that, under section 2.B.2.c. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. 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), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends part 165 of title 33, Code of Federal Regulations, 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.T13015 is added to read as follows:

§ 165.T13015 Safety Zone; Willamette River, Portland, OR.

(a) *Location.* The following area is a safety zone: All waters on the Willamette River between the Morrison and Hawthorne Bridges from river mile 12.8 to river mile 13.1, Portland, Oregon.

(b) The designated representative of the Captain of The Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Portland, to act on his behalf. The following officers have or will be designated by the Captain of the Port: The Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Officer at Coast Guard Group Portland, Oregon.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(2) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels or persons signalled shall stop and comply with the orders of the patrol vessels; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) *Effective Dates:* This section becomes effective on June 2, 1995, at 8:45 p.m. (PDT) and terminate on June 2, 1995, at 11:10 p.m. (PDT), unless sooner terminated by the Captain of the Port. If inclement weather causes the fireworks display to be postponed, the regulation will be effective on June 4, 1995, from 8:45 p.m. (PDT) to 11:10 p.m. (PDT), unless sooner terminated by the Captain of the Port.

Dated: May 9, 1995.

C.E. Bills,

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

[FR Doc. 95–12737 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AF03

Line of Duty

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) adjudication regulations concerning service connection for disabilities incurred or aggravated in line of duty. This amendment is necessary to implement legislation which precludes the establishment of service connection for any condition that results from the abuse of alcohol or drugs by the person on whose service benefits are claimed.

EFFECTIVE DATE: November 1, 1990.

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

SUPPLEMENTARY INFORMATION: Section 8052 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990), Pub. L. 101–508, amended 38 U.S.C. 105(a), 110 (recodified as 1110) and 331 (recodified as 1131) to provide that injuries or diseases resulting from the abuse of alcohol or drugs by the person on whose service benefits are claimed will not be considered incurred in line of duty and thus are not compensable by VA as service-connected disabilities.

On March 1, 1994, VA published a proposal in the **Federal Register** (59 FR 9719) to amend its adjudication regulations at 38 CFR 3.1 and 3.301 to provide that injuries or diseases incurred or aggravated during service as a result of the abuse of alcohol or drugs will not be considered incurred or aggravated in line of duty for purposes of service connection. Interested persons were invited to submit written comments, suggestions or objections on or before May 2, 1994. We received two comments: One from the Disabled American Veterans and one from a concerned individual.

One commenter expressed agreement with the amendment as proposed and suggested no changes.

The other commenter recommended that VA include within the body of the regulations the statutory direction that the amendments apply only to claims filed after October 31, 1990. We concur with that recommendation and have added appropriate language to the regulations at 38 CFR 3.1(m) and 3.301(a).

The same commenter noted that the *Veterans Benefits Administration Manual M 21–1* and VBA Circular 21–90–12 provide that alcohol- or drug-related disabilities will be considered service-connected if alcohol abuse is a manifestation of a service-connected disability such as post traumatic stress disorder, or if drug abuse arose out of therapy for a service-connected disability. He stated that these are substantive rules that should be included in the amendment to § 3.301.

The manual and circular provisions which the commenter cited are examples of the application of 38 CFR 3.310(a), which provides that disability that is proximately due to or the result of a service-connected disease or injury shall be service-connected and that when service connection is thus established for a secondary condition the secondary condition shall be considered a part of the original condition. In circumstances such as those raised by the commenter, VA is required by § 3.310(a) to consider conditions that it has determined are secondary to a service-connected condition to be part of that service-connected condition rather than a result of the abuse of alcohol or drugs. Since that requirement is established elsewhere in VA's regulations, it is unnecessary to incorporate those provisions into § 3.301.

The same commenter, citing the *Diagnostic and Statistical Manual of Mental Disorders* (Third Edition—Revised, 1987), (DSM–III–R), published by the American Psychiatric Association, stated that, at the time Congress enacted OBRA 1990, alcohol abuse had an established definition. The commenter implied that this definition was so well established as to constitute the meaning Congress intended when it enacted OBRA 1990, and suggested that, to the extent that VA's definition of alcohol abuse is inconsistent with the established definition, VA's definition exceeds the authority of the Secretary of Veterans Affairs to promulgate regulations. The commenter suggested that the definitions of alcohol abuse and drug abuse in DSM–III–R be adopted by VA.

While the DSM–III–R definitions may have been widely accepted in the medical community, they were intended for diagnostic and statistical purposes. There is no evidence to suggest that Congress had these diagnostic criteria in mind at the time OBRA 1990 was enacted. Rather, Congress clearly intended that no service-connected benefits would be granted for disability or death resulting from drug or alcohol abuse, whether from pathology due to long-term use, or from traumatic effects related to acute intoxication.

Nevertheless, we have further considered the meaning of the terms alcohol abuse and drug abuse in OBRA 1990. Congress did not define either term in OBRA 1990, and the legislative history does not indicate that Congress intended the terms to mean anything other than their commonly understood meanings. Therefore, we have concluded that Congress intended these terms to have their ordinary, contemporary, common meanings. We think that the definition of drug abuse in the proposed rule accurately reflects Congress' intent and, accordingly, have adopted the proposed definition in the final rule. However, we think that the definition of alcohol abuse in the proposed rule does not accurately reflect Congress' intent, since that definition differs from the common meaning. Therefore, we have changed the definition of alcohol abuse in the final rule to more accurately reflect the meaning we think Congress intended, i.e., ''the use of alcoholic beverages over time, or such excessive use at any one time, sufficient to cause disability to or death of the user.'' Under these circumstances, the definition of alcohol abuse constitutes an interpretative rule and need not be published as a proposed rule for notice and comment.

VA appreciates the comments submitted in response to the proposed rule which is now adopted with the changes noted above.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment will directly affect VA beneficiaries, but will not directly affect small business. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This regulatory action has been reviewed by the Office of Management and Budget under Executive Order 12866.

(The Catalog of Federal Domestic Assistance program number is 64.109).

List of Subjects in 38 CFR Part 3

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

Approved: May 12, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

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

PART 3—ADJUDICATION

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

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

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

§ 3.1 [Amended]

2. In § 3.1(m), in the first sentence, remove the period at the end of the sentence and insert, in its place, ''or, for claims filed after October 31, 1990, was a result of his or her abuse of alcohol or drugs.''

§ 3.301 [Amended]

3. In § 3.301(a), at the end of the paragraph, remove the period and insert, in its place, ''or, for claims filed after October 31, 1990, the result of his or her abuse of alcohol or drugs.''

4. In § 3.301(c), revise the heading to read as follows: ''*Specific applications; willful misconduct.*''

5. In § 3.301(c)(3), after the third sentence, add a new sentence in parenthesis to read as follows: ''(See paragraph (d) of this section regarding service connection where disability or death is a result of abuse of drugs.)''; and in the fourth sentence, remove the words ''Similarly, where'' and add, in their place, the word ''Where''.

6. In § 3.301, add a new paragraph (d) and an authority citation to read as follows:

§ 3.301 Line of duty and misconduct.

* * * * *

(d) *Line of duty; abuse of alcohol or drugs.* An injury or disease incurred during active military, naval, or air service shall not be deemed to have been incurred in line of duty if such injury or disease was a result of the abuse of alcohol or drugs by the person on whose service benefits are claimed. For the purpose of this paragraph, alcohol abuse means the use of alcoholic beverages over time, or such excessive use at any one time, sufficient to cause disability to or death of the user; drug abuse means the use of illegal drugs (including prescription drugs that are illegally or illicitly obtained), the intentional use of prescription or non-prescription drugs for a purpose other than the medically intended use, or the use of substances other than alcohol to enjoy their intoxicating effects.

(Authority: 38 U.S.C. 105(a))

[FR Doc. 95–12644 Filed 5–23–95; 8:45 am]

BILLING CODE 8320–01–P

38 CFR Part 3

RIN 2900–AH38

Examinations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to reflect a statutory change which authorizes VA to accept the report of a private physician's examination that is otherwise adequate for rating purposes to establish entitlement to compensation or pension benefits.

EFFECTIVE DATE: This amendment is effective November 2, 1994, the date that Public Law 103–446, the Veterans' Benefits Improvements Act of 1994, became effective.

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

SUPPLEMENTARY INFORMATION: On November 2, 1994, the Veterans' Benefits Improvements Act of 1994 was signed into law. Section 301 of that statute created 38 U.S.C. 5125, which authorizes the Secretary of Veterans Affairs to accept the report of a private physician's examination that is otherwise adequate for rating purposes to establish entitlement to compensation or pension benefits. This document amends 38 CFR 3.157, 3.326, 3.327, and 3.352 in order to reflect that statutory authority.

38 CFR 3.157(b)(2) is amended to remove the requirement that a private physician's statement be confirmed by a VA examination prior to granting service connection for a disability. 38 CFR 3.326(d) is amended to show that a private physician's statement may be accepted for rating any compensation or pension claim as long as it is adequate for rating purposes. 38 CFR 3.327(b)(1) is amended to remove the requirement that at least one VA examination be made in every case in which compensation benefits are awarded. 38 CFR 3.352(b)(1) is amended to remove the requirement that a veteran's need for the special aid and attendance benefit under 38 U.S.C. 1114(r) must be determined by a Department of Veterans Affairs physician.

Administrative Procedure Act

This final rule amends VA regulations merely to reflect statutory provisions. Accordingly, there is a basis for dispensing with prior notice and comment and for dispensing with a 30-day delay of the effective date.

Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities since it merely reflects a statutory change.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

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

Approved: May 17, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

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

PART 3—ADJUDICATION

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

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

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

§ 3.157 [Amended]

2. In § 3.157, the last sentence in paragraph (b)(2) is removed.

3. In § 3.326, paragraph (d) is revised to read as follows:

§ 3.326 Examinations.

* * * * *

(d) A statement from a private physician that includes clinical manifestations and substantiation of diagnosis by findings of diagnostic techniques generally accepted by medical authorities, such as pathological studies, X-rays, and laboratory tests as appropriate, may be accepted for rating any claim without further examination, provided it is otherwise adequate for rating purposes.

(Authority: 38 U.S.C. 5125)

§ 3.327 [Amended]

4. In § 3.327, the first two sentences in paragraph (b)(1) are removed.

§ 3.352 [Amended]

5. In § 3.352, paragraph (b)(1)(iv) is removed.

[FR Doc. 95–12707 Filed 5–23–95; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Ky–83–6927a; FRL–5184–7]

Approval and Promulgation of Implementation Plans State: Kentucky Approval of Revisions to State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the state implementation plan (SIP) submitted by the Commonwealth of Kentucky through the Natural Resources

and Environmental Protection Cabinet (Cabinet). This revision will incorporate into the SIP an operating permit issued to the Calgon Carbon Corporation located in the Kentucky portion of the Ashland/Huntington ozone (O_3) nonattainment area. This permit will reduce the emissions of volatile organic compounds (VOCs) by requiring reasonably available control technology (RACT).

DATES: This final rule will be effective July 10, 1995, unless adverse or critical comments are received by June 23, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 316 St. Clair Mall, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Scott Southwick, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4, Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 x 4207. Reference file KY–083.

SUPPLEMENTARY INFORMATION: Section 182(b)(2) of the Clean Air Act as Amended in 1990 (CAA) requires states to implement RACT for moderate and above O_3 nonattainment areas for: (1) Each category of VOC sources in the area covered by a control technique guideline (CTG) issued between November 15, 1990, and the date of attainment of these areas; (2) All VOC sources in the area covered by any CTG before November 15, 1990; and (3) All other major stationary sources of VOC (non-CTG sources) that are located in the area. Kentucky has already met the requirements of items (1) and (2) of section 182(b)(2) (see 59 FR 32352 published on June 23, 1994). On November 23, 1994, the Cabinet submitted a revision to the SIP requiring VOC RACT through a permit issued to the Calgon Carbon Corporation (Calgon). This permit requires Calgon to comply with 1.8 lbs/hr emission limit in the reactivation furnace. The permit also requires Calgon to maintain a 1400 degrees fahrenheit temperature in the fireboxes and a coal residence time of 0.1 seconds in all bakers and activator burners.

Calgon is the only major source located in the Kentucky portion of the Ashland/Huntington O_3 nonattainment area not subject to a CTG. The approval of this revision will satisfy section 182(b)(2)(C) which requires RACT on all non-CTG sources located in the Ashland/Huntington moderate O_3 nonattainment area.

Final Action

The EPA is approving the Calgon Permit and is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 24, 1995 unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 24, 1995.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 24, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 21, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart S—Kentucky

2. Section 52.920, is amended by adding paragraph (c)(78) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(78) Operating Permit requiring VOC RACT for Calgon Corporation in the Kentucky portion of the Ashland/Huntington ozone nonattainment area, submitted November 11, 1994.

(i) Incorporation by reference. Natural Resources and Environmental Protection Cabinet; Kentucky Department for Environmental Protection; Division for Air Quality; Permit 0–94–020; Calgon Carbon Corporation, effective on November 17, 1994.

(ii) Other material. Letter of November 23, 1994, from the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet.

[FR Doc. 95–12617 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MN30–1–6215a; FRL–5183–8]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Minnesota submitted a revision intended to simplify and update the rules in its State Implementation Plan (SIP). These revisions included deleting regulations that are redundant with Federal New Source Performance Standards (NSPS) regulations, removing odor regulations and other similar regulations from the SIP, and recodifying the regulations. In the case of open burning, the State requested removal of the regulations from the SIP or, in the alternative, replacing these regulations with statutes that regulate open burning. USEPA is replacing the open burning regulations in the SIP with the new statutes and is approving all other revisions requested by the State.

EFFECTIVE DATE: This action will be effective July 24, 1995 unless adverse or critical comments are received by June 23, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request and U.S. EPA's analysis are available for public inspection during normal business hours at the following addresses: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604; and Jerry Kurtzweg (6102), United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Air Enforcement Branch, Regulation Development Section (AE–17J), United States Environmental Protection, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION:

I. Review of State Submittal

On November 23, 1993, the Minnesota Pollution Control Agency (MPCA) submitted a request to (1) eliminate a number of regulations that need not be included in the Minnesota State Implementation Plan (SIP), (2) recodify the remaining regulations, and (3) make miscellaneous other changes. Each of these types of revisions are discussed in separate sections below.

Elimination of Regulations

MPCA recommended elimination of several categories of regulations from the SIP. The category with the most regulations recommended for elimination are regulations that repeat the requirements for new sources established by the United States Environmental Protection Agency (USEPA) in various New Source Performance Standards (NSPS). Some of these regulations also govern emissions from ''existing sources,'' i.e. sources that existed before the effective date of or otherwise not subject to a relevant NSPS. Most of these regulations were submitted in 1981. In its 1982 rulemaking on these regulations, USEPA approved these regulations only for ''existing sources,'' reflecting concern that these regulations would either be unnecessary by virtue of being redundant with Federal NSPS or be detrimental by virtue of causing uncertainty as to which of conflicting State versus Federal provisions apply. In this context, ''existing sources'' should be considered not only to include sources that existed prior to the effective date of the NSPS but also to include sources that are newer but are not subject to the NSPS due to size or other reasons.

Minnesota's submittal refines the list of rules which, by USEPA's approach, should be removed from the SIP or applied only to ''existing sources.'' In the cases of regulations for portland cement plants, asphalt concrete plants, grain elevators, sulfuric acid plants, and nitric acid plants, the State has specified which portions of the relevant sets of rules regulate new sources and which portions regulate existing sources. In the cases of regulations for lead smelters and brass and bronze plants, there are no existing brass or bronze plants and the only existing lead smelter is subject to a separate more stringent administrative order in the SIP. Therefore, the regulations apply only to new sources and should be eliminated from the SIP in their entirety. In the cases of regulations for incinerators and sewage sludge incinerators, MPCA does not identify portions of the rules that only apply to new sources but comments that USEPA should state that the SIP only includes these rules as they apply to existing sources (which again may include newly constructed sources that are not subject to NSPS). USEPA concurs with Minnesota's list of which of these rules should be removed from the SIP, and is modifying the SIP accordingly.

A second set of regulations recommended for elimination concern odors and acid/base fallout. MPCA's submittal states that these regulations were not intended for purposes of achieving air quality standards or other Clean Air Act purposes and remain unnecessary for such purposes. Specifically, Minnesota requests on this basis that USEPA delete the set of regulations entitled Ambient Odor Control, the set entitled Limits for Animal Matter Odors, and the set entitled Limits on Acid, Base Emissions. These regulations were adopted around 1970 and were submitted and approved as part of a package that included all extant air pollution regulations. USEPA concurs with Minnesota's request and is removing these regulations from the SIP.

A third set of regulations recommended for elimination concern indirect sources. These regulations establish permitting requirements for the facilities such as highways, shopping malls, and airports that attract motor vehicles and thus indirectly cause mobile source emissions. These regulations were submitted in 1981 and approved by USEPA in 1982.

Nevertheless, section 110(a)(5)(A)(iii) of the Clean Air Act (added in 1977) states that ''Any State may * * * suspend or revoke any [indirect source review program], provided the [implementation plan] meets the requirements of [section 110].'' Minnesota is maintaining these regulations as State enforceable requirements, and will continue to implement indirect source review, but the State is seeking to remove these regulations from the federally enforceable SIP. The SIP has been found to meet the requirements of Section 110, and so the criteria in section 110(a)(5)(A)(iii) for removal of the indirect source regulations from Minnesota's SIP have been satisfied. Consequently, USEPA is removing these regulations from the SIP.

A final set of regulations recommended for elimination concern open burning. MPCA explained that the Minnesota Legislature rescinded these air pollution regulations and incorporated similar restrictions into legislation administered by the Minnesota Department of Natural Resources (DNR). MPCA argued that particulate matter emitted from open burning was not found to be significant in the State's development of plans to address the nonattainment areas, and argued that these regulations may be considered to be nuisance regulations rather than particulate matter regulations. Nevertheless, MPCA's submittal states ''If the EPA does not approve the MPCA's request to remove the open burning program from the SIP, then the MPCA requests that the applicable portions of [the current statute that addresses open burning] be incorporated as part of Minnesota's SIP * * *.''

Minnesota's open burning regulations generally prohibit open burning of leaves and other vegetative material, with exemptions for campfires and cooking and exemptions for certain types of burning which may be conducted upon receipt of a permit. Open burning causes emissions most notably of particulate matter and also of carbon monoxide, hydrocarbons, and air toxicants. MPCA has not attempted to analyze the ambient impact of eliminating these restrictions. Available evidence is limited but suggests that the impacts of open burning can be significant. Therefore, absent evidence to the contrary, USEPA finds that open burning should be retained as part of the Minnesota SIP. USEPA further finds that the alternative of revising the SIP by replacing the old regulations with the new statute is fully appropriate. The statute provides essentially the same or better air quality benefits insofar as it provides for more effective administration of similar restrictions. This alternative would remove the open burning program from ''MPCA's regulatory program,'' as requested by MPCA. (This portion of the SIP would be administered by the Minnesota DNR.) Although Minnesota planned in any case to continue the open burning restrictions in force, this alternative would retain these restrictions as part of the Federal SIP, thereby retaining Federal authority to object should the State subsequently wish to end the restrictions. Therefore, USEPA is approving Minnesota's alternative of replacing MPCA regulations with State statutes.

Recodification

MPCA requested that USEPA renumber the rules in the SIP to be consistent with the State's current numbering system. This renumbering itself would not change any of the substance of the requirements included in these rules. USEPA approves this renumbering, to make the SIP consistent with current State rule numbering.

Other Revisions

The most significant other revisions requested by MPCA concern the definitions given in Rule 7005.0100. All of the definitions requested by MPCA are acceptable. However, rulemaking on these revisions is complicated by the interrelationship with other rulemakings on Rule 7005.0100. In USEPA's rulemaking on a prior recodification request (published March 23, 1993, at 58 FR 15433), USEPA chose not to approve post-1985 revisions to Rule 7005.0100 due to their significance to permitting rules which were still under review. Recent rulemaking on a subsequent set of permitting rules approved selected revisions to this rule. Consequently, this submittal includes only a small number of definitions that differ from definitions that have already been approved. Nevertheless, for convenience, USEPA is approving the full set of definitions in Rule 7005.0100 as submitted by MPCA. (Note that Subpart 25a, defining ''National Emissions Standards for Hazardous Air Pollutant,'' was excluded from MPCA's submittal and is therefore excluded from the approved SIP.)

A further significant revision included in MPCA's recodification submittal is an enhancement of requirements for sources to report emissions. (These provisions do not address the requirements in amended section 114 of the Clean Air Act for enhanced compliance monitoring.) USEPA approves this revision, which would replace Rule 7005.1870 (4) with Rules 7019.3000 and 7019.3010.

Rulemaking Action

USEPA is making various revisions in accordance with Minnesota's request. USEPA is recodifying the SIP to reflect the new Minnesota rule numbering. In addition, this action (1) replaces the open burning regulations with the current statutory provisions (rather than removing the restrictions altogether), (2) modifies the delineation of new source limits that are excluded from the SIP, (3) removes the odor regulations and indirect source regulations from the SIP, (4) incorporates the enhanced emission reporting regulations, and (5) makes various other minor revisions requested by MPCA. The codification of this rulemaking delineates the revised SIP. The specific regulations that are revised by this action are discussed in detail in the technical support document for this rulemaking.

This action is being taken without prior proposal because the changes are believed to be noncontroversial and USEPA anticipates no significant comments on them. This action will be effective July 24, 1995 unless adverse or critical comments are received by June 23, 1995.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. §§ 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but

simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [60 days from the date of publication]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, New source review, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 20, 1995.

David A. Ullrich,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by adding paragraph (c)(40) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(40) On November 23, 1993, the State of Minnesota requested recodification of the regulations in its State Implementation Plan, requested removal of various regulations, and submitted recodified regulations containing minor revisions.

(i) Incorporation by reference.

(A) Minnesota regulations in Chapters 7005, 7007, 7009, 7011, 7017, 7019, and 7023, effective October 18, 1993.

(B) Submitted portions of Minnesota Statutes Sections 17.135, 88.01, 88.02, 88.03, 88.16, 88.17, and 88.171, effective 1993.

3. Section 52.1222 is revised to read as follows:

§ 52.1222 EPA-approved Minnesota State regulations.

The following table identifies the State regulations submitted to and approved by EPA as revisions to the Minnesota State Implementation Plan (SIP). This table is for informational purposes only and does not have any independent regulatory effect. This table also does not include administrative orders that have been approved into the SIP. To determine regulatory requirements for a specific situation consult the plan identified in § 52.1220. To the extent that this table conflicts with § 52.1220, § 52.1220 governs.

TABLE 52.1222.—EPA APPROVED REGULATIONS

Rule description	Minnesota rule numbers	Contents of SIP	Effective date	Relevant ¶s in § 52.1220 [1]
Definitions and Abbreviations	7005.0100–.0110	Full rules except def'n of NESHAP.	10/18/93	b,c20,c40.
Air Emission Permits	7007.0050–.1850	Full rules	8/10/93	b,c3,c5, c24,c26,c39.
Offsets	7007.4000–.4030	Full rules	10/18/93	c33.
Ambient Air Quality Standards	7009.0010–.0080	All except 7009.0030 and 7009.0040.	10/18/93	b,c3,c26.
Air Pollution Episodes	7009.1000–.1110	Full rules	10/18/93	c1,c21.
Applicability	7011.0010, .0020	Full rules	10/18/93	b,c20
Opacity	7011.0100–.0120	All except 7011.0120	10/18/93	b,c3,c20.
Fugitive Particulate	7011.0150	Full rules	10/18/93	b.
Indirect Heating Equipment	7011.0500–.0550	Full rules	10/18/93	b,c3,c20,c21
Direct Heating Equipment	7011.0600–.0620	Full rules	10/18/93	c20,c21.
Industrial Process Equipment	7011.0700–.0735	Full rules	10/18/93	b,c20
Portland Cement Plants	7011.0800–.0825	All except 7011.0810	10/18/93	c20,c40.
Asphalt Concrete Plants	7011.0900–.0920	All except 7011.0910	10/18/93	c20,c40.
Grain Elevators	7011.1000–.1015	All except 7011.1005(2)	10/18/93	c20,c25,c40.
Coal Handling Facilities	7011.1100–.1140	All except 7011.1130	10/18/93	c21.
Incinerators	7011.1201–.1207	All rules for "existing sources" [2] .	10/18/93	b,c20,c40.
Sewage Sludge Incinerators	7011.1300–.1325	All rules for "existing sources"	10/18/93	c20,c40
Petroleum Refineries	7011.1400–.1430	All rules for "existing sources"	10/18/93	c20,c21.
Liquid Petroleum and VOC Storage Vessels.	7011.1500–.1515	All rules for "existing sources"	10/18/93	b,c21.
Sulfuric Acid Plants	7011.1600–.1630	All except 7011.1610	10/18/93	b,c3,c21,c40
Nitric Acid Plants	7011.1700–.1725	All except 7011.1710	10/18/93	b,c3,c21,c40.
Inorganic Fibrous Materials	7011.2100–.2105	All rules	10/18/93	c20.
Stationary Internal Combustion Engine.	7011.2300	Entire rule	10/18/93	b,c21.
CEMS	7017.1000	Entire Rule	10/18/93	c20.
Performance Tests	7017.2000	Entire Rule	10/18/93	c20.
Notifications	7019.1000	Entire Rule	10/18/93	c20.
Reports	7019.2000	Entire Rule	10/18/93	c20.
Emission Inventory	7019.3000, .3010	All rules	10/18/93	c20,c40.

TABLE 52.1222.—EPA APPROVED REGULATIONS—Continued

Rule description	Minnesota rule numbers	Contents of SIP	Effective date	Relevant ¶s in § 52.1220 [1]
Motor Vehicles	7023.0100–.0120	All rules	10/18/93	b,c21.
Open Burning	Portions of Chapter 17 and 88 of MN Statutes.	All submitted portions of Sections 17.135, 88.01, 88.02, 88.03, 88.16, 88.17, and 88.171.	1993	b,c21,c26, c40.

[1] Recodifications affect essentially all rules but are shown only for substantively revised rules.
[2] ''Existing'' sources are sources other than those subject to a new source performance standard.

[FR Doc. 95–12619 Filed 5–23–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 180

[PP 3F4233/R2134; FRL–4953–9]

RIN 2070–AB78

Bromoxynil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a time-limited tolerance, to expire on April 1, 1997, for residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from the application of its octanoic and heptanoic acid esters in or on the raw agricultural commodity (RAC) cottonseed (transgenic BXN varieties only) at 0.04 part per million (ppm). Rhone-Poulenc AG Co. submitted petitions requesting EPA to establish the maximum permissible residue of the herbicide in or on the RAC.

EFFECTIVE DATE: This regulation becomes effective May 24, 1995.

ADDRESSES: Written objections, identified by the document control number, [PP 3F4233/R2134], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and requests for hearings filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies and requests for hearings must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and requests for hearings will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and requests for hearings in electronic form must be identified by the docket number [PP 3F4233/R2134]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and requests for hearings on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–305–6800; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 29, 1995 (60 FR 16111), EPA issued a proposed rule that gave notice that the Rhone-Poulenc AG Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a pesticide petition, PP 3F4233, to EPA proposing to amend 40 CFR 180.324 by establishing a regulation to permit residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from the application of its octanoic and heptanoic acid esters in or on the raw agricultural commodity (RAC) transgenic cottonseed at 0.04 ppm. There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The tolerance will expire on April 1, 1997. Based upon the evaluation of a mouse carcinogenicity study currently under review and submission of an analytical method, residue data, and livestock metabolism study on the metabolite, the Agency will determine whether establishing permanent tolerances is appropriate. Residues remaining in or on the raw agricultural commodity after expiration of this tolerance will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the conditional registration.

There were no negative comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the time-limited tolerance will protect the public health. Therefore, the time-limited tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following:

There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 3F4233/R2134] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and requests for hearings, identified by the document control number [PP 3F4233/R2134], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and requests for hearings can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and requests for hearings must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 4, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.324, by adding new paragraph (d), to read as follows:

§ 180.324 Bromoxynil; tolerances for residues.

* * * * *

(d) A tolerance is established for residues of the herbicide bromxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from application of its octanoic and heptanoic acid esters in or on the following raw agricultural commodity:

Commodity	Parts per million	Expiration date
Cottonseed (transgenic BXN varieties only).	0.04	April 1, 1997.

[FR Doc. 95–12565 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300380A; FRL–4952–3]

RIN 2070–AB78

Acetic Acid Ethenyl Ester, Polymer with Ethenol and (α)-2-Propenyl-(ω)-Hydroxypoly(Oxy-1,2-Ethanediyl); Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly(oxy-1,2-ethanediyl) (CAS Reg. No. 137091-12-4), when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d). Japan Technical Information Center, Inc., requested this regulation on behalf of Nippon Gohsei (U.S.A.) Co., Ltd., pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective May 24, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300380A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs,

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Copies of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP-300380A]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Kerry Leifer, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703)-308-8323; e-mail: leifer.kerry@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 22, 1995 (60 FR 15111), EPA issued a proposed rule that gave notice that the Japan Information Center, Inc., 775 South 23rd St., Arlington, VA 22202, on behalf of Nippon Gohsei (U.S.A.) Co., Ltd., had submitted pesticide petition (PP) 4EO4403 to EPA requesting that the Administrator, pursuant to section 408(e) of the FFDCA (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly(oxy-1,2-ethanediyl) (CAS Reg. No. 137091-12-4), when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

A record has been established for this rulemaking under docket number [OPP-300380A] (including any comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number, [OPP-300380A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

Copies of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-Docket@epamail.epa.gov.

Copies of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the

paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 4, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredient	Limits	Uses
* * *	*	* * *
Acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly (oxy-1,2-ethanediyl) (CAS Reg. No.137091-12-4); minimum number average molecular weight 15,000.	.....	Component of water-soluble film.
* * *	*	* * *

* * * * *

[FR Doc. 95–12567 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 0E3909, 2E4052, 2E4065, 2E4092, and 3E4162/R2128; FRL–4950–3]

RIN 2070–AB78

2-[1-(Ethoxyimino)Butyl]-5-[2-(Ethylthio)Propyl]-3-Hydroxy-2-Cyclohexen-1-One; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes time-limited tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one (also referred to in this document as sethoxydim) and its metabolites in or on various raw agricultural commodities. The Interregional Research Project No. 4 (IR-4) requested this regulation to establish maximum permissible levels for residues of the herbicide. These time-limited tolerances expire on December 31, 1996.

EFFECTIVE DATE: This regulation becomes effective May 24, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 0E3909, 2E4052, 2E4065, 2E4092, and 3E4162/R2128], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing request must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number, [PP 0E3909, 2E4052, 2E4065, 2E4092, and 3E4162/R2128]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 15, 1995 (60 FR 13939), EPA issued a proposed rule that gave notice that the the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petitions (PP) 0E3909, 2E4052, 2E4065, 2E4092, and 3E4162 to EPA on behalf of various Agricultural Experiment Stations.

These petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.412 by establishing time-limited tolerances for combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on various raw agricultural commodities.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency

concludes that the time-limited tolerances will protect the public health. Therefore, the time-limited tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

A record has been established for this rulemaking under docket number [PP 0E3909, 2E4052, 2E4065, 2E4092, and 3E4162/R2128] (including any comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 10, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.412, by revising the section heading and the introductory text of paragraphs (a) and (b) and by adding new paragraphs (c) and (d), to read as follows:

§ 180.412 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one; tolerances for residues.

(a) Tolerances are established for combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the following raw agricultural commodities:

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the following raw agricultural commodities:

* * * * *

(c) Time-limited tolerances to expire on December 31, 1996, are established for combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the following raw agricultural commodities:

Commodity	Parts per million
Asparagus	4.0
Carrot	1.0
Cranberry	2.0
Peppermint	30.0
Spearmint	30.0

(d) Time-limited tolerances to expire on December 31, 1996, are established for combined residues of the herbicide

2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the following raw agricultural commodities:

Commodity	Parts per million
Endive	2.0

[FR Doc. 95–12744 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 2F4154/R2136; FRL–4955–3]

RIN 2070–AB78

Fenbuconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of the fungicide fenbuconazole, *alpha*-[2-(4-chlorophenyl)ethyl]-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile, and its metabolites *cis*-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone and *trans*-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone, expressed as fenbuconazole, in or on the raw agricultural commodity bananas (whole fruit) at 0.3 ppm of which not more than 0.05 ppm is contained in the banana pulp. Rohm & Haas Co. submitted petitions for this regulation to establish a maximum permissible level for residues of the fungicide.

EFFECTIVE DATE: This regulation becomes effective May 24, 1995..

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 2F4154/R2136], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing request filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20450. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 2F4154/R2136]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: James M. Stone, Acting Product Manager (PM) 22, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)- 305-5540; e-mail: stone.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of December 30, 1992 (57 FR 62334), which announced that Rohm & Haas, Agricultural Chemicals, Independence Mall West, Philadelphia, PA 19105, had submitted a pesticide petition (PP) 2F4154, to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), amend 40 CFR part 180 by establishing a regulation to permit residues of fenbuconazole, *alpha*-[2-(4-chlorophenyl)ethyl]-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile, and its metabolites [5-(4-chlorophenyl)-dihydro-3-phenyl-3-(methyl-1*H*-1,2,4-triazole-1-yl)-2-3*H*-furanone] in or on bananas (pulp) at 0.05 part per million (ppm) and bananas (peel) at 0.3 ppm. Subsequently, on June 29, 1994 (59 FR 33503), EPA announced that Rohm & Haas had amended the petition to propose amending 40 CFR part 180 by establishing a regulation to permit residues of fenbuconazole, *alpha*-(2-(4-chlorophenyl)ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile, and its metabolites *cis*-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-4-ylmethyl)-2-3*H*-furanone and *trans*-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone in or on bananas (whole fruit) at 0.3 ppm of which not more than 0.05 ppm is contained in banana pulp.

There were no comments or requests for referral to an advisory committee received in response to these notices of filing.

The scientific data submitted in the petitions and all other relevant material have been evaluated. The toxicology data considered in support of the tolerances include:

1. A rat acute oral study with an LD_{50} greater than 2 grams (g)/kilogram (kg).

2. A 13-week rat feeding study with a no-observed-effect level (NOEL) of 20 ppm (1.3 milligrams(mg)/kg/day males and 1.5 mg/kg/day females) and a lowest-observed-effect level (LOEL) of 80 ppm (5.1 mg/kg/day males and 6.3 mg/kg/day females) based on hepatotoxicity.

3. A 3-month mouse feeding study with a NOEL of 20 ppm (3.8 mg/kg/day males and 5.7 mg/kg/day females) and a LOEL of 60 ppm (11.1 mg/kg/day males and 17.6 mg/kg/day females) based on hepatotoxicity.

4. A 3-month dog feeding study with a NOEL of 100 ppm (3.3 mg/kg/day males and 3.5 mg/kg/day females) and LOEL of 400 ppm (13.3 mg/kg/day males and 14.0 mg/kg/day females), based hepatocellular hypertrophy.

5. A 21-day rat dermal study with a NOEL greater than 1,000 mg/kg/day (limit dose).

6. A 78-week dietary carcinogenicity study in mice with a NOEL of 1.43 mg/kg/day and a LOEL of 28.6 mg/kg/day (males) and 92.9 mg/kg/day (females) based on hepatocellular enlargement and a greater incidence and severity of hepatocellular vacuolation. There was evidence of carcinogenicity based on the occurrence of increased trend for malignant liver tumors in males and an increase in benign and malignant liver tumors in females. The carcinogenic effects observed are discussed below.

7. A 24-month rat chronic feeding/carcinogenicity study with a NOEL of 80 ppm (3.03 mg/kg/day for males and 4.02 mg/kg/day for females) for systemic effects and an LEL of 800 ppm (30.62 mg/kg/day for males and 43.07 mg/kg/day for females) based on decreased in body weights in females, and increased liver weighs in females and males along with hepatocellular enlargement and

vacuolization. There was also an increase in thyroid weights with slight increases in thyroid focal cystic hyperplasia and follicular cell neoplasia in both sexes. A LOEL was not established for males. There was evidence of carcinogenicity based on the increased occurrence of thyroid follicular cell benign and malignant tumors in males. The carcinogenic effects observed are discussed further below.

8. A 24-month male rat chronic feeding/carcinogenicity study with a NOEL of less than 800 ppm (30.41 mg/kg/day) and a LOEL is 800 ppm (30.41 mg/kg/day) based on increased liver with centrilobular to midzonal hepatocellular enlargement and vacuolization, decreased body weight gain, and increased thyroid weights. There was evidence of carcinogenicity based on the increased occurrence of thyroid follicular cell benign and malignant tumors. The carcinogenic effects observed are discussed further below.

9. A 1-year dog chronic feeding study with a NOEL of 150 ppm (3.75 mg/kg/day) and the LOEL, based on decreases in body weight gain and increased liver weight, of 1,200 ppm (30 mg/kg/day).

10. A two generation reproduction study in rats with a parental NOEL of 4 mg/kg/day (80 ppm) and a LOEL of 40 mg/kg/day (800 ppm), based on decreased body weight, decreased food consumption, increased number of dams not delivering viable or delivering nonviable offspring, and increases in adrenal and thyroid weights. The reproductive NOEL is greater than 40 mg/kg/day (800 ppm) [(highest dose tested (HDT)].

11. A developmental toxicity study in rabbits with a maternal NOEL of 10 mg/kg/day, and a developmental NOEL of 30 mg/kg/day, and a maternal LOEL of 30 mg/kg/day due to only 1/19 (5%) of the pregnant does producing a viable fetus, and no developmental LOEL (greater than 30 mg/kg/day).

12. A developmental toxicity study in rats with a maternal NOEL and developmental NOEL of 30 mg/kg/day and a LEL of 75 mg/kg/day due to decrease in maternal body weight compared to controls and increase in early and late resorption with a decrease in number of live fetuses per dam.

13. No evidence of gene mutation was observed in a test for induction of gene mutation at the HGPRT locus in Chinese hamster ovary cells. No increase in the number of cells with aberrations or observations per cell were noted in an *in vivo* cytogenetics assay using bone marrow from treated rats. No increase in unscheduled DNA synthesis in rat primary hepatocyte study was observed.

14. A rat metabolism study showed that radiolabeled fenbuconazole is rapidly absorbed, distributed, and excreted following oral administration in rats. Biliary excretion data indicated that systemic absorption of fenbuconazole was high for all dosing groups. The feces was the major route of excretion. Tissue distribution and bioaccumulation of fenbuconazole appeared to be minimal.

The Health Effects Division Carcinogenicity Peer Review Committee has concluded that the available data provide limited evidence of the carcinogenicity of fenbuconazole in mice and rats and has classified fenbuconazole as a Group C (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines, published in the **Federal Register** in 1986 (51 FR 33992; Sept. 24, 1986) and recommended that for the purpose of risk characterization a low-dose extrapolation model should be applied to the experimental animal tumor data for quantification for human risk ($Q1^*$). This decision was based on the induction of thyroid follicular cell adenomas and/or combined adenomas-carcinomas in male rats in two studies, both by pairwise comparison with controls and by trend analysis. The studies were combined for the purpose of deriving the $Q1^*$. The $Q1^*$ for fenbuconazole based on a recalculation with a 3/4's power safety factor is 1.06×10^{-2} $(mg/kg/day)^{-1}$ in human equivalents.

Based on (1) the established pecan and stone fruit group (except plums and prunes) tolerances, (2) the limitation of production of the only fenbuconazole product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use on stone fruit to 28,500 pounds of active ingredient per year (calculated to be equivalent to treating 12.8% of the total U.S acreage of apricots, cherries, nectarines, and peaches per year), and (3) the proposed banana tolerances, the upper-bound limit of the dietary carcinogenic risk is calculated in the range of 1 incidence in 1 million (9×10^{-7}).

Processing studies for bananas are not required. Therefore, food/feed additive tolerances are not needed in conjunction with these uses.

Using the NOEL of 3.0 mg/kg/day from the most sensitive species in the rat chronic feeding study with a 100-fold safety factor, the Reference Dose (RfD) for systemic effects is 0.03 mg/kg/day. The theoretical maximum residue contribution (TMRC) from the established and proposed tolerances is 0.000616 mg/kg/day and utilizes 2 percent of the RfD for the overall U.S. population. For exposure of the most highly exposed subgroups in the population, non-nursing infants (less than 1-year old), the TMRC is 0.00522 mg/kg/day and utilizes 17 percent of the RfD.

The metabolism of fenbuconazole in plants is adequately understood. Due to the following chemistry data gap, magnitude of the residue: Crop field trials with unbagged bananas (two in Hawaii and two in Puerto Rico) [GLN 171-4], EPA believes it is inappropriate to establish permanent tolerances for the uses of fenbuconazole at this time. However, based on trials with bagged bananas and one side-by-side trial with bagged and unbagged bananas, EPA believes that the existing data support time-limited tolerances to December 31, 1998.

The nature of the residue in plants is adequately understood for the purposes of these time-limited tolerances. An analytical method, gas-liquid chromatography with a thermionic-specific detector with nitrogen selectivity, is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

There is no reasonable expectation that secondary residues will occur in milk, eggs, or meat of livestock and poultry since there are no livestock feed items associated with this action. The pesticide is considered useful for the purpose for which the tolerance is sought. Based on the information and data considered, the Agency has determined that the time-limited tolerance established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the

Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fees provided by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, and the requestor's contentions on each such issue, and a summary of the evidence relied upon by the objection (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 2F4154/R2136] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 2F4154/R2136], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 10, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.480, by amending paragraph (a) in the table therein by adding and alphabetically inserting the raw agricultural commodity bananas, to read as follows:

§ 180.480 Fenbuconazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
Bananas (whole fruit)	0.3 (of which not more than 0.05 ppm is contained in the banana pulp).
* * *	* *

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[FR Doc. 95–12743 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[PP 4E4359/R2127; FRL–4936–3]

RIN 2070–AB78

Paraquat; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the desiccant, defoliant, and herbicide paraquat in or on the raw agricultural commodities lentils, lentil forage, and lentil hay. The Interregional Research Project No. 4 (IR-4) requested this regulation to establish the maximum permissible levels for residues of paraquat in or on the commodities, and EPA has found that paraquat is useful and safe for the requested tolerances.

EFFECTIVE DATE: This regulation becomes effective May 24, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4E4359/R2127], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees

accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

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FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 15, 1995 (60 FR 13939), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 4E4359 to EPA on behalf of the Agricultural Experiment Stations of Idaho and Washington. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.205 by establishing tolerances for residues of paraquat (1,1'-dimethyl-4,4'-bipyridinium-ion) derived from application of either the bis(methyl sulfate) or the dichloride salt (both calculated as the cation), in or on the raw agricultural commodities lentils at 0.3 part per million (ppm), lentil forage at 0.1 ppm, and lentil hay at 0.4 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 4E4359/R2127] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 4E4359/R2127], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

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A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal

mandates, the President's priorities, or the principles set forth in this Executive Order.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 10, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.205, paragraph (a) is amended in the table therein by adding and alphabetically inserting entries for the raw agricultural commodities lentils, lentil forage, and lentil hay, to read as follows:

§ 180.205 Paraquat; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Lentils	0.3
Lentil, forage	0.1
Lentil, hay	0.4
* * * * *	

* * * * *

[FR Doc. 95–12745 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[GEN Docket No. 90–314, FCC 95–167]

Unlicensed Personal Communications Services; Radio Frequency Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this action, the Commission affirms its designation of UTAM, Inc., to manage the transition of the 1910–1930 MHz band from the Private Operational Fixed Microwave Service to unlicensed Personal Communication Service (PCS) operations. Further, the Commission accepts UTAM's plan for the relocation of fixed microwave operations from this spectrum and the deployment of unlicensed PCS devices. The Commission is requiring UTAM to submit reports at six-month intervals on the progress of the plan's implementation. UTAM's management of the transition of the 1910–1930 MHz band will help to ensure that new and innovative unlicensed PCS devices, such as wireless PBX equipment, wireless messaging systems, wireless local area networks, and a broad range of data communication products, are made available as rapidly as possible without disrupting fixed microwave service.

EFFECTIVE DATE: June 23, 1995.

FOR FURTHER INFORMATION CONTACT: David L. Means, Office of Engineering and Technology, New Technology Development Division, (301) 725–1585, extension 206.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Memorandum Opinion and Order, FCC 95–167, adopted April 19, 1995, and released May 12, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. Copies may also be purchased from the Commission's duplicating contractor, International Transcription Services, at (202) 857–3800 or 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of the Memorandum Option and Order

1. This *Fourth Memorandum Opinion and Order* affirms its designation of UTAM, Inc., to manage the transition of the 1910–1930 MHz band from the Private Operational Fixed Microwave Service to unlicensed Personal Communication Service (PCS) operations. Further, the Commission accepts UTAM's plan for the relocation of fixed microwave operations from this spectrum and the deployment of unlicensed PCS devices. The Commission is requiring UTAM to submit reports at six-month intervals on the progress of the plan's implementation.

2. The 1910–1930 MHz band is currently occupied by 383 fixed point-to-point microwave links. In the *Second Report and Order*, 58 FR 59174, November 8, 1993, the Commission designated UTAM as the coordinator for the transition of the unlicensed PCS band from the fixed microwave service to unlicensed PCS, conditioned on UTAM's submission and the Commissions acceptance of: (1) A funding plan that is equitable to all prospective manufacturers of unlicensed devices, and (2) a plan for ''band clearing'' that will permit the implementation of nomadic devices and, in particular, nomadic data PCS devices, as promptly as possible.

3. On August 1, 1994, UTAM, Inc., submitted its plan for managing the transition of the 1910–1930 MHz band to use by unlicensed PCS operations. The UTAM plan describes UTAM's organization and governance, financing plan, bank clearing plan, coordination procedures, protection of proprietary information, dispute resolution procedures and UTAM's plans for ending its coordination role and dissolving itself.

4. We find that UTAM's cost and revenue projections are reasonable. These projections appear to be based on conservative estimates and to allow for situations where a revenue source may develop somewhat slowly. While we recognize that there is always some uncertainty in making such projections, we are convinced that there will eventually be sufficient revenues to totally fund relocation of the microwave incumbents. It seems fair to assume the PCS licensees will bear approximately half the cost of relocating the incumbent microwave links in the 1910–1930 MHz band, since these links are paired with links in the licensed PCS spectrum. We agree with UTAM that its estimate of the cost for relocating each link is conservative, which should provide some margin if UTAM is faced with relocating more links than it anticipates. We do not agree with arguments that the relocation of links would be disrupted if there are funding shortfalls. We note, in particular, that UTAM will not initiate relocation negotiations until adequate funding is available. Further,

we believe that UTAM is taking adequate steps to control interference so as to avoid the need to relocate microwave links prematurely. We also see no need to require UTAM to establish a contingency fund for such situations. We are satisfied that the BIS study provides a reasonable estimate of unlicensed PCS device deployment and takes due account of demand that may be satisfied through other equipment or services. Even if demand for unlicensed PCS devices does not fall within the range predicted by the BIS study, or if licensed PCS penetration lags or negotiations with incumbents take longer than anticipated, the safeguards included in the plan ensure that the only consequence will be that band clearing will simply take longer. With regard to concerns about equity in the band clearing process, we agree with UTAM that the plan clearly indicates that donated funds may be designated for clearing any part of the spectrum that the donor chooses and will be credited as an advance against the donor's clearing fees. Thus, no company interested in clearing the asynchronous band segment for deployment of nomadic products will be forced to subsidize coordination activities.

5. We believe that UTAM's band clearing plan is workable and appropriate. While we understand concerns for the need to make spectrum available for nomadic operations promptly, we also recognize the practical difficulties UTAM faces in clearing the 1910–1930 MHz band. We believe that UTAM has devised a workable strategy for expediting nomadic device deployment given the existing constraints, such as the need to fund and negotiate the relocation of the incumbent microwave links, and the fact that incumbent public safety licensees are not required to relocate for five years. While we are sympathetic to desires for a more rapid deployment scheme for nomadic data devices in this spectrum, none is apparent. We believe that the only way to make the band fully available to nomadic devices is to completely clear it. The most effective way to do so is to enable non-nomadic devices to be deployed so that fees from such deployment can be used to complete the band clearing process as rapidly as possible. While we share doubts regarding the potential of the ''wedge'' clearing approach to make significant amounts of spectrum available to nomadic devices prior to complete band clearing, this approach appears to be the soundest plan given the constraints. As an alternative for those developers of nomadic devices whose needs could be accommodated by the UTAM plan, we note that we recently allocated additional spectrum at 2390–2400 MHz for unlicensed data PCS devices, and this spectrum will not require clearing. We believe that the immediate needs of unlicensed nomadic data PCS devices can be accommodated in this spectrum. Operation in the 2390–2400 MHz band will not require participation in UTAM and will not be governed by the UTAM plan.

6. With regard to concerns about deployment of nomadic devices prior to complete band clearing, we addressed this matter in the *Memorandum Opinion and Order* in this proceeding, 59 FR 32830, June 24, 1994. We stated therein that when we have determined that spectrum is available, or will soon be available, for deployment of nomadic devices, we will issue a Public Notice announcing the date upon which we will begin accepting and processing applications for certification of such devices. We believe that this plan will adequately ensure that nomadic operations do not cause interference to fixed microwave operations. We believe UTAM's commitment to voluntarily address the concerns of the incumbent microwave community regarding coordination with PCS licensees to negotiate microwave relocations on a system-wide basis where possible and appropriately will further the relocation process. Such system-wide coordination and negotiation activities will promote more rapid availability of spectrum and minimize the relocation burden for incumbent microwave licensees. We believe that is neither necessary nor practical for the Commission to require such system-wide negotiations. Similarly, we believe that UTAM has adequately responded to concerns about clearing priorities and updating of the zone status.

7. We believe that UTAM has adequately responded to the concerns that have been raised about its coordination procedures. Its explanation that appropriate adjustments have already been incorporated into the TIA Bulletin 10F criteria and stated intention to coordinate system deployed in Zone 1 areas at maximum system capacity appear to adequately address the concerns of the microwave community. We also note that UTAM is taking steps to respond to the concerns of HP and other manufacturers regarding the necessity for advance warning for ''stop deployment'' orders. We are similarly convinced that UTAM will be gathering sufficient information to monitor manufacturer compliance with its LVP and to expeditiously locate any source of interference, should it occur. We disagree that we intended that UTAM develop and specify a standard procedure or specific technology to prevent unauthorized deployment of unlicensed PCS devices. In fact, we previously stated that we would allow UTAM broad flexibility in establishing the means it uses to fulfill its responsibility for ensuring that unlicensed devices do not interfere with existing microwave operations. We continue to believe that this is the appropriate approach. We believe that the standards for disablement mechanisms outlined in the plan, with the clarifications provided by UTAM in its response to the comments, will adequately protect incumbent microwave operations from potential interference caused by unauthorized relocation of unlicensed devices. We also agree with UTAM that further requirements would not prevent those who wish to intentionally violate the rules from doing so.

8. Regarding enforcement, we believe that the requirements of Section 15.307(b) of the Commission's rules are adequate to ensure manufacturers' compliance with the procedures established by UTAM, and that no additional rules are necessary or desirable. We fully intend to take appropriate enforcement action against parties that violate the rules and procedures we have established with regard to operation in the unlicensed spectrum at 1910–1930 MHz. We further believe that the clarifications UTAM provides regarding its dispute resolution procedures remove any confusion over UTAM's intent to work in good faith to resolve any disputes that may arise.

9. We find that UTAM has provided adequate and sufficient information to satisfy the conditions laid out in the *Second Report and Order.* As explained above, we believe that UTAM has adequately addressed all of the relevant issues. We find no merit in arguments that UTAM's authorization should be revoked or limited. While Apple challenges UTAM's governance, it offers no specifics as to how the governance procedures should be changed or otherwise improved. Further, we disagree that it is necessary or desirable to identify an alternative entity at this time to manage the band transition should UTAM cease operation. We note that no alternative to UTAM has been suggested or come forward. Therefore, we are reaffirming UTAM has the coordinator for the transition of the 1910–1930 MHz band from fixed microwave services to use by unlicensed PCS.

10. We do not believe it is necessary to require UTAM to submit a revised

plan that includes the additional information presented in its reply comments. We recognize that, to some extent, the plan and details of its implementation are a work in progress. Accordingly, we believe the appropriate course of action is to monitor UTAM's implementation of the plan. We are requiring UTAM to furnish biannual reports on its progress in implementing the plan. The first report will be due July 1, 1995, and every six months thereafter. The reports should provide an update on the status of the financial and band clearing plans, the extent of incumbent microwave relocation, and the extent of unlicensed PCS device deployment. Additionally, the reports should provide updated projections of future band clearing and unlicensed PCS implementation based on the best and most current data available at the time the report is prepared. We also are requiring that the report provide information on any problems or difficulties encountered in implementing the plan and how they are being resolved.

Ordering Clauses

11. Accordingly, It Is Ordered, pursuant to sections 4(i), 7(a), 302, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, U.S.C. Sections 154(i), 157(a), 302, 303(c), 303(f), 303(g), and 303(r), that UTAM, Inc. is designated to coordinate and manage the transition of the 1910–1930 MHz band from the Private Operational Fixed Microwave Service to unlicensed PCS operations. It Is Further Ordered, that UTAM, Inc., shall submit to the Commission reports on its progress in implementing its plan beginning on July 1, 1995, and every six months thereafter. It Is Further Ordered, that Part 15 is amended as shown to remove the conditions attached to UTAM's designation as the coordinator for unlicensed PCS operations in the 1910–1930 MHz band.

List of Subjects in 47 CFR Part 15

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Part 15 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: Secs. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, 304, and 307.

2. Section 15.307(a) is revised to read as follows:

§ 15.307 Coordination with fixed microwave service.

(a) UTAM, Inc., is designated to coordinate and manage the transition of the 1910–1930 MHz band from Private Operational-Fixed Microwave Service (OFS) operating under part 94 of this chapter to unlicensed PCS operations.

* * * * *

[FR Doc. 95–12704 Filed 5–23–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 900833–1095; I.D. 051595I]

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Bycatch Rate Standards for the Second Half of 1995

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

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the second half of 1995. Publication of these bycatch rate standards is required under regulations implementing the vessel incentive program. This action is necessary to implement the bycatch rate standards for vessel operators who participate in the Alaska groundfish trawl fisheries under the incentive program. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 12:01 a.m., Alaska local time (A.l.t.), July 1, 1995, through 12 midnight, A.l.t., December 31, 1995. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., June 30, 1995.

ADDRESSES: Comments should be mailed to Ronald J. Berg, Chief, Fisheries Management Division, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel; or be delivered to 709 West 9th Street, Federal Building, Room 401, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutians Islands and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council under the authority of the Magnuson Fishery Conservation and Management Act. The FMPs are implemented by regulations for the U.S. fisheries at 50 CFR parts 672, 675, and 676. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620. Regulations that establish observer coverage requirements are set out at 50 CFR part 677.

Regulations at §§ 672.26 and 675.26 implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels may not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and ''other trawl'' fisheries, and the BSAI yellowfin sole and ''bottom pollock'' fisheries. Vessel operators also may not exceed red king crab bycatch standards specified for the BSAI yellowfin sole and ''other trawl'' fisheries in Bycatch Limitation Zone 1 (defined in § 675.2). The fisheries included under the incentive program are defined in regulations at §§ 672.26(b) and 675.26(b).

Regulations at §§ 672.26(c) and 675.26(c) require that halibut and red crab bycatch rate standards for each fishery included under the incentive program be published in the **Federal Register**. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. For purposes of calculating vessel bycatch rates under the incentive program, 1995 fishing months were specified in the **Federal Register** on January 12, 1995 (60 FR 2905).

Halibut and red king crab bycatch rate standards for the first half of 1995 also were published in the **Federal Register** on January 12, 1995. As required by §§ 672.26(c) and 675.26(c), the Director, Alaska Region, NMFS (Regional Director), has established the bycatch rate standards for the second half of 1995 (July 1 through December 31).

These standards are set out in Table 1 and are based on the following information and considerations:

1. Previous years' average observed bycatch rates,
2. Immediately preceding season's average observed bycatch rates,
3. The bycatch allowances and associated fishery closures specified under §§ 672.20(f) and 675.21,
4. Anticipated groundfish harvests,
5. Anticipated seasonal distribution of fishing effort for groundfish, and
6. Other information and criteria deemed relevant by the Regional Director.

TABLE 1.—BYCATCH RATE STANDARDS BY FISHERY FOR THE SECOND HALF OF 1995 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA

Fishery	Bycatch rate standard
Pacific halibut bycatch rate standards (kilogram of halibut/metric ton of groundfish catch):	
BSAI Midwater pollock	1.0
BSAI Bottom pollock	5.0
BSAI Yellowfin sole	5.0
BSAI Other trawl	30.0
GOA Midwater pollock	1.0
GOA Other trawl	40.0
Zone 1 red king crab bycatch rate standards (number of crab/metric ton of groundfish catch):	
BSAI yellowfin sole	2.5
BSAI Other trawl	2.5

Bycatch Rate Standards for Pacific Halibut

The halibut bycatch rate standards for the 1995 trawl fisheries are unchanged from those implemented in 1994. The Regional Director based 1995 standards for the second half of 1995 on anticipated seasonal fishing effort for groundfish species and 1992–95 halibut bycatch rates observed in the trawl fisheries included under the incentive program. In determining these bycatch rate standards, the Regional Director recognized that directed fishing for BSAI Pacific cod by vessels using trawl gear is closed until October 25, 1995 (60 FR 20658, April 27, 1995) and that directed fishing for yellowfin sole is closed until August 1, 1995. The Regional Director also considered the August 15 opening date of the 1995 BSAI pollock ''B'' season (§ 675.23(e)).

The halibut bycatch rate standards for the BSAI yellowfin sole and ''bottom pollock'' fisheries are each set at 5 kilogram (kg) halibut/metric ton (mt) of groundfish. These standards approximate the average annual rates observed on trawl vessels participating in these fisheries since 1992.

The halibut bycatch rate standard for the BSAI and GOA midwater pollock fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. This standard is intended to encourage vessel operators to maintain off-bottom trawl operations and limit further bycatch of halibut in the pollock fishery when halibut prohibited species catch limits at §§ 672.20(f) and 675.21(c)(1) prohibit directed fishing for pollock by vessels using non-pelagic trawl gear.

A bycatch rate standard of 30 kg halibut/mt of groundfish is established for the BSAI ''other trawl'' fishery. This standard has remained unchanged since 1992. A bycatch rate standard of 40 kg halibut/mt of groundfish is established for the GOA ''other trawl'' fishery, which is unchanged from 1994.

The bycatch rate standards recommended for the GOA and BSAI ''other trawl'' fisheries are intended to simplify the GOA and BSAI incentive program by specifying a single bycatch rate standard for the trawl fisheries that are not assigned fishery-specific bycatch rate standards, while maintaining the objective of the incentive program to reduce overall halibut bycatch rates. Observer data collected from the 1994 GOA ''other trawl'' fishery show average third and fourth quarter halibut bycatch rates of 26 and 44 kg halibut/mt of groundfish, respectively. The first quarter rate from 1995 was lower, at 15 kg halibut/mt of groundfish, although the second quarter rate increased to 59 kg halibut/mt of groundfish. Observer data collected from the 1994 BSAI ''other trawl'' fishery show third and fourth quarter halibut bycatch rates of 3 and 4 kg halibut/mt of groundfish, respectively. The first and second quarter rates from the 1995 BSAI ''other trawl'' fishery were 11 and 14 kg halibut/mt of groundfish, respectively.

Generally, the average bycatch rates experienced by vessels participating in the GOA and BSAI ''other trawl'' fisheries are lower than the bycatch rate standards for these fisheries set out in Table 1. However, the Regional Director has determined that the halibut bycatch rate standards for the ''other trawl'' fisheries will continue to provide an incentive to vessel operators to avoid unusually high bycatch rates while participating in these fisheries and contribute towards an overall reduction in halibut bycatch rates experienced in the Alaska trawl fisheries.

Bycatch Rate Standards for Red King Crab

The red king crab bycatch rate standard for the yellowfin sole and ''other trawl'' fisheries in Zone 1 of the Bering Sea subarea is 2.5 crab/mt of groundfish during the second half of 1995. This standard remains unchanged since 1992.

Fishing for groundfish in Zone 1 is expected to be limited during the second half of 1995 because of fishery closures. Directed fishing for yellowfin sole in Zone 1 by vessels using trawl gear is closed for the remainder of 1995, because the Zone 1 *C. bairdi* Tanner crab bycatch allowance specified for this fishery has been reached (60 FR 17653, April 7, 1995). Directed fishing in Zone 1 for most groundfish species included in the ''other trawl'' fishery (defined at § 675.26(b)(4)) is closed for the remainder of 1995 because of halibut, red king crab, or *C. bairdi* Tanner crab bycatch restrictions (rockfish, Greenland turbot, sablefish, arrowtooth flounder (60 FR 8479, February 14, 1995); and Pacific cod (60 FR 15521, March 24, 1995)). Fishing in Zone 1 for rock sole, flathead sole, and ''other flatfish'' could occur after July 1 when the remaining portion of the halibut bycatch mortality limit apportioned to these fisheries becomes available. However, the 1995 halibut and *C. bairdi* bycatch allowances specified for these flatfish fisheries (60 FR 8479, February 14, 1995) likely will limit directed fishing in Zone 1 before the 1995 red king crab bycatch allowance specified for these fisheries is reached. Through late April 1995, the rock sole, flathead sole, and ''other flatfish'' fisheries have taken 85 percent and 71 percent of the halibut and *C. bairdi* bycatch allowances, respectively, specified for these fisheries for 1995, whereas only 19 percent of the red king crab bycatch allowance specified for these fisheries has been taken.

Given that Zone 1 has been closed to most fisheries during the second half of the year since 1992, limited data exist on which to base a red king crab bycatch rate standard for the second half of the year. Since 1992, average quarterly bycatch rates have ranged from 2.39 red king crab/mt groundfish to near zero. Although the red king crab bycatch rate standard set out in Table 1 is higher than the highest average quarterly bycatch rate since 1992, the Regional Director maintained the 2.5 red king crab/mt of groundfish bycatch rate standard to support any exploratory fishing in Zone 1 by vessel operators attempting to avoid relatively high halibut and *C. bairdi* bycatch rates

typically experienced in other areas of the BSAI.

The Regional Director has determined that the bycatch rate standards set out in Table 1 are appropriately based on the information and considerations necessary for such determinations under §§ 672.26(c) and 675.26(c). These bycatch rate standards may be revised and published in the **Federal Register** when deemed appropriate by the Regional Director, pending his consideration of the information set forth at §§ 672.26(c)(2)(v) and 675.26(c)(2)(v).

Classification

This action is taken under 50 CFR 672.26 and 675.26 and is exempt from review under E.O. 12866.

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

Dated: May 17, 1995.

Richard W. Surdi,

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

[FR Doc. 95–12616 Filed 5–23–95; 8:45 am]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 60, No. 100
Wednesday, May 24, 1995

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 94–114–1]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. All of the fruits and vegetables, as a condition of entry, would be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables would be required to undergo prescribed treatments for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. This proposed action would provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

DATES: Consideration will be given only to comments received on or before June 23, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–114–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–114–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper or Mr. Peter Grosser, Senior Operations Officers, Port Operations, PPQ, APHIS, Suite 4A03, 4700 River Road Unit 139, Riverdale, MD 20737–1236; (301) 734–8645.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

We are proposing to amend the regulations to allow additional fruits and vegetables to be imported into the United States from certain parts of the world under specified conditions. The importation of these fruits and vegetables has been prohibited because of the risk that the fruits and vegetables could introduce injurious insects into the United States. We are proposing to allow these importations at the request of various importers and foreign ministries of agriculture, and after conducting pest risk analyses [1] that indicate the fruits or vegetables can be imported under certain conditions without significant pest risk.

All of the fruits and vegetables included in this document would be subject to the requirements in § 319.56–6 of the regulations. Section 319.56–6 provides, among other things, that all imported fruits and vegetables, as a condition of entry, shall be subject to inspection, disinfection, or both, at the port of first arrival, as may be required by a U.S. Department of Agriculture (USDA) inspector to detect and eliminate plant pests. Section 319.56–6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is infested with fruit flies or other dangerous plant pests and an inspector determines that it cannot be cleaned by disinfection or treatment.

Some of the fruits and vegetables proposed for importation would be required to undergo prescribed treatments for fruit flies or other insect pests as a condition of entry, or to meet other special conditions. The proposed conditions of entry, which are discussed in greater detail below, appear adequate to prevent the introduction and dissemination of injurious plant pests by the importation of fruits and vegetables from certain foreign countries and localities into the United States.

Subject to Inspection and Treatment Upon Arrival

We are proposing to allow the following fruits and vegetables to be imported into the United States from the country or locality indicated in accordance with § 319.56–6 and all other applicable requirements of the regulations:

Country/Locality	Common name	Botanical name	Plant part(s)
Ecuador	Basil	*Ocimum spp.*	Above ground parts.
El Salvador	Basil	*Ocimum spp.*	Above ground parts.
Israel	Chives	*Allium schoenoprasum*	Leaf.
	Dill.	*Anethum graveolens.*	Above ground parts.
Jamaica	Pak choi	*Brassica chinensis*	Leaf and stem.
Netherlands	Radish	*Raphanus sativus*	Root.
New Zealand	Oca	*Oxalis tuberosa*	Tuber.

[1] Information on these pest risk analyses and any other pest risk analysis referred to in this document may be obtained by writing to the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Pest risk analyses conducted by the Animal and Plant Health Inspection Service (APHIS) have shown that the fruits and vegetables listed above are not attacked by fruit flies or other injurious plant pests, either because they are not hosts to the pests or because the pests are not present in the country or locality of origin. In addition, we have determined that any other injurious plant pests that might be carried by any of the listed fruits or vegetables would be readily detectable by a USDA inspector. Therefore, the provisions in § 319.56–6 concerning inspection, disinfection, or both, at the port of first arrival, appear adequate to prevent the introduction into the United States of injurious plant pests by the importation of these fruits and vegetables.

Subject to Inspection and Treatment Upon Arrival; Additional Conditions

In addition to the fruits and vegetables listed above, we are proposing to allow the following fruits and vegetables to be imported into the United States from the country or locality indicated in accordance with § 319.56–6 and all other applicable requirements of the regulations, and subject to the additional prescribed conditions explained below.

Papaya from Belize. We are proposing to allow papaya (fruit, *Carica papaya*) from Belize to be imported into the United States without treatment for the Mediterranean fruit fly (Medfly) if the fruit is grown in one of the designated Medfly-free districts of Belize. Belize has conducted a national Medfly trapping program for more than 6 years with the cooperation and monitoring of APHIS.[2] An intensive, ongoing trapping program in the districts of Cayo, Corozal, and Orange Walk has established that those districts are free from Medfly. Therefore, we are proposing to allow papayas to be imported from these three districts without treatment for Medfly if the papayas are accompanied by a phytosanitary certificate issued by the Belizean Department of Agriculture stating that the fruit originated in the district of Cayo, Corozal, or Orange Walk.

Because there are approved treatments for Medfly that can be used on papaya, we would also allow papaya grown in Belize outside the Medfly-free areas to be imported into the United States, provided the fruit is treated for Medfly as described below under ''Treatment Required.''

With or without treatment, however, the entry of the papaya into Hawaii—where most domestically grown papayas are produced—would be prohibited as a precaution against the possible introduction of *Toxotrypana curvicauda.* Accordingly, the cartons in which the papaya are packed would have to be stamped ''Not for importation into or distribution in HI.''

Pest risk analyses conducted by APHIS have determined that any other injurious plant pests that might be carried by the papaya would be readily detectable by a USDA inspector. Therefore, the provisions in § 319.56 and all other applicable requirements of the regulations and the additional special conditions appear adequate to prevent the introduction into the United States of injurious plant pests by the importation of papaya from Belize.

Cantaloupe from Brazil. We are proposing to allow the importation of cantaloupe (fruit, *Cucumis melo*) from Brazil under the same conditions currently imposed on the importation of honeydew melons from Brazil (7 CFR 319.56–2aa). Cantaloupe, like honeydew melon, is a recorded host of the South American cucurbit fly, and we believe that the multiple safeguards applied to the importation of honeydew melon from Brazil would also be adequate to prevent the introduction of the pest with cantaloupe.

Specifically, the cantaloupe would have to be grown in that area of Brazil considered by APHIS to be free of the South American cucurbit fly. The free area is described in § 319.56–2aa(a). During the last 7 years, Brazil's Ministry of Agriculture, the Departamento de Defenso Sanitaria Vegetal (DDSV), has conducted surveys in and around the free area to establish the absence of infestations of the South American cucurbit fly in the free area. APHIS has determined that the survey methods used by the DDSV are adequate to detect infestations of the pest, and that the requirements enforced by the DDSV to prevent the introduction of the South American cucurbit fly into the free area are at least equivalent to those imposed under 7 CFR chapter III to prevent the introduction into the United States and interstate spread of injurious insects.

The cantaloupe would have to be accompanied by a phytosanitary certificate issued by DDSV that includes a declaration that the fruit was grown in the free area. The cantaloupe would have to be shipped in an enclosed container or vehicle, or under a tarpaulin cover, while in transit from the free area in Brazil to the United States to prevent the fruit from being exposed to insect pests. Finally, shipments of the cantaloupe would have to be labeled in accordance with § 319.56–2(g) of the regulations.

Pest risk analyses conducted by APHIS have determined that any other injurious plant pests that might be carried by the cantaloupe would be readily detectable by a USDA inspector. Therefore, the applicable requirements of the regulations and these special conditions appear adequate to prevent the introduction into the United States of injurious plant pests.

Ya Pears from China. We are proposing to allow Ya variety pears (fruit, *Pyrus bretschneideri*) to be imported into the United States from China under certain conditions designed to prevent the introduction of *Bactrocera dorsalis* and other exotic pests into the United States.

First, we would require that the pears be grown in an APHIS-approved export growing area in Hebei Province by growers registered with the Chinese Ministry of Agriculture. The Ministry of Agriculture would be responsible for conducting field inspections for signs of pest infestation during the growing season. The registered growers would be responsible for following the phytosanitary measures agreed upon by APHIS and the Ministry of Agriculture, including applying pesticides to reduce the pest population and bagging the pears on the trees to reduce the opportunity for insect pests to attack the fruit during the growing season. The bags would have to remain on the pears through the harvest and during their movement to the packing house.

In order to prevent Ya pears intended for export to the United States from being commingled with any other fruit, the packing houses in which the pears would be prepared for exportation to the United States could not be used for other fruit during the pear export season. The packing houses could accept only those pears that were grown in the APHIS-approved growing area and that were still in intact bags. Additionally, the pears would have to be loaded into containers at the packing house and the containers then sealed before movement to the port of export to prevent the fruit from being exposed to insect pests while en route to the port of export. Each shipment of Ya pears would have to be accompanied by a phytosanitary certificate issued by the Chinese Ministry of Agriculture stating that the conditions discussed above have been met.

Finally, we would require that the pears be cold treated for *Bactrocera dorsalis* in accordance with the Plant

[2] Details on APHIS-monitored trapping programs in Belize are available from Operational Support, IS, APHIS, Suite 5A03, 4700 River Road Unit 67, Riverdale, MD 20737–1233.

Protection and Quarantine (PPQ) Treatment Manual, which has been incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1. The prescribed cold treatment would be conducted as follows:

10 days at 0 °C (32 °F) or below;
11 days at 0.55 °C (33 °F) or below;
12 days at 1.1 °C (34 °F) or below; or
14 days at 1.66 °C (35 °F) or below.

We believe that the growing, harvest, shipment, and treatment conditions described above and the other requirements of the regulations would be adequate to prevent the introduction of *Bactrocera dorsalis* and other insect pests into the United States on Ya pears imported from China.

Lettuce from Israel. Under the regulations in § 319.56–2x, lettuce may be imported into the United States from Israel only if treated in accordance with the PPQ Treatment Manual. The treatment—fumigation with methyl bromide—is required because the lettuce may be attacked by leafminers, thrips, and *Sminthuris viridis.* We are proposing to amend the regulations to offer an alternative that would allow lettuce to be imported into the United States from Israel without fumigation.

We would require that the lettuce be grown in insect-proof houses covered with 50-gauge mesh screens, with double self-closing doors and hard walks (no soil) between the beds. The lettuce would have to be grown in growing media that had been sterilized by steam or chemical means. Additionally, the crop would have to be protected with sticky traps and prophylactic sprays approved for lettuce by Israel.

The lettuce would have to be inspected for signs of pest infestation during its active growth phase, with the inspection monitored by a representative of the Israeli Ministry of Agriculture.

After being harvested, the lettuce would have to be packed in insect-proof packing houses. The movement from the growing house to the packing house would have to take place at night and, during the movement, the lettuce would have to be held in plastic containers covered by 50-gauge mesh screens. Inside the insect-proof packing houses, the lettuce would have to be individually packed in transparent plastic bags, then packed in cartons; the cartons would have to be placed on pallets and covered in shrink wrapping. The lettuce would have to be transported to the airport in a closed, refrigerated truck for shipment to the United States.

Finally, each shipment of lettuce would have to be accompanied by a phytosanitary certificate issued by the Israeli Ministry of Agriculture stating that the conditions discussed above have been met. We believe that these multiple levels of pest exclusion measures and the other applicable requirements of the regulations would be adequate to prevent the introduction into the United States of leafminers, thrips, and *Sminthuris viridis* on lettuce imported from Israel.

Treatment Required

Additionally, we are proposing to allow the fruits and vegetables listed below to be imported into the United States. These fruits and vegetables are attacked by the Medfly or other injurious insects, as specified below, in their country or locality of origin. Visual inspection cannot be relied upon to detect these insects. However, the fruits and vegetables listed below can be treated to destroy the Medfly or other injurious insects. Therefore, we propose to allow these fruits and vegetables to be imported into the United States, or specified parts of the United States, only if they have been treated in accordance with the PPQ Treatment Manual.

We would revise the PPQ Treatment Manual to show that treatments are required as follows for the fruits and vegetables listed below:

Country—Common Name, Botanical Name, and Plant Part(s)

Belize

Papaya, *Carica papaya,* Fruit.

All fruit grown outside the districts of Cayo, Corozal, and Orange Walk must be treated for Medfly with high-temperature forced air or vapor heat treatment, as follows:

High-temperature forced air treatment:

The treatment consists of four incremental temperature increases, with each increase in air temperature based on when the internal temperature in the seed cavity is reached as indicated below:

Air temperature	Seed cavity temperature
1. 43 ± 1 °C (109.4 ± 1.8 °F).	41 ± 1.5 °C (105.8 ± 2.7 °F).
2. 45 ± 1 °C (113.0 ± 1.8 °F).	44 ± 1 °C (111.2 ± 1.8 °F).
3. 46.5 ± 1 °C (115.7 ± 1.8 °F).	46 ± 0.76 °C (114.8 ± 1.35 °F).
4. 49 ± 0.5 °C (120.2 ± 0.9 °F).	47.2 °C (117 °F).

Expose fruit in an approved chamber to each air temperature in steps 1 through 4 until the indicated seed cavity temperature is reached. Treatment is complete when the seed cavity temperature reaches 47.2 °C (117 °F). The treated fruit may be hydrocooled immediately with tap water (20 ± 5 °C or 68 ± 9 °F) when 47.2 °C is reached.

Alternative single-stage high-temperature forced air treatment:

Conditioning: To enable the papayas to tolerate the treatment, the fruit may have to be conditioned. Such conditioning is the responsibility of the shipper and at the shipper's risk. Conditioning of the fruit may be considered part of the overall treatment.

Preparation: Insert temperature sensors into the seed cavity with the probe's tip at the approximate center of the fruit. Use a temperature recorder to monitor temperatures. Set the print interval for at least once every 5 minutes. The APHIS-approved operating protocol of the chamber must be inaccessible to the operator. The papayas must be in single layers and put into APHIS-approved trays or lugs or in APHIS-approved and certified bulk bins. Have the trays, lugs, or bins put into the chamber. The chamber for treating the fruit must be airtight. Make sure that there are fans present to circulate the air. If certified bulk bins are used, the direction of the air flow and the protocol for monitoring the fruit's temperature during treatment must be APHIS-certified.

Application: The air temperature during treatment must be sufficient to raise the temperature at the fruit's center to 47.2 °C (117 °F) or higher. Whether the air temperatures are single or multiple staged or ramped is the responsibility of the shipper. Maintain the relative humidity in the chamber as desired by the shipper. If the relative humidity is kept within 40 to 60 percent, though, tests have shown that there will be less damage to the papayas. The papayas must be treated for at least 4 hours. The treatment is complete once the temperature at the fruit's center reaches 47.2 °C (117 °F) or higher. The treated papayas may be hydrocooled immediately by whatever means are deemed appropriate by the shipper. However, if the papayas are hydrocooled with water at a temperature lower than 12.5 °C (54.5 °F), the fruit may be damaged.

Vapor heat treatment:

1. Raise temperature of article by saturated water vapor at 44.4 °C (112 °F) until approximate center of fruit reaches 44.4 °C (112 °F) within a time period designated by the inspector.

2. Hold fruit temperature at 44.4 °C (112 °F) for 8.75 hours, then cool immediately.

(Pretreatment conditioning is optional and is the responsibility of the shipper.)

Entry of the papayas into Hawaii prohibited due to *Toxotrypana curvicauda.*

China

Litchi, *Litchi chinensis,* Fruit.

Cold treatment as follows for *Conopomorpha sinensis* and *Bactrocera dorsalis:*

15 days at 1 °C (33.8 °F) or below, or
18 days at 1.39 °C (34.5 °F) or below.

(Pulp of the fruit must be at or below the indicated temperature at the time treatment begins.)

Entry into Florida prohibited due to litchi rust mite.

India Grape,

Vitis spp., Fruit.

Cold treatment for *Bactrocera dorsalis* and *Eutetranychus orientalis,* followed by fumigation for a complex of insect pests:

Cold treatment as follows:

10 days at 0 °C (32 °F) or below;
11 days at 0.55 °C (33 °F) or below;
12 days at 1.11 °C (34 °F) or below; or
14 days at 1.66 °C (35 °F) or below.

(Pulp of the fruit must be at or below the indicated temperature at the time treatment begins.)

Fumigation as follows:

With methyl bromide at NAP—chamber or tarpaulin:

24 g/m³ (1½ lbs/1000 ft³) for 2 hours at 26.5 °C (80 °F) or above, with minimum gas concentrations of:

19 g (19 oz) at ½ hour after fumigation begins
14 g (14 oz) at 2 hours after fumigation begins; or:

32 g/m³ (2 lbs/1000 ft³) for 2 hours at 21–26 °C (70–79 °F), with minimum gas concentrations of:

26 g (26 oz) at ½ hour after fumigation begins
19 g (19 oz) at 2 hours after fumigation begins; or:

40 g/m³ (2½ lbs/1000 ft³) for 2 hours at 15.5–20.5 °C (60–69 °F), with minimum gas concentrations of:

32 g (32 oz) at ½ hour after fumigation begins
24 g (24 oz) at 2 hours after fumigation begins; or:

48 g/m³ (3 lbs/1000 ft³) for 2 hours at 10–15 °C (50–59 °F), with minimum gas concentrations of:

38 g (38 oz) at ½ hour after fumigation begins
29 g (29 oz) at 2 hours after fumigation begins; or:

64 g/m³ (4 lbs/1000 ft³) for 2 hours at 4.5–9.5 °C (40–49 °F), with minimum gas concentrations of:

48 g (48 oz) at ½ hour after fumigation begins
38 g (38 oz) at 2 hours after fumigation begins

(Fruit must be at the indicated temperature at start of fumigation.)

Litchi, *Litchi chinensis,* Fruit.

Cold treatment for *Conopomorpha sinensis* and *Bactrocera dorsalis* as set forth above for litchi from China.

Entry into Florida prohibited due to litchi rust mite.

Zimbabwe

Apricot, *Prunus armeniaca,* Fruit.

Cold treatment for Medfly, *Pterandrus rosa,* and *Cryptophlebia leucotreta* as follows:

22 days at −0.55 °C (31 °F) or below.

(If the temperature exceeds −0.27 °C (31.5 °F), the treatment shall be extended one-third of a day for each day or part of a day that the temperature is above −0.27 °C. If the temperature exceeds 1.11 °C (34 °F) at any time, the treatment is nullified.

Nectarine, *Prunus persica,* Fruit.

Cold treatment for Medfly, *Pterandrus rosa,* and *Cryptophlebia leucotreta* as set forth above for apricot from Zimbabwe.

Peach, *Prunus persica,* Fruit.

Cold treatment for Medfly, *Pterandrus rosa,* and *Cryptophlebia leucotreta* as set forth above for apricot from Zimbabwe.

Plum, *Prunus domestica,* Fruit.

Cold treatment for Medfly, *Pterandrus rosa,* and *Cryptophlebia leucotreta* as set forth above for apricot from Zimbabwe.

The treatments described above have been determined to be effective against the specified insects. This determination is based on research evaluated and approved by the Department. A bibliography and additional information on this research may be obtained from the Hoboken Methods Development Center, PPQ, APHIS, USDA, 209 River Street, Hoboken, NJ 07030.

In accordance with § 319.56–2x(b) of the regulations, those fruits and vegetables listed above that would require treatment for fruit flies would be restricted to ports of arrival at Wilmington, NC, and the North Atlantic if treatment has not been completed before the fruits and vegetables arrive in the United States. Climatic conditions at Wilmington, NC, and at North Atlantic ports are unsuitable for the fruit flies listed above. Therefore, in the unlikely event that any fruit flies escape before treatment, they will not become established pests in the United States. The designated North Atlantic ports are: Atlantic Ocean ports north of, and including, Baltimore; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; and, for air shipments, Washington, DC (including Baltimore-Washington International and Dulles International airports).

In the case of litchi from China and India, we would prohibit the fruit to be imported into or distributed within Florida because of concerns regarding the potential introduction of the litchi rust mite and the effects such an introduction could have on the Florida litchi industry. Accordingly, the cartons in which the litchi are packed would have to be stamped ''Not for importation into or distribution in FL.''

Pest risk analyses conducted by APHIS have determined that any other injurious plant pests that might be carried by the fruits and vegetables listed above would be readily detectable by a USDA inspector. As noted, the fruits and vegetables would be subject to inspection, disinfection, or both, at the port of first arrival, in accordance with § 319.56–6. We believe that these requirements and conditions are adequate to prevent the introduction into the United States of injurious plant pests by the importation of these fruits and vegetables.

Use of Methyl Bromide

Methyl bromide is currently in widespread use as a fumigant. It is prescribed as a treatment for grapes from India to be imported into the United States under this proposal. The environmental effects of using methyl bromide, however, are being scrutinized by international, Federal, and State agencies. The U.S. Environmental Protection Agency (EPA), based on its evaluation of data concerning the ozone depletion potential of methyl bromide, published a notice of final rulemaking in the **Federal Register** on December 10, 1993 (58 FR 65018–65082). That rulemaking freezes methyl bromide production at 1991 levels and requires the phasing out of domestic use of methyl bromide by the year 2001. APHIS is studying the effectiveness and environmental acceptability of alternative treatments to prepare for the eventual unavailability of methyl bromide fumigation. Our current proposal assumes the continued availability of methyl bromide for use as a fumigant for at least the next few years.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this proposed rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee, 150ff, 151–167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

This proposed rule would amend the regulations governing the importation of fruits and vegetables by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain foreign countries and localities under specified conditions. The importation of these fruits and vegetables has been prohibited because of the risk that they could introduce injurious plant pests into the United States. This proposed rule would revise the status of certain commodities from certain countries and localities, allowing their importation into the United States for the first time.

Our proposed changes are based on pest risk analyses that were conducted by APHIS at the request of various importers and foreign ministries of agriculture. The pest risk analyses indicate that the fruits or vegetables listed in this proposed rule could, under certain conditions, be imported into the United States without significant pest risk. All of the fruits and vegetables, as a condition of entry, would be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a USDA inspector. In

addition, some of the fruits and vegetables in this proposal also would be required to undergo mandatory treatment for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. Our proposed action would provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction into the United States of injurious plant pests by imported fruits and vegetables.

Papayas From Belize

The United States produced 71.3 million pounds of papayas in 1993. Papayas are produced commercially on approximately 300 farms, the majority of which are in Hawaii. Nearly 65 percent of those farms are owned by individuals whose major occupation is not farming, while the balance are operated by individuals whose major occupation is farming. All of the farms are considered to be small entities according to Small Business Administration (SBA) size standards.

The United States imported 31.3 million pounds of papayas, valued at $8,883,000, in 1993. Most of the imported papayas came from Mexico (66.6 percent), Jamaica (14.4 percent), and Belize (13.7 percent). The United States exported 16.7 million pounds of fresh papayas, worth $14,245,000, in 1993. The major importers were Japan (73.4 percent) and Canada (24.6 percent). Almost all exports of domestically grown papayas are from Hawaii, while all imports of foreign-origin papayas come into the continental United States.

The total annual production of papayas in Belize is approximately 4.5 million pounds. Its current exports account for about 4.2 million pounds. The additional amount expected to be exported to the United States would be approximately 300,000 pounds of fresh papayas. Even if all the available supply were exported to the United States, it would increase the U.S. supply of papayas by only about 0.34 percent. A 0.34 percent increase in supply is unlikely to have any impact on prices or on producers or consumers.

Cantaloupes From Brazil

The United States produced about 1,910 million pounds of cantaloupes, with a total value of $310 million, in 1993. Cantaloupes are produced commercially on about 7,500 farms, nearly 97 percent of which are considered to be small entities, according to SBA size standards. The United States is a net importer of cantaloupes. Imports totalled approximately 458 million pounds of cantaloupes. The major sources of imported cantaloupes include Mexico (32.8 percent), Honduras (26 percent), Costa Rica (17.5 percent), Guatemala (16 percent), and the Dominican Republic (2.8 percent). There were 116 million pounds of cantaloupes exported from the United States in 1993, of which nearly 95 percent went to Canada, while about 4 percent went to Mexico.

The commercial production of cantaloupe is in the infant stage in Brazil. Most of the Brazilian production is concentrated in the states of Rio Grande do Norte and São Paulo. Production occurs mainly during the months of October through March, while U.S. production occurs during the months of May through September. Thus, any export from Brazil would be supplementary to, rather than competitive with, the U.S. supply. Total production of cantaloupes in Brazil was about 5,000 metric tons, or 11 million pounds, in 1994. Currently all cantaloupe production in Brazil is for domestic consumption. However, even if all Brazilian production were to be exported to the United States, the U.S. cantaloupe supply would increase by less than 0.5 percent. Because this proposed rule would allow the importation of cantaloupe from only part of Brazil—that area considered by APHIS to be free of the South American cucurbit fly—any increase in the U.S. cantaloupe supply would be even smaller. Such an increase would not be expected to impact U.S. producer prices.

Ya Pear From Peoples Republic of China

The United States produced 860,000 metric tons (1,895 million pounds) of pears in 1993. The United States is a net exporter of pears, having exported 244 million pounds and imported 143 million pounds in 1993. Most of the pears imported into the United States came from Chile (57.3 percent), Argentina (30.4 percent), South Africa (6.1 percent), and New Zealand (3.9 percent). The main importers of U.S. pears are Canada (32.9 percent) and Mexico (34.9 percent), with the remaining quantities distributed among 45 destinations. There are approximately 9,800 farms producing pears in the United States, about 98 percent of which are considered to be small entities, according to SBA size standards.

China produced about 30,000 metric tons (or 66 million pounds) of Ya pears in 1993. It exported about 5,700 metric tons (or 12,562,800 pounds). Exports are to several countries in Europe, the Middle East, and Southeast Asia. The Ya pears that would be imported from the Peoples Republic of China are of a different variety than pears produced in the United States; because they are considered to be different products, they are not expected to be competitive with domestically grown pears.

Litchi From Peoples Republic of China

The U.S. produced about 700,000 pounds of Litchi in 1993. There are 205 farms that produced litchi, most of which are considered to be small entities according to SBA criteria.

China produced approximately 27,000 metric tons (or 59.5 million pounds) of litchi in 1994, exporting about 25 percent (about 15 million pounds) of its production. Most of China's litchi exports went to several countries in Western Europe, the Middle East, and Southeast Asia, as well as to Canada. What proportion of China's domestic litchi production would be exported to the United States is not clear. In the event that a significant proportion of China's production is exported to the United States, U.S. producers would most likely be negatively impacted in the short run, since the increased supply would drive the market price of litchi down. U.S. consumers, on the other hand, would benefit from the lower price as well as the increased choice. In the long run, as a result of foreign competition in the U.S. litchi market, more competitive and cost-effective producers may emerge. Lower prices could also result in an increased demand for litchi. Which of these effects would outweigh the other cannot be stated definitely.

Basil From Ecuador and El Salvador

The United States imported 5,397,091 pounds of fresh or dried basil in 1993 (the ratio of fresh to dried cannot be ascertained). The major sources of import were Egypt (77.7 percent), Mexico (16.1 percent), France (2.2 percent), and Taiwan (1.2 percent). No information was obtained on potential production and imports of basil from Ecuador and El Salvador.

Grapes From India

Total domestic grape production in 1993 was 5,466,606 metric tons (or 12,048 million pounds). There are approximately 21,843 producers of grapes in the United States, about 97 percent of which are considered to be small entities, according to SBA size standards. The United States imported 708,712,000 pounds of grapes in 1993, with most imports occurring between the months of December and April. Grape imports to the United States

originate mainly from Chile, which accounted for 88.6 percent of the imports. Mexico is a distant second with 11 percent of the imports. The United States exported 449,331,000 pounds of grapes in 1993, with most exports occurring between the months of August and November. Canada receives approximately 62 percent of U.S. exports, while the remaining destinations are highly varied.

At present, India produces about 426,000 (1990–1992 average) metric tons (or 939 million pounds) of grapes and exports approximately 4,000 metric tons (or 8.8 million pounds). Most of these exports go to Europe. In the unlikely event that India's grape exports were all directed to the United States, they would represent less than 0.08 percent of domestic production. This amount would not have a significant impact upon U.S. market supply. Both producer prices and consumer prices would likely be unaffected by the actual grape import from India.

Pak Choi From Jamaica

There is no published data on the U.S. production of pak choi and no record of trade. Jamaica's current production of pak choi is estimated to be 3,825 metric tons (8.43 million pounds). Most production takes place between January and April. Although the exact amount that would be shipped to the United States is not known, approximately 50–75 percent of total production is expected to be exported to the United States. This is expected to expand the variety of choices available to vegetable consumers.

Chives from Israel

Israel produces approximately 100 metric tons of chives. Production takes place mainly from October to the end of March. Currently about 95 percent of production is exported to Europe. It is expected about 20 to 40 metric tons to be exported to the United States. Both producer prices and consumer prices would likely be unaffected by the importation of chives from Israel.

Dill From Israel

The United States imported 1,828,359 pounds of dill in 1993 (trade records do not clearly indicate whether the dill was fresh or dried). The major sources were India (68 percent), Pakistan (13.2 percent), Egypt (10 percent), Sweden (3.2 percent), and Turkey (2.5 percent). The United States is a net importer of dill. Israel produced about 520 metric tons (1,146,000 pounds) of dill in 1994 and exported about 46 metric tons of dill during the same period. Israel expects that it would export about 30 metric tons of dill to the United States within the next 3 to 5 years. Both producer prices and consumer prices would likely be unaffected by the importation of dill from Israel.

Lettuce From Israel

Total U.S. production of head, leaf, and romaine lettuce in 1993 was 3,756,350 metric tons (or 8,279 million pounds). There are approximately 2,660 producers of lettuce in the United States, about 97 percent of which are considered to be small entities according to SBA size standards.

The United States is a net exporter of lettuce. It imported 32,738,000 pounds of lettuce in 1993, mainly from Mexico and Canada, which together accounted for 99.2 percent of the imports. The United States exported 693,354,000 pounds of lettuce in 1993. Canada received approximately 82 percent of those exports, while the remaining destinations were highly varied.

Israel produced about 10 million pounds of insect-free lettuce, which is grown inside insect-proof screenhouses, during 1993. About 10 percent of the production is exported to Europe and the rest is consumed domestically. The amount of lettuce that would be exported to the United States is expected to be about 1,600,000 pounds, which represents less than 0.02 percent of U.S. production. This amount would not have a significant impact upon U.S. market supply. Additionally, the marketing target for this lettuce, both in Israel's domestic market as well as in the export market, is the ultra-orthodox religious community, members of which would not consume lettuce produced in any other way. Importation of this specialty product is not expected to compete with domestic production. Both producer prices and consumer prices would likely be unaffected by the importation of insect-free lettuce from Israel.

Radishes From the Netherlands

The United States produced about 122.4 million pounds of radishes in 1993. Radishes are produced on about 760 farms, all of which are considered to be small entities. The United States is a net importer of radishes and it imported 35,121,976 pounds of fresh and chilled (the proportion of fresh to chilled cannot be ascertained) radishes in 1993. Over 94 percent of these imported radishes came from Mexico and 5.5 percent from Canada.

The Netherlands currently produces about 68 million pounds of radishes. Exports are expected to increase in stages, from 1.1 million pounds in the first year, to 2.2 million pounds during the second year, to about 4.4 million pounds (about 3 percent of U.S. supply) the third year and thereafter. Exports of radishes are expected to be spread equally over a 12-month period, with no significant peak period.

Oca From New Zealand

There is no known commercial production of oca in the United States. Additionally, there is no record of oca imports into the United States. Oca is a specialty crop and only minor production is carried on in New Zealand. Most production occurs between the months of March and October. Annual production is about 110,000 pounds. Current oca exports from New Zealand to the rest of the world equal about 440 pounds. Allowing the importation of oca from New Zealand into the United States would provide additional choice to vegetable consumers.

Apricots, Peaches, Plums, and Nectarines From Zimbabwe

In 1993 the United States produced 87,430 metric tons (192.7 million pounds) of apricots on 3,353 farms; 1,130,00 metric tons (2,490.6 million pounds) of peaches on 19,106 farms; 182,395 metric tons (402 million pounds) of nectarines on 2,488 farms; and 176,710 metric tons (390 million pounds) of plums on 8,006 farms. About 98 percent of these farms are considered to be small entities according to SBA size standards.

The United States is a net exporter of all four of these commodities. Imports of these four commodities into the United States are largely from Chile, while most of the U.S. exports are destined for Canada, Mexico, Taiwan, Hong Kong, and the United Kingdom. Although relevant volume data is not available, the addition of Zimbabwe as a new trading partner in apricots, peaches, plums, and nectarines is unlikely to shift the favorable balance of trade that the United States currently enjoys for these four commodities.

Summary

The United States produces large amounts of grapes, cantaloupes, pears, papayas and radishes. The proposed importations of these and other listed commodities would likely increase supply. However, since potential imports would represent a very small proportion of the total domestic production of each product, no significant negative impact on U.S. producers is expected from such importations. Although increased supply generally results in lower prices, no information is currently available

about the magnitude of price responses to changes in supply. Overall, the benefits to consumers of any resulting price decline would likely outweigh the small losses to producers. Additionally, importation of oca and pak choi would increase the availability of new products. Both oca and pak choi have a limited market and are unlikely to compete with other products. Similarly, the Ya pears and cantaloupes proposed for importation are also unlikely to compete with other products. Ya pears are of different variety than any domestically produced pear, while cantaloupes from Brazil would be imported during the off season for U.S. cantaloupes. Other products such as basil and dill are very minor products. Some of these products are grown to supplement other farm income.

The aggregate economic impact of this proposed rule is expected to be positive. U.S. consumers would benefit from a greater availability of fruits and vegetables. U.S. importers would also benefit from a greater availability of fruits and vegetables to import.

The alternative to this proposed rule was to make no changes in the fruits and vegetables regulations. After consideration, we rejected this alternative since there was no pest risk reason to maintain the prohibitions on the affected produce.

This proposed rule contains no paperwork or recordkeeping requirements.

Executive Order 12778

This proposed rule would allow certain fruits and vegetables to be imported into the United States from certain parts of the world. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits and vegetables under this rule would be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this proposed rule. The assessment provides a basis for the conclusion that the importation of fruits and vegetables under the conditions specified in this proposed rule would not present a significant risk of introducing or disseminating plant pests and would not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individuals listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

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

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, title 7, chapter III, of the Code of Federal Regulations would be amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, 167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 300.1, paragraph (a) would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was reprinted on November 30, 1992, and includes all revisions through _____ 1995, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, and 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

4. In § 319.56–2t, the table would be amended by adding, in alphabetical order, the following:

§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/Locality	Common name	Botanical name	Plant part(s)
*	*	*	* * * * *
Belize			
*	*	*	* * * * *
	Papaya	*Carica papaya*	Fruit (Must be accompanied by a phytosanitary certificate issued by the Belizean department of agriculture stating that the fruit originated in the district of Cayo, Corozal, or Orange Walk. Papayas from other districts enterable only with treatment—see § 319.56–2x). Prohibited entry into Hawaii due to *Toxotrypana curvicauda.* Cartons in which fruit is packed must be stamped ''Not for importation into or distribution within HI.''
*	*	*	* * * * *
Ecuador			
*	*	*	* * * * *
	Basil	*Ocimum* spp	Above ground parts.
*	*	*	* * * * *
El Salvador	Basil	*Ocimum* spp	Above ground parts.
*	*	*	* * * * *
Israel			
*	*	*	* * * * *
	Chives	*Allium schoenoprasum.*	Leaf.
	Dill	*Anethum graveolens.*	Above ground parts.
*	*	*	* * * * *
Jamaica			
*	*	*	* * * * *
	Pak choi	*Brassica chinensis*	Leaf and stem.
*	*	*	* * * * *
Netherlands	Radish	*Raphanus sativus*	Root.
New Zealand			
*	*	*	* * * * *
	Oca	*Oxalis tuberosa*	Tuber.
*	*	*	* * * * *

5. In § 319.56–2u, the section heading and would be revised and paragraph (a) would be added to read as follows:

§ 319.56–2u Conditions governing the entry of lettuce and peppers from Israel.

(a) Lettuce may be imported into the United States from Israel without fumigation for leafminers, thrips, and *Sminthuris viridis* only under the following conditions:

(1) *Growing conditions.* (i) The lettuce must be grown in insect-proof houses covered with 50 mesh screens, double self-closing doors, and hard walks (no soil) between the beds;

(ii) The lettuce must be grown in growing media that has been sterilized by steam or chemical means;

(iii) The lettuce must be inspected during its active growth phase and the inspection must be monitored by a representative of the Israeli Ministry of Agriculture;

(iv) The crop must be protected with sticky traps and prophylactic sprays approved for the crop by Israel;

(v) The lettuce must be moved to an insect-proof packing house at night in plastic containers covered by 50 mesh screens;

(vi) The lettuce must be packed in an insect-proof packing house, individually packed in transparent plastic bags, packed in cartons, placed on pallets, and then covered with shrink wrapping; and

(vii) The lettuce must be transported to the airport in a closed refrigerated truck for shipment to the United States.

(2) Each shipment of lettuce must be accompanied by a phytosanitary certificate issued by the Israeli Ministry of Agriculture stating that the conditions of paragraph (a)(1) of this section have been met.

* * * * *

6. In § 319.56–2x, paragraph (a) would be amended as follows:

a. In the table, in the entry for Israel, the entry for lettuce would be amended in the fourth column under the heading *Plant part(s)* by adding the words ''(Treatment for leafminers, thrips, and *Sminthuris viridis* not required if the

lettuce is imported in accordance with § 319.56–2u(a))'' after the word ''Leaf''.

b. The table would be amended by adding, in alphabetical order, the following:

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required. (a) * * *

Country/Locality	Common name	Botanical name	Plant part(s)
*	*	*	* * * * *
Belize	Papaya	*Carica papaya*	Fruit (Treatment for Medfly not required for fruit grown in the districts of Cayo, Corozal, and Orange Walk - see § 319.56–2t). Papayas prohibited entry into Hawaii due to *Toxotrypana curvicauda.* Cartons in which fruit is packed must be stamped ''Not for importation into or distribution in HI''.
*	*	*	* * * * *
China	Litchi	*Litchi chinensis*	Fruit (Prohibited entry into Florida due to litchi rust mite. Cartons in which litchi are packed must be stamped ''Not for importation into or distribution in FL'').
*	*	*	* * * * *
India	Grapes	*Vitis* spp	Fruit.
	Litchi	*Litchi chinensis*	Fruit (Prohibited entry into Florida due to litchi rust mite. Cartons in which litchi are packed must be stamped ''Not for importation into or distribution in FL'').
*	*	*	* * * * *
Zimbabwe			
*	*	*	* * * * *
	Apricot	*Prunus armeniaca*	Fruit.
*	*	*	* * * * *
	Nectarine	*Prunus persica*	Fruit.
	Peach	*Prunus persica*	Fruit.
*	*	*	* * * * *
	Plum	*Prunus domestica*	Fruit.
*	*	*	* * * * *

§ 319.56–2aa [Amended]

7. In § 319.56–2aa, the section heading and the introductory text of the section would be amended by adding the words ''and cantaloupe'' after the word ''melons''; paragraph (a) would be amended by adding the words ''or cantaloupe'' after the word ''melons'' in the first sentence and both times it appears in the second sentence; paragraph (b) would be amended by adding the words ''or cantaloupe'' after the word ''melons''; and paragraph (c) would be amended by adding the words ''or cantaloupe'' after the word ''melons''.

8. A new § 319.56–2ee would be added to read as follows:

§ 319.56–2ee Administrative instructions: conditions governing the entry of Ya variety pears from China.

Ya variety pears may be imported into the United States from China only under the following conditions:

(a) *Growing and harvest conditions.* (1) The pears must have been grown by growers registered with the Chinese Ministry of Agriculture in an APHIS-approved export growing area in Hebei Province.

(2) Field inspections for signs of pest infestation must be conducted by the Chinese Ministry of Agriculture during the growing season.

(3) The registered growers shall be responsible for following the phytosanitary measures agreed upon by APHIS and the Chinese Ministry of Agriculture, including applying pesticides to reduce the pest population and bagging the pears on the trees to reduce the opportunity for pests to attack the fruit during the growing season. The bags must remain on the pears through the harvest and during their movement to the packing house.

(4) The packing houses in which the pears are prepared for exportation shall not be used for any fruit other than Ya variety pears from registered growers during the pear export season. The packing houses shall accept only those pears that are in intact bags as required by paragraph (a)(3) of this section. The pears must be loaded into containers at the packing house and the containers then sealed before movement to the port of export.

(b) *Treatment.* The pears must be cold treated for *Bactrocera dorsalis* in accordance with the Plant Protection and Quarantine Treatment Manual,

which is incorporated by reference at § 300.1 of this chapter.

(c) Each shipment of pears must be accompanied by a phytosanitary certificate issued by the Chinese Ministry of Agriculture stating that the conditions of paragraphs (a) and (b) of this section have been met.

Done in Washington, DC, this 18th day of May 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–12748 Filed 5–23–95; 8:45 am]

BILLING CODE 3410–34–P

7 CFR Part 354

[Docket No. 94–074–1]

RIN 0579–AA68

User Fees—Commercial Aircraft and Vessels; Phytosanitary Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the user fee regulations by lowering the fees charged for certain agricultural quarantine and inspection services we provide in connection with the arrival of an international commercial aircraft at a port in the customs territory of the United States. We are also proposing to amend the user fee regulations by raising the fees charged for export certification of plants and plant products. We have determined, based on a review of our user fees, that the fees must be adjusted to reflect the actual cost of providing these services. In addition, we are proposing to amend the user fee regulations to clarify the exemption for certain vessels which sail only between the United States and Canada.

DATES: Consideration will be given only to comments received on or before June 23, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–074–1, Regulatory Analysis and Development, PPD, APHIS, suite 3CO3, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–074–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations, contact Mr. Don Thompson, Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 136, Riverdale, MD 20737–1236, (301) 734–8295.

For information concerning rate development, contact Ms. Donna Ford, PPQ User Fees Section Head, FSSB, BAD, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232, (301) 734–5901.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 354.3 (referred to below as the ''regulations'') contain provisions for the collection of user fees for certain international services provided by the Animal and Plant Health Inspection Service (APHIS). In this docket we are proposing to amend 2 user fees: (1) The user fee for servicing international commercial aircraft arriving at ports in the customs territory of the United States; and (2) the user fee for certifying plants and plant products for export. We are also proposing to clarify the exemption from user fees which applies to certain vessels which sail only between the United States and Canada. Each amendment is discussed separately below.

International Commercial Aircraft

One service our user fees cover is the cost of agricultural quarantine and inspection (AQI) services provided by APHIS in connection with the arrival of an international commercial aircraft at a port in the customs territory of the United States. (The customs territory of the United States is defined in the regulations as the 50 States, the District of Columbia, and Puerto Rico.)

The current user fee for international commercial aircraft became effective on January 1, 1993, following the publication of an interim rule in the **Federal Register** on December 31, 1992 (Docket No. 92–148–1, 57 FR 62468–62473). At that time the fee was set at $61.00. This fee was later affirmed in a document published in the **Federal Register** on November 9, 1993 (Docket No. 92–148–2, 58 FR 59354–59356).

As we have stated in previous proposed and final regulations, we intend to monitor our user fees and review them at least annually to determine whether the fees should be adjusted. After reviewing the fees that were collected in FY 1993 and FY 1994 and calculating our cost and revenue projections for FY 1995, we have determined that the fee for international commercial aircraft needs to be lowered from $61.00 to $53.00 for each arrival. This is necessary to avoid collecting more revenue than needed to cover the costs of the services we provide.

Calculation of User Fees for Commercial Aircraft

To calculate the adjusted user fees for commercial aircraft, we determined the total projected cost of providing AQI services in FY 1995 for international commercial aircraft. The cost of providing these services in FY 1993 and FY 1994 served as a basis for calculating our projected FY 1995 costs. It is important to note that each year in the budget process, Congress limits or specifies how much APHIS can withdraw from the AQI User Fee Account. For FY 1993, APHIS was authorized to spend $83.3 million. For FY 1994 we were authorized to spend $91.6 million, plus $6.9 million to cover additional AQI program needs.

In FY 1992, APHIS established accounting procedures to segregate AQI user fee program costs. We published a detailed description of these procedures in the **Federal Register** on December 31, 1992 (57 FR 62469–62471), as part of a document (Docket No. 92–148–1) amending some of our user fees.

As part of our accounting procedures, we established distinct accounting codes to record costs that can be directly related to each inspection activity. At the State level and below, the following costs are direct-charged to the AQI User Fee Account: Salaries and benefits for inspectors and canine officers, supervisors (such as officers-in-charge) and clerical staff, user-fee-specific equipment, contracts, and large supply items such as x-ray equipment or uniforms.

Other costs that cannot be directly charged to individual accounts are charged to ''distributable'' accounts established at the State level. The following types of costs are charged to distributable accounts: utilities, rent, telephone, vehicles, office supplies, etc. The costs in these distributable accounts are prorated (or distributed) among all the activities that benefit from the expense, based on the ratio of the costs that are directly charged to each activity divided by the total costs directly charged to each account at the field level. For example, if a State office performs work on domestic programs, AQI user fee programs, and AQI appropriated programs, the costs are distributed among each program, based on the percentage of the direct costs for that activity at the field level that is charged to that activity. Costs incurred at the regional, headquarters program staff, and agency-level support offices are also prorated to the separate AQI

activities based on the percentage of the costs that were directly charged to each activity at the field level, as discussed above.

Under these accounting procedures, we calculated the total cost of providing AQI services in FY 1993 and FY 1994 by determining the amounts in each direct-charge account, then adding the pro rata share of the distributable accounts maintained at the State, regional, headquarters, and agency levels. In FY 1993, it cost APHIS approximately $13.9 million to provide services to commercial aircraft; in FY 1994 the cost was approximately $17.5 million.

We projected that in FY 1995, it will cost APHIS a total of $18.9 million to provide inspection services for international commercial aircraft. Of this total, $15.7 million is for program delivery costs, which are costs incurred at the State level and below. The total also includes $1.7 million for a pro rata share of the program direction and support costs, as explained above, which include items at the regional and headquarters program staff levels. Finally, the total includes $1.5 million for a pro rata share of agency-level support costs, as discussed above, which include activities that support the entire agency, such as recruitment and development, legislative and public affairs, regulations development, regulatory enforcement, budget and accounting services, and payroll and purchasing services. The exceptions are costs for billing and collection services, legal counsel, and rate development services. These costs are directly related to user fee activities, so these costs are directly added to the user fee activities they support and are not included in the proration of agency-level costs.

For the commercial aircraft user fee, we also have the authority to include an amount that would provide for a reasonable reserve balance in the AQI User Fee Account (referred to below as ''the Account''). We defined a ''reasonable reserve balance'' as equal to 3 months' normal operating expenses. We have now accumulated a reserve balance equal to this amount in the Account for international aircraft. Therefore, the reserve component of this user fee would be eliminated in our proposed fee adjustments.

Volumes

We estimated the annual number of international commercial aircraft that would be subject to inspection. The estimates, which were based on our FY 1993 and FY 1994 collection history, were then used as a basis for projecting activity volumes for FY 1995.

A total of 357,442 commercial aircraft were subject to inspection during FY 1993. During FY 1993, we revised the aircraft clearance fee from $76.75 per arrival to $61.00 per arrival. The decrease became effective for all aircraft arriving in the United States on or after January 1, 1993. To arrive at the FY 1993 volume for aircraft, we divided the first quarter collections (October 1 through December 31, 1992) of $6,187,047.75 by $76.75, the per arrival fee, for a total first quarter volume of 80,613. We divided the 3 remaining quarter collections of $16,886,569.00 by $61.00, the revised per arrival fee, for a volume total of 276,829 for the remainder of the fiscal year. This produced a total FY 1993 volume of 357,442. Our FY 1994, volume projection is 350,293. To arrive at the FY 1994 volume for aircraft, we divided our projected FY 1994 collections of $21,367,873.00 by $61.00, the per arrival fee, for a volume total of 350,293. While the actual volume went down in FY 1994, we do not expect that to happen again in FY 1995. In fact, in FY 1995 we are projecting a modest volume increase of 2 percent. Therefore, we applied a 2 percent increase to the FY 1994 volume of 350,293 to arrive at a projected FY 1995 commercial aircraft volume of 357,299.

Fee Adjustments and Rounding of Fees

In calculating the adjusted user fees, our final step was to divide the sum of the cost of providing service by the projected number of international commercial aircraft subject to inspection, thereby arriving at a ''raw'' fee.

For the commercial aircraft user fee, the raw fee was $52.99; rounding this fee up to the nearest quarter yields a fee of $53.00. Rounding up ensures that the fee would be easy to calculate and collect. The lower fee of $53.00 would be sufficient to recover the full cost of providing aircraft inspection services, without collecting more revenue than needed to cover the costs of the services provided.

Commercial Vessels

Another AQI service we offer is inspection of commercial vessels of 100 net tons or more. Certain categories of commercial vessels are exempt from paying APHIS user fees under the current regulations. Among those is ''any vessel which sails only between United States and Canadian ports'' (see current § 354.3(b)(2)(vi)).

The United States Customs Service (Customs), U.S. Department of the Treasury, collects APHIS user fees and remits them to us. Customs has requested that we amend our regulations to make it easier for them to determine which vessels are exempt from our fees.

Under our regulations, certain vessels are exempt from paying APHIS user fees. Customs must determine, when reviewing the paperwork presented for each arriving vessels, which vessels are exempt. In order to ensure that they have the necessary information to make this determination, Customs has requested that we amend § 354.3(b)(2)(vi) of our regulations to require Masters of vessels in the United States-Canada trade arriving from Canada to certify, in the ''Remarks'' block of the General Declaration, Customs Form 1301, that the vessel has sailed solely between the United States and Canada for the previous 2 years.

The proposed certification would be placed in a document which vessels arriving in the United States are required, under Customs regulations in 19 CFR 4.7, to present to the Customs official on duty at the port of arrival. In addition to helping Customs to more accurately and efficiently collect APHIS user fees, the proposed requirement would also clarify that vessels which ''sail only between United States and Canada ports'' are vessels which have done so for at least the previous 2 years. The 2-year restriction is necessary to ensure that pests and regulated articles brought on board the vessel at ports outside Canada or the United States no longer pose a pest or disease risk. This requirement is identical to requirements in our regulations concerning the handling and disposal of garbage from places outside the United States (see 7 CFR 330.400 and 9 CFR 95.4).

Phytosanitary Certificates

In addition to AQI services, our user fees also cover the issuance of phytosanitary certificates for the export of plants and plant products. Phytosanitary certificates are issued in accordance with 7 U.S.C. 147a and regulations in 7 CFR part 353. These documents certify agricultural products as being free from plant pests, according to the phytosanitary requirements of the foreign countries to which the plants or plant products may be exported, or to the freedom from exposure to plant pests while in transit through the United States. These certificates must be issued in accordance with 7 CFR part 353 to be accepted in international commerce.

The user fees for some phytosanitary certificates issued by APHIS became effective on March 17, 1993, upon publication of a final rule in the **Federal Register** on March 17, 1993 (Docket 92–

088–2, 58 FR 14305–14307). The user fees for other phytosanitary certificates issued by APHIS became effective on February 9, 1992, following the publication of a final rule in the **Federal Register** on January 9, 1992 (Docket No. 91–135, 57 FR 755–773). The fees were set at: (1) $30.00 for a certificate for a commercial shipment; (2) $19.00 for a certificate for certain low-value commercial shipments; (3) $19.00 for a certificate for a non-commercial shipment; (4) $30.00 for a certificate for reexport of a commercial shipment; (5) $19.00 for a certificate for reexport of certain low value commercial shipments; (6) $30.00 for a processed product certificate for a commercial shipment; (7) $6.00 for reissuing any certificate or certificate for reexport (see current 7 CFR 354.3(g)(5)). In addition, there is a $6.00 user fee for processing unissued phytosanitary certificates of all types (see 7 CFR 354.3(h)).

After reviewing the fees for phytosanitary certificates that were collected in FY 1993 and FY 1994 and calculating our cost and revenue projections for FY 1995, we have determined that, for the reasons discussed below, the fees need to be adjusted in order to recover the full cost of providing services. Therefore, we are proposing to raise our user fees for phytosanitary certificates as follows: (1) to $50.00 for a certificate for a commercial shipment; (2) to $23.00 for a certificate for certain low-value commercial shipments; (3) to $23.00 for a certificate for a non-commercial shipment; (4) to $50.00 for a certificate for reexport of a commercial shipment; (5) to $23.00 for a certificate for reexport of certain low value commercial shipments; (6) to $50.00 for a processed product certificate for a commercial shipment; (7) to $7.00 for reissuing any certificate or certificate for reexport. In addition, we are proposing to raise the user fee for processing unissued phytosanitary certificates of all types to $7.00.

Calculation of User Fees for Phytosanitary Certificates

To calculate the adjusted user fees for phytosanitary certificates, we determined the total projected cost of providing phytosanitary certificate services in FY 1995. The cost of providing these services in FY 1993 and FY 1994 served as a basis for calculating our projected FY 1995 costs.

In FY 1992, APHIS established accounting procedures to segregate phytosanitary certificate-related costs. We established distinct accounting codes to record costs that can be directly related to this activity. At the State level and below, the following costs are charged directly to the phytosanitary certificate user fee account: salaries and benefits for inspectors, supervisors (such as officers-in-charge) and clerical staff, user-fee-specific equipment, contracts, and large supply items such as uniforms.

Other costs that cannot be directly charged to individual accounts are charged to ''distributable'' accounts established at the State level. The following types of costs are charged to distributable accounts: utilities, rent, telephone, vehicles, office supplies, etc. The costs in these distributable accounts are prorated (or distributed) among all the activities that benefit from the expense, based on the ratio of the costs that are directly charged to each activity divided by the total costs directly charged to each account at the field level. For example, if a State office performs work on domestic programs and phytosanitary certificate programs, the costs are distributed among each program, based on the percentage of the direct costs for that activity at the field level that is charged to that activity. Costs incurred at the regional, headquarters program staff, and agency-level support offices are also prorated to the separate phytosanitary certificate-related activities, based on the percentage of the costs that were directly charged to each activity at the field level, as discussed above.

Under these accounting procedures, we calculated the total cost of providing phytosanitary certificate services in FY 1993 and FY 1994 by determining the amounts in each direct-charge account, then adding the pro rata share of the distributable accounts maintained at the State, regional, headquarters, and agency levels. In FY 1993, it cost APHIS approximately $3.5 million to issue phytosanitary certificates, and it cost APHIS approximately $4.1 million in FY 1994. We project our FY 1995 costs to be $4.6 million. Of this total, $3.83 million is for program delivery costs, which are costs incurred at the State level and below. The total also includes $389,000 for a pro rata share of the program direction and support costs, as explained above, which include items at the regional and headquarters program staff levels. Finally, the total includes $384,000 for a pro rata share of agency-level support costs, as discussed above, which include activities that support the entire agency, such as recruitment and development, legislative and public affairs, regulations development, regulatory enforcement, budget and accounting services, and payroll and purchasing services. The exceptions are costs for billing and collection services, legal counsel, and rate development services. These costs are directly related to user fee activities, so these costs are directly added to the user fee activities they support and are not included in the proration of agency-level costs.

To calculate the adjusted user fees for phytosanitary certificates, we determined the total projected cost of issuing phytosanitary certificates in FY 1995, based on our costs to provide these services in FY 1993 and FY 1994.

Under our accounting procedures, we calculated the total cost of issuing phytosanitary certificates in FY 1993 by determining the amount in each direct-charge account, then adding the prorata share of the distributable accounts maintained at the State, regional, headquarters, and agency levels.

We then used a weighted average method to develop the rate for each type of phytosanitary certificate. The average time to complete each type of certificate was calculated. Each type of phytosanitary certificate fee was assigned a weighted value. This was done by comparing the time value for each certificate type relative to the time value for commercial certificates. The time value of commercial certificates was 2.45. This was weighted 1.00 (2.45/2.45). Non-commercial certificates were given a value of 0.46 (1.13/2.45), and reissued certificates were given a value of 0.14 (0.35/2.45).

We then applied the weighted values to our volume estimates for FY 1995 to determine the weighted transaction amounts. The total number of transactions for each category was then added and divided into the total program cost. In this way we arrived at an average per inspection cost of $49.84. We multiplied the average per inspection cost by the activity weight. This produced the weighted average cost for each type of certificate. The raw fees calculated using this method were: $49.84 for commercial phytosanitary certificates; $22.76 for non-commercial phytosanitary certificates; and $7.05 for reissued and returned phytosanitary certificates. We then rounded the raw fees for commercial and non-commercial certificates up to the nearest quarter, for final fees of $50.00 and $23.00. Due to the small number of reissued and returned certificates which we process, and in order to make collecting fees easier, we rounded the raw fee for these certificates down for a final fee of $7.00.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The 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.

This proposed rule, if adopted, would increase the user fees for phytosanitary certificates to recover the cost to APHIS of providing export certification services for plants and plant products. This proposed rule, if adopted, would also reduce the user fee for international commercial aircraft to correspond with the cost to APHIS of providing services. Amendments to user fees are necessary to adjust for changes in service volume and in costs.

Federal phytosanitary certificates are issued in accordance with the International Plant Protection Convention. They certify that agricultural products moving between countries are free from injurious insects and diseases. These certificates must be issued by APHIS to be accepted in international commerce, and must accompany the majority of agricultural commodities (except livestock products) traded. Traded commodities generally include cereals and grains (such as soybeans, wheat, and corn), fruit and vegetables, and other horticultural products. In 1993, the value of exported agricultural products requiring phytosanitary certificates was estimated at $3 billion.

Current user fees for phytosanitary certificates do not fully recover APHIS's costs for services performed. In the past fiscal year, the total cost of providing phytosanitary certificate services was $3,487,347, while total fee collections amounted only to $2,875,716. The reason for the discrepancy is that we overestimated the number of certificates that would be issued, thereby underestimating the cost of issuing each certificate. The total program cost for the 1994–1995 fiscal year, which we must recover through user fees, is estimated at $4,643,385. This amount includes costs associated with program delivery, program direction and support, agency support, departmental charges, and Office of the General Counsel services. If the proposed fee increases are adopted, estimated collections would rise to $4,717,947.

Exporters of agricultural commodities would be affected by this rule. The Regulatory Flexibility Act requires APHIS to address the economic impact of imposing user fees on ''small'' entities. The Small Business Administration (SBA) criteria for a small wholesale business engaged in the trading of fresh fruits and vegetables is that the business have 100 or fewer employees. SBA criteria for a small crop production business is that it have annual revenues up to $500,000.

Approximately 90,000 phytosanitary certificates were issued in 1993. Certificates for commercial shipments are issued to wholesale businesses engaged in the trading of fresh fruits and vegetables, and to crop production businesses. Certificates are also issued to export brokers who handle shipments of produce from various sources. The proportion of exporters in this group which may qualify as small is unknown. It is likely that a large number of these brokers employ fewer than 100 workers.

In general, the value of an average commercial shipment is likely to be well over the proposed $50 user fee. Given that the total value of agricultural products requiring phytosanitary certificates exported in 1993, estimated at $3 billion, is much larger in magnitude than the $4.7 million in total user fee collection, any impact on U.S. producers/exporters is expected to be small.

Phytosanitary certificates for noncommercial exporters are generally issued to individuals and to exporters of low value commodities. The user fee for this category of phytosanitary certificate is proposed to increase from $19 to $23, an increase of 21 percent. Although user fees represent a proportionately larger share of the total value of noncommercial and low-value exports, these small exports may possess a much higher value in the foreign country than in the United States. Moveover, exports by individuals may be gift items with nonmonetary values offsetting some of the impact of the fee increase.

SBA criteria for a small airline is that it have 1,500 or fewer employees. Data from the 1988 Census indicates that there were 67 domestic and international airline operators employing a total of 481,000 employees. Although the size distribution of air carriers that enter the customs territory of the United States is unknown, the impact of the proposed user fee change, regardless of carrier size, is positive—we are proposing a 13 percent user fee reduction, from $61 to $53 per aircraft. The lower fee is sufficient to recover the full cost of providing aircraft inspection services, without collecting more revenue than needed to recover costs. The estimated cost to provide inspection services for international commercial aircraft in FY 1995 is $18.9 million. At the proposed user fee of $53 per aircraft and a projected FY 1995 commercial aircraft volume of 357,299, total collections would amount to $18.9 million.

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

Executive Order 12372

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

Executive Order 12778

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 1515–00–62.

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, 7 CFR part 354 would be amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 would continue to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.3 would be amended as follows:

a. By revising paragraph (b)(2)(vi) to read as set forth below.

b. In paragraph (e)(1), the last sentence, by removing ''$61'' and adding ''$53'' in its place.

c. In paragraph (g)(5)(i)(A), by removing ''$30'' and adding ''$50'' in its place.

d. In paragraph (g)(5)(i)(B), by removing ''$19'' and adding ''$23'' in its place.

e. In paragraph (g)(5)(ii), by removing ''$19'' and adding ''$23'' in its place.

f. In paragraph (g)(5)(iii)(A), by removing ''$30'' and adding ''$50'' in its place.

g. In paragraph (g)(5)(iii)(B), by removing ''$19'' and adding ''$23'' in its place.

h. In paragraph (g)(5)(iv), by removing ''$30'' and adding ''$50'' in its place.

i. In paragraph (g)(5)(v), by removing ''$6'' and adding ''$7'' in its place.

j. In paragraph (h)(2), by removing ''$6'' and adding ''$7'' in its place.

§ 354.3 User fees for certain international services.

* * * * *

(b)(2)(vi) Any vessel which sails only between United States and Canadian ports, when the Master of such vessel arriving from Canada certifies, in the ''Remarks'' block of the General Declaration, Customs Form 1301, that the vessel has sailed solely between the United States and Canada for the previous 2 years.

(Approved by the Office of Management and Budget under control number 1515–00–62).

* * * * *

Done in Washington, DC, this 19th day of May 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–12750 Filed 5–23–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 264

[INS No. 1686–95]

RIN 1115–AD87

Removal of Form I–151, Alien Registration Receipt Card, From the Listing of Forms Recognized as Evidence of Registration for Lawful Permanent Resident Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Immigration and Naturalization Service (''the Service'') regulations by removing Form I–151, Alien Registration Receipt Card, from the listing of forms recognized as evidence of registration as a lawful permanent resident alien. This rule is necessary to complete the establishment of the current Alien Registration Receipt Card, Form I–551, as the exclusive alien registration receipt card for use by permanent resident aliens.

DATES: Written comments must be submitted on or before July 24, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper handling, please reference INS No. 1686–95 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: Gerard Casale, Senior Adjudications Officer, Immigration and Naturalization Service, Room 3214, 425 I Street NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 1993, the Service published a final rule in the **Federal Register** at 58 FR 48775–48780, establishing the Form I–551, Alien Registration Receipt Card, as the exclusive form of registration for lawful permanent resident aliens, by terminating the validity of the old Form I–151, Alien Registration Receipt Card. In addition, the final rule provided the procedures by which a lawful permanent resident alien in possession of a Form I–151 or a prior alien registration document, such as the Form AR–3 or AR–103, could replace these documents with the current Form I–551. The final rule provided that the amendments to 8 CFR part 264 concerning the procedures for applying for a replacement card became effective on October 20, 1993.The final rule also provided that the effective date for the removal of references to the Form I–151 from 8 CFR parts 204, 211, 223, 223a, 235, 251, 252, 247a, 299, 316, and 334 would be September 20, 1994. On September 14, 1994, the Service published a final rule at 59 FR 47063, delaying the effective date of the amendments to 8 CFR parts 204, 211, 223, 235, 251, 252, 247a. 299, 316, and 334, from September 20,1994, until March 20, 1995. On March 17, 1995, a final rule was published in the **Federal Register** at 60 FR 14353, further delaying the effective date of the amendments to 8 CFR parts 204, 211, 235, 251, 252, 274a, 299, 316, and 334, from March 20, 1995, until March 20, 1996.

Removal of Form I–151 From the List of Prescribed Service Forms

The Service's reasons for terminating the validity of the Form I–151, Alien Registration Receipt Card have been discussed in detail in the previous notice of proposed rulemaking published on May 28, 1993, at 58 FR 31000–31003, and in the final rulemaking published on September 20, 1993, at 58 FR 48775–48780, which considered and addressed the public comments received. These rulemakings advised the public of the Service's conclusion that the current Form I–551 Alien Registration Receipt Card must be established as the exclusive Alien Registration Receipt card because ''it is no longer sound public policy to recognize Alien Registration Receipt Cards that predate the use of the Form I–551.'' 58 FR 48775 (September 20, 1993).

In the course of that rulemaking process, however, the intended removal of Form I–151 from the list of prescribed Service forms in 8 CFR 264.1(b) was inadvertently omitted. By removing the Form I–151 from that list, the proposed rule would correct that previous omission and complete the I–151 card replacement program's declared objective of establishing the current Form I–551 as the sole Alien Registration Receipt Card recognized by the Service. The Service intends that this rule, if adopted, would take effect on March 20, 1996, the date on which the validity of the old Form I–151 Alien Registration Receipt Card will terminate under the final rule published March 17, 1995, at 60 FR 14353. By taking effect upon the same date, the proposed rule would preclude any discrepancy or confusion over the effective date on which the validity of the old cards will terminate.

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 the rule will not have a significant adverse economic impact on a substantial number of small entities because of the following factors. The provisions of this rule merely clarify the requirements of existing regulations concerning documentation of lawful permanent resident aliens. As such, the new provisions have no significant adverse economic impact on the small entities.

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 proposed 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 264

Aliens, Reporting and recordkeeping requirements.

Accordingly, part 264 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

1. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301–1305.

§ 264.1 [Amended]

2. In § 264.1, paragraph (b) is amended by removing the Form Number and Class reference to Form ''I–151'' from the listing of forms.

Dated: April 12, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–12717 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No: EE–RM–93–701]

Energy Conservation Program for Consumer Products

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Proposed Rule.

SUMMARY: This document reproposes amendments to the Department of Energy's clothes washer test procedure to provide a means to test clothes washers that are designed to lock out wash/rinse temperature selections from the normal cycle.

DATES: Consumer usage test data for clothes washers that ''lockout'' certain temperature selections shall be provided to DOE by June 30, 1995, and will be placed in Department's Freedom of Information Reading Room. Comments, including comments on any consumer usage data that are submitted, shall be provided by July 31, 1995.

ADDRESSES: Written comments and data (ten copies) are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Proposed Test Procedures for Clothes Washers, Docket No. EE–RM–93–701, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

P. Marc LaFrance, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8423

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION:

I. Introduction

An amended appliance energy conservation standard for clothes washers became effective May 14, 1994. Manufacturers are required to test their clothes washers for compliance with the new standard using the test procedure regulations set forth in 10 CFR Part 430, Subpart B, Appendix J.

Whirlpool Corporation (Whirlpool) designed a new line of clothes washers to meet this standard which lock out a warm rinse when the user selects a hot water wash/warm water rinse temperature combination setting in the cycle Whirlpool has designated as the ''normal cycle.'' That is, although the controls may be set for a warm rinse in this circumstance, a cold water rinse would be provided. However, a warm rinse is available in all other cycles. Thus, energy consumption in the ''normal cycle'' is lower than in the other cycles which offer a warm rinse option.

Whirlpool requested an informal interpretation of the test procedure from the Department's Office of Energy Efficiency and Renewable Energy in 1992, and again in early 1993. Whirlpool asserted that the test procedure requires all testing be conducted in the ''normal cycle'' as defined in Section 1.10 of the test procedure, with the temperature selector set to the hottest setting that is available in the normal cycle. The Office of Energy Efficiency and Renewable Energy responded by letters dated December 18, 1992, and April 21, 1993, which disagreed with Whirlpool's interpretation. Whirlpool engaged in further discussions with the Department's Office of General Counsel, and after review, the General Counsel wrote a letter to Whirlpool on October 20, 1993 stating: ''Whirlpool's interpretation of the test procedure is one that the Department concurs is a permissible reading of the test procedure. The Department believes, however, that Whirlpool's interpretation may yield results not consistent with the objectives of the Energy Policy and Conservation Act, as amended.'' The letter further stated that the Department planned to amend the test procedure to clarify the testing requirements for clothes washers that do not have all of the temperature combinations available in the normal cycle.

II. Discussion

The Department published a proposed rule to amend the clothes washer test procedure to address the Whirlpool clothes washer ''lockout'' issue. 58 FR 67710 (December 22, 1993) (hereafter referred to as the December 1993 Proposed Rule). A public hearing was held on February 24, 1994.

The Department received eight written comments in response to the proposed rule and received testimony from four persons at the public hearing. Written comment or testimony was provided by the American Council for an Energy-Efficient Economy (ACEEE), Frigidaire Company (Frigidaire), General Electric Appliances (GEA), Maytag Corporation (Maytag), Natural Resources Defense Council (NRDC), the

Oregon Department of Energy (ODOE), Speed Queen Company (Speed Queen), and Whirlpool.

(A) Proposed Test Procedure Amendment Issues

1. Temperature Selection Lockout. The Department proposed to test a clothes washer with a warm rinse ''lockout'' feature by prorating the hot water consumption between the temperature combination setting in the normal cycle and the corresponding temperature combination in the cycle with the greatest hot water consumption, for each temperature combination selection locked out of the normal cycle. The unknown factor in the calculation is the frequency with which users will choose the normal versus other cycles when a warm rinse is selected, that is, the proration value. As stated in the December 1993 Proposed Rule, clothes washers which offer the warm rinse lockout design feature had not been distributed in commerce and, therefore, no data regarding the effect of this feature on consumer selection were available.

Whirlpool asserted that consumer usage of the normal cycle would not change because of the lockout feature, and that, based on Proctor and Gamble's (P&G) historical consumer usage data on the use of the normal cycle versus other cycles, it was appropriate to assume that users would use the normal cycle 75 percent of the time in spite of the warm rinse lock out. Because of confidentiality concerns raised by Whirlpool, the Department did not consult with other manufacturers or industry experts on this issue. Based on Whirlpool's argument, DOE proposed a proration value at 75 percent, that is, users would override the normal cycle ''lockout'' only 25 percent of the time. The Department stated that the proposed proration was subject to revision as data becomes available to reflect actual consumer usage of machines with the lockout feature.

ACEEE [1] was ''troubled'' by use of the 75/25 apportionment, because it was not based on empirical measurements on how consumers would actually use washers. ''Therefore, we recommend that for the present time, a 100 percent weighing factor be assigned to the most energy-intensive cycle, until such time that empirical data is available on how these washers will actually be used.'' (ACEEE, No. 5 at 1).

Maytag stated, ''While Maytag's data indicates the 'normal cycle' use to be 67%, this percentage could be dramatically impacted by the manner in which a manufacturer designs and displays its 'normal cycle' for the product.'' (Maytag, No. 1 at 5). Maytag further stated, ''If you put a normal cycle on a washer that is not too appealing to the customer * * * it's [use is] going to drop down to some lower number.'' (Maytag, Testimony at 14).

Frigidaire stated, ''The 75/25 apportionment is inappropriate'' because it ''is based on products where all temperature options are available in the normal cycle'' and ''is not valid for a product with a 'new' feature.'' (Frigidaire, No. 2 at 3). Frigidaire further stated, ''I don't see how the proposed lockout saves any energy at all. * * * It will just require the consumer to use a different named cycle to get the results, or to get the water temperatures that they want to use.'' (Frigidaire, Testimony at 38).

GEA stated, ''We question what effect the temperature lockout feature will have on the 75%/25% cycle usage assumptions which justify the usage factors found in the calculation.'' (GEA, No. 3 at 6). Speed Queen stated, ''Consumers will quickly modify their usage pattern by switching to select the cycle most nearly approximating a 'normal' cycle to obtain the hot wash/warm rinse selection.'' (Speed Queen, No. 8 at 2).

Frigidaire also produced an estimate of the impact of the proposed rule. Frigidaire stated that the proposed test procedure would underestimate energy consumption by 24.9 percent and 31.4 percent for its five-temperature and four-temperature machines, respectively, as compared to clothes washers without warm rinse lockout. (Frigidaire, No. 2 at 7).

Whirlpool's comment is the only one that supported the proposed apportionment. (Whirlpool, No. 4 at 5 and No. 9 at 6). Whirlpool believes that the 75 percent value for use of the normal cycle has been consistent over many surveys.[2] It also believes the type of cycle to be used is chosen first, then the temperature selection is made. However, Whirlpool acknowledged that it did not have machines in the field to develop data concerning the validity of the proposal. (Whirlpool, Testimony at 25). Whirlpool offered to conduct a market study to evaluate consumer use of the product with and without the warm rinse lockout. (Whirlpool, No. 9 at 6).

Based upon review of the comments, the Department is inclined to agree with the majority of commenters that users seeking a warm rinse will shift to a cycle other than the normal cycle to get the desired temperature combination more often than 25 percent of the time. The Department has concluded therefore that use of the 75 percent weighting for use of the normal cycle is inappropriate. Whirlpool's assumption regarding consumer behavior, i.e., that the use of the normal cycle would not be affected by the presence of a warm rinse lockout, is not supported by any empirical data [3] or by any other major clothes washer manufacturer. Consumers will most likely alter their cycle usage patterns if they desire a particular temperature selection.

The Department nonetheless believes that a warm rinse lockout on the normal cycle will result in some reduction in hot water usage because a small percentage of consumers will use the normal cycle with the locked out warm rinse feature, rather than adjusting the controls to another cycle in order to get a warm rinse. Thus, the Department is proposing an amendment to the clothes washer test procedure with a credit of 20 percent for the temperature selection lockout design feature. That is, instead of a 75/25 percent split between the normal cycle and the most energy intensive cycle for locked out temperature selections as proposed in the December 1993 Proposed Rule, DOE is proposing a 20/80 percent split in today's Notice.

The Department remains interested in receiving statistically significant consumer usage data for clothes washers with locked out temperature selections in the normal cycle. The Department expects to receive consumer usage data from Whirlpool. The Department welcomes any other interested party to submit consumer usage data. Moreover, DOE will make available for review any data submitted to the Department in response to today's Notice.

Although the lockout feature's energy saving value is subject to question, the Department encourages the introduction of control features for appliances that can be fully demonstrated to save energy.

2. Lockout Features other than Temperature Selection. The comments expressed a concern that other features or selections could be locked out.

[1] Comments on the proposed rule have been assigned docket numbers and have been numbered consecutively. Statements that were presented at the February 24, 1994, public hearing are identified as Testimony.

[2] Proctor and Gamble survey data from numerous years was referenced in Whirlpool's submission. However, the survey data was not based on usage of clothes washers with a lockout feature.

[3] The P&G data concerning choices among cycles were not obtained under conditions where the lockout feature was present.

Frigidaire, Speed Queen, and Maytag indicated that a hot wash or a maximum water level could also be locked out. (Frigidaire, Testimony at 35; Speed Queen, No. 8 at 1; Maytag, No. 1 at 5).

Today's proposed rule addresses all possible temperature selection lockouts. Possible lockouts relating to wash time and maximum fill level were not part of the December 1993 Proposed Rule and are not addressed in today's Notice. The commenters' concerns appear to be unfounded under the existing test procedure. The requirement for wash time is specified as a basic test condition (Section 2.10), and any testing conducted with less time than 9.75 minutes of agitation time would not comply with the requirements of the existing regulations. The requirement for maximum fill is specified prior to the selection of the wash cycle and refers to the maximum fill of the clothes washer. Moreover, DOE is not aware of any products currently employing such lockout designs. Such designs, should they emerge, could be addressed in a separate rulemaking.

3. Energy Test Cycle. Several commenters raised questions about the Department maintaining the requirement for testing in the ''normal'' cycle. Maytag, Speed Queen, and GEA proposed the use of an energy test cycle which would include elements such as minimum wash time, all wash/rinse temperature combinations, maximum water fill, and maximum spin speed. Maytag suggested specific changes to the test procedure for its proposed test cycle. (Maytag, No. 6 at 1). Speed Queen proposed that a test cycle be adopted with requirements very similar to Maytag's proposal. (Speed Queen, No. 8 at 1). GEA supported the Maytag proposal of a test cycle if the Department continued with the amendment. (GEA, No. 12 at 4). The ODOE supported the Maytag suggestion of a test cycle. (ODOE, No. 11 at 1). The ACEEE generally supported the Maytag proposal but believes it should be done in a subsequent rulemaking. (ACEEE, No. 5 at 2).

The Department does not believe it would be appropriate in this rulemaking to adopt an alternate test cycle. Furthermore, the Department does not have any assessment as to how an alternate test cycle would affect existing models and the potential development of new models. The Department may consider adopting an alternate test cycle in the future.

4. Ambiguity in Test Procedure. The Department received comments indicating that the test procedure proposed in the December 1993 Proposed Rule was ambiguous and complicated. Frigidaire indicated that the proposed test procedure was unnecessarily complicated and adds test burden and ambiguities with room for creative interpretation. (Frigidaire, No. 2 at 8 and Testimony at 34).

The Department has clarified the proposed amendment to the test procedure so that there is no change to any testing requirements for clothes washers that do not incorporate temperature selection lockouts. The proposed amendment has been clarified to reference specifically the sections that are inapplicable to clothes washers without temperature selection lockouts (see Section 3.2). Additionally, the definition of the ''non-normal cycle'' was modified to specifically exclude any manually selected pre-wash, pre-soak, and extra-rinse cycles.

5. Classes. Frigidaire recommends having a separate class and minimum energy standard for clothes washers with lockout. (Frigidaire, Testimony at 31). NRDC opposed the addition of a separate class and minimum energy standard for clothes washers with lockout. (NRDC, No. 10 at 2). The Department believes that a separate class and standard for products with lockout features is not justified. The primary reason is that clothes washers with temperature selection lockouts do not provide any added utility to the consumer and, therefore, do not warrant a separate class.

6. Effective Date of Amended Test Procedure. Commenters criticized the Department's proposal to allow one year of lead time from the date of publication of the final rule to the date the test procedure amendment becomes effective. Comments opposing a one-year lead time include Maytag (Maytag, No. 1 at 4), ACEEE (ACEEE, No. 5 at 1), Speed Queen (Speed Queen, No. 8 at 2), NRDC (NRDC, No. 10 at 3), and ODOE (ODOE, No. 11 at 2). All of these commenters believe that a 180-day lead time is sufficient. Whirlpool agreed with the Department's original proposal of one year lead time. (Whirlpool, No. 9 at 6).

The Department agrees with the majority of commenters that 180 days is reasonable. Coupled with the advance notice of a likely change in the test procedure provided by this Notice, an effective date 180 days following publication of the final rule should provide ample time for manufacturers to make any necessary adjustments.

7. Impact on Existing Efficiency Standard. To the Department's knowledge, Whirlpool is the only manufacturer of clothes washers that is actively considering use of a lockout feature, and is thus the only manufacturer directly affected by today's proposed rule. The Department has determined that the proposed amendment to the test procedure will not significantly alter measured energy use or energy efficiency, and thus no change in the energy efficiency standard would be required under 42 U.S.C. 6293(e)(2).

(B) Interpretation of Test Procedures

The Department received numerous comments concerning the Department's procedures for providing informal interpretations of test procedures to manufacturers, such as the one provided to Whirlpool concerning the ''lockout'' issue.

GEA called for the Department to provide notice and an opportunity for comment before issuing an interpretation. (GEA, No. 3 at 3–4). Maytag strongly urged the Department to adopt internal procedures designed to provide appropriate notice to all parties potentially affected by a request for an informal interpretative ruling. (Maytag, No. 1 at 3). Speed Queen said a Petition for Waiver was the proper vehicle necessary to institute a test procedure change in this matter. (Speed Queen, No. 8 at 2). Whirlpool supported the Department's process of interpretation. (Whirlpool, No. 9 at 2–3).

On April 8, 1994, DOE met with representatives of trade associations and manufacturers to discuss procedures to be implemented with regard to future requests concerning interpretations of DOE regulations. Having considered the views of various interested parties, DOE has opened and will maintain a file in its headquarters' Freedom of Information Reading Room in which DOE will make available any written request for an informal, non-binding interpretative ruling and any written informal rulings issued by DOE. These materials will be placed in the DOE Freedom of Information Reading Room under the heading ''Consumer Product Informal Interpretations, Docket No. EE–OBT–INTERPS.'' Interested persons may examine and copy the file periodically.

The Department does not propose to amend the existing procedures for obtaining formal Interpretations in today's notice. The procedures for formal Interpretations are set out in 10 CFR §§ 205.80–205.86.

III. Regulatory Review

The December 1993 Proposed Rule set forth determinations with regards to: Environmental Review, Regulatory Planning and Review, Regulatory Flexibility Act, and Federalism Review. The determinations made under each of

these topics in the December 1993 Proposed Rule remain valid.

A. ''Takings'' Assessment Review

It has been determined pursuant to Executive Order 12630 (52 FR 8859, March 18, 1988) that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

B. Paperwork Reduction Act Review

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

IV. Public Comment

Interested persons are invited to participate in this rulemaking by submitting data, comments or information with respect to the proposed test procedure amendment. Public comment has already been received on many elements of this proposal in response to the December 1993 Proposed Rule, so the Department is particularly interested in comments on the key changes from the December 1993 Proposed Rule—the 20/80 proration for use of the normal cycle with a temperature lockout and the effective date 180 days after publication of the final rule.

Interested persons are invited to submit statistically significant usage data or information on the usage behavior of consumers with clothes washers that have temperature selections locked out of the normal cycle. Such data or information shall be sent to the address indicated at the beginning of the notice. Comments with regard to the proposed amendment or comments on any submitted consumer usage data, which will be available in the Department's Freedom of Information Room, shall also be sent to the address indicated at the beginning of this notice.

Data and comments should be identified both on the envelope and on the documents as ''Amendment of the Test Procedure for Clothes Washers, Docket No. EE–RM–93–701.'' Ten (10) copies are requested to be submitted. If possible, the Department would appreciate an electronic copy of the comments on a 3.5'' diskette. The Department is currently using WordPerfect™ 5.1. All submittals received by the dates specified at the beginning of this notice will be considered by the Department of Energy before final action is taken on the Proposed Rule.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and nine copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make a determination with regard to the confidential status of the information and treat it according to its determination.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, May 5, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

Appendix J [Amended]

2. In appendix J to subpart B of part 430, paragraphs 1.10 through 1.18 are redesignated as paragraphs 1.13 through 1.21, paragraph 1.9 is redesignated as paragraph 1.10 and new paragraphs 1.9, 1.11 and 1.12 are added to read as follows:

1. Definitions

* * * * *

1.9 ''Lock out'' means to make unavailable at least one wash/rinse water temperature combination in the normal cycle that is available in another cycle on the machine.

* * * * *

1.11 ''Most energy intensive cycle'' means a cycle other than the normal cycle that uses the most energy when tested with the required wash/rinse temperature combinations.

1.12 ''Non-normal cycle'' means a cycle other than the normal cycle, excluding any manually selected pre-wash, pre-soak, or extra rinse.

* * * * *

3. Paragraph 3.2 of appendix J to subpart B of part 430 is revised to read as follows:

3. Test Measurements

* * * * *

3.2 Test cycle. Establish the testing conditions set forth in section 2 of this appendix. For clothes washers that do not lock out any wash/rinse water temperature combination in the normal cycle, skip section 3.2.5. For automatic clothes washers that lock out certain wash/rinse temperature combinations in the normal cycle, perform all tests in section 3.2 of this appendix.

* * * * *

4. In appendix J to subpart B of part 430, add new paragraphs 3.2.5 through 3.2.5.5 to read as follows:

3. Test Measurements

* * * * *

3.2.5 Hot water energy consumption testing for clothes washers that lock out any wash/rinse temperature combinations in the normal cycle.

3.2.5.1 For clothes washers that lock out certain wash/rinse temperature combinations, perform additional tests on non-normal cycles. Set the cycle selector to a non-normal cycle. Set the water level selector at maximum fill and insert the appropriate test load, if applicable. Activate the cycle of the clothes washer and also any suds-saver switch. Set the wash/rinse temperature selector to the hottest temperature combination setting that is locked out in the normal cycle and repeat 3.2.2.3, 3.2.2.4, and 3.2.2.5.

3.2.5.2 Repeat 3.2.5.1 under the same temperature combination setting for all other untested non-normal cycles on the machine.

3.2.5.3 Total the measured hot water consumption of wash, deep rinse, and spray rinse of each non-normal cycle tested in 3.2.5.1 and 3.2.5.2 and compare. The cycle that has the highest hot water consumption shall be the most energy intensive cycle for that particular wash/rinse temperature combination setting.

3.2.5.4 Repeat 3.2.5.1 through 3.2.5.2 for all other wash/rinse temperature combination selections that are locked out in the normal cycle.

3.2.5.5 Set the water level selector at minimum fill and insert the appropriate test load, if applicable. Activate the cycle of the clothes washer and also any suds-saver switch. Repeat tests as described in 3.2.5.1 through 3.2.5.4, except that minimum fill tests are required only for the most energy intensive cycles as determined during the maximum fill tests.

* * * * *

5. In appendix J to subpart B of part 430, paragraph 4.1 is revised to read as follows:

4. Calculation of Derived Results from Test Measurements

4.1 Per-cycle temperature-weighted hot water consumption for maximum and minimum water fill levels. Calculate the per-cycle temperature-weighted hot water consumption for the maximum water fill level, V_{max}, expressed in gallons per cycle and defined as:

$$V_{max} = X_1 \sum_{i=1}^{n} [(V_i \times L) \times TUF_i] + X_2 [TUF_w \times S_H]$$

where:

V_i=Reported hot water consumption in gallons per-cycle at maximum fill for each wash/rinse temperature selection, as recorded in 3.3.2. (For clothes washers that lock out certain wash/rinse temperature combinations, there will be ''V_i's'' for wash/rinse temperature combination settings available in the normal cycle and ''V_i's'' for wash/rinse temperature combination settings in the most energy intensive cycles.)

L=Lock out factor to be applied to the reported hot water consumption.

L=1, used for the wash/rinse temperature combination settings that do not lock out temperature selections in the normal cycle.

L=0.20, used for the locked out wash/rinse temperature combination settings of the normal cycle. (This is used only for clothes washers that lock out one or more wash/rinse temperature selections in the normal cycle.)

L=0.80, used for the locked out wash/rinse temperature combination settings of the most energy intensive cycles. (This is used only for clothes washers that lock out one or more wash/rinse temperatures selections in the normal cycle.)

TUF_i=Applicable temperature use factor corresponding to wash/rinse temperature selection as shown in 5 or 6.

n=For clothes washers that do not lock out any wash/rinse temperature combinations in the normal cycle, n=the number of wash/rinse temperature combination settings available to the user. For clothes washers that lock out one or more temperature selections in the normal cycle, n=the number of wash/rinse temperature combination settings on the washers plus the number of wash/rinse temperature combination settings that are locked out in the normal cycle.

TUF_w=Temperature use factor for warm wash setting.

For clothes washers equipped with suds-saver feature:

X_1=Frequency of use without suds-saver feature=.86.

X_2=Frequency of use with suds-saver feature=.14.

For clothes washers not equipped with suds-saver feature:

X_1=1.0

X_2=0.0

S_H=Fresh make-up water measured during suds-return cycle at maximum water fill level.

Calculate the per-cycle temperature-weighted hot water consumption for the minimum water fill level, V_{min}, expressed in gallons per cycle and defined as:

$$V_{min} = X_1 \sum_{j=1}^{n} [(V_j \times L) \times TUF_j] + X_2 [TUF_w \times S_L]$$

where:

V_j=Reported hot water consumption in gallons per cycle at minimum fill for each wash/rinse temperature selection, as recorded in 3.3.3. (For clothes washers that lock out certain wash/rinse temperature combinations, there will be ''V_j's'' for wash/rinse temperature combination settings available in the normal cycle and ''V_j's'' for wash/rinse temperature combination settings in the most energy intensive cycle.)

L=As defined above.

TUF_j=Applicable temperature factor corresponding to wash/rinse temperature selection as shown in 5 or 6.

S_L=Fresh make-up water measured during suds-return cycle at minimum water fill level.

n=As defined above.

TUF_w=As defined above.

X_1=As defined above.

X_2=As defined above.

* * * * *

6. The headings in paragraphs 5.1, 5.2, and 5.3 of appendix J to subpart B of part 430 are amended by removing the expressions (n=5), (n=4), and (n=3), respectively.

[FR Doc. 95–12622 Filed 5–23–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–140–AD]

Airworthiness Directives; Boeing Model 747–400, 757, and 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Boeing Model 747–400, 757, and 767 series airplanes. This proposal would require a revision to the Airplane Flight Manual that would advise flight crews to monitor the engine indication and crew alerting system (EICAS) for ''status'' level messages pertaining to impending engine fuel filter bypass. This proposal also would require the installation of upgraded EICAS computers that provide ''advisory'' level messages to indicate such bypass conditions. This proposal is prompted by a finding that EICAS computers currently installed on these airplanes do not provide an appropriate indication to the flight crew of an impending engine fuel filter bypass condition. The actions specified by the proposed AD are intended to ensure that the flight crew is appropriately aware of conditions involving a severely contaminated airplane fuel system and the associated increased potential for engine power loss.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–140–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Duven, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2688; 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–140–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–140–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA recently has learned that appropriate indication to the flight crew of an impending engine fuel filter bypass condition is not provided on Boeing Models 747–400 and 757 series airplanes, and on Model 767 series airplanes powered by General Electric CF6–80A and CF6–80C2 engines, Pratt & Whitney PW 4000 engines, and Rolls-Royce RB211–524 engines. Such indication to the flight crew is required by part 25 of the Federal Aviation Regulations (14 CFR part 25), which establishes the certification requirements for all transport category airplanes, including the Models 747–400, 757, and 767.

Service experience has demonstrated that severe fuel contamination can lead to fuel filter bypass, engine power loss, engine flameout, and consequent airplane diversions. Fuel contaminants have been known to adversely affect entire fuel systems on airplanes and, therefore, pose a threat of complete loss of power on all engines. Clear indication to the flight crew of an impending fuel filter bypass condition is necessary in order to ensure that the flight crew is warned promptly of conditions that could lead to a loss of power from one or more engines.

The engine indication and crew alerting system (EICAS) computers installed on Model 747–400, 757, and 767 series airplanes use a multi-level message system to provide indications of various conditions to the flight crew. The levels of messages, in increasing order of importance to the flight crew, are indicated as ''status,'' ''advisory,'' ''caution,'' and ''warning.'' In general, ''status'' messages are used to ensure an acceptable airplane condition prior to dispatch of the airplane. A ''status'' level message on the EICAS computer is not considered to be an item that flight crews need to be aware of during flight, or an item that would have any effect on the flight planning considerations made by the flight crew.

The EICAS computers currently installed on all Model 747–400 and 757 series airplanes, and on certain Model 767 series airplanes, use a ''status'' level message to indicate impending engine fuel filter bypass conditions. The FAA considers that this use of a ''status'' level message to indicate these conditions is an unsafe condition, since such messages do not provide information to the flight crew at an appropriate awareness level. Using a ''status'' level message to indicate an impending engine fuel filter bypass condition could result in the flight crew being unaware of a severely contaminated airplane fuel system and the associated increased potential for engine power loss. This condition, if not corrected, could result in the airplane landing with reduced engine power, or the total loss of engine power before the airplane is able to reach a suitable landing site.

It should be noted that the addressed unsafe condition pertains only to situations involving gross fuel contaminants. Such contaminants exceed the particulate size or concentration capabilities of what the engine fuel filters are certified to handle. Additionally, the type of gross fuel contaminants that are of concern do not include ice, which can be eliminated by fuel heating. Contamination of airplane fuel systems has occurred in the past and will likely occur in the future, despite the many industry standards intended to maintain cleanliness of the airplane fuel supply. Examples of such contamination found in service include microbial growth, sealant, lint, metal particles, fuel tank cleaning chemicals, and liquid fertilizer. There also have been data indicating the existence of other contaminants in the fuel system that, although unidentified, were severe enough to cause engine power loss.

Since an unsafe condition has been identified that is likely to exist on other products of this same type design, the proposed AD would require, initially, a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) of affected airplanes that would require the flight crew to respond to EICAS ''status'' level messages that indicate impending engine fuel filter bypass conditions. Information addressing the presence of multiple engine fuel filter bypass messages would be contained in this AFM revision.

This proposed AD also would require the installation, on certain airplanes, of upgraded EICAS computers that display an ''advisory'' level message to the flight crew to indicate that an impending engine fuel filter bypass condition exists for each engine. Following installation of the upgraded EICAS computers, the AFM information would be required to be revised to be consistent with the displayed information.

The upgraded EICAS installation would not be required for Model 767 airplanes powered by Pratt & Whitney JT9D engines, since those airplanes are currently equipped with EICAS computers that provide the level of indications that are otherwise proposed in this notice. However, the AFM for those airplanes does not contain appropriate information addressing these messages. Therefore, this proposed AD would require revising the Limitations Section of that AFM to include information addressing the situation where multiple advisory level messages are present, indicating that multiple engine fuel filters are in an impending bypass condition.

There are approximately 1,378 Model 747–400, 757, and 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 588 airplanes of U.S. registry would be affected by this proposed AD.

The proposed initial revision to the AFM would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of this proposed action on U.S. operators is estimated to be $35,280, or $60 per airplane.

The FAA currently has no specific cost estimates associated with the proposed installation of upgraded EICAS computers, since the upgrade has not been developed yet. The FAA has been advised, however, that the manufacturer is planning other changes to these EICAS computers that are

necessary to provide for global positioning system (GPS) navigation capability and other enhanced features. The proposed compliance time of four years for the EICAS installation requirements of this AD will allow a portion of the EICAS computers installed on airplanes affected by this AD to have the required EICAS message upgrade made coincidentally with those other planned EICAS changes, thereby reducing the costs and scheduling impact of such changes on operators. As indicated earlier in this preamble, the FAA specifically invites the submission of comments and other data regarding the economic aspect of this proposal.

The proposed revision to the AFM that would be required subsequent to the installation of the upgraded EICAS computers would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of this proposed action on U.S. operators is estimated to be $35,280, or $60 per airplane.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 94–NM–140–AD.

Applicability: All Model 747–400, 757, and 767 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is appropriately aware of conditions involving a severely contaminated airplane fuel system and the associated increased potential for engine power loss, accomplish the following:

(a) For all Model 747–400 series airplanes: Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

''Respond to the EICAS STATUS CUE by checking for the following status level messages(s):

ENG 1 FUEL FILT
ENG 2 FUEL FILT
ENG 3 FUEL FILT
ENG 4 FUEL FILT

If more than one of these impending fuel filter bypass messages is displayed, airplane fuel system contamination may be present, which can result in erratic engine operation and engine flameout.''

(b) For all Model 757 series airplanes, and Model 767 series airplanes powered by General Electric CF6–80A and CF6–80C2 engines, Pratt & Whitney PW 4000 engines, and Rolls-Royce RB211–524 engines: Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

''Respond to the EICAS STATUS CUE by checking for the following status level messages(s):

R ENG FUEL FILT
L ENG FUEL FILT

If more than one of these impending fuel filter bypass messages is displayed, airplane fuel system contamination may be present, which can result in erratic engine operation and engine flameout.''

(c) For Model 767 series airplanes powered by Pratt & Whitney JT9D engines: Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

''If both of the following EICAS advisory level messages for impending fuel filter bypass are displayed, and engine fuel icing is not suspected (based on the fuel temperature being too high or because engine fuel heat has been selected ''on''), airplane fuel system contamination may be present, which can result in erratic engine operation and engine flameout:

R ENG FUEL FILT
L ENG FUEL FILT''

(d) For all Model 747–400 series airplanes; all Model 757 series airplanes; and Model 767 series airplanes powered by General Electric CF6–80A and CF6–80C2 engines, Pratt & Whitney PW 4000 engines, and Rolls-Royce RB211–524 engines: Accomplish the requirements of paragraph (d)(1) and (d)(2) of this AD:

(1) Within 4 years after the effective date of this AD, install an upgraded engine indication and crew alerting system (EICAS) computer that will provide ''advisory'' level messages to the flight crew to indicate an impending engine fuel filter bypass condition for each engine. The installation shall be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Coincidental with the installation required by paragraph (d)(1) of this AD, remove the AFM revisions required by paragraphs (a) and (b) of this AD, and revise the Limitations Section of the AFM to advise the flight crew that impending engine fuel filter bypass advisory level messages for multiple engines may indicate contamination of the airplane fuel system, which can result in erratic engine operation and engine flameout. The revision to the Limitations Section must be approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate.

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

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

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on May 18, 1995. Original Signed By:

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12710 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–16–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9 and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–9 and C–9 (military) series airplanes. This proposal would require replacement, inspection, and modification of the attach fittings of the main landing gear (MLG). This proposal is prompted by reports of severe structural damage and rupture of the integral fuel tank due to overload of the MLG caused by adverse landing conditions. The actions specified by the proposed AD are intended to minimize the possibility of primary structural damage and rupture of the integral fuel tank due to overload of the MLG; these conditions could lead to fuel spillage and a resultant fire.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–16–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 McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: David Y. J. Hsu, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5323; fax (310) 627–5210.

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–16–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–16–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Since October 28, 1971, the FAA has received 11 reports of severe structural damage and rupture of the wing integral fuel tank on McDonnell Douglas Model DC–9 series airplanes. These occurrences resulted from unpredictable overload of the main landing gear (MLG) caused by adverse landing conditions. Model DC–9 series airplanes having certain MLG fittings attached to the airframe in a particular manner can sustain damage of the primary structure and rupture of the integral fuel tank during certain abnormal landing conditions. Such conditions include overrunning the runway, going off the runway, skidding off the runway, taxiing into holes on a runway under repair, landing off the runway, or a hard landing. Structural damage of this type could compromise the integrity of the integral fuel tank. Should the integral fuel tank subsequently rupture, it could result in fuel spillage and a resultant fire.

The FAA has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 57–207, dated May 24, 1994, which references two other McDonnell Douglas DC–9 service bulletins that contain procedures which, when accomplished, will improve the capability of the MLG to break away during abnormal landing operations. These service bulletins contain procedures for replacement, inspection, and modification of the attachments of the MLG attach fittings, as follows:

1. McDonnell Douglas DC–9 Service Bulletin 57–125, Revision 5, dated November 5, 1990, describes procedures for replacement of MLG attach fittings fabricated from 7079–T6 with fittings fabricated from 7075–T73 aluminum alloy forgings. These procedures are specified in the service bulletin as Option 1.

2. McDonnell Douglas DC–9 Service Bulletin 57–148, Revision 5, dated November 23, 1992. This service bulletin describes procedures for the following:

—Enlarging the counterbores in the MLG attach fitting at the inboard and outboard lower attachment holes, and performing a high frequency eddy current inspection of the counterbore areas to detect cracks;
—Shotpeening selected areas of the MLG attach fitting;
—Replacing the lower attachment bolts of the inboard and outboard MLG attach fittings with bolts having a different part number; and
—Replacing the fasteners through the lower flange of the MLG attach fitting with interference fit fasteners.

These procedures are identified in the service bulletin as Phase 2.

Accomplishment of the actions described above will minimize the possibility of primary structural damage, fuel tank rupture, and possible fuel spillage due to unpredictable overload of the MLG caused by abnormal landing operations.

Accomplishment of the procedures described in Revision 4 of McDonnell Douglas DC–9 Service Bulletin 57–125 is required currently by AD 90–18–03, amendment 39–6701 (55 FR 34704, August 24, 1990) to address an unsafe condition identified as cracking due to stress corrosion and subsequent degradation of the structural capability of the affected airplanes. Revisions 3, 4, and 5 of that service bulletin also specify procedures which, when accomplished, will improve the

capability of the MLG to break away during abnormal landing operations. Therefore, the FAA has determined that the unsafe condition related to structural damage of the integral fuel tank, as addressed by this proposed AD, also has been addressed adequately for those airplanes on which Option 1 of Revision 3, 4, or 5 of the service bulletin has been accomplished. However, the original version through Revision 2 of McDonnell Douglas DC–9 Service Bulletin 57–125 do not contain procedures that will improve the breakaway capability of the MLG. The FAA has previously approved accomplishment of Option 1 in accordance with the original version through Revision 2 of the service bulletin, in lieu of Revision 4, as an acceptable alternative method of compliance with AD 90–18–03. Therefore, for airplanes on which the procedures described in the original version, Revision 1, or Revision 2 of McDonnell Douglas DC–9 Service Bulletin 57–125 have been accomplished, the FAA finds that Phase 2, as specified in McDonnell Douglas DC–9 Service Bulletin 57–148, also must be accomplished to ensure that the unsafe condition specified in this proposed AD is corrected.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require one of the actions specified below, as applicable. The actions would be required to be accomplished in accordance with the service bulletins described previously.

1. Replacement of the attach fittings of both the right and left MLG's would be required for airplanes on which Option 1 (or production equivalent) of McDonnell Douglas DC–9 Service Bulletin 57–125 (original version through Revision 5) has not been accomplished.

2. Inspection and modification of the attach fittings of both the right and left MLG's would be required for airplanes on which Option 1 of McDonnell Douglas DC–9 Service Bulletin 57–125 (original version through Revision 2) has been accomplished, but on which Phase 2 of McDonnell Douglas DC–9 Service Bulletin 57–148 (original version through Revision 5) has not been accomplished.

There are approximately 906 Model DC–9 and C–9 (military) series airplanes of the affected design in the worldwide fleet. The FAA estimates that 549 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that the replacement specified as Option 1 in McDonnell Douglas DC–9 Service Bulletin 57–125 has been accomplished on all 549 airplanes of U.S. registry that would be affected by this proposed AD. (As discussed previously, accomplishment of Option 1 was required by AD 90–18–03.) Accordingly, the FAA finds that the proposed replacement required by this AD would impose no additional economic burden on any U.S. operator.

However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 425 work hours to accomplish Option 1, at an average labor charge of $60 per work hour. The cost of required parts would be $58,853 per airplane. Based on these figures, the total cost impact for accomplishing Option 1 would be $84,353 per airplane.

The FAA estimates that all 549 airplanes of U.S. registry would be required to accomplish the inspection and modification specified as Phase 2 in McDonnell Douglas DC–9 Service Bulletin 57–148. It would take approximately 36 work hours per airplane to accomplish Phase 2, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,338 per airplane. Based on these figures, the total cost impact on U.S. operators for accomplishing Phase 2 is estimated to be $3,567,402, or $6,498 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished this proposed requirement (Phase 2) of this AD action, and that no operator would accomplish that action in the future if this AD were not adopted.

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 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:

McDonnell Douglas: Docket 95–NM–16–AD.

Applicability: All Model DC–9 and C–9 (military) 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 (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 minimize the possibility of primary structural damage and rupture of the integral fuel tank due to overload of the main landing gear (MLG) caused by adverse landing conditions, and subsequent fuel spillage and a resultant fire, accomplish the following:

(a) For airplanes on which Option 1 (or production equivalent) has not been accomplished as specified in McDonnell Douglas DC–9 Service Bulletin 57–125 (original issue through Revision 5): Within 12 months after the effective date of this AD, replace the attach fittings of both the right and left MLG's in accordance with Option 1 of the Accomplishment Instructions of McDonnell Douglas DC–9 Service Bulletins 57–125, Revision 5, dated November 5, 1990.

Note 2: Airplanes on which Option 1 has been accomplished as specified in any of the following revisions of McDonnell Douglas DC–9 Service Bulletin 57–125, are considered to be in compliance with this AD and no further action is required by this AD:

Service bulletin No.	Revision level	Date
57–125	Revision 3	October 28, 1982; or
	Revision 4	June 21, 1983; or
	Revision 5	November 5, 1990.

(b) For airplanes on which Option 1 has been accomplished as specified in McDonnell Douglas DC–9 Service Bulletin 57–125 (original version through Revision 2); but on which Phase 2 has not been accomplished as specified in McDonnell Douglas DC–9 Service Bulletin 57–148 (original version through Revision 5): Within 12 months after the effective date of this AD, inspect and modify the attach fittings of both the right and left MLG's in accordance with Phase 2 of McDonnell Douglas DC–9 Service Bulletin 57–148, Revision 5, dated November 23, 1992.

Note 3: Airplanes on which both Option 1 (or a production equivalent) has been accomplished as specified in any of the following revisions of McDonnell Douglas DC–9 Service Bulletin 57–125; and Phase 2 (or a production equivalent) has been accomplished as specified in any of the following revisions of McDonnell Douglas DC–9 Service Bulletin 57–148; are considered to be in compliance with this AD and no further action is required by this AD:

Service bulletin No.	Revision level	Date
57–125	(original)	January 26, 1979; or
	Revision 1	February 16, 1979; or
	Revision 2	August 24, 1979;
and 57–148	(original)	October 1, 1982; or
	Revision 1	June 8, 1983; or
	Revision 2	August 9, 1989; or
	Revision 3	September 11, 1990; or
	Revision 4	February 25, 1991; or
	Revision 5	November 23, 1992.

(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, Los Angeles 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, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles 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 18, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12712 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ANE–28]

Proposed Alternation Class D and Class E Airspace; Hartford, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the Class D and Class E airspace areas established in the vicinity of the Hartford-Brainard Airport, Hartford, CT. Those airspace areas also define controlled airspace to contain aircraft operating to and from the Rentschler Airport, a privately operated airport in East Hartford, CT. The owner of Rentschler Airport has recently closed the control tower. Therefore, this action is necessary to revise the Class D and Class E airspace in the vicinity of the Rentschler and Hartford-Brainard airports.

DATES: Comments must be received on or before June 23, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7530; fax (617) 238–7596.

The official docket may be examined in the Office of the Assistant Chief Counsel for the New England Region, ANE–7, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, ANE–530, at the first address shown above.

FOR FURTHER INFORMATION CONTACT: Joanne Botos, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regularly decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commentators wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comment to Airspace Docket No 95–ANE–28.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 12 New England Executive Park, Burlington, MA 02108–5299, both before and after the closing date for comments. A report summarizing each

substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Air Traffic Division, 12 New England Executive Park, Burlington, MA 02108–5299. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D and Class E airspace areas established in the vicinity of the Hartford-Brainard Airport, Hartford, CT. Those airspace areas also define controlled airspace to contain aircraft operating to and from the Rentschler Airport, a privately operated airport in East Hartford, CT. The owner of Rentschler Airport, United Technologies, Inc., has recently closed the control tower. Therefore, this action is necessary to revise the Class D and Class E airspace in the vicinity of the Rentschler and Hartford-Brainard airports. The FAA has reviewed the airspace needs of the Standard Instrument Approach Procedures (SIAP's) at Rentschler that will remain, and has included the controlled airspace necessary for those SIAP's in the proposed airspace descriptions. Class D and Class E airspace areas are published in FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. Class D airspace areas appear in paragraph 5000 of FAA Order 7400.9B, Class E areas extending upward from 700 feet or more about the surface of the earth appear in paragraph 6005. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposed to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963, Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 General

* * * * *

ANE CT D Hartford, CT [Revised]

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.6-mile radius of Hartford-Brainard Airport from the Hartford-Brainard Airport 158° bearing clockwise to the Hartford-Brainard Airport 052° bearing, and within a 6.0-mile radius of Hartford-Brainard Airport from the Hartford-Brainard Airport 052° bearing clockwise to the 158° bearing; excluding that airspace within the Windsor Locks, CT Class C airspace area. This Class D airspace is effective during the specific dates and times established in advance by a Notice of Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANE CT E5 Hartford, CT [Revised]

Hartford-Braindard Airport, Hartford, CT
(Lat. 41°44′10″ N, long. 72°39′00″ W)

That airspace extending upward from 700 feet above the surface within an 11.5-mile radius of Hartford-Brainard Airport; excluding that airspace within the Windsor Locks, CT and Chester, CT Class E airspace areas.

* * * * *

Issued in Burlington, Massachusetts, on May 17, 1995.

Eileen B. Seaman,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 95–12756 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–2]

Proposed Amendment to Class E Airspace; Scribner, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Scriber, NE. The development of a standard instrument approach procedure (SIAP) at Scribner State Airport, utilizing the new Scriber, NE Very High Frequency Omnidirectional Range (VOR) as a navigational aid, has made the proposal necessary. The intended effect of this proposal is to provide control airspace for aircraft executing the SIAP at Scribner, NE. This action will also change the airport status from VFR to IFR.

DATES: Comments must be received on or before July 3, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 95–ACE–2, 601 East 12th Street, Kansas City, MO 64106. The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Brenda Doney, ACE–530A, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ACE–2.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for Instrument Flight Rules (IFR) procedures at the Scribner State Airport. The additional airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts, thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ACE NE E5 Scribner, NE [New]

Scribner State Airport, NE
(Lat. 41°36′46″ N, long. 96°37′43″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Scribner State Airport.

* * * * *

Issued in Kansas City, MO, on May 3, 1995.

Herman J. Lyons, Jr.,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 95–12757 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–0023–95]

RIN 1545–AT49

Allocation and Apportionment of Research and Experimental Expenditures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document provides guidance concerning the allocation and apportionment of research and experimental expenditures for purposes of determining taxable income from sources within and without the United States. This document affects taxpayers that have income from United States and foreign sources and that have made expenditures for research and experimentation that the taxpayer deducts under section 174 of the Internal Revenue Code of 1986. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by August 22, 1995. Outlines of topics to be discussed at the public hearing scheduled for September 8, 1995, at 10 a.m. must be received by August 18, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (INTL–0023–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (INTL–0023–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Carl Cooper

at (202) 622–3840; concerning submissions, Michael Slaughter, (202) 622–8543 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This notice of proposed rulemaking does not contain collections of information and, therefore, it has not been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3504(h)).

Background and Explanation of Provisions

Section 1.861–8(e)(3) of the Income Tax Regulations provides rules regarding the allocation and apportionment of research and experimental expenditures for purposes of determining taxable income from sources within and without the United States.

This notice of proposed rulemaking proposes three changes to the existing regulations at § 1.861–8(e)(3).

First, allocation of research and experimental expenditures to three digit SIC code product categories of gross income would be permitted. Existing regulations require taxpayers to allocate research and experimental expenditures to two digit SIC code product categories. Use of three digit SIC code product categories would enable taxpayers to allocate research and experimental expenditures to narrower classes of gross income than the classes of gross income permitted by the existing regulations.

Second, the percentage of research and experimental expenditures that may be exclusively apportioned to United States source income under the sales method of apportionment under § 1.861–8(e)(3)(ii) would be increased from 30 percent to 50 percent. Thus, where an apportionment based upon geographic sources of income of a deduction for research and experimental expenses is necessary and the sales method of apportionment is elected, an amount equal to 50 percent of the deduction for research and experimental expenditures shall be apportioned exclusively to the statutory or residual grouping of gross income, as the case may be, arising from the geographic source where the research and experimental activities which account for more than 50 percent of the amount of the deduction were performed.

Third, use of the optional gross income methods of apportionment would constitute a binding election to use such methods in subsequent years. The election would not be revocable without the prior consent of the Commissioner.

These changes would apply to taxable years beginning after December 31, 1995. However, the taxpayer would have the option to apply the new rules, in their entirety, to taxable years beginning after December 31, 1994.

Examples (3) through *(8)* of § 1.861–8(g) are conformed to these changes. *Examples (9)* through *(16)* and *Example (23)* are removed and reserved.

The three changes are proposed in part on the basis of an economic study performed by the Treasury Department pursuant to Rev. Proc. 92–56, 1992–2 C.B. 409, which is being simultaneously published by Treasury. The Treasury study evaluates the factual relationships between taxpayer performed research and experimental expenses and income from foreign sources. The study reviewed evidence of foreign returns from research and experimental expenditures in the form of both royalties and the retained earnings and profits of controlled foreign corporations. Estimates of foreign returns attributable to research and experimental expenditures were translated into appropriate allocations and apportionments using two alternative methodologies. One methodology was based on estimated comparable domestic returns for research and experimental expenditures. The other methodology simulated the relationship expected between the current returns from research and experimental expenditures and the level of current research and experimental expenditures for taxpayers with ongoing research programs. The methodologies generated a range of allocations and apportionments to foreign income that were not inconsistent with the available evidence. The allocations and apportionments to foreign income which would result from adoption of these proposed regulations are within that range and are about 25 percent lower than the allocations and apportionments to foreign income which result under the current regulations.

In addition, the proposed regulations provide explicit rules for allocating and apportioning research and experimental expenses incurred by a partnership and for computing a partner's sales for purposes of apportioning research and experimental expenses under the sales method.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 8, 1995, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by August 22, 1995 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by August 18, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Carl Cooper, Office of the Associate Chief Counsel (International). However, other personnel from IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.861–8 is amended by:

1. Revising paragraph (e)(3).
2. Revising paragraph (g), *Examples (3)* through *(8).*
3. Removing and reserving paragraph (g), *Examples (9)* through *(16)* and *(23).*

The revisions read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(e) * * *

* * * * *

(3) *Research and experimental expenditures*—(i) *Allocation*—(A) *In general.* The methods of allocation and apportionment of research and experimental expenditures set forth in this paragraph (e)(3) recognize that research and experimentation is an inherently speculative activity, that findings may contribute unexpected benefits, and that the gross income derived from successful research and experimentation must bear the cost of unsuccessful research and experimentation. Expenditures for research and experimentation which a taxpayer deducts under section 174 ordinarily shall be considered deductions which are definitely related to all income reasonably connected with the relevant broad product category (or categories) of the taxpayer and therefore allocable to all items of gross income as a class (including income from sales, royalties, and dividends) related to such product category (or categories). For purposes of this allocation, the product category (or categories) which a taxpayer may be considered to have shall be determined in accordance with the provisions of paragraph (e)(3)(i)(B) of this section.

(B) *Determination of product categories.* Ordinarily, a taxpayer's research and experimental expenditures may be divided between the relevant product categories. Where research and experimentation is conducted with respect to more than one product category, the taxpayer may aggregate the categories for purposes of allocation and apportionment; however, the taxpayer may not subdivide the categories. Where research and experimentation is not clearly identified with any product category (or categories), it will be considered conducted with respect to all the taxpayer's product categories. A taxpayer shall determine the relevant product categories by reference to the three digit classification of the Standard Industrial Classification Manual (SIC code). A copy may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. The individual products included within each category are enumerated in Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual, 1987 (or later edition, as available). Once a taxpayer selects a product category for the first taxable year for which this paragraph (e)(3) is effective with respect to the taxpayer, it must continue to use that product category in following years, unless the taxpayer establishes to the satisfaction of the Commissioner that, due to changes in the relevant facts, a change in the product category is appropriate. For this purpose, a change in the taxpayer's selection of a product category shall include a change from a three digit SIC code category to a two digit SIC code category, a change from a two digit SIC code category to a three digit SIC code category, or any other aggregation, disaggregation or change of a previously selected SIC code category. The two digit SIC code category ''Wholesale trade'' is not applicable with respect to sales by the taxpayer of goods and services from any other of the taxpayer's product categories and is not applicable with respect to a domestic international sales corporation (DISC) or foreign sales corporation (FSC) for which the taxpayer is a related supplier of goods and services from any of the taxpayer's product categories. The two digit SIC code category ''Retail trade'' is not applicable with respect to sales by the taxpayer of goods and services from any other of the taxpayer's product categories, except Wholesale trade, and is not applicable with respect to a DISC or FSC for which the taxpayer is a related supplier of goods and services from any other of the taxpayer's product categories, except Wholesale trade.

(C) *Affiliated Group.* (*1*) Except as provided in paragraph (e)(3)(i)(C)(*2*) of this section, the allocation and apportionment required by this paragraph (e)(3) shall be determined as if all members of the affiliated group (as defined in § 1.861–14T(d)) were a single corporation. See § 1.861–14T.

(*2*) For purposes of the allocation and apportionment required by this paragraph (e)(3), sales and gross income from products produced in whole or in part in a possession by an electing corporation (within the meaning of section 936(h)(5)(E)), and dividends from an electing corporation, shall not be taken into account, except that this paragraph (e)(3)(i)(C)(*2*) shall not apply to sales of (and gross income and dividends attributable to sales of) products with respect to which an election under section 936(h)(5)(F) is not in effect.

(*3*) The research and experimental expenditures taken into account for purposes of this paragraph (e)(3) shall be reduced by the amount of such expenditures included in computing the cost-sharing amount (determined under section 936(h)(5)(C)(i)(I)).

(D) *Exception.* Where research and experimentation is undertaken solely to meet legal requirements imposed by a political entity with respect to improvement or marketing of specific products or processes, and the results cannot reasonably be expected to generate amounts of gross income (beyond de minimis amounts) outside a single geographic source, the deduction for such research and experimentation shall be considered definitely related and therefore allocable only to the grouping (or groupings) of gross income within that geographic source as a class (and apportioned, if necessary, between such groupings as set forth in paragraphs (e)(3)(ii)(B) and (iii) of this section). For example, where a taxpayer performs tests on a product in response to a requirement imposed by the U.S. Food and Drug Administration, and the test results cannot reasonably be expected to generate amounts of gross income (beyond de minimis amounts) outside the United States, the costs of testing shall be allocated solely to gross income from sources within the United States.

(ii) *Apportionment of research and experimentation—sales method*—(A) *Exclusive apportionment.* Where an apportionment based upon geographic sources of income of a deduction for research and experimentation is necessary (after applying the exception in paragraph (e)(3)(i)(D) of this section), an amount equal to fifty percent (50%) of such deduction for research and experimentation shall be apportioned exclusively to the statutory grouping of gross income or the residual grouping of gross income, as the case may be, arising from the geographic source where the research and experimental activities which account for more than fifty percent (50%) of the amount of such deduction were performed. If the fifty percent test of the preceding sentence is not met, then no part of the deduction shall be apportioned under this paragraph (e)(3)(ii)(A). This exclusive apportionment reflects the view that research and experimentation is often most valuable in the country where it is performed, for two reasons. First,

research and experimentation often benefits a broad product category, consisting of many individual products, all of which may be sold in the nearest market but only some of which may be sold in foreign markets. Second, research and experimentation often is utilized in the nearest market before it is used in other markets, and in such cases, has a lower value per unit of sales when used in foreign markets. The taxpayer may establish to the satisfaction of the Commissioner that, in its case, one or both of the conditions mentioned in the preceding sentences warrant a significantly greater percent than 50 percent (50%) because the research and experimentation is reasonably expected to have very limited or long delayed application outside the geographic source where it was performed. For purposes of establishing that only some products within the product category (or categories) are sold in foreign markets, the taxpayer shall compare the commercial production of individual products in domestic and foreign markets made by itself, by uncontrolled parties (as defined under paragraph (e)(3)(ii)(C) of this section) of products involving intangible property which was licensed or sold by the taxpayer, and by those controlled corporations (as defined under paragraph (e)(3)(ii)(D) of this section) which can reasonably be expected to benefit directly or indirectly from any of the taxpayer's research expense connected with the product category (or categories). The individual products compared for this purpose shall be limited, for nonmanufactured categories, solely to those enumerated in Executive Office of the President, Office of Management and Budget Standard Industrial Classification Manual, 1987 (or later edition, as available), and, for manufactured categories, solely to those enumerated at a 7-digit level in the U.S. Bureau of the Census, Census of Manufacturers: 1992, Numerical List of Manufactured Products, 1993 (or later edition, as available). Copies of both of these documents may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. For purposes of establishing the delayed application of research findings abroad, the taxpayer shall compare the commercial introduction of its own particular products and processes (not limited by those listed in the Standard Industrial Classification Manual or the Numerical List of Manufactured Products) in the United States and foreign markets, made by itself, by uncontrolled parties (as defined under paragraph (e)(3)(ii)(C) of this section) of products involving intangible property which was licensed or sold by the taxpayer, and by those controlled corporations (as defined under paragraph (e)(3)(ii)(D) of this section) which can reasonably be expected to benefit, directly or indirectly, from the taxpayer's research expense. For purposes of evaluating the delay in the application of research findings in foreign markets, the taxpayer shall use a safe haven discount rate of 10 percent per year of delay unless he is able to establish to the satisfaction of the Commissioner, by reference to the cost of money and the number of years during which economic benefit can be directly attributable to the results of the taxpayer's research, that another discount rate is more appropriate.

(B) *Remaining apportionment.* The amount equal to the remaining portion of such deduction for research and experimentation, not apportioned under paragraph (e)(3)(ii)(A) of this section, shall be apportioned between the statutory grouping (or among the statutory groupings) within the class of gross income and the residual grouping within such class in the same proportions that the amount of sales from the product category (or categories) which resulted in such gross income within the statutory grouping (or statutory groupings) and in the residual grouping bear, respectively, to the total amount of sales from the product category (or categories). For purposes of this paragraph (e)(3), amounts received from the lease of equipment during a taxable year shall be regarded as sales receipts for such taxable year. Amounts apportioned under this paragraph (e)(3) may exceed the amount of gross income related to the product category within the statutory grouping. In such case, the excess shall be applied against other gross income within the statutory grouping. See paragraph (d)(1) of this section for instances where the apportionment leads to an excess of deductions over gross income within the statutory grouping.

(C) *Sales of uncontrolled parties.* For purposes of the apportionment under paragraph (e)(3)(ii)(B) of this section, the sales from the product category (or categories) by each party uncontrolled by the taxpayer, of particular products involving intangible property which was licensed or sold by the taxpayer to such uncontrolled party shall be taken fully into account both for determining the taxpayer's apportionment and for determining the apportionment of any other member of a controlled group of corporations to which the taxpayer belongs if the uncontrolled party can reasonably be expected to benefit directly or indirectly (through any member of the controlled group of corporations to which the taxpayer belongs) from the research expense connected with the product category (or categories) of such other member. In the case of licensed products, if the amount of sales of such products is unknown (for example, where the licensed product is a component of a large machine), a reasonable estimate should be made. In the case of sales of intangible property, and in cases where a reasonable estimate of sales of licensed products cannot be made, the sales taken into account shall be an amount which is ten times the amount received or accrued for the intangible during the taxpayer's taxable year. For purposes of this paragraph (e)(3)(ii)(C), the term *uncontrolled party* means a party which is not a person with a relationship to the taxpayer (specified in section 267(b)), or is not a member of a controlled group of corporations to which the taxpayer belongs (within the meaning of section 993(a)(3) or section 927(d)(4)). An uncontrolled party can reasonably be expected to benefit from the research expense of a member of a controlled group of corporations to which the taxpayer belongs if such member can reasonably be expected to license, sell, or transfer intangible property to that uncontrolled party or transfer secret processes to that uncontrolled party, directly or indirectly, through a member of the controlled group of corporations to which the taxpayer belongs.

(D) *Sales of controlled parties.* For purposes of the apportionment under paragraph (e)(3)(ii)(B) of this section, the sales from the product category (or categories) of the taxpayer shall be taken fully into account and the sales from the product category (or categories) of a corporation controlled by the taxpayer shall be taken into account to the extent provided in this paragraph (e)(3)(ii)(D) for determining the taxpayer's apportionment, if such corporation can reasonably be expected to benefit directly or indirectly (through another member of the controlled group of corporations to which the taxpayer belongs) from the taxpayer's research expense connected with the product category (or categories). However, sales from the product category (or categories) between or among such controlled corporations or the taxpayer shall not be taken into account more than once; in such a situation, the amount sold by the selling corporation to the buying corporation shall be subtracted from the sales of the buying corporation. For

purposes of this paragraph (e)(3)(ii)(D), the term *a corporation controlled by the taxpayer* means any corporation other than an *uncontrolled party* as defined in paragraph (e)(3)(ii)(C) of this section. A corporation controlled by the taxpayer can reasonably be expected to benefit from the taxpayer's research expense if the taxpayer can be expected to license, sell, or transfer intangible property to that corporation or transfer secret processes to that corporation, either directly or indirectly through a member of the controlled group of corporations to which the taxpayer belongs. Past experience with research and experimentation shall be considered in determining reasonable expectations. However, if the corporation controlled by the taxpayer has entered into a bona fide cost-sharing arrangement, in accordance with the provisions of § 1.482–7, with the taxpayer for the purpose of developing intangible property, then that corporation shall not reasonably be expected to benefit from the taxpayer's share of the research expense. The sales from the product category (or categories) of a corporation controlled by the taxpayer taken into account shall be equal to the amount of sales that bear the same proportion to total sales of the controlled corporation as the taxpayer's direct or indirect ownership, as defined in section 1563, of the total combined voting power of all classes of stock entitled to vote of such corporation bears to the total outstanding combined voting power of all such classes of stock of such corporation.

(iii) *Apportionment of research and experimentation—gross income methods.* In lieu of apportioning the deduction for research and experimental expense under paragraph (e)(3)(ii) of this section, a taxpayer may make a binding election pursuant to paragraph (e)(3)(iii)(C) of this section to apportion such deduction, as prescribed in paragraph (e)(3)(iii)(A) or (B) of this section, between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping of gross income. These optional methods must be applied to the taxpayer's entire deduction for research and experimental expense remaining after applying the exception in paragraph (e)(3)(i)(D) of this section, and may not be applied on a product category basis. Thus, after the allocation of the taxpayer's entire deduction for research and experimental expense under paragraph (e)(3)(i) of this section (by attribution to SIC code categories), the taxpayer must then apportion as necessary the entire deduction as allocated by separate amounts to various product categories, using only the sales method under paragraph (e)(3)(ii) of this section or only the optional gross income methods under this paragraph (e)(3)(iii). The taxpayer may not use the sales method for a portion of the deduction and optional gross income methods for the remainder of the deduction separately allocated.

(A) *Option one.* The taxpayer may apportion its research and experimental expenditures ratably on the basis of gross income between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping of gross income in the same proportions that the amount of gross income in the statutory grouping (or groupings) and the amount of gross income in the residual grouping bear, respectively, to the total amount of gross income, if both of the following two conditions are met.

(*1*) The amount of research and experimental expense ratably apportioned to the statutory grouping (or groupings in the aggregate) is not less than fifty percent (50%) of the amount which would have been so apportioned if the taxpayer had used the method described in paragraph (e)(3)(ii) of this section; and

(*2*) The amount of research and experimental expense ratably apportioned to the residual grouping is not less than fifty percent (50%) of the amount which would have been so apportioned if the taxpayer had used the method described in paragraph (e)(3)(ii) of this section.

(B) *Option two.* If, when the amount of research and experimental expense is apportioned ratably on the basis of gross income, either of the conditions described in paragraph (e)(3)(iii)(A) (*1*) or (*2*) of this section is not met, the taxpayer may either—

(*1*) Where the condition of paragraph (e)(3)(iii)(A)(*1*) of this section is not met, apportion fifty percent (50%) of the amount of research and experimental expense which would have been apportioned to the statutory grouping (or groupings in the aggregate) under paragraph (e)(3)(ii) of this section to such statutory grouping (or to such statutory groupings in the aggregate and then among such groupings on the basis of gross income within each grouping), and apportion the balance of the amount of research and experimental expenses to the residual grouping; or

(*2*) Where the condition of paragraph (e)(3)(iii)(A)(*2*) of this section is not met, apportion fifty percent (50%) of the amount of research and experimental expense which would have been apportioned to the residual grouping under paragraph (e)(3)(ii) of this section to such residual grouping, and apportion the balance of the amount of research and experimental expenses to the statutory grouping (or to the statutory groupings in the aggregate and then among such groupings ratably on the basis of gross income within each grouping).

(C) *Binding election to use optional gross income methods.* A taxpayer may use either the sales method under paragraph (e)(3)(ii) of this section or the optional gross income methods under this paragraph (e)(3)(iii) for its return filed for its first taxable year to which this paragraph (e)(3) applies. The taxpayer's use of the optional gross income methods for its return filed for its first taxable year to which this paragraph (e)(3) applies or for any subsequent taxable year shall constitute a binding election to use the optional gross income methods for all taxable years thereafter. The taxpayer's election to use the optional gross income methods may not be revoked without the prior consent of the Commissioner.

(iv) *Special rules for partnerships.* For purposes of applying this paragraph (e)(3), if research and experimental expenditures are incurred by a partnership in which the taxpayer is a partner, the taxpayer's research and experimental expenditures shall include the taxpayer's distributive share of the partnership's research and experimental expenditures. In applying the exception for expenditures undertaken to meet legal requirements under paragraph (e)(3)(i)(D) of this section and the exclusive apportionment for the sales method under paragraph (e)(3)(ii)(A) of this section, a partner's distributive share of research and experimental expenditures incurred by a partnership shall be treated as incurred by the partner for the same purpose and in the same location as incurred by the partnership. In applying the remaining apportionment for the sales method under paragraph (e)(3)(ii)(B) of this section, a taxpayer's sales from a product category shall include the taxpayer's share of any sales from the product category of any partnership in which the taxpayer is a partner. For purposes of the preceding sentence, a taxpayer's share of sales shall be proportionate to the taxpayer's distributive share of the partnership's gross income in the product category, but the sales of the partnership taken into account by the taxpayer shall in no event be less than ten times the amount received or accrued for any intangible from the partnership during the taxpayer's taxable year.

(v) *Examples. Examples (3)* through *(8)* of paragraph (g) of this section illustrate the allocation and apportionment of research and experimental deductions.

(vi) *Effective date.* This paragraph (e)(3) applies to taxable years beginning after December 31, 1995. However, the taxpayer may at its option, apply this paragraph (e)(3) in its entirety to taxable years beginning after December 31, 1994.

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Example 3—Research and Experimentation—(i) *Facts.* X, a domestic corporation, is a manufacturer and distributor of small gasoline engines for lawn mowers. Gasoline engines are a product within the category, Engines and Turbines (SIC Industry Group 351). Y, a wholly owned foreign subsidiary of X, also manufactures and sells these engines abroad. During 1996, X incurred expenditures of $60,000 on research and experimentation, which it deducts as a current expense, to invent and patent a new and improved gasoline engine. All of the research and experimentation was performed in the United States. In 1996, the domestic sales by X of the new engine total $500,000 and foreign sales by Y total $300,000. X provides technology for the manufacture of engines to Y via a license that requires the payment of an arm's length royalty. In 1996, X's income is $150,000, of which $140,000 is from domestic sales and $10,000 is royalties from Y.

(ii) *Allocation.* The research and experimental expenditures were incurred in connection with small gasoline engines and they are definitely related to the items of gross income to which the research gives rise, namely gross income from the sale of small gasoline engines in the United States and royalties received from subsidiary Y, a foreign manufacturer of gasoline engines. Accordingly, the expenses are allocable to this class of gross income.

(iii) *Apportionment.* (A) For purposes of applying the foreign tax credit limitation, the statutory grouping is general limitation gross income from sources without the United States and the residual grouping is general limitation gross income from sources within the United States. Since the related class of gross income derived from the use of engine technology consists of both gross income from sources without the United States (royalties from Y) and gross income from sources within the United States (gross income from engine sales), X's deduction of $60,000 for its research and experimental expenditure must be apportioned between the statutory and residual grouping before the foreign tax credit limitation may be determined. Because more than 50 percent of X's research and experimental activity was performed in the United States, 50 percent of that deduction can be apportioned exclusively to the residual grouping of gross income, gross income from sources within the United States. The remaining 50 percent of the deduction can then be apportioned between the residual and statutory groupings on the basis of sales by X and Y. Alternatively, X's deduction for research and experimentation can be apportioned under the optional gross income method. The apportionment for 1996 is as follows:

(*1*) *Tentative Apportionment on the Basis of Sales.*

(*i*) Research and experimental expense to be apportioned between residual and statutory groupings of gross income: $60,000.

(*ii*) Less: Exclusive apportionment of research and experimental expense to the residual grouping of gross income ($60,000×50 percent): $30,000.

(*iii*) Research and experimental expense to be apportioned between residual and statutory groupings of gross income on the basis of sales: $30,000.

(*iv*) Apportionment of research and experimental expense to the residual grouping of gross income ($30,000×$500,000/($500,000+$300,000)): $18,750.

(*v*) Apportionment of research and experimental expense to the statutory grouping of gross income ($30,000×$300,000/($500,000+$300,000)): $11,250.

(*vi*) Total apportioned deduction for research and experimentation: $60,000.

(*vii*) Amount apportioned to the residual grouping ($30,000+$18,750): $48,750.

(*viii*) Amount apportioned to the statutory grouping: $11,250.

(*2*) *Tentative Apportionment on the Basis of Gross Income.*

(*i*) Research and experimental expense apportioned to sources within the United States (residual grouping) ($60,000×$140,000/($140,000+$10,000)): $56,000.

(*ii*) Research and experimental expense apportioned to sources within country Y (statutory grouping) ($60,000×$10,000/($140,000+$10,000)): $4,000.

(*iii*) Amount apportioned to the residual grouping: $56,000.

(*iv*) Amount apportioned to the statutory grouping: $4,000.

(B) The total research and experimental expense apportioned to the statutory grouping ($4,000) under the gross income method is approximately 36 percent of the amount apportioned to the statutory grouping under the sales method. Thus, X may use option two of the gross income method (paragraph (e)(3)(iii)(B) of this section) and apportion to the statutory grouping fifty percent (50%) of the $11,250 apportioned to that grouping under the sales method. Thus, X apportions $5,625 of research and experimental expense to the statutory grouping. X's use of the optional gross income method will constitute a binding election to use the optional gross income method for all taxable years thereafter.

Example 4—Research and Experimentation—(i) *Facts.* Assume the same facts as in *Example 3* except that X also spends $30,000 in 1996 for research on steam turbines, all of which is performed in the United States, and X has steam turbine sales in the United States of $400,000. X's foreign subsidiary Y neither manufactures nor sells steam turbines. The steam turbine research is in addition to the $60,000 in research which X does on gasoline engines for lawnmowers. X thus has a deduction of $90,000 for its research activity. X's gross income is $200,000, of which $140,000 is from sales of gasoline engines, $50,000 is from sales of steam turbines, and $10,000 is royalties from Y.

(ii) *Allocation.* X's research expenses generate income from sales of small gasoline engines and steam turbines. Both of these products are in the same three digit SIC code category, Engines and Turbines (SIC Industry Group 351). Therefore, the deduction is definitely related to this product category and allocable to all items of income attributable to it. These items of X's income are gross income from the sale of small gasoline engines and steam turbines in the United States and royalties from foreign subsidiary Y, a foreign manufacturer and seller of small gasoline engines.

(iii) *Apportionment.* (A) For purposes of applying the foreign tax credit limitation, the statutory grouping is general limitation gross income from sources outside the United States and the residual grouping is general limitation gross income from sources within the United States. X's deduction of $90,000 must be apportioned between the statutory and residual groupings. Because more than 50 percent of X's research and experimental activity was performed in the United States, 50 percent of that deduction can be apportioned exclusively to the residual grouping, general limitation gross income from sources within the United States. The remaining 50 percent of the deduction can then be apportioned between the residual and statutory groupings on the basis of total sales by X and Y. Alternatively, X's deduction for research and experimentation can be apportioned under the optional gross income methods. The apportionment for 1996 is as follows:

(*1*) *Tentative Apportionment on the Basis of Sales.*

(*i*) Research and experimental expense to be apportioned between residual and statutory groupings of gross income: $90,000.

(*ii*) Less: Exclusive apportionment of the research and experimental expense to the residual grouping of gross income ($90,000×50 percent): $45,000.

(*iv*) Research and experimental expense to be apportioned between the residual and statutory groupings of gross income on the basis of sales: $45,000.

(*iv*) Apportionment of research and experimental expense to the residual grouping of gross income ($45,000×($500,000+400,000)/($500,000+$400,000+$300,000)): $33,750.

(*v*) Apportionment of research and experimental expense to the statutory grouping of gross income ($45,000×$300,000/($500,000+$400,000+$300,000)): $11,250.

(*vi*) Total apportioned deduction for research and experimentation: $90,000.

(*vii*) Amount apportioned to the residual grouping ($45,000+$33,750): $78,750.

(*viii*) Amount apportioned to the statutory grouping: $11,250.

(*2*) *Tentative Apportionment on the Basis of Gross Income.*

(*i*) Research and experimental expense apportioned to sources within the United States (residual grouping)

($90,000×$190,000/
($140,000+$50,000+10,000)): $85,500.

(*ii*) Research and experimental expense apportioned to sources within country Y (statutory grouping) ($90,000×$10,000/ ($140,000+$50,000+$10,000)): $4,500.

(*iii*) Amount apportioned to the residual grouping: $85,500.

(*iv*) Amount apportioned to the statutory grouping: $4,500.

(B) The total research and experimental expense apportioned to the statutory grouping ($4,500) under the gross income method is 40 percent of the amount apportioned to the statutory grouping under the sales method. Thus, X, may use option two of the gross income method (paragraph (e)(3)(iii)(B) of this section) and apportion to the statutory grouping fifty percent (50%) of the $11,250 apportioned to that grouping under the sales method. Thus, X apportions $5,625 of research and experimental expense to the statutory grouping. X's use of the optional gross income method will constitute a binding election to use the optional gross income method for all taxable years thereafter.

Example 5—Research and Experimentation—(i) *Facts.* Assume the same facts as in *Example 3* except that in 1997 X continues its sales of the new engines, with sales of $600,000 in the United States and $400,000 by subsidiary Y. X also acquires a 60 percent ownership interest in foreign corporation Z and a 100 percent ownership interest in foreign corporation C. X transfers its engine technology to Z for a royalty equal to 5 percent of sales, and X enters into an arm's length cost-sharing arrangement with C to share the funding of all of X's research activity. In 1997, corporation Z has sales in country Z equal to $1,000,000. X incurs expense of $80,000 on research and experimentation in 1997, and in addition, X performs $15,000 of research on gasoline engines which was funded by the cost-sharing arrangement with C. All of Z's sales are from the product category, Engines and Turbines (SIC Industry Group 351). X performs all of its research in the United States and $20,000 of its expenditure of $80,000 is made solely to meet pollution standards mandated by law. X establishes, to the satisfaction of the Commissioner, that the expenditure in response to pollution standards is not expected to generate gross income (beyond *de minimis* amounts) outside the United States.

(ii) *Allocation.* The $20,000 of research expense which X incurred in connection with pollution standards is definitely related and thus allocable to the residual grouping, general limitation gross income from sources within the United States. The remaining $60,000 in research and experimental expenditure incurred by X is definitely related to all gasoline engines and is therefore allocable to the class of gross income to which the engines give rise, gross income from sales in the United States, royalties from country Y, and royalties from country Z. No part of the $60,000 research expense is allocable to dividends from country C, because corporation C has already paid, through its cost-sharing arrangement, for research activity performed by X which may benefit C.

(iii) *Apportionment.* For purposes of applying the foreign tax credit limitation, the statutory grouping is general limitation gross income from sources without the United States, and the residual grouping is general limitation gross income from sources within the United States. X's deduction of $60,000 for its research and experimental expenditure must be apportioned between these groupings. Because more than 50 percent of the research and experimentation was performed in the United States, 50 percent of the $60,000 deduction can be apportioned exclusively to the residual grouping. The remaining 50 percent of the deduction can then be apportioned between the residual and the statutory grouping on the basis of sales by X, Y, and Z. (If X utilized the optional gross income methods in 1996, then its use of such methods constituted a binding election to use the optional gross income methods for all taxable years thereafter. The optional gross income methods are not illustrated in this *Example 5* (see instead *Examples 3* and *4).*) Since X has only a 60 percent ownership interest in corporation Z, only 60 percent of Z's sales (60% of $1,000,000, or $600,000) are included for purposes of apportionment. The allocation and apportionment for 1997 is as follows:

(A) X's total research expense: $80,000.

(B) Less: Legally mandated research directly allocated to the residual grouping of gross income: $20,000.

(C) Tentative apportionment on the basis of sales.

(*1*) Research and experimental expense to be apportioned between residual and statutory groupings of gross income: $60,000.

(*2*) Less: Exclusive apportionment of research and experimental expense to the residual grouping of gross income ($60,000×50 percent): $30,000.

(*3*) Research and experimental expense to be apportioned between the residual and the statutory grouping on the basis of sales: $30,000.

(*4*) Apportionment of research and experimental expense to general limitation gross income from sources within the United States (residual grouping)
($30,000×$600,000/
($600,000+$400,000+$600,000)): $11,250.

(*5*) Apportionment of research and experimental expense to general limitation gross income from countries Y and Z (statutory grouping)
($30,000×$400,000+$600,000/
($600,000+$400,000+$600,000)): $18,750.

(*6*) Total apportioned deduction for research and experimentation
($30,000+$30,000): 60,000.

(*7*) Amount apportioned to the residual grouping ($30,000+$11,250): $41,250.

(*8*) Amount apportioned to the statutory grouping of sources within countries Y and Z: $18,750.

Example 6—Research and Experimentation—(i) *Facts.* X, a domestic corporation, manufacturers and sells forklift trucks and other types of materials handling equipment in the United States. The manufacture and sale of forklift trucks and other materials handling equipment belongs to the product category, Construction, Mining, and Materials Handling Machinery and Equipment (SIC Industry Group 353). X also sells its forklift trucks to a wholesaling subsidiary located in foreign country Y (but title passes in the United States), and X manufactures forklift trucks in foreign country Z. The wholesaling of forklift trucks to country Y also belongs to X's product category Transportation equipment and, therefore, may not belong to the product category, Wholesale trade (SIC Major Group 50 and 51). In 1997, X sold $7,000,000 of forklift trucks to purchasers in the United States, $3,000,000 of forklift trucks to the wholesaling subsidiary in Y, and transferred forklift truck components with an FOB export value of $2,000,000 to its branch in Z. The branch's sales of finished forklift trucks were $5,000,000. In response to legally mndated emission control requirements, X's United States research department has been engaged in a research project to improve the performance and quality of engine exhaust systems used on its products in the United States. It incurs expenses of $100,000 for this purpose in 1997. In the past, X has customarily adapted the product improvements developed originally for the domestic market to its forklift trucks manufactured abroad. During the taxable year 1997, development of an improved engine exhaust system is completed and X begins installing the new system during the latter part of the taxable year in products manufactured and sold in the United States. X continues to manufacture and sell forklift trucks in foreign countries without the improved engine exhaust systems.

(ii) *Allocation.* X's deduction for its research expense is definitely related to the income to which it gives rise, namely income from the manufacture and sale of forklift trucks within the United States and in country Z. Although the research is undertaken in response to a legal mandate, it can reasonably be expected to generate gross income from the manufacture and sale of trucks by the branch in Z. Therefore, the deduction is not allocable solely to income from X's domestic sales of forklift trucks. It is allocable to income from such sales and income from the sales of X's branch in Z.

(iii) *Apportionment.* For the method of apportionment on the basis of either sales or gross income, see example 3. However, in determining the amount of research apportioned to income from foreign and domestic sources, the net sales of the branch in Z are $3,000,000 ($5,000,000 less $2,000,000) and the sales within the United States are $12,000,000 ($7,000,000 plus $3,000,000 plus $2,000,000).

Example 7—Research and Experimentation—(i) *Facts.* X, a domestic corporation, is a drug company which manufactures a wide variety of pharmaceutical products for sale in the United States. Pharmaceutical products belong to the product category, Drugs (SIC Industry Group 283). X exports its pharmaceutical products through a foreign sales corporation (FSC). X's wholly owned foreign subsidiary Y also manufactures pharmaceutical products. In 1997, X has domestic sales of $10,000,000, the FSC has sales of $3,000,000, and Y has sales of $5,000,000. In that same year, 1997, X incurs

expense of $200,000 on research to test a product in response to requirements imposed by the United States Food and Drug Administration (FDA). X is able to show that, even though country Y imposes certain testing requirements on pharmaceutical products, the research performed in the United States is not accepted by country Y for purposes of its own licensing requirements, and the research has minimal use abroad. X is further able to show that its FSC sells goods to countries which do not accept or do not require research performed in the United States for purposes of their own licensing standards.

(ii) *Allocation.* Since X's research expense of $200,000 is undertaken to meet the requirements of the United States Food and Drug Administration, and since it is reasonable to expect that the expenditure will not generate gross income (beyond *de minimis* amounts) outside the United States, the deduction is definitely related and thus allocable to the residual grouping.

(iii) *Apportionment.* No apportionment is necessary since the entire expense is allocated to the residual grouping, general limitation gross income from sales within the United States.

Example 8—Research and Experimentation—(i) *Facts.* X, a domestic corporation, is engaged in continuous research and experimentation to improve the quality of the products that it manufactures and sells, which are floodlights, flashlights, fuse boxes, and solderless connectors. X incurs and deducts $100,000 of expenditure for research and experimentation in 1997 which was performed exclusively in the United States. As a result of this research activity, X acquires patents which it uses in its own manufacturing activity. X licenses its floodlight patent to Y and Z, uncontrolled foreign corporations, for use in their own territories, countries Y and Z, respectively. Corporation Y pays X an arm's length royalty of $3,000 plus $0.20 for each floodlight sold. Sales of floodlights by Y for the taxable year are $135,000 (at $4.50 per unit) or 30,000 units, and the royalty is $9,000 ($3,000+$0.20×30,000). Y has sales of other products of $500,000. Z pays X an arm's length royalty of $3,000 plus $0.30 for each unit sold. Z manufactures 30,000 floodlights in the taxable year, and the royalty is $12,000 ($3,000+$0.30×30,000). The dollar value of Z's floodlight sales is not known and cannot be reasonably estimated because, in this case, the floodlights are not sold separately by Z but are instead used as a component in Z's manufacture of lighting equipment for theaters. The sales of all Z's products, including the lighting equipment for theaters, are $1,000,000. Y and Z each sell the floodlights exclusively within their respective countries. X's sales of floodlights for the taxable year are $500,000 and its sales of its other products, flashlights, fuse boxes, and solderless connectors, are $400,000. X has gross income of $500,000, consisting of gross income from domestic sources of $479,000, and royalty income of $9,000 and $12,000 from foreign corporations Y and Z respectively.

(ii) *Allocation.* X's research and experimental expenses are definitely related to all of the products that it produces, which are floodlights, flashlights, fuse boxes, and solderless connectors. All of these products are in the same three digit SIC Code category, Electric Lighting and Wiring Equipment (SIC Industry Group 364). Thus, X's research and experimental expenses are allocable to all items of income attributable to this product category, domestic sales income and royalty income from the foreign countries in which corporations Y and Z operate.

(iii) *Apportionment.* (A) The statutory grouping of gross income is general limitation income from sources without the United States. The residual grouping is general limitation gross income from sources within the United States. X's deduction of $100,000 for its research expenditures must be apportioned between the groupings. For apportionment on the basis of sales in accordance with paragraph (e)(3)(ii) of this section, X is entitled to an exclusive apportionment of 50 percent of its research and experimental expense to the residual grouping, general limitation gross income from sources within the United States, since more than 50 percent of the research activity was performed in the United States. The remaining 50 percent of the deduction can then be apportioned between the residual and statutory groupings on the basis of sales. Since Y and Z are unrelated licensees of X, only their sales of the licensed product, floodlights, are included for purposes of apportionment. Floodlight sales of Z are unknown, but are estimated at ten times royalties from Z, or $120,000. All of X's sales from the entire product category are included for purposes of apportionment on the basis of sales. Alternatively, X may apportion its deduction on the basis of gross income, in accordance with paragraph (e)(3)(iii) of this section. The apportionment is as follows:

(*1*) *Tentative Apportionment on the basis of sales.*

(*i*) Research and experimental expense to be apportioned between statutory and residual groupings of gross income: $100,000.

(*ii*) Less: Exclusive apportionment of research and experimental expense to the residual groupings of gross income ($100,000 x 50 percent): $50,000.

(*iii*) Research and experimental expense to be apportioned between the statutory and residual groupings of gross income on the basis of sales: $50,000.

(*iv*) Apportionment of research and experimental expense to the residual groupings of gross income ($50,000×$900,000/($900,000+$135,000+$120,000)): $38,961.

(*v*) Apportionment of research and experimental expense to the statutory grouping, royalty income from countries Y and Z ($50,000×$135,000+$120,000/($900,000+$135,000+$120,000)): $11,039.

(*vi*) Total apportioned deduction for research and experimentation: $100,000.

(*vii*) Amount apportioned to the residual grouping ($50,000+$38,961): $88,961.

(*viii*) Apportioned to the statutory grouping of sources within countries Y and Z: $11,039.

(*2*) *Tentative apportionment on gross income basis.*

(*i*) Apportionment of research and experimental expense to the residual grouping of gross income ($100,000×$479,000/$500,000): $95,800.

(*ii*) Apportionment of research and experimental expense to the statutory grouping of gross income ($100,000×$9,000+$12,000/$500,000): $4,200.

(*iii*) Amount apportioned to the residual grouping: $95,800.

(*iv*) Amount apportioned to the statutory grouping of general limitation income from sources without the United States: $4,200.

(B) Since X's apportionment on the basis of gross income to the statutory grouping, $4,200, is less than 50 percent of its apportionment on the basis of sales to the statutory grouping, $11,039 it may use Option two of paragraph (e)(3)(iii)(B) of this section and apportion $5,520 (50 percent of $11,039) to the statutory grouping.

Examples (9) through *(16)*—[Reserved]

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Example (23)—[Reserved]

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–12621 Filed 5–19–95; 9:25 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 203

Technical Assistance for Public Participation

AGENCY: Department of Defense, Office of the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)).

ACTION: Notice of request for comments.

SUMMARY: Consistent with section 326 of The National Defense Authorization Act for Fiscal Year 1995 (NDAA–95), the Department of Defense intends to publish interim rules for providing technical assistance funding to citizens affected by the environmental restoration of Department of Defense facilities. This request for comments discusses and solicits comments on several options the Department of Defense is considering for providing assistance to community members of Technical Review Committee (TRCs) and Restoration Advisory Boards (RABs) to obtain technical advisors and facilitate the participation of these members and affected citizens in environmental restoration activities at their associated installations. The Department of Defense will consider these comments in formulating an Interim Final Rule.

DATES: Written comments must be received on or before July 24, 1995.

ADDRESSES: Send written comments to the Office of the Deputy Under Secretary of Defense for Environmental Security/Cleanup, 3400 Defense Pentagon, Washington, DC 20301–3400.

FOR FURTHER INFORMATION CONTACT: Patricia Ferrebee or Marcia Read, telephone (703) 697–7475.

SUPPLEMENTARY INFORMATION: Today's request for comments has the following sections:

I. Background
II. Options for Providing Assistance
III. Requests for Comments

I. Background

The Department of Defense is engaged in environmental investigations, removal actions, treatability studies, community relations efforts, interim remedial actions, cleanups, and operation and maintenance activities at approximately 1800 active installations, 70 closing installations, and 2200 formerly utilized defense properties in the United States under the Defense Environmental Restoration Program (DERP, 10 USC Chapter 160).

The Department of Defense has issued policy for establishing Restoration Advisory Boards (RABs) at all installations. On September 9, 1993, the Department of Defense issued policy for establishing RABs at installations designated for closure or realignment under Base Realignment and Closure (BRAC) Acts of 1988 and 1990 where property will be available for transfer the community. On April 14, 1994, the Department of Defense issued RAB policy for non-closing installations as part of Management Guidance for Execution of the FY94/95 and Development of the FY96 Defense Environmental Restoration Program. The policy called for the establishment of RABs at Department of Defense installations where there is sufficient, sustained community interest. Criteria for determining sufficient interest are: (1) A government requests that a RAB be formed; (2) fifty local residents sign a petition requesting that a RAB be formed; or (3) an installation determines that a RAB is needed. On September 27, 1994, the Department of Defense and the Environmental Protection Agency (EPA) issued joint RAB guidelines on how to develop and implement a RAB. The guidelines are now in effect for all installations.

The purpose of a RAB is to bring together people who reflect the diverse interests within the local community, enabling the early and continual flow of information between the affected community, the military installation, and environmental oversight agencies. The Department of Defense has established, or is in the process of establishing, RABs to ensure that all stakeholders have a voice and can actively participate in a timely and thorough manner in the review of environmental restoration activities and projects at an intallation. RAB community members provide advice as individuals to the decision-makers on restoration issues. This forum is used for the expression and careful consideration of diverse points of view. The RAB complements other community involvement efforts, but does not replace them.

On October 5, 1994, Congress passed the National Defense Authorization Act for Fiscal Year 1995 (NDAA–95, Public Law 103–337), which contained specific provisions for RABs (amending 10 USC 2705 which contains requirements for Technical Review Committees (TRCs) under the Superfund Amendments and Reauthorization Act). Section 326(a) [Section 2705(d)(2)] of the NDAA–95 requires the Secretary of Defense to prescribe regulations on the characteristics, composition, funding, and establishment of RABs. Section 326(b) of the NDAA [Section 2705(e)(2)(C)] authorizes the Department of Defense to make funds available to community members of TRCs and RABs to: (1) Obtain technical assistance in interpreting scientific and engineering issues with regard to the nature of environmental hazards at an installation and the restoration activities proposed for or conducted at the installation; and (2) assist such members and affected citizens to participate more effectively in environmental restoration activities at the installation. Section 326(b) [Section 2705(e)(3)(A) and (B)] specifies that funds for community members of TRCs and RABs at closing and non-closing installations be provided from the BRAC and Defense Environmental Restoration Account (DERA), respectively, and that the total amount of funds from these accounts not exceed $7,500,000. This paragraph [Section 2705(e)(2)(B) and (C)] further states that funding can be given to TRC and RAB members only if they reside in the vicinity of the installation and are not potentially responsible parties.

The Department of Defense has developed a number of options for providing technical and public participation assistance to community members of TRCs and RABs. The Department of Defense is issuing this request for comments to notify the public of its efforts, and to solicit comments on a number of promising funding options. The Department of Defense will publish an interim rule specifying available funding mechanisms after considering any comments received.

II. Options for Providing Assistance

The Department of Defense is seeking to provide technical and public participation assistance to community members of TRCs and RABs at its facilities in the most efficient manner. Technical assistance under this program means the provision of technical advisors, facilitators, mediators, and educators. Public participation assistance means the provision of training and related expenses. Three options are being considered for providing expeditious assistance to TRCs and RABs. These options are described separately in the following sections, but are not mutually exclusive.

Option A: Use EPA TAG and TOSC Mechanisms

This option for providing assistance to community members of TRCs and RABs at Department of Defense facilities involves the use of existing vehicles under EPA's Technical Assistance Grant (TAG) and Technical Outreach Services to Communities (TOSC) program. The TAG program provides funds for qualified citizens' groups affected by a site on EPA's National Priorities List (NPL) to hire independent technical advisors to help interpret and comment on site-related information. Under this option, the Department of Defense and EPA would sign a Memorandum of Understanding (MOU) authorizing EPA to provide additional assistance to community organizations subject to existing TAG regulations. EPA Regional TAG specialists would provide outreach to community members of TRCs, RABs, or other members of the community desiring technical assistance and would assist them throughout the application process and during the post-award administration phase. The Department of Defense would reimburse EPA for all awarded TAGs at Department of Defense facilities. Under this option, community members at NPL installations would obtain funds directly for technical assistance. Under this option, the TAG regulations published in the **Federal Register** on October 1, 1992, page 45311 through 45321, and recorded in 40 CFR Part 35, Subpart M, would be followed. These regulations allow for one TAG award per NPL facility but would not preclude the same community group from applying for additional technical assistance.

The TOSC is a pilot program funded by EPA to provide communities affected by hazardous waste sites with a variety of technical support services. The TOSC

program complements EPA's TAG program by serving as a mechanism for providing technical assistance to communities near non-NPL hazardous waste sites. The TOSC program provides services to communities through five geographically-based Hazardous Substance Research Centers (HSRCs) created in 1986. Each HSRC is a consortium of universities which supports two EPA Regions (i.e. Regions 1&2, 3&4, 5&6, 7&8, 9&10). Each HSRC provides independent technical resources and services that are flexible and tailored to the identified needs of a community. HSRC researchers and professionals are available to conduct technical and educational programs in a community, assist in the review of technical documents, provide comments on proposed actions, and answer questions. Under this option, the Department of Defense and EPA would sign an MOU that makes the TOSC program available to community members of TRCs, RABs, and other community groups through EPA Superfund Regional Community Relations Staff. EPA Regional Community Relations Staff would provide outreach near a Department of Defense facility to community members desiring TOSC support, would review proposals for assistance from community members, and would work with them throughout the approval and post-approval process. The Department of Defense would reimburse EPA for TOSC service rendered. Under this option, community members of TRCs and RABs at non-NPL installations would obtain technical advisors and related services from designated HSRCs.

Option B: Procure One or More Technical Assistance Providers

This option would involve the competitive procurement of one or more independent technical assistance providers to provide technical and public participation assistance to community members of TRCs and RABs at Department of Defense facilities. This assistance would be above the administrative support to TRCs and RABs already provided by the installations. One or more technical assistance providers would provide this assistance and would carry out many of the administrative and financial management requirements associated with a technical and public participation assistance program. An announcement, a procurement for technical assistance providers, would be made via the **Federal Register** in conjunction with the publication of the Interim Final Rule mentioned in Section I. Actual awards to one or more qualified technical assistance providers would be made via grants or cooperative agreements based on the results of an independent selection process. Recent experience with a similar grants process in the Department of Defense suggests that this option will involve a five or six month procurement process beginning with a formal announcement of a competition in the **Federal Register** and ending with awards to technical assistance providers.

At a later date, the Department of Defense plans a **Federal Register** announcement requesting expressions of interest to serve as a technical assistance provider. As indicated in that announcement, the technical assistance provider would provide technical assistance and public participation assistance to community members of TRCs and RABs. The provider would be responsible for receiving, evaluating, and making recommendations on applications from RABs for support and for providing the applications to the appropriate DoD approving official based on DoD established criteria. Once the approving official has selected the applications, the technical assistance provider would assume full responsibility for ensuring that the technical services and public participation support provided are delivered in a timely and effective manner to community members of TRCs and RABs, and that all funds are managed and dispersed in full compliance with appropriate Department of Defense regulations. The technical assistance provider would be responsible for supporting TRC and RAB requests nationwide or within a particular geographic area. Minimum qualifications for a technical assistance provider are:

(1) Perceived as neutral and credible.

(2) Either have or be able to obtain an interdisciplinary staff with demonstrated expertise in hazardous substance remediation, investigation, management and/or research.

(3) Management capability, for both financial and scientific management, and a demonstrated skill in planning and scheduling projects of comparable magnitude to that discussed in this Announcement.

(4) Ability to provide facilitation and mediation services.

(5) Knowledge and experience in environmental restoration activities preferably at federal facilities.

(6) A demonstrated ability to disseminate results of hazardous substance information through an interdisciplinary program to locally affected and concerned citizens.

(7) The ability to perform the required tasks either nationally or within a defined geographic area.

(8) Not-for-profit.

Under this option, community members of TRCs and RABs would be responsible for making requests to the community co-chair or designated members of the TRC or RAB responsible for applying to the designated technical assistance provider for assistance and for preparing facility specific statements describing the type and level of support requested. The technical assistance provider would be responsible for allocating available resources among these competing requests using general guidelines and established criteria provided by Department of Defense.

Option C: Issue Purchase Orders to Assistance Providers

This option would involve the issuance of purchase orders to technical and public participation assistance providers up to the allowable government purchase limit per purchase order (now at $25,000). If multiple purchase orders were needed to assist community members of a particular TRC or RAB, the combined sum of these purchase orders could not exceed a specified allotment. Qualified assistance providers would be selected by the community members of a TRC or RAB at each Department of Defense facility using guidelines provided by the Department of Defense. Under this option, community members of the TRC or RAB would provide a description of the services it is requesting to a Department of Defense contracting office, along with a cost estimate, and would identify the assistance provider and the provider's statement of qualifications. A minimum set of organizational qualifications for receiving a purchase order would be specified under this option by the Department of Defense. These qualifications would be promulgated as part of an Interim Final Rule.

Under all options described in the preceding sections, the local installations will continue to be responsible for providing administrative support in accordance with joint EPA and Department of Defense Restoration Advisory Board Implementation Guidelines issued September 27, 1994.

III. Requests for Comments

Today the Department of Defense solicits comments on the options for providing technical and public participation assistance to community members of RABs or TRCs. Each of the options described in Section II of this notice have strengths and weaknesses.

Option A is the most timely option with the advantage of using existing EPA mechanisms to provide support, but also has the attached limitations of the TAG and TOSC programs as to the type of support which could be provided. Option B would procure independent technical assistance providers for the program and would relieve community members of TRCs and RABs of much of the administrative burden associated with managing government grants; however, it requires the time needed for a competitive procurement and does not provide the funds directly to community members of TRCs and RABs. Option C allows greater control and flexibility by community members, but imposes greater administrative burdens on community members of TRCs and RABs and on the contracting office issuing the purchase order. The Department of Defense is interested in determining the opinions of affected citizens and groups on these options. This would include preferences for particular options over others. It would also include comments on the individual options and the components of those options as described in Section II. There also exists the possibility of combining one or more of the Section II options. The Department of Defense solicits any comments or suggestions regarding option combinations. The Department of Defense also solicits comments on specific aspects of each option as well as on additional options desired to provide for technical and public participation assistance.

Within the options are specific items for which the Department of Defense solicits comments. These include the qualifications given for the independent technical assistance providers described in Option B. Comments on either the list of qualifications provided or on additional qualifications which should be added are encouraged. Both Options A and B have provisions for the division of the country into geographic areas with different service providers for each area. Do those commenting have preferences regarding nationwide versus regionalized coverage by service providers for these options? All options will be subject to an allotment cap. Do those commenting have suggestions as to the size of such a cap or the criteria which should be use to establish a cap? The Department of Defense has developed a list of public participation services it believes should be provided under Options B and C in addition to hiring technical advisors, facilitators, mediators and educators. These services are: translation and interpretation; training; transportation to meetings; and payment of approved travel. Comments on these or other services to be included under Options B and C are encouraged.

Dated: May 18, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12628 Filed 5–23–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–90–028]

RIN 2115–AE06

Regulated Navigation Area: Puget Sound and Strait of Juan de Fuca, WA; Grays Harbor, WA; Columbia River & Willamette River OR; Yaguina Bay, OR; Umpqua River, OR; Coos Bay, OR

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination.

SUMMARY: This rulemaking project was initiated to adopt regulations requiring an emergency tow-wire on tank barges while transiting certain port areas of the Pacific Northwest. The project is no longer necessary because the Coast Guard issued separate regulations on December 22, 1993, which require an emergency tow wire or tow line on all offshore oil barges. The Coast Guard is therefore terminating further rulemaking under docket number CGD13–90–028.

FOR FURTHER INFORMATION CONTACT: LCDR J. Bigley or LTJG M. L. Kammerer, Thirteenth Coast Guard District, Port Safety and Security Branch, (206) 220–7210.

SUPPLEMENTARY INFORMATION: On May 22, 1990, the Coast Guard published a ''Request for comments; notice of hearing'' at 55 FR 21044 seeking public comment on six navigation safety initiatives for port areas in the Pacific Northwest. These six safety initiatives involved the use of tug escorts, emergency towing plans, speed criteria, additional bridge personnel, emergency tow-wire requirements for tank barges, and requirements for extended pilotage. A public hearing was held on June 22, 1990, in Seattle, Washington, to hear comments on the six initiatives and alternative courses of action. The comments pertaining to emergency tow-wire requirements for tank barges were addressed and incorporated in a notice of proposed rulemaking (NPRM) published on October 24, 1991 at 56 FR 55104.

The rule proposed by the October 24, 1991, NPRM would have required all tank barges to carry an emergency tow-wire while transiting certain port areas of the Pacific Northwest. This rule was proposed in response to the growing concerns of the citizens of Washington and Oregon that regulatory action was necessary to prevent the discharge of oil or other hazardous substances during transportation. The proposed rule was intended to enhance navigation safety, thereby reducing the risk of pollution and environmental damage from collisions and groundings.

Subsequent to publication of the October 24, 1991 NPRM, the Coast Guard issued regulations requiring that all offshore oil barges carry an emergency tow wire or tow line (December 22, 1993, 58 FR 67988). These separate regulations became effective on January 21, 1994, and are codified at 33 CFR 155.230. Because these separate regulations adequately addressed the same issue addressed by the proposed rule, the proposed rule has become unnecessary, and the Coast Guard is terminating further rulemaking under docket number CGD13–90–028.

Dated: May 16, 1995.

John A. Pierson,

Captain, U.S. Coast Guard, Commander, Thirteenth Coast Guard District, Acting.

[FR Doc. 95–12735 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–83–6927b; FRL–51848–8]

Approval and Promulgation of Implementation Plans State: Kentucky Approval of Revisions to State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the state implementation plan (SIP) submitted by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet (Cabinet). This revision will incorporate into the SIP an operating permit issued to the Calgon Carbon Corporation located in the Kentucky portion of the Ashland/Huntington ozone (O_3) nonattainment area. This permit will reduce the emissions of volatile organic compounds (VOCs) by requiring reasonably available control technology

(RACT). In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by June 23, 1995.

ADDRESSES: Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 316 St. Clair Mall, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Scott Southwick, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 x 4207. Reference file KY–083.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: March 21, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–12618 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MN30–1–6215b; FRL–5183–9]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: In the Final Rules Section of the **Federal Register**, the USEPA is approving recodification of Minnesota's regulations, removal of certain redundant and unnecessary regulations from the SIP, and other minor revisions. USEPA is taking that action as a direct final rule without prior proposal because USEPA views the action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to the proposal of that action. If USEPA receives adverse public comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this action must be received by June 23, 1995.

SUPPLEMENTARY INFORMATION: Addresses and Supplementary Information are provided in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 20, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95–12562 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[Region II Docket No.129, NY10–1–6212, FRL–5210–1]

Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to approve a revision to the New York State Implementation Plan (SIP) related to the control of volatile organic compounds. The SIP revision consists of amendments to Part 200, ''General Provisions,'' Part 201, ''Permits and Certificates,'' Part 228, ''Surface Coating Processes,'' Part 229, ''Petroleum and Volatile Organic Liquid Storage,'' Part 233, ''Pharmaceutical and Cosmetic Manufacturing Processes,'' and Part 234, ''Graphic Arts.'' The amendments extend reasonably available control technology rules to enlarged nonattainment areas and to areas of the Northeast Ozone Transport Region as required by the Clean Air Act. In addition, the amendments to Part 228 correct deficiencies in New York's existing SIP, as required by the Clean Air Act.

DATES: Comments must be received on or before June 23, 1995.

ADDRESSES: All comments should be addressed to: William S. Baker, Chief Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 20th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Paul R. Truchan, State Implementation Plan Section, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 20th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act (Act) as amended in 1990 sets forth a number of requirements that states with areas designated as nonattainment for ozone must satisfy and a timetable for satisfying these requirements. These requirements are further explained in the General Preamble to the Act (57 FR 13513), which was published on April 16, 1992. The specific requirements vary depending upon the severity of the ozone problem. One of the requirements, and the subject of this proposed rulemaking, is for states to adopt reasonably available control technology (RACT) rules for various volatile organic compound (VOC)

source categories. Section 182 sets forth two separate RACT requirements for ozone nonattainment areas. The first requirement, contained in Section 182(a)(2)(A) and referred to as RACT fix-up, requires the correction of RACT rules for which EPA identified deficiencies before the Act was amended in 1990. The second requirement, set forth in Section 182(b)(2), applies to moderate (and above) ozone nonattainment areas. The goal of this latter requirement is to ensure that areas not required previously to adopt RACT for some or all of the major stationary sources, adopt rules and ''catch-up'' to those areas subject to more stringent RACT requirements. In addition, the RACT catch-up provision requires certain areas to apply RACT to smaller sources because the definition of major source has been changed to include smaller sources.

The State has previously adopted regulations addressing some of these requirements and EPA has approved many of these revisions to the New York State Implementation Plan (SIP). On March 8, 1993, New York submitted a SIP revision addressing more of these requirements. This SIP revision is the subject of this proposed action.

In New York the applicability of these requirements varies depending on whether the source category is in an area previously designated nonattainment (New York City and the counties of Nassau, Suffolk, Westchester and Rockland), a nonattainment area where the boundaries have been extended by the Act (the towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick and Woodbury in Orange County), or an area within the Northeast Ozone Transport Region (the entire State). There are also areas in New York which are designated as marginal nonattainment (parts or all of the counties of Albany, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, Erie, Niagara, Essex, and Jefferson.) There are no RACT requirements for these areas because of their marginal designation, but these areas are subject to the RACT requirements for an area within the Northeast Ozone Transport Region. On October 6, 1994, Dutchess and Putnam counties and portions of Orange County were reclassified as moderate nonattainment (See section ahead entitled ''Requirements for nonattainment areas with expanded boundaries'').

Requirements for Previously Designated Nonattainment Areas

The New York portion of the ''New Jersey, New York, Connecticut interstate metropolitan air quality control region'' (composed of New York City and the counties of Nassau, Suffolk, Westchester and Rockland) was previously designated nonattainment for ozone. Under the amended Act, EPA included these areas as part of the New York-Northern New Jersey-Long Island Nonattainment Area and classified it as severe nonattainment for ozone.

Section 182(a)(2)(A) of the Act requires states with ozone nonattainment areas classified as marginal or above, to fix their deficient RACT rules for ozone precursors in accordance with EPA's pre-enactment guidance by May 15, 1991. New York made SIP submittals addressing this requirement and EPA approved this submittal with the exception of two remaining deficiencies for the New York portion of the New York-Northern New Jersey-Long Island Nonattainment Area on July 27, 1993 (58 FR 40057 and 58 FR 40062). New York's March 8, 1993 SIP revision corrects these two remaining deficiencies as described later in this proposal.

Section 182(b)(2) of the Act requires states with ozone nonattainment areas classified as moderate or above to develop RACT for (1) all pre-enactment Control Technology Guideline (CTG) source categories; (2) all sources subject to post-enactment CTGs; and (3) all other major sources in those areas.

With regard to the first requirement, the pre-amended Act required ozone nonattainment areas to adopt RACT rules for certain sources of VOC emissions. EPA issued three sets of CTGs, establishing a ''presumptive norm'' for RACT for various categories of VOC sources. The three sets of CTGs were (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). New York was required to adopt RACT rules for all of the CTG sources. New York had already developed RACT rules for the pre-enactment CTG sources. Therefore nothing further is required to fulfill this portion of the requirement.

With regard to the second requirement, New York has followed the process set forth by EPA in its CTG document issued as Appendix B to the General Preamble. In Appendix B, EPA provides that states could delay submission of non-CTG rules for those sources the state anticipates will be covered by one of EPA's 11 proposed post-enactment CTGs. Section 183(a) requires EPA to issue these 11 CTGs by November 15, 1993 and, when each is issued to establish a schedule for state adoption. Therefore, New York would be required to adopt by that schedule. Should EPA not issue a CTG by November 15, 1994, then New York would have to adopt RACT for those major source categories by November 15, 1994.

On November 15, 1993, EPA published a CTG for reactor processes and distillation operations in the synthetic organic chemical manufacturing industry. On March 23, 1994, in 56 FR 13717, EPA published an addendum to that CTG. In that addendum EPA explained that states are required to adopt RACT rules for this CTG category by March 23, 1995 and that sources must be in compliance with these rules no later than November 15, 1996. EPA did not issue any additional CTGs by the November 15, 1993 deadline. Therefore, in order to meet the Appendix B requirement, New York must adopt RACT rules for reactor processes and distillation operations in the synthetic organic chemical manufacturing industry by March 23, 1995. In addition, New York must adopt RACT rules for all major sources which would be subject to other post-enactment CTG categories by November 15, 1994.

With regard to the third requirement, Section 182(d) of the Act defines major sources in severe ozone nonattainment areas as sources capable of emitting 25 tons or more of VOC per year. Therefore, New York was required to adopt RACT rules for all sources that exceed this 25 ton per year cut-off by November 15, 1992.

New York had already developed RACT rules for the pre-enactment CTGs in this area. These rules all meet the 25 ton per year cutoff or a lower cutoff specified by the applicable CTG, therefore, nothing further is needed to fulfill this portion of the requirement for pre-enactment CTG sources. New York's March 8, 1993 submittal is intended to address some of the RACT requirements for non-CTG major sources including: volatile organic liquid storage (other than gasoline), marine tanker loading and pharmaceutical manufacturing processes (other than synthesized processes). These regulations are addressed in this proposal. In a January 15, 1992 letter, EPA notified the Governor of New York that it was starting the sanction process required by Section 179(a) of the Act,[1] because of

[1] Section 179(a) of the Act requires that EPA impose sanctions 18 months after finding: that a

Continued

New York's failure to completely address the requirement to develop RACT regulations for all non-CTG major sources. On July 8, 1994, New York submitted the necessary regulations which EPA found complete on July 13, 1994 thereby stopping the sanction process. These regulations will be the subject of a future **Federal Register** notice.

Requirements for Nonattainment Areas With Expanded Boundaries

On November 6, 1991 (56 FR 56694), EPA extended the boundaries of the New York-Northern New Jersey-Long Island Nonattainment Area to include Putnam and Orange counties. New York, however, requested time to study the boundaries and classification under Section 187(d)(4)(A)(iv). Based on New York's study, EPA confirmed that the southern part of Orange County (the towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick and Woodbury) should remain in the New York-Northern New Jersey-Long Island Nonattainment Area with a nonattainment classification of severe and that Putnam County should be included in the Poughkeepsie Area with a nonattainment classification of marginal. The northern portion of Orange County was classified as attainment for ozone. Therefore, only the southern portion of Orange County described previously was covered by the extended nonattainment area boundary provisions.

The southern portion of Orange County was not subject to the Section 182(a)(2)(A) RACT fix-up requirement. However, under Section 182(b)(2), the State was required to submit RACT rules for all sources subject to a pre-enactment CTG or a post-enactment CTG and to submit RACT rules for all other major VOC sources. For this area, a major source is one that has the potential to emit greater than 25 tons per year.

New York's March 8, 1993 SIP revision extended the applicability of New York's RACT rules for sources covered by pre-enactment CTGs to the towns in the southern portion of Orange County and it also adds control requirements for some non-CTG RACT sources in this area. These regulations are addressed in this proposal. As was explained earlier for the previously designated portion of the New York-Northern New Jersey-Long Island Nonattainment Area, the State needed to make additional submissions with respect to non-CTG RACT rules. This was also true for the expanded portion of the New York-Northern New Jersey-Long Island Nonattainment Area. The State has now made the necessary submissions which will be the subject of a future **Federal Register** notice.

It should be noted that on October 6, 1994 (59 FR 50848), EPA reclassified Dutchess, Putnam and the northern portion of Orange County as moderate nonattainment for ozone. The new moderate classification changes the requirements for these areas. However, since these areas are in the Northeast Ozone Transport Region there will be a minimum of changes needed to the regulations. The State should still review the regulations to determine if administrative changes are needed.

Requirements for Areas in the Northeast Ozone Transport Region

Because ozone is a regional problem, Section 184(a) of the Act included all of New York State in the Northeast Ozone Transport Region. Section 184(b)(1)(B) requires areas that are part of the Ozone Transport Region to implement RACT rules for VOC sources. This requirement includes sources subject to pre-enactment CTGs, sources subject to post-enactment CTGs, and all non-CTG sources with the potential to emit more than 50 tons of VOCs per year.

New York's March 8, 1993, SIP revision extended the applicability of New York's RACT rules for sources covered by pre-enactment CTGs statewide and it also adds control requirements for some non-CTG RACT sources. These regulations are addressed in this proposal. As was explained earlier for the portions of New York which are designated as severe, the State needed to make additional submissions with respect to non-CTG RACT rules. This was also true for the remainder of the State. The State has now made the necessary submissions which will be the subject of a future **Federal Register** notice.

SIP Deficiencies

EPA has identified a number of deficiencies in New York's Ozone SIP. New York made a number of submittals intending to address these deficiencies but on October 16, 1991, EPA wrote to the Governor of New York, informing him that New York had missed the May 15, 1991 deadline to correct all of the RACT deficiencies that EPA had previously identified. This initiated the sanction process required by Section 179(a) of the Act.

The specific problems that EPA identified were the failure to develop a control measure regulating the detection and repair of component leaks at synthetic organic chemical manufacturing industry (SOCMI) facilities, an inadequate definition for VOC, and inadequate emission limitations for certain surface coatings.

On January 8, 1992, New York submitted SIP revisions that addressed the missing control measures for SOCMI facilities and the inadequate definition of VOC. EPA approved this SIP revision on July 27, 1993 (58 FR 40057).

In its March 8, 1993, SIP revision, New York addressed the remaining SIP deficiencies. EPA's April 9, 1993, determination that this submittal was complete stopped the sanctions process initiated on October 16, 1991. EPA's action on these rules is addressed in this proposal.

State Submittals

On March 8, 1993, New York submitted to EPA a request to revise its SIP. The revisions consisted of amendments to Part 200, ''General Provisions,'' Part 201 ''Permits and Certificates,'' Part 228, ''Surface Coating Processes,'' Part 229 ''Petroleum and Volatile Organic Liquid Storage and Transfer,'' Part 233, ''Pharmaceutical and Cosmetic Manufacturing Processes,'' and Part 234, ''Graphic Arts'' of Title 6 of the New York Code of Rules and Regulations. These regulations were adopted on February 27, 1993, and became effective on March 29, 1993. These regulations address, in part, the requirements of the Clean Air Act explained previously. It should be noted that because the specific requirements of the Act which New York must address vary by the severity of the ozone problem in a specific area, the applicability of New York's regulations also vary by area. A summary of EPA's review and findings concerning these regulations follows. For a more detailed analysis, see the technical support document which is available at EPA's Region 2 office.

Part 200—General Provisions

A definition for ''Lower Orange County Metropolitan Area'' was added to Part 200. The definition is consistent with EPA's current non-attainment designation. In addition, Part 200 was updated to reflect numbering changes made previously to other regulations dealing with references to test methods. EPA proposes to fully approve Part 200.

Part 201—Permits and Certificates

EPA's past approval of Part 201 dates back to 1981 and the regulation has been revised from time to time since then. Some of the current revisions were

state has failed to submit a SIP or an element of a SIP that is required by the Act; that a State has submitted a SIP or an element of a SIP that is incomplete; or that EPA disapproves a SIP submission for a nonattainment area.

necessary to extend the applicability of Part 201 to source categories which were previously exempted from these requirements. Other changes were made which clarify when a certificate to operate is required, when a certificate to construct or operate can be transferred, and when a certificate to operate ceases to be valid. On June 28, 1989 (54 FR 27274), EPA provided guidance on what requirements a state operating permit program must meet in order to part of a SIP. There are, however, certain inconsistencies between Part 201 and EPA's guidance pertaining to public participation procedures. EPA is in the process of preparing additional guidance which may necessitate changes to state permit programs similar to Part 201. EPA is proposing to approve the current revisions to Part 201 because they are necessary for the efficient administration of the expanded RACT regulations discussed later in this proposal. EPA may in the near future notify New York that Part 201 must be revised in order for Part 201 to remain in the SIP.

Part 228—Surface Coating Processes

New York has made two corrections to Part 228 to address existing deficiencies in New York's RACT rules as required by Section 182(a)(2)(A) of the Act. These corrections involve removing an exemption for high performance aluminum architectural coatings previously contained in 228.3(a)(2)(v), and removing an emission limit for clear coating of metal furniture previously contained in 228.8 table 1. Sources that were previously regulated under these provisions must now meet the requirements for miscellaneous metal parts and metal furniture respectively contained in the revised Part 228. EPA is proposing to approve both of these changes. These changes correct the last of the deficiencies in New York's SIP that were required to be corrected under Section 182(a)(2)(A). New York's submission of a SIP which met EPA's completeness criteria (40 CFR 51 Appendix V) stopped the sanction process required by Section 179(a).

New York has also extended the applicability of sources regulated by Part 228 to cover unregulated sources in upstate New York. Depending upon the type of surface coating operation, the regulation applies to sources with potential annual emissions of VOCs of either 10 tons or 50 tons. New York has required that certain surface coating operations must be regulated at sources with potential annual emissions of 10 tons to meet requirements set forth in CTGs for surface coating operations. New York has regulated additional types of surface coating operations at facilities with the potential annual emissions of 50 tons to satisfy the Section 184(b) requirement to require RACT for all major sources of VOCs. The applicability of Part 228 has also been extended to include the seven towns in southern Orange County that have been added to the New York-Northern New Jersey-Long Island Nonattainment area. The applicability in southern Orange County extends to sources with potential annual emissions of either 10 tons or 25 tons, depending upon the type of surface coating source being regulated. Sources must comply with these new requirements by June 1, 1995. This date is consistent with the Act's requirement that sources required to be regulated be in compliance with RACT requirements ''as expeditiously as practicable but no later than May 31, 1995.''

New York has also removed from the rule, a facility wide reduction plan (bubble) as a compliance option. Part 228 previously contained generic provisions allowing for the mathematical combination of VOC emissions or ''bubble'' provisions. These provisions were not consistent with EPA's Emission Trading Policy (51 FR 43814, December 4, 1986) because New York had not attained the national ambient air quality standard for ozone by December 31, 1987 and its SIP was found to be substantially inadequate. New York decided to eliminate these bubble provisions as a control option. This change makes Part 228 consistent with EPA's Emission Trading Policy.

In addition to making changes required by the Act, New York has made a number of other changes to Part 228. New York added a low use specialty coating exemption. To be exempted: each low-use specialty coating to be exempted must be identified in the plants permit and approved by the State prior to exemption, the plant-wide total exempted coating usage cannot exceed 55 gallons from all coatings, the source must maintain records on an as used basis for each exempted and non-exempted coating, and the annual potential to emit of these exempt coatings can not exceed five percent of the facility's total annual potential to emit. Since this is consistent with EPA's August 10, 1990 guidance, EPA is proposing to approve it. New York also revised Part 228 to clarify that sources are allowed the option of either reformulating coatings or using control equipment to reduce VOC emissions. The control efficiency required is the lesser of the control efficiency required to meet the coating limits required for reformulated coatings calculated on a solids as applied basis or 85%. EPA proposes to fully approve Part 228.

Part 229—Petroleum Liquid Storage Facilities

Control requirements were added for the transfer of gasoline at gasoline bulk plants and loading terminals in upstate New York that were previously uncontrolled. Control requirements were also added for the storage of volatile organic liquids (other than gasoline) and marine gasoline loading facilities statewide. Marine gasoline loading facilities at all gasoline storage and distribution facilities which have a daily throughput of greater than 20,000 gallons must be equipped with and operating a vapor control system. The final compliance date for newly regulated sources is June 1, 1995, except for marine vessel loading facilities which must be in compliance by November 15, 1994. EPA proposes to fully approve Part 229.

Part 233—Pharmaceutical Manufacturing Processes

The applicability of Part 233 was extended to control unregulated sources in upstate New York. In addition, control requirements were added for non-synthesized pharmaceutical manufacturing processes and for cosmetic manufacturing processes statewide. These sources must control emissions from: process equipment, air dryer and production equipment exhausts, VOC transfers, centrifuges and filters, in process tanks and leaks. All newly regulated sources must comply with these requirements by June 1, 1995. New York has also removed facility wide emission reduction plans (bubbles) as a compliance option. EPA proposes to fully approve Part 233.

Part 234—Graphic Arts

The applicability of Part 234 was extended to control unregulated sources in upstate New York that have potential annual emissions of 50 tons or more. In addition, the applicability has been extended to sources located in the seven towns in southern Orange County that are part of the New York-Northern New Jersey-Long Island Nonattainment area. The applicability to these sources extends down to those with 25 tons or more of potential annual emissions. Statewide control requirements were also added for screen printing operations and offset lithographic printing operations. New York has also added provisions regulating the handling, storage and disposal of VOCs. An opacity limitation was also added

for all sources subject to this regulation. EPA proposes to fully approve Part 234.

Conclusion

EPA is proposing full approval of Parts 200, 201, 228, 229, 233 and 234 because they are consistent with EPA policy and guidance and also meet the requirements of Sections 110, 182(a)(2)(A), 182(b)(2) and 184(b) of the Act.

Nothing in this proposal should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moveover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *US EPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 U.S.C. § 7410(a)(2).

The Office of Management and Budget has exempted these actions from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C 7401–7671q.

Dated: May 2, 1995.

William Muszynski,

Acting Regional Administrator.

[FR Doc. 95–12772 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 86

[FRL–5209–9]

RIN 2060–AE27

Revisions to the Federal Test Procedure for Emissions From Motor Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: On February 7, 1995 (60 FR 7404), EPA published a Notice of Proposed Rulemaking in the **Federal Register** that proposed additions and revisions to the tailpipe emissions portions of the Federal Test Procedure for light-duty vehicles and light-duty trucks. Interested parties should consult that notice and/or the public docket (see **ADDRESSES** below) for a detailed description and background of the proposal.

A public hearing regarding the proposed regulations was held on April 19 and 20, 1995. In joint testimony presented at that hearing the Agency was asked by the American Automobile Manufacturers Association and the Association of International Automobile Manufacturers to consider extending the comment period from 30 days after the public hearing to 90 days after the public hearing. As a continuation of previous EPA-industry cooperation efforts, the automobile manufacturers have extensive test programs in progress to investigate many aspects of the proposed regulations. The completion of these programs and the necessary data analyses to follow can not be accomplished within the original comment period. The EPA believes that the test programs and the resulting data have sufficient merit to warrant the requested extension of the comment period.

DATES: The comment period for the notice of proposed rulemaking will be extended from the original closing date of May 22, 1995 to July 19, 1995.

ADDRESSES: Comments should be submitted in duplicate to Public Docket No. A–92–64, at: Air Docket Section, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. (Phone 202–260–7548; FAX 202–260–4000).

Materials relevant to this notice have been placed in Docket No. A–92–64. The docket is located at the above address in Room M–1500, Waterside Mall, and may be inspected weekdays between 8:30 a.m. and 5:30 p.m. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: John German, Certification Division, U.S. Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. Telephone (313) 668–4214. Fax (313) 741–7869.

Dated: May 16, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–12771 Filed 5–23–95; 8:45 am]

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40 CFR Part 180

[OPP–300386; FRL–4954–1]

RIN 2070–AC18

Polymethylene Polyphenylisocyanate, Polymer with Ethylene Diamine, Diethylene Triamine and Sebacoyl Chloride, Cross-Linked; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish an exemption from the requirement of a tolerance for residues of polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d) to replace and delete the existing exemption from the requirement of a tolerance for residues of cross-linked nylon-type encapsulating polymer under 40 CFR 180.1028. Elf Atochem North America, Inc., requested this proposed regulation pursuant to the Federal Food, Drug and Cosmetic Act.

DATES: Written comments, identified by the document control number [OPP-300386], must be received on or before June 23, 1995.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington,

VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-300386]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703)-308-8811; e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Elf Atochem North America, Inc., 2000 Market St., Philadelphia, PA 10103-3222, submitted pesticide petition (PP) 5E4447 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR part 180 by replacing the existing exemption from the requirement of a tolerance for residues of cross-linked nylon-type encapsulating polymer listed under 40 CFR 180.1028 with an exemption from the requirement of a tolerance for residues of polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d).

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, will need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances that are defined as ''polymers,'' the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria that are used to identify low-risk polymers.

1. The minimum number-average molecular weight of polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, is 100,000. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal tract. Chemicals not absorbed through skin or GI tract generally are incapable of eliciting a toxic response.

2. Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, is not a cationic polymer, nor is it reasonably expected to become a cationic polymer in a natural aquatic environment.

3. Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, does not contain less than 32.0 percent by weight of the atomic element carbon.

4. Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.

7. Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, is not manufactured from reactants containing, other than impurities, halogen atoms or cyano groups.

8. Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, does not contain a reactive functional group that is intended or reasonably expected to undergo further reaction.

9. Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, is neither designed nor reasonably expected to substantially degrade, decompose, or depolymerize.

The establishment of an exemption from the requirement of a tolerance for residues of polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only under 40 CFR 180.1001 will obviate the need to maintain an exemption from the requirement of a tolerance for cross-linked nylon-type encapsulating polymer as listed under 40 CFR 180.1028. The polymer listed in 40 CFR 180.1028 is described as being ''formed by the reaction of a mixture of sebacoyl chloride and polymethylene polyphenylisocyanate with a mixture of ethylene diamine and diethylene triamine.'' The resultant polymer can best be described as polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, the subject of this proposed regulation.

In addition, based on the polymer's conformance to the set of criteria that are used to identify low-risk polymers, the additional use restrictions described in 40 CFR 180.1028 (i.e., use as an encapsulating material for formulations of methyl parathion applied to growing alfalfa, apples, artichokes, barley, cabbage, cherries, corn (except popcorn), cotton, forage grasses, grapes, beans, (dry, lima, and snap), peaches, pears, peas, plums (fresh prunes), potatoes, rice, soybeans, tomotoes, and wheat and for formulations of parathion applied to growing sorghum), are no longer applicable.

Based on the information above and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful, and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, that contains any of the ingredients listed herein, may request within 30 days after the publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300386]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [OPP-300386] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirement of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subject in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Processed foods, Reporting and recordkeeping requirements.

Dated: May 10, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredient	Limits	Uses
* * *	* * *	* *
Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked; minimum number average molecular weight 100,000.	.....	Encapsulating agent
* * *	* * *	* *

* * * * *

§ 180.1028 [Removed]

3. By removing § 180.1028 *Cross-linked nylon-type encapsulating polymer; exemption from the requirement of a tolerance* is deleted.

[FR Doc. 95–12742 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–68, RM–8629]

Radio Broadcasting Services; Berlin, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by John P. Gillen, proposing the allotment of Channel 235A to Berlin, Maryland, as that community's second FM Broadcast service. The coordinates for Channel 235A are 38–13–45 and 75–10–58. There is a site restriction 10.8 kilometers (6.7 miles) southeast of the community.

DATES: Comments must be filed on or before July 10, 1995, and reply comments on or before July 25, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: John P. Gillen, 12314 Dixie Drive, Bishopville, Maryland 21813.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–68, adopted May 11, 1995, and released May 18, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857–3800.

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* contact.

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. 95–12703 Filed 5–23–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–67, RM–8624]

Radio Broadcasting Services; Greenfield & Stockton, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by KYOO Communications proposing the allotment of Channel 299A at Stockton, Missouri, as that community's first local service. The coordinates for Channel 299A at Stockton are 37–42–22 and 93–53–21. There is a site restriction 8.5 kilometers (5.3 miles) west of the community. To accommodate Channel 299A at Stockton, we shall propose the deletion of vacant Channel 299A at Greenfield, Missouri.

DATES: Comments must be filed on or before July 10, 1995, and reply comments on or before July 25, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William J. Pennington, III, 5519 Rockingham Road-East, Greensboro, North Carolina 27407.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–67, adopted May 8, 1995, and released May 18, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857–3800.

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* contact.

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. 95–12705 Filed 5–23–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 94–753]

Federal Acquisition Regulation; Public Meeting on Travel Cost

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of public meeting on proposed rule.

SUMMARY: At 59 FR 64542, December 14, 1994, a Federal Acquisition Regulation (FAR) proposed rule for implementing statutory requirements of the Federal Acquisition Streamlining Act, (the Act) with regard to travel cost was published. Numerous written comments have been received at the FAR Secretariat in response to the **Federal Register** document. The notice announces a public meeting for the Travel Cost rule.

DATES: The meeting will be at 2:00 p.m. on June 14, 1995.

ADDRESSES: The public meeting will held at: Office of Personnel Management, 1900 E Street NW., Room 1350, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, FAR Secretariat, General Services Administration, 18th and F Streets NW., Washington, DC 20405. Telephone: (202) 501–4755; FAX (202) 501–4067.

SUPPLEMENTARY INFORMATION: In order to implement Section 2191 of the Act, the Cost Principles Team drafted a proposed rule which would use the Federal Travel Regulation/Joint Travel Regulation (FTR/JTR) rates as a baseline, while allowing contractors to propose alternative maximum per diem rates based on existing travel cost reimbursement systems. After review and analysis of the public comments on the proposed rule, the team has preliminarily decided to recommend retention of the current cost principle language at FAR 31.205–46 without change and to withdraw the proposed rule.

The team's preliminary determination to retain the current cost principle language is based on the following: (i) Industry and Government agency commentors generally agreed that the proposed rule's alternative maximum per diem rate requirements would place an undue administrative burden on contractor and Government personnel; (ii) commentors proposing a revision to the ''reasonableness standard'' did not provide any empirical data to support claimed inequities or increased administrative burdens under the current rule; and (iii) the commenters' alternatives were considered by the team to be administratively burdensome and inadequate to protect the Government's interests. The team's preliminary conclusion is that retaining the current FAR requirement will reduce disagreements and disputes between contractors and the Government, is less burdensome administratively than any alternative proposed, and results in equitable reimbursement of per diem costs.

To allow the public to present its views on this determination, a public meeting will be held on June 14, 1995. Persons or organizations wishing to make presentations will be allowed 10 minutes to present their views, provided they notify the FAR Secretariat at (202) 501–4745 and provide an advance copy of their remarks not later than June 9, 1995. All participants should be prepared to provide data to support their positions. The team is particularly interested in data which supports the contention that FTR/JTR rates are inequitable or that the current FAR requirements are more administratively burdensome than would be other proposed alternatives, either proposed during the public comment process, or presented at this meeting. Alternatives, other than those previously proposed during the public comment period, may be submitted the consideration. The team will enter into discussion with commentors and the audience during this meeting.

Dated: May 18, 1995.

Edward C. Loeb,

Deputy Project Manager for Implementation of the Federal Acquisition Streamlining Act of 1994.

[FR Doc. 95–12659 Filed 5–23–95; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 94–30, Notice 2]

RIN 2127–AF17

Consumer Information Regulations Uniform Tire Quality Grading Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Uniform Tire Quality Grading Standards to:

1. Revise treadwear testing procedures to maintain the base course wear rate of course monitoring tires at its current value. That revision should eliminate treadwear grade inflation, reduce testing expenses, and reduce the adverse environmental consequences of operating testing convoys;

2. Create a new traction grading category of ''AA'' in addition to the current traction grades of A, B, and C to differentiate those tires with the highest traction characteristics from lower performing tires;

3. Replace the temperature resistance grade with a rolling resistance/fuel economy grade. This change would provide a measure of a key fuel economy characteristic of tires, and responds to the President's Climate Change Action Plan.

DATES: Comments on this notice must be received on or before July 10, 1995.

ADDRESSES: Comments should refer to the docket and notice number shown above and be submitted to Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Room 5111, Washington, DC 20590. Docket room hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, Office of the Associate Administrator for Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5320, Washington, DC 20590, telephone (202) 366–0846.

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I. Background

49 U.S.C. 30123(e) requires the Secretary of Transportation to prescribe a uniform system for grading motor vehicle tires to assist consumers in

making informed choices when purchasing tires. NHTSA implemented this congressional mandate by issuing the Uniform Tire Quality Grading Standards (UTQGS) (49 CFR § 575.104). The UTQGS are applicable to most passenger car tires.

The UTQGS require manufacturers to grade their tires for treadwear, traction, and temperature resistance. Those characteristics were adopted by NHTSA after an extended process of study, testing, and public comment. NHTSA believed that those three characteristics provided the best balance of tire properties that would be the most meaningful to consumers. Because those three characteristics interact with each other, however, manufacturers must use care in trying to improve any particular characteristic since improving one characteristic could detract from one or both of the other characteristics. For example, treadwear life could be extended by adjusting the tire compounds to produce a harder tread. That adjustment, however, could detract from traction performance. Tread life could also be extended by adding more rubber compound to the tread. That addition, however, could increase rolling resistance, causing greater internal heating. The increased heating could, in turn, result in temperature buildup and possibly result in tire failure.

II. April 25, 1994 Request for Comments

On April 25, 1994, NHTSA published a Request for Comments in the **Federal Register** (59 FR 19686) requesting public comment on possible improvements to the UTQGS. Specifically, the agency requested comments on ways to cure a problem of treadwear grade inflation, whether to add an additional rating category to provide a means of differentiating tires with the highest traction characteristics, and whether to commence the grading of tires for rolling resistance. In view of the complexity of the subject matter of this notice, the agency is repeating much of the background explanatory discussion in the Request for Comments.

A. Treadwear

In the Request for Comments, the agency described the testing of candidate tires, the role played by course monitoring tires in adjusting the measured wear of candidate tires and the possible sources of treadwear rating inflation.

1. Treadwear Test and Calculation Procedures

a. Candidate tires. The treadwear grade is considered the most meaningful of the three grades to the public, but treadwear is also the most difficult of the three characteristics to grade.

The procedures which NHTSA follows for testing tires for compliance with the UTQGS are specified in 49 CFR 575.104(e), Treadwear grading conditions and procedures. NHTSA tests treadwear by running the tires being tested, called candidate tires, on test vehicles multiple times over a 400-mile test course on public roads in the vicinity of San Angelo, Texas. The test vehicles travel in convoys of two or four passenger cars, light trucks, or multipurpose passenger vehicles, each with a GVWR of 10,000 pounds or less. To equalize operating conditions, the drivers are changed at regular intervals, the tires are rotated to different positions on the vehicles, and the vehicles are rotated to different positions within the convoy.

Candidate tires are subjected to a 6,400 mile test. At the end of the test, the total measured wear is multiplied by a factor that reflects the severity of the environmental conditions during the test (the purpose and derivation of that factor is explained below in the discussion of course monitoring tires). The result of the multiplication is the adjusted wear rate (AWR) of the candidate tires. The AWR is extrapolated to wearout, which is considered to be the point at which 1/16th of an inch of tread remains. The extrapolated figure becomes the treadwear grade. A grade of 100 indicates that the tire can be expected to achieve 30,000 miles to wear out, as measured on the San Angelo course. A treadwear grade of 150 should achieve 50 percent more mileage than the one graded 100, if tested on the same course and under the same conditions. NHTSA emphasizes, however, that the treadwear grades are not meant to be indicative of the actual mileage every consumer can expect from a given tire. The grades are intended to be indicators of relative performance rather than absolute performance. Thus, a tire graded at 150 should achieve 50 percent more mileage than one graded at 100. The actual tire mileage achieved by a motorist depends on many variables, such as geographic location, road conditions, individual driving habits, climate, weather, tire maintenance, and so forth.

b. Course Monitoring Tires. Environmental factors like changes in road and climatic conditions can cause course wear rates for the same tire to vary on a daily basis. In order to compensate for the effect of such variables on the amount of wear during a particular treadwear convoy test, candidate tires are tested along with control tires called course monitoring tires (CMT). Four CMT's are placed on one test vehicle and four candidate tires with identical size designations are placed on each other test vehicle in the convoy. CMTs are built to the specifications of American Society for Testing and Materials (ASTM) standard E1136, which specifies tight controls over the production, handling, and storage of those standardized control tires.

Since CMT lots are not precisely identical, even though manufactured to ASTM standards, a base course wear rate (BCWR) is established for each new batch or lot of CMTs procured by the agency. The BCWR is the calculated wear rate of that lot of CMTs under ''average'' conditions and is applied to the CMTs to adjust for the variability in the wear rates between CMT lots. The BCWR for the new lot is determined by running tires selected from that lot over the test course in a convoy along with CMTs from the previous lot. The previous CMTs are run in an attempt to determine whether and to what extent there have been changes in the condition of the course. The measure of those changes is called a course severity adjustment factor (CSAF). The CSAF is determined by dividing the BCWR for the CMTs by the average wear rate of the 4 CMTs in the test convoy. It is assumed that any difference between the BCWR and the wear rate reflects changes in the course. The measured wear rate of the new CMTs is then multiplied by the CSAF to obtain the adjusted wear rate (AWR) of the new CMTs, which then becomes the BCWR for new CMTs. This procedure is intended to make the BCWR of new CMTs comparable to that of the previous CMTs by removing changes in the course as a source of difference between the BCWR of the previous CMTs and that of the new CMTs.

Upon completion of the 6,400-mile test of the candidate tires, the BCWR of the new CMT lot is divided by the average measured wear rate of the new CMTs in the test convoy to determine the CSAF for that convoy. That CSAF is then applied to the wear rates of the candidate tires. The AWR of the candidate tires is extrapolated to the point of wear out, which then becomes the treadwear rating of the candidate tires.

2. Treadwear Grade Inflation

NHTSA has noted significant increases in treadwear ratings since the UTQGS became fully effective in 1980. Early in the UTQGS program, the treadwear ratings remained at roughly the same level. As the years progressed, however, treadwear ratings have drifted steadily upward in both manufacturers' and NHTSA's testing results. In part, this increase reflects the fact that current tires are of higher quality, perform better and last longer than tires produced even a few years ago. Such improvements result from industry developments such as improvements in rubber compounds, cord materials, tire designs, and tread configurations.

The agency believes, however, that some of the increase in treadwear grades cannot be explained by improvements in tires. A significant amount of the unexplained increase is traceable to a decline in the BCWRs of each successive lot of CMTs. Under the formula for calculating treadwear, the BCWRs for CMTs and treadwear vary inversely, Thus, as the BCWRs decrease, treadwear increases.

3. Decline in Base Course Wear Rate

Since the first lot of CMTs was procured in 1975, there has been a steady and consistent decline in the BCWRs of each successive lot of CMTs. Although measured wear rates for CMTs have varied, BCWRs have steadily declined from 4.44 mils per thousand miles for the original lot of CMTs to 1.47 mils per thousand miles for the last lot purchased in 1993, as shown in Table 1, below:

TABLE 1.—CMT WEAR RATES AND BASE COURSE WEAR RATE ADJUSTMENT FACTORS

Year tested	Manufacturer	Series	Wear rate (mils per 1,000 miles)	BCWR
1975	Goodyear	Batch 1	4.44	4.44
1979	Goodyear	Batch 1	4.08	
1979	Goodyear	Batch 2	3.82	4.16
1980	Goodyear	Batch 2	5.29	
1980	Goodyear	Batch 3	4.76	3.74
1984	Goodyear	Batch 3	4.22	
1984	Uniroyal	40000	3.27	2.89
1987	Uniroyal	40000	5.96	
1987	Uniroyal	71000	4.56	2.21
1989	Uniroyal	71000	5.01	
1989	Uniroyal	91000	4.84	2.14
1991	Uniroyal	91000	6.24	
1991	ASTM E1136	010000	4.94	1.70
1991	ASTM E1136	010000	6.96	
1992	ASTM E1136	110000	6.65	1.62
1992	ASTM E1136	110000	5.83	
1992	ASTM E1136	210000	5.60	1.56
1993	ASTM E1136	210000	7.21	
1993	ASTM E1136	310000	6.80	1.47

4. Causes of the Decline in BCWRs and Possible Agency Responses

The decline in the BCWRs suggests either that the test course itself is becoming progressively rougher or that other factors, as yet unidentified, are responsible, or both. The agency does not believe that the course has changed to any significant extent. The test course is well maintained by the State of Texas and presumably has changed little in severity over the years.

Accordingly, the agency has considered a number of other factors which could explain the decline, such as effects of aging and storage on tire performance, errors in the BCWR calculation, or some combination of those and perhaps other factors. The agency believes that the decline of the BCWRs may be caused in large part by the aging of the CMTs themselves while in storage. In addition, since the decrease in BCWRs has been so consistent with each new lot of CMTs, the agency believes that the problem may also be caused at least in part by an as-yet unidentified flaw in the formula for calculating the BCWR.

As tires age, their chemical compounds steadily emit minute amounts of gases. The rate of emission may be affected by environmental conditions. Further, environmental conditions, such as extremes of temperature can directly affect the tires. The combined effect of the environmental conditions and the emission of gases can cause changes in the rubber compounds over time. Such changes adversely affect the resiliency of the rubber, increasing wear rates and giving a false indication that the test course could be becoming more severe.

To minimize the aging factor, the agency has in recent years procured CMTs in small lots so as to reduce the interval between determining the BCWR for a given lot and subsequently using tires from that lot in determining the BCWR for the next lot. The agency has also begun to store the CMTs in polyethylene bags in a warehouse in which the temperature, although not controlled to the extent specified in ASTM E1136, normally ranges between 60° and 90°. The agency hopes that by storing the CMTs in the bags they will not be exposed to the atmosphere, thereby diminishing the gas emissions described above and lessening the outgas effect on the tires.

With respect to the formula for calculating BCWR, the agency requested comment on whether the practice of recalculating the BCWR of each new lot of CMTs should be abandoned and the wear rates of candidate tires compared directly with those of the CMTs, that is, without adjusting the wear rate of the new CMTs to reflect differences (theoretically due to aging) between the wear rates of the new CMTs and the CMTs from the previous lot. The intent of the BCWR is to provide a common baseline by which to grade candidate tires. However, NHTSA's practice of relating all new CMTs to the original CMTs in the manner specified in the UTQGS has somehow distorted the treadwear grading procedure to bring about the inflated results now being experienced.

In asking whether the agency should switch to direct comparison, the agency sought available data on whether such direct comparison of the wear rates of CMTs and candidate tires would avoid the effects of flaws in the current treadwear procedures. The switch to direct comparison could result in lower, and perhaps more realistic, treadwear ratings. On the other hand, it could change the original intent of the CMT, which was to provide a common baseline for comparison of wear rates, regardless of when a candidate tire was tested. In addition, it could present a problem for the tires already graded and still in production by having to re-test and re-grade them.

The agency posed four other questions in the notice, i.e., whether the current ratings are misleading, whether a new system should be developed for treadwear grading, whether the test should be changed, and whether the BCWR computation procedure should be changed.

B. Traction

1. Traction Test and Calculation Procedures

Traction grades are established by sliding tires over test pads also located near San Angelo, Texas. One pad consists of a wet asphalt surface; the other, a wet concrete surface. A test trailer is equipped with two control tires manufactured in accordance with ASTM standard E501. The control tires are inflated to 24 pounds per square inch (psi), statically balanced, allowed to cool to ambient temperature with inflation pressure maintained at 24 psi, then installed on the test trailer. Each tire is loaded to 1,085 pounds. The trailer is first towed over the wet asphalt surface at a speed of 40 miles per hour (mph). As one of the wheels with a control tire passes across the asphalt, it is locked. The traction coefficient of the locked wheel is recorded for a period of 0.5 to 1.5 seconds after lockup. The same procedure is then followed for the same wheel/control tire as the trailer is towed across the wet concrete surface. These tests are conducted 10 times on each surface for that wheel/control tire. The same tests are then conducted for the other wheel/control tire. The 20 measurements taken on each surface are averaged to find the control tire traction coefficient for that surface. After the testing of the control tires, those coefficients are used in calculating the traction coefficients of the candidate tires.

In testing the candidate tires, two tires of the same type, construction, manufacturer, line, and size designation are prepared and tested utilizing the same procedures described above for the control tires. The loads on the candidate tires, however, are maintained at 85 percent of the test loads specified in § 575.104(h). The adjusted traction coefficients of the candidate tires are determined in accordance with § 575.104(f)(2)(ix) and (x).

The grades of the candidate tires are designated as ''A'', ''B'', or ''C.'' A tire that achieves both a high level of traction performance on asphalt (above 0.47μ) and a high level on concrete (above 0.35μ) is graded ''A.'' A tire achieving medium traction performance (0.38μ on wet asphalt and 0.26μ on wet concrete) is graded ''B.'' A tire achieving traction performance lower than 0.38μ on asphalt and 0.26μ on concrete is graded ''C.''

2. Ability of Traction Grading System to Differentiate Highest Traction Tires

NHTSA's analysis of traction test data since 1989 indicates that tire traction performance has improved to the extent that the current grading system does not adequately differentiate between tires with different levels of performance, particularly the highest performing tires.

Another issue being examined by NHTSA is the implication of the increasing number of vehicles with antilock braking systems (ABS) for the way in which traction is measured. For non-ABS vehicles, sliding traction is the primary traction force in panic braking since the vehicles' wheels are locked during such braking. However, for ABS vehicles, peak tire traction is the primary traction force since the ABS keeps the tire rolling during panic braking.

3. Possible Solutions to Traction Grading Problems

The agency solicited comments on whether the traction ratings should be revised to differentiate the highest performing tires. One alternative for addressing this problem would be to adjust each grade category so that it would represent a higher band or range of performance than it currently does. For example, the A grade could be adjusted so that it includes tires with traction coefficients above 0.54μ on asphalt and above 0.41μ on concrete, while a B rating could include tires with traction coefficients above 0.48μ and 0.35μ respectively, and a C rating could include tires with performance below that. Another alternative would be to make no adjustment in the level of performance represented by the existing grades, but create a new grade category of ''AA'' for the highest performing tires, i.e., those tires achieving traction coefficients above 0.54μ and 0.41μ respectively.

NHTSA also sought comments on whether to replace or supplement traction grading based on sliding traction with traction grading based on peak tire traction and asked about the cost of measuring peak traction.

C. Temperature and Rolling Resistance/ Fuel Economy

1. Temperature Resistance

The current provisions of the UTQGS require grading tires in a third category, temperature resistance. The temperature resistance grade indicates the extent to which heat is generated and/or dissipated by a tire by measuring the ability of the tire to operate at high speeds without tire failure. Heat is generated by the energy absorbed by the tire from the friction caused by the flexing and slipping of the rubber as it rolls along the road. That energy is wasted and appears in the tire as heat. The more energy that is wasted, the greater the heat buildup. If the tire is unable to dissipate that heat effectively or if the tire is unable to resist the heat buildup, its ability to run at high speeds without failure is reduced. Therefore, its temperature resistance grade is lower.

Heat buildup is generally caused by some combination of tire overloading, high speed operation, and/or improper inflation pressure, all of which contribute to greater flexing and increased heat buildup. Sustained high temperature can cause structural degeneration of the tire compounds resulting in reduced tire life or outright tire failure.

NHTSA tests tires for temperature resistance utilizing the same laboratory test wheel as the high speed performance test of Federal motor vehicle safety standard (Standard) No. 109, *New pneumatic tires.* That test is conducted at speeds up to 85 mph, while the UTQGS temperature resistance test is run at speeds of up to 115 mph. A tire is graded ''A'' if it completes the test at a sustained speed of 115 mph without visual evidence of tread, sidewall, ply, cord, innerliner, or bead separation, chunking, broken cords, cracking or open splices, and the inflation pressure is not less than the specified test pressure. A tire is graded ''B'' if it completes the test at speeds between 100 and 115 mph without the damage mentioned above, and is graded ''C'' if it has successfully completed the test at speeds between 85 and 100 mph.

2. Rolling Resistance/Fuel Economy

NHTSA considers temperature resistance to be a valid safety concern

and is unaware of any problems with the accuracy of the ratings. However, despite the agency's efforts over the years to educate the public by means of consumer information bulletins, press releases, and labels affixed to tires explaining the meaning and significance of the UTQGS ratings, NHTSA has found that most of the tire-buying public is not aware of and/or does not understand the significance of the temperature resistance rating.

Conversely, increasing interest has been shown in adding a rating for rolling resistance on the basis that such a rating could be readily understood by the public. The possibility of adding such a rating was discussed at the White House Conference on Global Climate Change on June 10 and 11, 1993 (hereinafter referred to as the Conference). At a meeting of the Auto and Light Truck Workshop of the Transportation Working Group of the Conference, Michelin presented a paper asserting that the average rolling resistance for original equipment all-season radial tires was 22.6 percent less than that for typical replacement tires. Further, it was suggested that a 4 percent improvement in fuel economy could be realized if replacement tires had the same rolling resistance as original equipment tires.

As a result of the Conference, the Administration issued a report on October 19, 1993, entitled The Climate Change Action Plan (Plan), setting forth a series of initiatives to reduce greenhouse gas emissions. The Plan calls for reduction of U.S. greenhouse gas emissions to 1990 levels by the year 2000. One of the initiatives to accomplish that goal calls for DOT, through NHTSA, to issue new rules and test procedures requiring manufacturers to test and label tires relative to their rolling resistance.

NHTSA expressed its belief in the Request for Comments that there is a close relationship between temperature resistance and rolling resistance. One of the causes of heat generation in tires, the action of the tread on the road surface, also causes rolling resistance. In fact, it is the friction resulting from rolling resistance that is the immediate cause of heat generation in the tire. Properties of the road and of tire materials, such as roughness, softness, as well as amount of flexing, determine the amount of friction and therefore the amount of heat generated.

Rolling resistance is measured in a procedure similar to that used for measuring temperature resistance, namely by running a tire under load on a test wheel. The energy consumed in driving the tire is measured and the energy recovered from the tire is measured by the test equipment. The difference is the heat energy lost which is the measure of the rolling resistance.

Safety benefits should not be lost by substituting rolling resistance for temperature resistance since the two are related and determined by similar tests. Standard No. 109 would continue to ensure that all tires are capable of safe operation at speeds of up to 85 mph, which establishes a minimum safety threshold. Further, given that the public is not very responsive to temperature resistance ratings, the elimination of those ratings should not cause the tire manufacturers to lower the temperature resistance performance of their tires.

3. Issues Regarding Temperature/Rolling Resistance/Fuel Economy

The agency invited comments on a wide variety of issues relating to temperature resistance. Among them were whether the rolling resistance can be improved without detracting from the other rated tire performance characteristics, whether the temperature resistance rating should be supplemented by or replaced by a rolling resistance rating, whether such a substitution would have any safety consequences, and how rolling resistance values should be translated into improvements in ''real world'' fuel economy.

III. Summary of Public Comments, Agency Decisions and Benefits and Costs

To preserve the continuity of discussion about each type of UTQGS rating, the agency presents below, as one unit, the summary of public comments, the agency decision in response to those comments, and the costs and benefits of the decision first with respect to the treadwear rating procedures, then traction, and then temperature/rolling resistance.

A. Treadwear

1. Summary of Comments

Bridgestone/Firestone, Inc. (BF), The Goodyear Tire and Rubber Company (Goodyear), General Tire (GT), Michelin, MTS Systems Corporation (MTS), Dunlop Tire Corporation (Dunlop), Cooper Tire and Rubber Company (Cooper), and the European Tyre and Rim Technical Organisation (ETRTO) responded to the agency's treadwear issues. BF, GT, and Dunlop did not consider the UTQGS treadwear grade misleading to consumers, so long as the grade is used only to compare tires and not project expected mileage to wearout. Goodyear, ETRTO, and Michelin, on the other hand, believed that the treadwear rating is misleading to the public because the treadwear test produces inconsistent results. They argued that the inconsistencies arose from such factors as the steady decline in the BCWR, the relatively short duration of the treadwear test, and the low wear rates of the tires, which cause the treadwear test to overestimate tire life. Michelin further commented that although tire technology has improved considerably in the past few years, treadwear grades have increased faster than technological improvements. Michelin commented that the test course is not sufficiently demanding.

BF, Goodyear, Cooper, and Dunlop commented that the treadwear grade should be deleted altogether, arguing that it is not needed and is not cost effective. Goodyear stated that manufacturers' tire warranties are better and more meaningful to consumers, and BF asserted that NHTSA's own figures indicate that 70 percent of the tire-buying public pay no attention to the treadwear grade. Cooper and Dunlop asserted that the treadwear grade is environmentally unfriendly, Dunlop contending that every test convoy adds 22 tons of greenhouse gases to the environment and costs $27,524.64.

Goodyear, Dunlop, Michelin, BF, and MTS commented that if the treadwear grade remains a part of the UTQGS, a new system should be developed for rating it. They contended that the present rating system is too expensive, unreliable, and has too many variables. Goodyear, Dunlop, and MTS urged development of a standard, repeatable laboratory test, and BF, Cooper and Dunlop recommended that NHTSA participate with the ASTM F9 Committee to develop a new indoor, environmentally friendly test procedure. This refers to a committee of the ASTM, designated the ''F9 Committee,'' which was formed to develop a laboratory test to assess treadwear potential.

Goodyear, Michelin, BF, and MTS all agreed that the test procedure should be changed, contending that the vehicle to vehicle rotation of the candidate tires creates new variables in addition to the existing ones. Finally, Goodyear, Cooper, Dunlop, BF, and GT recommended that the BCWR be fixed at its present figure of 1.47 to achieve more consistent results and save testing costs.

2. Agency Decision

The agency is not persuaded by the commenters' assertions that the treadwear ratings of tires under the UTQGS are inconsistent and mislead the public. The agency does not agree that the treadwear test results are

inconsistent. The treadwear grade provides a basis on which to compare the relative treadwear of tires tested under controlled conditions. The agency believes that a road test has the inherent advantage of measuring treadwear rates under actual road conditions. Further, the computations used in calculating the BCWR, CSAF, and the AWR are specifically intended to make the treadwear test results as consistent as possible.

NHTSA does not agree with commenters that suggested that the practice of vehicle to vehicle rotation of candidate tires creates new variables and should be changed. On the contrary. NHTSA has found, and so stated in a previous notice (55 FR 47765) that rotation of the tires throughout the test convoy significantly reduced the variability of treadwear grades resulting from test car and driver factors.

NHTSA believes that the treadwear ratings provide consumers with reliable information on which to distinguish between the relative performance of the different tire types and brands. They are not intended to project the actual expected mileage of a tire. Tire purchasers are specifically advised of this on the label required by 49 CFR 575.104(d)(1)(B)(2), which states that the treadwear rating is a ''comparative rating'' and explains what the rating represents. The voluntary treadwear warranties provided by manufacturers do, by contrast, indicate the amount of mileage that can be expected from a given tire. NHTSA considers the UTQGS treadwear ratings and the manufacturers' warranties to be complementary and, in many instances, confirm each other. NHTSA's surveys show that 74 percent of the public had heard of the treadwear ratings and 29 percent consider such ratings in making their tire purchases. While 29 percent may seem a comparatively small percentage of the tire buying public, it is large enough to be influential. Tire manufacturers continue to make improvements in treadwear. Further, treadwear related information is given prominent treatment in tire advertising.

Cooper and Dunlop commented that the treadwear rating should be deleted because the testing is expensive and ''environmentally unfriendly.'' Since treadwear is the central feature of the statutorily-mandated UTQGS, NHTSA is not proposing to delete treadwear. NHTSA is well aware of the expense of treadwear testing. NHTSA's contract cost of operating a 4-car test convoy for the 7,200 mile test (6,400 miles for the test and 800 miles for the pre-test break-in) is $17,751. Dunlop did not disclose the basis for the $27,524.64 figure it quoted. Regardless of the per convoy cost, the agency notes that the per tire cost is minimal, considering that the test cost is averaged over all the tires produced of the same type. As to greenhouse gas emissions, NHTSA estimates that the emissions into the atmosphere per 4-car convoy is between 14.08 and 15.8 tons. Again, Dunlop did not explain how it arrived at the 22-ton figure.

As discussed in section IIA1, *Treadwear test and calculation procedures,* above, the agency believes that the primary reason for past treadwear grade inflation has been the effects of aging on the CMTs while in storage. The agency believes, however, that wrapping the CMTs in polyethylene bags and storing them in a warehouse where the temperature only varies between 60° and 90° is minimizing the aging effects on the different lots of CMTs.

The agency is persuaded by the suggestions of Goodyear, Cooper, Dunlop, BF and GT that the BCWR be fixed at its present figure, 1.47 mils per thousand. Maintaining the BCWR at the current figure would allow existing treadwear ratings to remain essentially unchanged and prevent future grade creep. Further, the fiscal expense and environmental effects of running test convoys would be eliminated. Accordingly, NHTSA proposes to fix the BCWR of all future lots of CMTs at the current rate of 1.47 mils per thousand, or the value in use on the date of issuance of any final rule resulting from this proposed rulemaking action. If the agency issues such a final rule, it would consider taking the further step of subsequently substituting the BCWR in use on the effective date of the final rule for the BCWR in use on the issuance date of the final rule. The agency believes that fixing the BCWR, in addition to the more strictly controlled storage procedures, would eliminate or significantly reduce treadwear grade inflation and reduce costs both to NHTSA and the industry by not having to test each new lot of CMTs.

3. Costs and Benefits

The agency believes that assigning a fixed value to the BCWR would reduce to insignificance, if not eliminate entirely, the inflation of treadwear ratings. The change in storage procedures is internal to NHTSA and will not result in any costs to tire manufacturers or consumers. Fixing the BCWR at its present rate also would have no cost effect on manufacturers or consumers because it involves no additional testing, retesting or relabeling of tires. The treadwear amendments would, however, benefit both manufacturers and the public by simplifying the required treadwear grading of tires and by making the treadwear grades more realistic and consistent.

B. Traction

1. Public Comments

Goodyear, Dunlop, ETRTO, GT, MTS, and BF recommended maintaining the current traction rating method. GT and Dunlop stated that changing the rating system could cause confusion both to consumers and to the industry, and MTS stated that the current system produces reliable, repeatable results.

Cooper, on the other hand, recommended changing the rating system, arguing, without explanation, that the current system is oversimplified and potentially misleading. Cooper argued further that the traction numbers generated since NHTSA changed the test pads at San Angelo in 1989 are significantly lower than before the pads were changed and that therefore there is no need for an additional traction grade level. Specifically, Cooper cited traction tests conducted on the new skid pads in 1992 and 1993 on 54 tires of 28 different brands from 12 different manufacturers. Cooper stated that those tests showed an arithmetic mean of only 0.48±.04 for traction coefficients on the wet asphalt surface and 0.34±.02 on the wet concrete surface. Cooper stated that these figures showed a significantly different statistical distribution than that cited by NHTSA in support of the suggestion to upgrade the traction grading system. In addition, Cooper noted that none of the 54 tires tested would qualify for NHTSA's suggested ''AA'' traction grade. Finally, Cooper suggested that the agency work with the ASTM F9 Committee to develop a better test method.

Only Michelin supported the suggestion that the traction grade be upgraded. Cooper and Dunlop opposed upgrading the traction rating, arguing that it would confuse the public and increase costs to the industry with no consequent benefit to consumers. Dunlop stated that changes to the traction grading scheme would mean most existing tires and those in production would need to be regraded. Although Goodyear and ETRTO were not enthusiastic about upgrading the traction category, they stated that if the traction grade were changed, they favored creation of the ''AA'' category. MTS agreed that if the traction grade were changed, ''AA'' would be the simplest and most meaningful change.

With respect to whether peak traction should be measured and added to the traction grade, Goodyear, Michelin and MTS expressed support for the suggestion, saying that peak traction correlates with stopping distance and the measurements are reliable. Dunlop, Cooper, and BF opposed the suggestion, however, contending that the majority of motor vehicles currently on the road are not equipped with ABS. They also contended that peak traction data are more variable than sliding traction data and thus not so reliable.

The commenters agreed, however, that the cost of measuring peak traction would be minimal since both peak and sliding traction values could be measured under current test procedures, although data retrieval systems would need to be modified.

2. Agency Decision

NHTSA does not agree with the conclusions that Cooper draws from its figures regarding the traction coefficients of the new skid pads at San Angelo. The agency notes that Cooper's figures are based on a relatively small sample.

NHTSA statistically analyzed larger samples. Its analysis of traction tests of 254 candidate tires tested on the new skid pads showed that the distribution of the traction coefficients of the tested tires had a mean, or average, value of 0.516 on the wet asphalt surface and 0.364 on the wet concrete surface. The standard deviation about the mean values of this tire group was 0.029 on the wet asphalt and 0.017 on the concrete surface.

NHTSA's statistical analysis of 196 candidate tires tested on the old skid pads showed the mean value of the traction coefficients of those tires to be to be 0.533 on the wet asphalt surface and 0.375 on the wet concrete surface. The standard deviation about the arithmetic mean among this group was 0.036 on the old asphalt surface and 0.027 on the old concrete surface. The agency believes that the difference between the traction coefficients of the 196 tires tested on the old skid pads and the 254 tires tested on the new skid pads may be due to differences in the old and the new pads or differences in the tire populations of 1989–1991 and 1992–1994. In any case, all future traction testing will occur on the new pads since the old pads no longer exist.

Based on the average traction coefficient and standard deviation values from the new pads, the agency proposes adding a fourth category, designated as ''AA,'' to the traction grade only for tires with traction coefficients that exceed 0.54 (representing the mean, 0.516, and adding the standard deviation of 0.029) when tested on wet asphalt and 0.38 (0.364, the mean, +0.017, the standard deviation) when tested on wet concrete. Of the 254 tires tested as described above, only 8 would currently qualify for the new ''AA'' grade. The agency believes, however, that an optional new traction rating would provide an incentive for manufacturers to improve the traction performance of other tire lines.

NHTSA disagrees with GT and Dunlop that providing a means for differentiating the highest traction tires would cause confusion among consumers. To the contrary, NHTSA believes that adding the ''AA'' rating would benefit consumers by providing them additional guidance for choosing the proper tires to suit their individual needs.

Since upgrading traction performance to take advantage of the ''AA'' rating is optional, tire manufacturers would not necessarily incur any additional costs. Those manufacturers that chose to use the AA rating would be free to pass on whatever additional costs they would incur to their customers (see discussion of costs below).

NHTSA agrees with Goodyear, Michelin and MTS that there is a correlation between peak and sliding traction and that both values can be considered equivalent for grading purposes. However, the agency is persuaded by the comments of Dunlop, Cooper and BF that the majority of vehicles currently on the road are not equipped with ABS. Thus, they depend on sliding traction rather than peak traction for maximum stopping action. Accordingly, NHTSA does not propose to include peak traction in the traction ratings at this time.

3. Costs and Benefits

The proposed amendments to the traction grade under the UTQGS would create an additional level of traction rating the use of which would be optional to manufacturers. Therefore, the proposed ''AA'' traction rating would apply only to those manufacturers who elect to produce tires that meet the proposed ''AA'' criteria and label those tires accordingly. As discussed in IIIB above, only 8 of the 254 tires skid-tested by NHTSA would qualify for the proposed ''AA'' rating. The manufacturers' costs of reworking tire molds to accommodate the new traction rating would be minimal and would be necessary only for this small group and only if the manufacturers of those tires opted to give those tires the new, higher grade. The paper labels required by 49 CFR 575.104(d)(1)(i)(B)(2), however, would need to be changed to reflect the 4-grade rating system.

C. Temperature/Rolling Resistance/Fuel Economy

1. Public Comments

All comments on the Request for Comments addressed the temperature/rolling resistance/fuel economy issue. Nine trade and consumer associations responded, including engineering companies and test laboratories, 5 of which supported a rolling resistance grade and 4 of which were opposed. Seven tire manufacturers responded, 6 of which opposed a rolling resistance grade either as a substitute for the temperature resistance grade or as a fourth rating category under the UTQGS. Fourteen private citizens commented, 9 of whom supported a rolling resistance grade, while 5 were opposed.

The members of the public and the private associations and companies that opposed a rolling resistance grade cited various objections to it. For example, Mr. Christopher Smith of Pennsylvania asserted that NHTSA should not be concerned with rolling resistance because it robs consumers of their choices. Mr. Fred Crum of California stated that road surface ratings are more important than rolling resistance ratings if fuel savings are to be achieved. Mr. Robert Burns, President of the Private Brand Tire Group (PBTG) asserted that the government should not force consumers to bear the cost of testing and remolding a new UTQGS symbol which will be passed on to them by manufacturers. Advocates for Highway Safety (AHS) expressed concern that addition of a rolling resistance rating could cause consumers, for reasons of economy, to purchase tires that have a lower overall traction performance.

Cooper, Dunlop, Goodyear, BF and GT argued that rolling resistance and temperature resistance are separate properties. They asserted that rolling resistance measures the energy consumed by the tire, which relates to the efficiency of the tire in converting motive power to distance traveled, while temperature resistance relates to the ability of the tire structure and materials to withstand the temperatures generated by the flexing of the rubber and its reinforcing materials. The PBTG opposed the deletion of the temperature resistance grade, asserting that the temperature resistance characteristics of tires are relevant to such hot climates as the American desert southwest where tire dealers choose their tire lines on

this basis. Cooper and Dunlop stated that such desert countries as Saudi Arabia require tires imported into their countries to be rated at least ''B'' for temperature resistance. Goodyear, on the other hand, supported the deletion of the temperature resistance rating because, as NHTSA discussed in the Request for Comments of April 25, 1994, the majority of consumers pay no attention to this rating when purchasing tires. Michelin also supported the deletion of the temperature resistance grade, stating that the voluntary speed ratings placed on some tires by manufacturers in accordance with SAE Recommended Practice J1561, Laboratory Speed Test Procedure for Passenger Car Tires, adequately represent the temperature resistance capability of the tire.

Michelin commented that vehicle manufacturers, in order to meet fuel economy requirements, have long required their tire suppliers to provide low rolling resistance original equipment (OE) tires, while still imposing strict standards on treadwear, traction, and speed durability. Michelin stated that since 1980 tire rolling resistance has in some cases been reduced by as much as 50 percent while still maintaining other performance characteristics. BF asserted that the rolling resistance of OE tires is constantly being improved to meet CAFE standards and that that technology is included in after-market tires through standardization. Therefore, BF argued that there is no need to establish a rolling resistance grade for the UTQGS.

NTDRA, PBTG, Goodyear, and GT argued that a rolling resistance grade would be costly and yield little or no consumer benefit because of lack of consumer interest. NTDRA contended that a rolling resistance grade would constitute an unnecessary cost burden on manufacturers. Goodyear, claiming a the lack of success of its Invicta GFE model low rolling resistance tire, stated that there is little public interest in low rolling resistance/fuel efficient tires because of their increased cost. STL asserted that there are too many variables in measuring rolling resistance to be of any consumer benefit. Goodyear, Michelin, Dunlop and Cooper stated that even tires of the same size designation, construction and load-carrying capacity can have different rolling resistance characteristics. PBTG, Goodyear, GT, BF, and Dunlop argued that rolling resistance cannot be improved without adversely affecting treadwear and traction. Michelin disagreed with this assertion, saying that tire manufacturers have used tire technology to reduce rolling resistance in OE tires without adversely affecting treadwear or traction.

Manufacturers generally agreed that there would be a difference in production and consumer costs between grading for temperature resistance and rolling resistance, but did not specify what such difference might be. Goodyear stated that it costs less to test for rolling resistance than for temperature resistance, but more tests would probably be required. Goodyear estimated that rolling resistance tests cost $175 per test while temperature resistance tests cost $250 per test. BF stated that it would be ''extremely expensive'' to consumers to implement all the changes suggested by NHTSA in the Request for Comments. GT estimated that to achieve reduced rolling resistance without loss of the other tire properties would increase tire costs to consumers by 15 percent, due to the increased cost of redesigning and testing of tire lines. Goodyear asserted that a tire designed to minimize rolling resistance may have a shorter tread life, thereby creating the need for more tires with associated increased energy consumption. The American Retreaders Association expressed concern that such low rolling resistance tires may not be retreadable.

PBTG, Goodyear, BF, GT, Dunlop, NTDRA and Cooper asserted that the best course of action would be for NHTSA to mount a publicity campaign to educate the public with respect to proper tire maintenance and encourage people to maintain proper inflation pressure, proper balance and alignment, and obey speed limits. The commenters asserted that those measures would have a more significant effect on reduction of greenhouse gasses than grading tires for their rolling resistance characteristics. Nevertheless, Dunlop, BF, Goodyear, GT, and Cooper suggested that if NHTSA decides to proceed with the rolling resistance grade, the agency should make the requirement effective for newly-introduced tire lines only.

The lone manufacturer supporting the establishment of a rolling resistance grade was Michelin. That company supported the deletion of the temperature resistance grade, stating that it does not serve the purpose for which it was intended and does not provide useful consumer information. Michelin asserted, on the other hand, that establishment of a rolling resistance grade for all tires would encourage manufacturers to improve the rolling resistance characteristics of replacement tires and bring them up to the capabilities of OE tires. Michelin estimated that the additional consumer cost would be less than $1 per tire, but in any case no more than $2.50 per tire. Michelin believes that those costs would be more than offset by the value of the fuel conservation and reduction of global warming gases that rolling resistance labeling would make possible.

2. Agency Decision

a. *Temperature resistance*. The temperature resistance grade under the UTQGS represents a tire's ability to dissipate and withstand heat buildup that can cause the tire to degenerate and result in a reduction of tire life or even tire failure. Currently, 20.4 percent of new replacement tire lines are rated A, 51.8 percent are rated B, and 26.4 percent are rated C.

The temperature resistance grade is not widely understood by consumers and therefore most do not find it useful when purchasing tires. NHTSA's data indicate that of consumers purchasing tires for their own use, 38 percent have heard of the temperature resistance grade, while only 12 percent consider it in making tire selections. The comparable figures for the other types of ratings are 74 percent and 29 percent for the treadwear ratings and 65 and 27 percent for the traction ratings.

As stated above, in order to create wider knowledge and better understanding of the UTQGS ratings among consumers, including the temperature resistance rating, NHTSA has issued consumer information bulletins, press releases, and has required labels to be affixed to each individual tire. These efforts seemed to arouse little public interest and had no lasting effect. NHTSA has considered expanding its publicity efforts into nationwide publicity campaigns, but such publicity campaigns are very expensive. Further, based on the lack of response to previous publicity on the subject, NHTSA has no reason to believe that a widespread, expensive publicity campaign would produce any more significant results than past efforts. NHTSA believes that the safety purposes of the temperature resistance grade can be essentially met by other existing measures. The high speed performance test specified in section S5.5 of Standard No. 109, New pneumatic tires, assures the minimum temperature resistance performance for all passenger car tires. That section requires that tires be tested at 75 miles per hour (mph) for 30 minutes, at 80 mph for 30 minutes, and again at 85 mph for 30 minutes. At the end of the test, the tire must have not less than the initial inflation pressure and must not

show the indications of damage specified in paragraph S4.2.2.5(a) of Standard No. 109. Successful completion of this test equates to a temperature resistance grade of ''C'' under the UTQGS. That meets at least the minimum requirements under the UTQGS.

To accommodate those with special needs, such as law enforcement vehicles that require tires capable of sustained high speeds or those operating in areas of high ambient temperatures, tire speed ratings are available. These ratings are voluntary industry ratings in accordance with the procedures set forth in SAE-J1561. Such ratings are indicated by symbols molded onto or into tire sidewalls which range from the ''S'' category, meaning capability of sustained speeds up to 112 mph, to the ''Y'' category, meaning capability of sustained speeds up to 186 mph. Tires above the ''S'' category would be equivalent to a UTQGS temperature resistance rating of ''A.''

With respect to Michelin's comment, noted above, that the manufacturers' voluntary speed ratings adequately represent the temperature resistance capability of a tire, NHTSA has no data about the number of consumers who know of and consider the industry speed ratings. The agency believes, however, that consumers who need, for reasons such as occupation or climate, tires with higher speed ratings are motivated to obtain information about the industry speed ratings and consider them in selecting replacement tires.

For those reasons, NHTSA proposes to delete the temperature resistance rating from the UTQGS, substituting therefor a rolling resistance/fuel economy rating, as discussed below. NHTSA believes that since the UTQGS are intended to be meaningful and helpful to the tire-buying public in selecting tires that suit their individual needs, the agency should continue its efforts to make the UTQGS as meaningful and helpful as possible to consumers by rating those tire characteristics which the public understands and in which the public is interested.

b. *Rolling resistance/fuel economy.* Based on the public comments in response to the agency's April 25, 1994 Request for Comments, the agency believes that there is a direct correlation between rolling resistance and fuel economy. Michelin commented that a 5 percent reduction in rolling resistance results in a 1 percent fuel savings at highway speeds, regardless of the vehicle's fuel consumption. The agency would welcome comments on the validity of this relationship.

NHTSA also solicits comments on how the relationship would be affected by various real-world driving conditions, such as temperature, precipitation, vehicle speed, and road conditions, and vehicle conditions such as wheel alignment, tire balance, and inflation pressures. Even if that relationship would not be affected by those conditions, NHTSA assumes that any such fuel savings would be reduced in direct proportion to the number of tires on the vehicle that do not have low rolling resistance. For example, under this assumption, a vehicle equipped with 2 low rolling resistance tires and 2 tires with rolling resistance typical of current replacement tires would achieve only half the savings of the same vehicle equipped with 4 low rolling resistance tires. The agency requests comment on that assumption.

The agency does not agree with the assertions of some commenters that rolling resistance cannot be improved without detracting from the other tire characteristics. NHTSA agrees with commenters on the Request for Comments that although rolling resistance and temperature resistance are separate properties, there is a correlation between rolling resistance and heat generation. Rolling resistance contributes to heat buildup which can ultimately result in tire failure. Thus, a tire with lower rolling resistance will normally run cooler, and therefore safer, than a tire with higher rolling resistance. In addition, a tire with lower rolling resistance creates less friction, thus contributing to tire efficiency which in turn results in less fuel consumption.

Michelin and other commenters pointed out that the rolling resistance of OEM tires has been significantly reduced in recent years to assist vehicle manufacturers in meeting corporate auto fuel economy (CAFE) standards, without loss of traction or treadwear. Since the achievement of rolling resistance reductions without adverse safety consequences is a significant issue, NHTSA solicits more specific data on the differences in rolling resistance and traction characteristics between OEM and replacement tires at the manufacturers' recommended pressures and at typical inflation pressures.

While the cheapest way of reducing rolling resistance would also reduce traction, there are other ways, such as alternative tread compounds, that are reasonable in cost and that may not affect traction. Further, the UTQGS traction ratings would inform purchasers when making a particular tire choice that would involve a reduction in traction. Therefore, there should logically be no inherent detraction from treadwear or traction capabilities by the production and purchase of low rolling resistance replacement tires. Nevertheless, the agency solicits comments on the extent to which, if at all, there is or could be a trade-off between safety characteristics such as traction and low rolling resistance. If such trade-offs do exist—(1) to what extent would this occur in real-world driving and vehicle conditions and typical inflation pressures? (2) how do tire manufacturers trade off those characteristics between OEM and replacement tires? (3) to what extent to the trade-offs vary for the different ways of reducing rolling resistance?

NHTSA has no data regarding Goodyear's assertion that low rolling resistance tires may have a shorter tread life, thus requiring more tires with associated increased energy consumption and the adverse environmental consequences of more scrap tires for disposal. NHTSA has not received any reports or indication that low rolling resistance OEM tires tend to have lower treadwear grades. To the contrary, as discussed above, treadwear grades have steadily increased over the past several years. Nevertheless, information is requested on any differences in treadwear ratings between OEM and replacement tires.

Several comments suggested that there was no public interest in lower rolling resistance. This suggestion appears to be based largely on speculation. One commenter did rely on the lack of success of its reduced rolling resistance tire. The agency does not believe that much reliance can be placed on that experience. When that tire was being sold, there was no comparative information available to the public regarding the rolling resistance of other tires.

NHTSA believes that while significant improvements have been made in the rolling resistance of OEM tires in the last 15 years, changes in replacement tire rolling resistance have lagged behind somewhat. The agency has no data, and Michelin provided no specifics, regarding that company's assertion that the rolling resistance of OEM tires has been reduced by 50 percent since 1980. Similarly, NHTSA has no data indicating that, as BF contended, the low rolling resistance technology of OEM tires is being applied to replacement tires. Although that might eventually happen, NHTSA believes that there is an equally strong possibility that it will not. The agency would welcome data on the amount of

reduction in rolling resistance in OEM tires since 1980 and to what extent, if any, such technology has been applied to currently available replacement tires.

Tire manufacturers have been producing low rolling resistance OEM tires for vehicle manufacturers since 1980 and equivalent low rolling resistance tires are available on the replacement market to some extent. However, comparative information on the fuel economy benefits of such tires is not available to consumers. The agency seeks to expedite the availability of low rolling resistance tires by encouraging tire manufacturers to produce low rolling resistance replacement tires and emphasize the economic and environmental advantages of such tires in their promotional advertising. NHTSA will also publicize the advantages of low rolling resistance tires and encourage the public to purchase them.

NHTSA disagrees with commenters that suggested that a public education program encouraging proper tire maintenance would result in as much fuel conservation as requiring a rolling resistance grade. The agency is aware that a great deal of fuel is unnecessarily consumed by improper tire maintenance, particularly improper inflation pressure. However, the agency believes that even if the motoring public did properly maintain all tires, there would continue to be potential fuel savings available by reducing the rolling resistance of replacement tires.

ARA did not explain why it thought low rolling resistance tires would not be retreadable. In response to the ARA comment, however, Michelin stated that low rolling resistance tires have routinely been retreaded without any problems. NHTSA has not received any information or complaints on this issue, which could indicate that there is no significant problem with retreading low rolling resistance tires. The agency also notes that it is not aware that many car tires are currently retreaded. NHTSA would welcome comments on this issue, however, particularly if there are problems with retreadability, including the types and sizes of tires involved.

Some commenters stated that the rolling resistance of larger tires is less than that of smaller tires under the same loading conditions. For instance, Cooper commented that tire size makes a difference in rolling resistance measurements because tire loading is not precisely proportional to tire size. Michelin reported rolling resistance values of 8.3 kilograms per ton to 9.8 kilograms per ton for tires in a given tire line having the same rim diameter and aspect ratio, but of different width.

NHTSA does not believe that the variation in the rolling resistance of different sized tires would be so great as that reported by Michelin under the procedures of SAE J–1269. The agency believes that, as measured under test loading conditions, rolling resistance should remain approximately the same for all tire sizes in a tire line. If certain tire lines do show substantial differences in rolling resistance among sizes, testing of each size may be necessary to determine fuel economy grades. Depending on the number of tires and lines involved, manufacturers might choose to grade each size individually or assign the lower value to all tires within the same line. At the extreme, there may be two or three rolling resistance values for a tire line, just as there is presently for temperature resistance or treadwear.

For the reasons discussed above, the agency proposes to delete the temperature resistance grade from the UTQGS and substitute a fuel economy grade. The agency considers fuel economy more understandable and more meaningful to the tire-buying public than the temperature resistance rating. As pointed out above, the latter is not widely understood or utilized by the public in their tire purchases. Finally, addition of the fuel economy grade furthers the initiatives in the Climate Change Action Plan issued by the Administration in a national effort to reduce greenhouse gas emissions.

The agency is proposing to base the new fuel economy rating on a rolling resistance coefficient instead of rolling resistance itself since this will partially normalize rolling resistance variations by tire size within a tire line. The rolling resistance coefficient (C_r) is calculated by dividing the rolling resistance by the load on the tire when tested in accordance with SAE J–1269. Michelin stated that this coefficient ranges from 0.0073 to 0.0156, while Goodyear assessed the range as being between 0.0067 and 0.0152, and STL fixed it at 0.005 to 0.015.

Using 0.010 as the midpoint of the range, one method of rating fuel economy based on the rolling resistance coefficient would be by rating tires with a coefficient of less than 0.010 as ''A'' for fuel economy. Tires with a coefficient of 0.010 to 0.015 could be graded ''B'', while tires with a rolling resistance coefficient greater than 0.015 could be rated ''C''. This approach would be consistent with the views of those commenters who stated that if a rolling resistance/fuel economy rating were established, the A, B, and C ratings would be simpler, and therefore preferable.

Michelin, on the other hand, prefers a more differentiated, quantitative expression of the amount of potential fuel savings than would be provided by a general indication as in the case of the letter ratings. The agency believes that some consumers might also prefer this method. For example, a rolling resistance coefficient of 0.0080 would be graded as a 9 percent increase in fuel savings (100(0.0150–0.0080)/(0.0150)(5)) compared to a rolling resistance coefficient of 0.0150 (the number (5) in the preceding calculation represents a 5 percent change in rolling resistance, corresponding to a 1 percent change in fuel economy). A rolling resistance coefficient of 0.0150 or greater would be graded as 0 percent, indicating no fuel savings.

The agency seeks to make the rolling resistance/fuel economy rating as meaningful as possible to consumers. Accordingly, the agency solicits comments on the feasibility and preferability of the two methods of expressing the rating as discussed above, namely the A, B, and C method or the method quantifying the amount of potential fuel savings of the tire.

Note: All amendments related to the former method are identified in the regulatory text as ''alternative 1'' and all those related to the latter method are identified as ''alternative 2.''

3. Costs and Benefits.

The requirement to test and label all tires for rolling resistance could add to the testing costs associated with the production of tires. NHTSA believes that some of the costs of grading tires for rolling resistance would be offset by the deletion of testing for temperature resistance. Some commenters stated that although the rolling resistance test is less costly than the temperature resistance test, tire manufacturers may need to conduct more rolling resistance tests on different tire sizes to determine accurate fuel economy grades.

GT estimated the cost of rolling resistance testing at $250 per test, while Goodyear estimated $175 and BF estimated $100. Considering those comments, NHTSA believes that, as stated in the Request for Comments of April 25, 1994, the cost of a rolling resistance test should not exceed $250. The commenters variously estimated the cost of rolling resistance testing machines at between $400,000 and $1.2 million. Cooper stated that if rolling resistance tests were required, it would require a capital investment of $1.2 million to purchase 4 test machines. Considering the data submitted by commenters, NHTSA estimates that a single tire station rolling resistance test

machine can be purchased for $500,000. NHTSA also notes, however, that tire manufacturers have the option of contracting with independent testing laboratories for their testing requirements, thereby avoiding a large capital outlay.

NHTSA estimates that the costs of labeling for fuel economy would be minimal, probably no more than pennies per tire. That conclusion is based on Cooper's statement that its total UTQGS labeling costs are $0.10 per tire, and Michelin's statement that its total UTQGS labeling could cost up to $0.15 per tire. On this issue, NHTSA agrees with Michelin that if given sufficient lead time to change tire molds during a regular replacement cycle, the proposed labeling changes would have negligible cost impact.

NHTSA estimates that the consumer cost of improving rolling resistance would be no more than $5 per tire, or $20 per set of 4. However, those figures are based on the projected cost of reducing the average rolling resistance of OEM tires by 10 percent, not on the cost of reducing average aftermarket tires' rolling resistance values to the level of average OEM tires. NHTSA solicits additional and more specific comments on the cost per tire of decreasing the rolling resistance of typical replacement tires to that of typical OEM tires, including the magnitude of that reduction in rolling resistance (Michelin asserted that the average rolling resistance of OEM tires is 22.6 percent lower than that of average replacement tires) and a description of the specific materials and design changes on which the cost estimate(s) is based. Further, are any alternative materials or designs that would significantly lower costs? To what extent are the answers to this question affected by typical tire and vehicle maintenance habits by consumers, such as inflation pressure, wheel alignment and tire balance?

NHTSA estimates that, assuming the realization of fuel economy gains of 4 percent, the use of 4 low rolling resistance replacement tires on a typical passenger car could result in fuel savings of 67 gallons over an assumed 40,000 mile tread life. The present value of such fuel savings, excluding Federal and state taxes, would be approximately $58. The average cost-benefit ratio of fuel savings per tire purchase would therefore be 2.9 to 1 ($58/$20) for passenger cars. Given these assumptions, the improved rolling resistance of the tires could in most cases pay for itself in slightly more than 1 year.

However, NHTSA notes that the imposition of rolling resistance grading would not include any obligation for tire manufacturers to reduce the rolling resistance of their tires. In fact, if the manufacturers believe that there is no consumer interest in low rolling resistance tires, they need not make any changes in their tires other than adding the grade marking on the sidewall.

D. Lead Time

The agency is proposing to make these amendments effective one year after issuance of the final rule. The agency believes that this would be sufficient for the following reasons. None of the amendments would require tire manufacturers to redesign their tires. Further, neither the treadwear nor the traction amendments would require the retesting of any tires. The rolling resistance/fuel economy amendments would require the testing of all existing tires. However, the agency believes that that testing could be readily completed in time to begin labeling tires with rolling resistance information at the end of a year.

Several tire manufacturers urged that the rolling resistance requirement be made effective for newly introduced tire lines only. The agency lacks authority to establish effective dates in the requested fashion. It could phase-in the requirement by percentage of production, as it has various vehicle standards, or by type of tire. However, NHTSA believes that a year should be sufficient lead time and that a phase-in would not be necessary. Nevertheless, the agency requests comment on these lead time issues.

IV. Rulemaking Analyses and Notices

A. E.O. 12866 and DOT Regulatory Policies and Procedures

This notice has not been reviewed under E.O. 12866, Regulatory Planning and Review. The agency has considered the impact of this rulemaking action and has concluded that it is not ''significant'' under the DOT's Regulatory Policies and Procedures. The amendments proposed in this notice are intended to make the UTQGS more meaningful and helpful to consumers in selecting tires to meet their needs. The amendments to the provisions regarding the treadwear and traction ratings are intended to reduce the treadwear rating inflation experienced in the past, and to add a traction grade category that differentiates the highest traction tires from lower traction tires. Neither of those testing and labeling amendments inherently involves any additional costs either to manufacturers or to consumers. The testing costs for a fuel economy grade would be offset by the savings realized by not having to conduct temperature resistance testing. The rolling resistance test is cheaper than the temperature resistance test, but more tire sizes may need to be tested. Additional discussion of these issues is contained in the agency's Preliminary Regulatory Evaluation, a copy of which has been placed in the public docket with this rulemaking action.

B. Regulatory Flexibility Act

NHTSA has considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

The agency believes that no passenger car tire manufacturers qualify as small businesses. Small businesses, small organizations, and small governmental units would be affected by this rulemaking only to the extent that initially they may voluntarily pay as much as $5 more per tire for low rolling resistance tires in order to obtain the fuel savings associated with such tires.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking for purposes of the National Environmental Policy Act and has determined that implementation of this action would have no significant impact on the quality of the human environment.

Rolling resistance labeling could indirectly result in some modest environmental benefit, to the extent that such labeling encourages consumers to buy more fuel efficient aftermarket tires. However, the agency currently is unable to estimate the extent of any increase in sales of such tires. For illustrative purposes, the agency estimated the impacts that would result from 5, 10, and 15 percentage point increases in the sales of tires with low rolling resistance (NHTSA believes that the current market share for low rolling resistance tires in the aftermarket is about 15 percent). Such sales increases could reduce fleet fuel consumption by 155, 309, and 464 million gallons, respectively, over the assumed 40,000 mile tread lives of tires. This range of reductions is equivalent to oil savings of 10 to 30 thousand barrels per day. Further, such reductions in fuel consumption would result in vehicle carbon dioxide emission reductions of approximately 1.4, 2.7, and 4.1 million

metric tons over the tread lives of the tires.

D. Federalism

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612 and has determined that the proposals in this notice do not have sufficient federalism implications to warrant preparation of a Federalism Assessment. No state laws would be affected.

E. Civil Justice Reform

The proposed amendments in this notice would not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision thereof may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if the state's standard is identical to the Federal standard. However, the United States government, a state or political subdivision of a state may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

V. Comments

A. Comment Closing Date

NHTSA has determined that it is in the public interest to provide a comment period of less than 60 days in this instance because of the importance of the President's Climate Change Action Plan to fuel conservation and the reduction of greenhouse gas emissions into the environment. In addition, the Joint Conference Report on the Department of Transportation's Fiscal Year 1995 Appropriations directed the agency to issue a rolling resistance tire labeling rule by June 1, 1995.

B. General

Interested persons are invited to submit comments on the amendments proposed in this rulemaking action. It is requested but not required that any comments be submitted in 10 copies each.

Comments must not exceed 15 pages in length (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in concise fashion. Necessary attachments, however, may be appended to those comments without regard to the 15-page limit.

If a commenter wishes to submit certain information under a claim of confidentiality, 3 copies of the complete submission including the purportedly confidential business information should be submitted to the Chief Counsel, NHTSA at the street address shown above, and 7 copies from which the purportedly confidential information has been expunged should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in 49 CFR part 512, the agency's confidential business information regulation.

All comments received on or before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available to the public for examination in the docket at the above address both before and after the closing date. To the extent possible, comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for public inspection in the docket. NHTSA will continue file relevant information in the docket after the closing date, and it is recommended that interested persons continue to monitor the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 575

Consumer protection, Motor vehicle safety, Reporting and recordkeeping, Tires.

In consideration of the foregoing, 49 CFR Part 575 would be amended as follows:

PART 575—CONSUMER INFORMATION REGULATIONS

1. The authority citation for Part 575 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 575.104 would be amended by revising paragraphs (a); (d)(1)(i)(B); (d)(1)(ii); (d)(1)(iii); (d)(2)(i), and (d)(2)(ii) introductory text; adding paragraph (d)(2)(ii)(D); revising paragraphs (d)(2)(iii); (e)(2)(ix)(C); and (g); Table 1; and Figure 1; and in Figure 2, by revising Part I and in Part II, by removing the paragraph for ''Temperature'' and adding a paragraph for ''Fuel Economy''; and by removing Table 2A and sections (i) through (l).

§ 575.104 Uniform tire quality grading standards.

(a) *Scope.* This section requires motor vehicle and tire manufacturers and tire brand name owners to provide information indicating the relative performance of passenger car tires in the areas of treadwear, traction, and fuel economy.

* * * * *

(d) Requirements—(1) Information. * * *

Alternative 1 to paragraph (d)(1)(i)(B)

(i)(B) Each tire manufactured on and after the effective date of these amendments, other than a tire sold as original equipment on a new vehicle, shall have affixed to its tread surface so as not to be easily removable a label or labels containing its grades and other information in the form illustrated in Figure 2, Parts I and II. The treadwear grade attributed to the tire shall be either imprinted or indelibly stamped on the label containing the material in Part I of Figure 2, directly to the right of or below the word ''TREADWEAR''. The traction grade attributed to the tire shall be indelibly circled in an array of the potential grade letters AA, A, B, or C, directly to the right of or below the words ''TRACTION'' in Part I of Figure 2. The fuel economy grade attributed to the tire shall be indelibly circled in an array of the potential grade letters A, B, or C directly to the right of or below the words ''FUEL ECONOMY'' in Part I of Figure 2. The words ''TREADWEAR'', ''TRACTION'', and ''FUEL ECONOMY,'' in that order, may be laid out vertically or horizontally. The text of Part II of Figure 2 may be printed in capital letters. The text of Part I and the text of Part II of Figure 2 need not appear on the same label, but the edges of the two texts must be positioned on the tire tread so as to be separated by a distance of no more than one inch. If the text of Part I and the text of Part II of Figure 2 are placed on separate labels, the notation ''See EXPLANATION OF DOT QUALITY GRADES'' shall be added to the bottom of the Part I text, and the words ''EXPLANATION OF DOT QUALITY GRADES'' shall appear at the top of the Part II text. The text of Figure 2 shall be oriented on the tire tread surface with lines of type running perpendicular to the tread circumference. If a label bearing a tire size designation is attached to the tire tread surface and the tire size designation is oriented with lines of type running perpendicular to the tread

circumference, the text of Figure 2 shall read in the same direction as the tire size designation.

ALTERNATIVE 2 TO PARAGRAPH (d)(1)(i)(B)

(i)(B) Each tire manufactured on and after the effective date of these amendments, other than a tire sold as original equipment on a new vehicle, shall have affixed to its tread surface so as not to be easily removable, a label or labels containing its grades and other information in the form illustrated in Figure 2, Parts I and II. The treadwear grade attributed to the tire shall be either imprinted or indelibly stamped on the label containing the material in Part I of Figure 2, directly to the right of or below the word ''TREADWEAR.'' The traction grade attributed to the tire shall be indelibly circled in an array of the potential grade letters AA, A, B, or C, directly to the right of or below the word ''TRACTION.'' The fuel economy grade attributed to the tire shall be either imprinted or indelibly stamped on the label containing the material in Part I of Figure 2, directly to the right of or below the words ''FUEL ECONOMY.'' The words ''TREADWEAR,'' ''TREADWEAR,'' and ''FUEL ECONOMY,'' in that order, may be laid out vertically or horizontally. The text of Part II of Figure 2 may be printed in capital letters. The text of Part II of Figure 2 may be printed in capital letters. The text of Part I and the text of Part II of Figure 2 need not appear on the same label, but the edges of the two texts must be positioned on the tire tread so as to be separated by a distance of no more than one inch. If the text of Part I and the text of Part II of Figure 2 are placed on separate labels, the notation ''See EXPLANATION OF DOT QUALITY GRADES'' shall be added to the bottom of the Part I text, and the words ''EXPLANATION OF DOT QUALITY GRADES'' shall appear at the top of the Part II text. The text of Figure 2 shall be oriented on the tire tread surface with lines of type running perpendicular to the tread circumference. If a label bearing a tire size designation is attached to the tire tread surface and the tire size designation is oriented with lines of type running perpendicular to the tread circumference, the text of Figure 2 shall read in the same direction as the tire size designation.

ALTERNATIVE 1 TO PARAGRAPH (d)(1)(ii)

(ii) In the case of information required in accordance with § 575.6(c) to be furnished to prospective purchasers of motor vehicles and tires, each vehicle manufacturer and each tire manufacturer or brand name owner shall, as part of that information, list all possible grades for traction and fuel economy, and restate verbatim the explanations for each performance area specified in Figure 2. The information need not be in the same format as in Figure 2. In the case of a tire manufacturer or brand name owner, the information must indicate clearly and unambiguously the grade in each performance area for each tire of that manufacturer or brand name owner offered for sale at the particular location.

ALTERNATIVE 2 TO PARAGRAPH (d)(1)(ii)

(ii) In the case of information required in accordance with § 575.6(c) to be furnished to prospective purchasers of motor vehicles and tires, each vehicle manufacturer and each tire manufacturer or brand name owner shall, as part of that information, list all possible traction grades and restate verbatim the explanations for each performance area specified in Figure 2. The information need not be in the same format as in Figure 2. In the case of a tire manufacturer or brand name owner, the information must indicate clearly and unambiguously the grade in each performance area for each tire of that manufacturer or brand name owner offered for sale at the particular location.

ALTERNATIVE 1 TO PARAGRAPH (d)(1)(iii)

(iii) In the case of information required in accordance with § 575.6(a) to be furnished to the first purchaser of a new motor vehicle, other than a motor vehicle equipped with tires manufactured prior to the effective date of these amendments, each manufacturer of motor vehicles shall, as part of the information, list all possible grades for traction and fuel economy, and restate verbatim the explanation for each performance area specified in Figure 2. The information need not be in the format of Figure 2, but it must contain a statement referring the reader to the tire sidewall for the specific tire grades for the tires with which the vehicle is equipped.

ALTERNATIVE 1 TO PARAGRAPH (d)(1)(iii)

(iii) In the case of information required in accordance with § 575.6(a) to be furnished to the first purchaser of a new motor vehicle, other than a motor vehicle equipped with tires manufactured prior to the effective date of these amendments, each manufacturer of motor vehicles shall, as part of the information, list all possible grades for traction and fuel economy, and restate verbatim the explanation for each performance area specified in Figure 2. The information need not be in the format of Figure 2, but it must contain a statement referring the reader to the tire sidewall for the specific tire grades for the tires with which the vehicle is equipped.

(2) Performance—(i) Treadwear. Each tire shall be graded for treadwear performance with the word ''TREADWEAR'' followed by a number of two or three digits representing the tire's grade for treadwear, expressed as a percentage of the NHTSA nominal treadwear value, when tested in accordance with the conditions and procedures specified in paragraph (e) of this section. Treadwear grades shall be in multiples of 20 (for example, 80, 120, and 160).

(ii) Traction. Each tire shall be graded for traction performance with the word ''TRACTION,'' followed by the symbols C, B, A, or AA, when the tire is tested in accordance with the conditions and procedures specified in paragraph (f) of this section.

* * * * *

(D) The tire may be graded AA only when its adjusted traction coefficient is both:

(*1*) More than 0.54 when tested in accordance with paragraph (f)(2) of this section on the asphalt surface specified in paragraph (f)(1)(i) of this section; and

(*2*) More than 0.38 when tested in accordance with paragraph (f)(2) of this section on the concrete surface specified in paragraph (f)(1)(i) of this section.

ALTERNATIVE 1 TO PARAGRAPH (d)(2)(iii)

(iii) Fuel economy. Each tire shall be graded for fuel economy performance with the words ''FUEL ECONOMY'' followed by the letter A, B, or C, based on its performance when the tire is tested in accordance with the procedures specified in paragraph (g) of this section.

(A) The tire may be graded A only if its rolling resistance coefficient is less than 0.010.

(B) The tire may be graded B only if its rolling resistance coefficient is equal to or greater than 0.010 but less than 0.015.

(C) The tire may be graded C if its rolling resistance coefficient equal to or greater than 0.015.

ALTERNATIVE 2 TO PARAGRAPH (d)(2)(iii)

(iii) Fuel economy. Each tire shall be graded for fuel economy performance

with the words ''FUEL ECONOMY'' followed by the tire's rated percentage of increase in fuel savings, such as ''5%'', based on the tire's performance when tested in accordance with the procedures specified in paragraph (g) of this section.

* * * * *

(e) Treadwear grading conditions and procedures. * * *

(2) Treadwear grading procedure. * * *

(ix) * * *

(C) Determine the course severity adjustment factor by assigning a base wear rate of 1.47 to the course monitoring tires and dividing that rate by the average wear rate for the four course monitoring tires.

* * * * *

ALTERNATIVE 1 TO PARAGRAPH (g)

(g) Fuel economy grading. The fuel economy grade is calculated as follows:

(1) The tire's rolling resistance coefficient is determined in accordance with the procedures of SAE Recommended Practice J–1269, Rolling Resistance Measurement Procedure for Passenger Car, Light Truck, and Highway Truck and Bus Tires, revised March, 1987 (SAE J–1269).

(2) The rolling resistance coefficient (C_r) is the ratio of rolling resistance force (F_r) to the normal load on the tire: (F_n) or $C_r=F_r \div F_n$.

Example No 1. F_n=1,100 pounds of force (lbf); F_r=8 lbf; then C_r=8 ÷ 1,00=0.00727.

A rolling resistance coefficient of 0.00727 would result in a grade of ''A'' for fuel economy.

Example No. 2. F_n=1,100 lbf, and F_r=18 lbf, then C_r=18 ÷ 1,100=0.01636.

A rolling resistance coefficient of 0.01636 would result in a grade of ''C'' for fuel economy.

ALTERNATIVE 2 TO PARAGRAPH (g)

(g) Fuel economy grading. The fuel economy grade is calculated as follows:

(1) The tire's rolling resistance coefficient is determined in accordance with the procedures of SAE Recommended Practice J–1269, Rolling Resistance Measurement Procedure for Passenger Car, Light Truck, and Highway Truck and Bus Tires, revised March, 1987 (SAE J–1269).

(2) The rolling resistance coefficient (Cr) is the ratio of rolling resistance force (Fr) to the normal load on the tire: (Fn) or Cr=Fr÷Fn.

Example No 1. Fn=1,100 pounds of force (lbf); Fr=8 lbf; then Cr=8=÷1,100=0.00727.

Example No. 2. Fn=1,100 lbf, and Fr=18 lbf, then Cr=18÷1,100=0.01636.

(3) Determine the tire's fuel economy grade by subtracting its rolling resistance coefficient from 0.0150, then multiply by 1,333. The resulting number, rounded to the nearest whole number, is the fuel economy grade, expressed as a percentage.

(i)(A) Using the numbers in Example No. 1 in paragraph (g)(2) of this section, given the rolling resistance coefficient (Cr) of 0.00727, the fuel economy grade (Fg) would be calculated as follows:

Fg=(0.0150–0.00727)×1,333=(0.00773)×1,333=10.30 percent, rounded to 10 percent.

(B) This would represent an increase of 10 percent in fuel economy, expressed as a fuel economy grade of ''10%''.

(ii) Using the numbers in Example No. 2 in paragraph (g)(2) of this section: If Fn=1,100 lbf, and Fr=18 lbf, then Cr=18÷1,100=0.01636

Fg=(0.0150–0.01636) ×1,333=(−0.00136) ×1,333 = −1.82 or 0 percent A negative value represents a 0 percent increase in fuel economy, and would be expressed as a fuel economy grade of ''0%''.

TABLE 1.—TEST INFLATION PRESSURES

Maximum permissible inflation pressure for the treadwear test												
Tires other than CT tires									CT Tires			
Psi				kPa					kPa			
32	36	40	60	240	280	300	340	350	290	330	350	390
24	28	32	52	180	220	180	220	230	230	270	230	270

* * * * *

ALTERNATIVE 1 TO FIGURE 1

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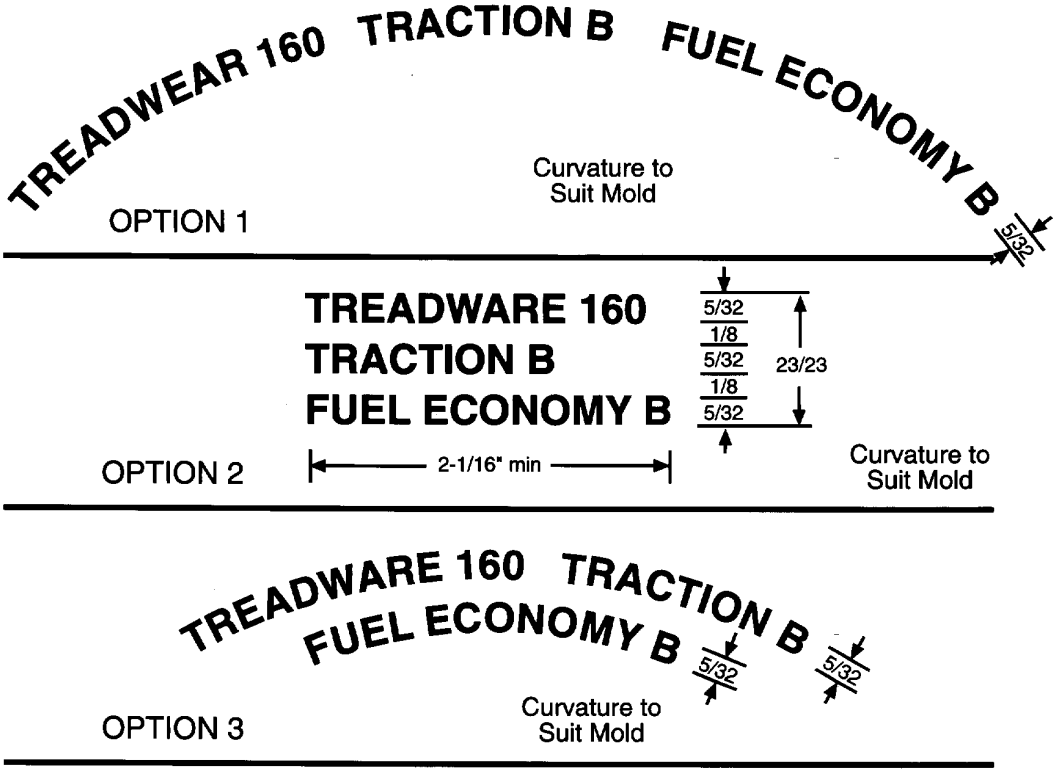

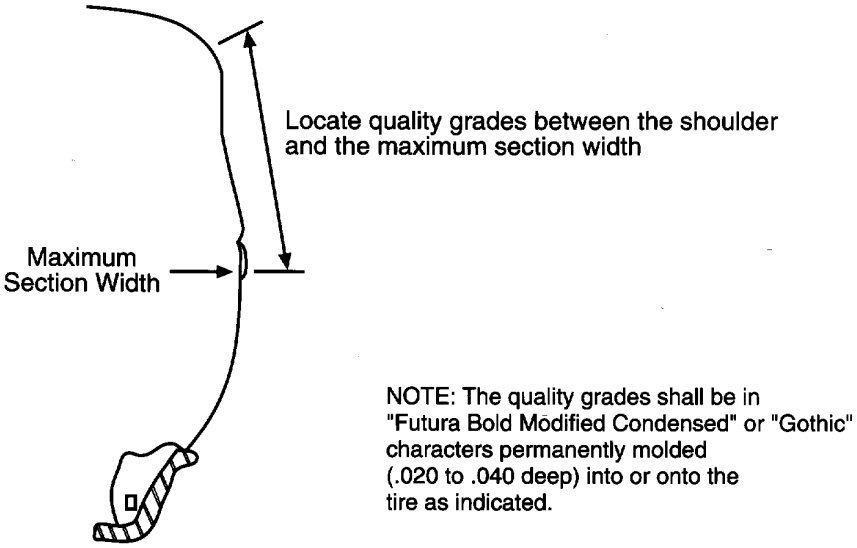

Figure 1

Revsion 1

ALTERNATIVE 2 TO FIGURE 1:

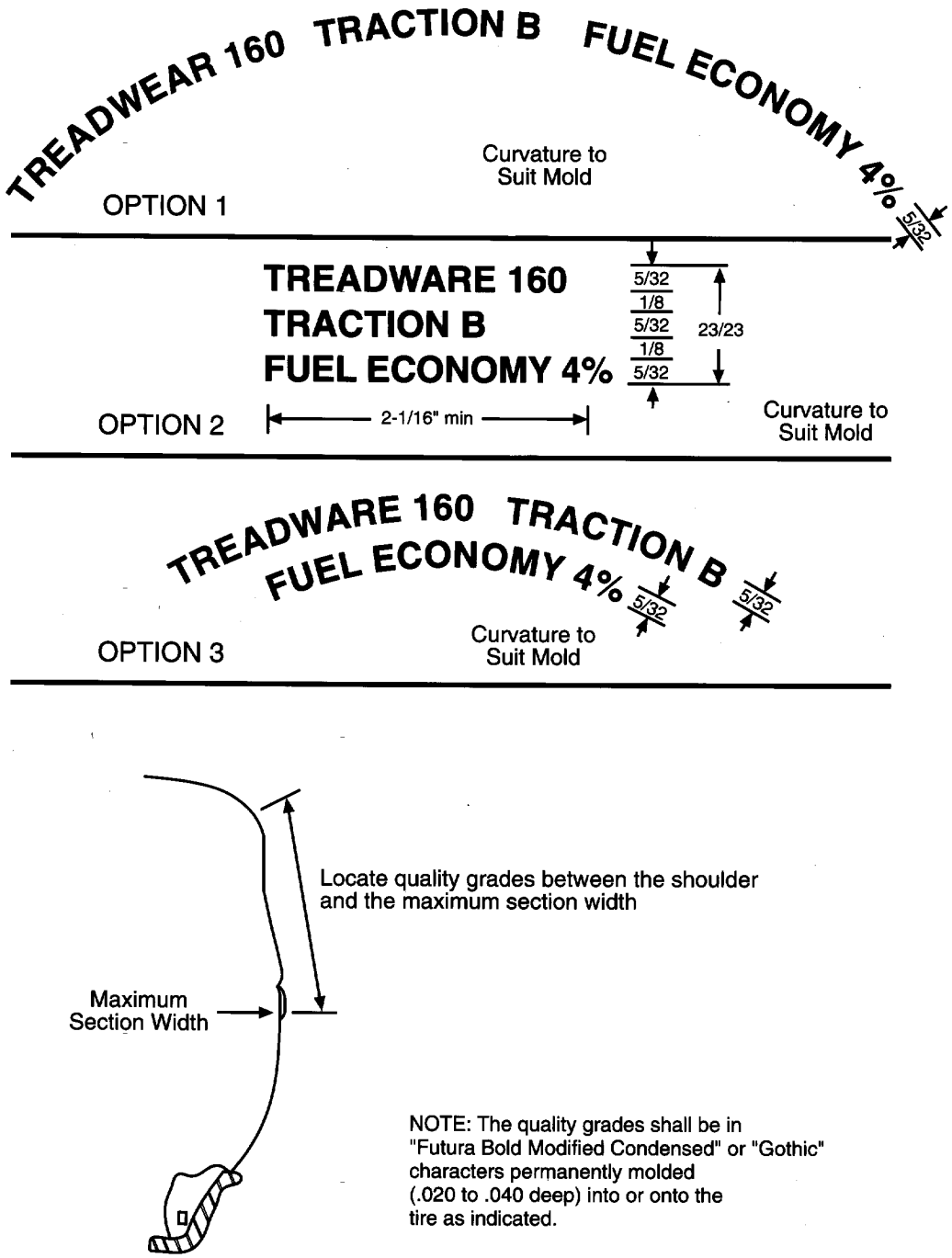

Figure 1

Revsion 2

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ALTERNATIVE 1 TO FIGURE 2—[PART I]

Figure 2—[Part I]—DOT Quality Grades

TREADWEAR
TRACTION AA A B C
FUEL ECONOMY A B C

ALTERNATIVE 2 TO FIGURE 2—[PART I]

TREADWEAR
TRACTION AA A B C
FUEL ECONOMY

ALTERNATIVE 1 TO FIGURE 2—[PART II]

[Part II] * * *

* * * * *

FUEL ECONOMY

The fuel economy grade gives a relative value of the tire's potential to affect a motor vehicle's fuel economy. For example, a vehicle with four tires rated ''A'' for fuel economy would have lower rolling resistance and therefore greater fuel efficiency than a vehicle with four tires rated ''B'' or ''C''. Saving fuel reduces carbon dioxide emissions which contribute to global warming. It should be noted, however, that actual fuel savings depend on driving habits, proper vehicle and tire maintenance, proper tire inflation pressure, road conditions, and climate. The fuel economy grade is based on testing the tire for rolling resistance under controlled conditions using specified test procedures. Only tires of the size appropriate for your car should be compared.

[ALTERNATIVE 2 TO FIGURE 2—[PART II]

[Part II * * *]

* * * * *

FUEL ECONOMY

The fuel economy grade gives a relative value of the tire's potential to affect a motor vehicle's fuel economy. For example, a vehicle with four tires rated ''2%'' for fuel economy would achieve 2% higher fuel economy than a vehicle with four tires rated ''0%.'' A vehicle with two tires rated ''2%'' and two tires rated ''0%'' would achieve 1% higher fuel economy than a vehicle with four tires rated ''0%.'' Saving fuel reduces carbon dioxide emissions which contribute to global warming. It should be noted, however, that actual fuel savings depend on driving habits, proper vehicle and tire maintenance, proper tire inflation pressure, road conditions, and climate. The fuel economy grade is based on testing the tire for rolling resistance under controlled conditions using specified test procedures. Only tires of the size appropriate for your car should be compared.

* * * * *

Issued on May 17, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–12513 Filed 5–18–95; 1:52 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

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

Groundfish of the Bering Sea and Aleutian Islands Area; Apportionment of Reserve

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

ACTION: Apportionment of reserve; request for comments.

SUMMARY: NMFS proposes to apportion reserve to certain target species in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow for ongoing harvest and account for previous harvest of the total allowable catch (TAC). It is intended to promote the goals and objectives of the North Pacific Fishery Management Council.

DATES: Comments must be received at the following address no later than 4:30 p.m., Alaska local time June 7, 1995.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 W. 9th, Room 453, Juneau, AK 99801 or P.O. Box 21668, Juneau, AK 99802, Attention: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Nick Hindman, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the U.S. 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.

The Director, Alaska Region, NMFS, has determined that the initial TACs specified for pollock, Greenland turbot, and Pacific ocean perch (POP) in the Bering Sea (BS) subarea; for pollock, Greenland turbot, POP, and sharpchin/northern rockfish in the Aleutian Islands (AI) subarea; for Atka mackerel in the combined Eastern Aleutian District and BS subarea; for Atka mackerel in the Central and Western Aleutian Districts; and for Pacific cod, arrowtooth flounder, and the ''other species'' category in the BSAI; need to be supplemented from the non-specific reserve in order to continue operations and account for prior harvest.

Therefore, in accordance with § 675.20(b), NMFS proposes to apportion from the reserve to TACs for the following species: (1) For the Bering Sea subarea —93,750 metric tons (mt) to pollock, 700 mt to Greenland turbot, and 277 mt to POP; (2) for the AI subarea—4,245 mt to pollock, 350 mt to Greenland turbot, 1,575 mt to POP; and 765 mt to sharpchin/northern rockfish; (3) for the combined Eastern Aleutian District and BS subarea—2,025 mt to Atka mackerel; (4) for the Central Aleutian District—7,500 mt to Atka mackerel; (5) for the Western Aleutian District—2,475 mt to Atka mackerel; and (6) for the BSAI—37,500 mt to Pacific cod, 1,534 mt to arrowtooth flounder, and 3,000 mt to the ''other species'' category.

These proposed apportionments are consistent with § 675.20(a)(2)(i) and do not result in overfishing of a target species or the ''other species'' category, because the revised TACs are equal to or less than specifications of acceptable biological catch.

Pursuant to § 675.20(a)(3)(i) the proposed apportionments of pollock are allocated between the inshore and offshore components: (1) For the BS subarea - 32,812 mt to vessels catching pollock for processing by the inshore component and 60,938 mt to vessels catching pollock for processing by the offshore component; (2) for the AI subarea—1,486 mt to vessels catching pollock for processing by the inshore component and 2,759 to vessels catching pollock for processing by the offshore component.

Pursuant to § 675.20(a)(3)(iv) the proposed apportionment of the BSAI Pacific cod TAC is allocated 750 mt to vessels using jig gear, 16,500 mt to vessels using hook-and-line or pot gear, and 20,250 mt to vessels using trawl gear.

In accordance with the 1995 final specifications for the BSAI (FR 60 8479, February 14, 1995) the allocation of Pacific cod to hook-and-line/pot gear will result in seasonal apportionments as follows: For the period January 1 through April 30—80,300 mt, for the period May 1 through August 31—20,900 mt, and for the period September 1 through December 31—8,800 mt.

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 17, 1995.

Richard W. Surdi,

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

[FR Doc. 95–12615 Filed 5–23–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 100

Wednesday, May 24, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–034–1]

Availability of Information on Releases of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to information concerning the receipt of permit applications and issuance of permits by the Animal and Plant Health Inspection Service for environmental releases of certain genetically engineered organisms. The purpose of this notice is to advise interested persons of the availability of this information on the Internet service and through lists prepared on a monthly basis.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. For assistance in gaining access to information on the Internet contact Dr. Keith Reding, and for a list of environmental release permit applications received and permits issued contact Mr. Clayton Givens at this same address and telephone number.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States.

In order to provide information to the public in a timely manner about the regulatory activities administered by the Animal and Plant Health Inspection Service (APHIS) under 7 CFR part 340, we have made information, except that claimed as trade secret or confidential business information, available on the Internet. The information available includes records of environmental release permits and notifications, movement permits and notifications, and petitions for nonregulated status received and approved. The Internet address for Biotechnology Permits on the APHIS World Wide Web is: URL: http://www.aphis.usda.gov/BBEP/BP. For assistance in using the Internet for access to the APHIS Biotechnology Permits Home Page, please refer to the individual listed above under **FOR FURTHER INFORMATION CONTACT**.

Information about environmental releases conducted under permit is also available in hard copy form. To obtain a copy of the monthly lists of environmental release permit applications received and permits issued, please refer to the person designated above under **FOR FURTHER INFORMATION CONTACT**.

In accordance with the provisions of APHIS' National Environmental Policy Act Implementing Procedures published in the **Federal Register** on February 1, 1995 (60 FR 6000–6005, Docket No. 93–165–3), and effective on March 3, 1995, APHIS will publish a notice in the **Federal Register** announcing the availability of an environmental assessment when one is prepared for an environmental release permit.

Done in Washington, DC, this 18th day of May 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–12747 Filed 5–23–95; 8:45 am]

BILLING CODE 3410–34–M

Food Safety and Inspection Service

[Docket No. 95–020N]

National Consultation on Foodborne Diseases and Animal Production Food Hygiene

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS), the Animal and Plant Health Inspection Service, and the World Health Organization are co-hosting a consultation, ''National Consultation on Foodborne Diseases and Animal Production Food Hygiene,'' on June 8, 1995, at the Sphinx Club, 1315 K Street, NW., Washington, DC 20005. The purpose of the consultation is to explore ways to refine and advance strategies to assure the safety of meat and poultry products as well as discuss the rationale and significance of international animal production (preharvest) food hygiene activities in foodborne disease control programs.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret Webb, Communications and Public Affairs, FSIS Animal Production Food Safety Program, FSIS, USDA, (202) 690–2683.

To register to attend, call Ms. Jennifer Callahan (202) 501–7136.

SUPPLEMENTARY INFORMATION: The consultation will begin at 8:30 a.m. and end at 9 p.m. The consultation will primarily focus on the economic and public health impact of foodborne diseases and the contribution animal production hygiene can make to pathogen control under prevailing conditions in different regions of the world.

Seating space for observers at the forum is limited. Early registration is recommended. Please call Ms. Jennifer Callahan if you wish to attend the consultation (see **FOR FURTHER INFORMATION CONTACT**). Observers attending the consultation will be responsible for making their own hotel arrangements.

Done at Washington, DC, on: May 17, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–12573 Filed 5–23–95; 8:45 am]

BILLING CODE 3410–DM–P

[Docket No. 95–018N]

Codex Alimentarius: Public Meeting

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA); the

Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS); and the Environmental Protection Agency (EPA) are sponsoring a public meeting on June 7, 1995, from 9 a.m. to 4:00 p.m., in the Washington Rooms, Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Crystal City, Virginia. The meeting will provide information and solicit public comments and suggestions on U.S. participation in activities of the Codex Alimentarius Commission. The co-sponsors of this public meeting recognize the importance of providing interested parties the opportunity to obtain background information on Codex, to discuss current Codex issues, and to address U.S. participation in the Codex process.

FOR FURTHER INFORMATION CONTACT: Dr. Marvin A. Norcross, U.S. Coordinator for Codex Alimentarius, USDA, Food Safety and Inspection Service, Room 311-West End Court, Washington, DC 20250–3700, telephone (202) 254–2517; Fax (202) 254–2530.

SUPPLEMENTARY INFORMATION: Codex was established in 1962 by two United Nations' organizations, the Food and Agriculture Organization and the World Health Organization, to encourage fair international trade in food and to promote the health and economic interests of consumers worldwide.

Codex provides a forum for the world's leading experts to discuss, debate, and often reach scientific consensus on food safety issues that affect trade. There are currently 151 member nations of Codex that work to develop Standards, Codes of Practice, and Guidelines dealing with basic principles, technical specifications for products, and good manufacturing practices.

With the signing of the North American Free Trade Agreement (NAFTA), the successful conclusion of the Uruguay Round of multilateral trade negotiations, and the formation of the World Trade Organization, the role of Codex as an international standard-setting body has become much more visible and critical to U.S. interests.

On January 1, 1995, the Uruguay Round Agreement of the General Agreement on Tariffs and Trade was implemented by the United States. One part of this is the Agreement on Sanitary and Phytosanitary Measures elevating the significance of Codex standards and requiring that a country scientifically justify its actions to achieve its level of food safety, if higher than Codex recommendations. The Agreement on Sanitary and Phytosanitary Measures recognizes three international standard-setting organizations. The three are the Codex for food safety, the International Plant Protection Convention for plant health, and the Office of International Epizootics for animal health.

Within the United States, Codex activities are carried out by officials from USDA, FDA, EPA, and the National Marine Fisheries Service who serve as U.S. Delegates and Alternate Delegates to various Codex Committees. Dr. Marvin A. Norcross, Food Safety and Inspection Service, USDA, assisted by a Codex staff, serves as the U.S. Coordinator for Codex Alimentarius. A Steering Committee made up of Senior Executives from USDA, FDA, and EPA provides direction for all U.S. Codex activities.

Meeting Agenda

The following specific issues will be discussed during the public meeting:

1. The implications of NAFTA and the Uruguay Round Agreements Act for Codex and U.S. participation.
2. The draft ''U.S. Codex Strategic Plan.'' (copies available see **FOR FURTHER INFORMATION CONTACT**.)
3. The paper ''Role of Science in the Codex Decision-Making Process.'' (copies available see **FOR FURTHER INFORMATION CONTACT**.)
4. An overview of matters to be addressed during the upcoming 21st session of the Codex Alimentarius Commission.
5. Issues raised by public comments relating to Codex.

Attendance

The meeting will be open to all interested parties on a space available basis. All persons wishing to give a presentation at the meeting should submit a written request that includes the participant's name and organization, address, telephone and facsimile numbers, and a copy of the remarks to be presented. Send your request to Dr. Marvin Norcross (see **FOR FURTHER INFORMATION CONTACT**).

All information and comments presented will be carefully reviewed and taken into consideration for future Codex activities. A summary of the meeting and copies of information submitted during the meeting will be available for review in the FSIS Docket Clerk's Office, Room 4352, South Building, U.S. Department of Agriculture, Washington, DC. 20250.

Done at Washington, DC, on: May 17, 1995.

Michael R. Taylor,

Administrator, Food Safety and Inspection Service.

[FR Doc. 95–12749 Filed 5–23–95; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 04/18/95–05/15/95

Firm name	Address	Date petition accepted	Product
Plastic Design, Inc	111 Industrial Park Road, Middletown, CT 06457.	04/18/95	Medical, transportation, automotive, security system and misc. plastic parts.
E/G Electro-Graph, Inc	2365 Camino Vida Roble, Carlsbad, CA 92009.	04/26/95	Semiconductor machinery parts.
Shube's Manufacturing, Inc	600 Moon Street, S.E. Albuquerque, NM 87123.	04/26/95	Pewter figurines made of nonprecious metal.
Pyott-Boone Electronics, Inc	P.O. Box 809, Tazewell, VA 24651.	04/28/95	Electronic communications and monitoring equipment and sub-assemblies for mining industry.
Galax Electronics Tech. Inc	2391 Zanker Road, Suite 340, San Jose, CA 95031.	04/28/95	Cable harness assemblies.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 04/18/95–05/15/95—Continued

Firm name	Address	Date petition accepted	Product
Dia-Netics, Inc	410 E. Odell Street, Marionville, MO 65705.	04/28/95	Coils and bobbins for electrical relays.
Ruebush Packing Company	2910 S. Tabor Drive, Silver City, NM 88061.	05/03/95	Beef.
J.B. Martin Company, Inc	321 East Avenue, Leesville, SC 29070.	05/08/95	Velvet textile fabric of manmade and cotton fiber.
G.J. Nikolas & Company, Inc	2800 Washington Boulevard, Bellwood, IL 60104.	05/08/95	Lacquer, pigmented enabels, thinners and bronze powders and dyes.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: May 18, 1995.

Lewis R. Podolske,

Acting Director, Trade Adjustment Assistance Division.

[FR Doc. 95–12649 Filed 5–23–95; 8:45 am]

BILLING CODE 3510–24–M

National Oceanic and Atmospheric Administration

[I.D. 051595F]

Permits; Foreign Fishing

In accordance with a memorandum of understanding with the Secretary of State, the National Marine Fisheries Service publishes for public review and comment summaries of applications received by the Secretary of State requesting permits for foreign fishing vessels to operate in the Exclusive Economic Zone (EEZ) under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*). This notice concerns the receipt of an application from the Government of the Russian Federation requesting authorization to conduct a joint venture (JV) in the Northwest Atlantic Ocean. The application requests 20,000 metric tons of Atlantic sea herring be made available for the JV. The factory trawler NADIR is identified as the vessel that will receive sea herring from U.S. vessels. While no Fishery Management Plan for Atlantic sea herring has yet been implemented, based on receipt of the Russian application, and in accordance with section 201(h) of the Magnuson Act, necessary regulatory actions are being effected and a Preliminary Fishery Management Plan (PMP) for Atlantic sea herring is being developed. Approvability of the proposed JV to have the foreign vessel NADIR receive Atlantic sea herring from U.S. fishing vessels in the EEZ will be contigent on specifications under the PMP that would make available an amount of U.S.-harvested herring for such operations, and on other issues that bear on the approval of foreign fishing permits. Send comments on this application to:

NOAA—National Marine Fisheries Service, Office of Fisheries Conservation and Management, 1315 East-West Highway, Silver Spring, MD 20910 and/or, to one or both of the Regional Fishery Management Councils listed below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; 617/231–0422.

David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901–6790; 302/674–2331.

For further information contact Robert A. Dickinson, Office of Fisheries Conservation and Management, (301) 713–2337.

Dated: May 18, 1995.

Richard W. Surdi,

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

[FR Doc. 95–12721 Filed 5–23–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 051795A]

Marine Mammals and Endangered Species; Permits

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

ACTION: Receipt of modification request for a scientific research permit (P771#67).

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, 7600 Sand Point Way, NE., BIN C15700 Building 1, Seattle WA 98115–0070 has requested a modification to permit 837 to take the marine mammals listed below for the purpose of scientific research.

DATES: Written comments must be received on or before June 23, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700 Building 1, Seattle, WA 98115–0070;

Director, Southwest Region, NMFS, 501 West Ocean Blvd. Suite 4200, Long Beach, CA 90802–4213;

Written data or views, or requests for a public hearing on this request, should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, Silver Spring, MD 20910,

within 30 days of the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Gary Barone (301–713–2289).

SUPPLEMENTARY INFORMATION: Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Fur Seal Act of 1966 (16 U.S.C. 1151–1187) and the Regulations promulgated thereunder (50 CFR part 215).

The applicant seeks to sedate up to 10 percent of the fur seals authorized under Condition A–5 of Permit 837; take tissue samples from up to 300 fur seals; instrument 46 fur seal pups with time-wet recorders or time-depth recorders; satellite tag up to 30 adult female fur seals on San Miguel Island; and inadvertently harass up to 7,431 additional fur seals and 15,000 California sea lions.

Dated: May 18, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–12720 Filed 5–23–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 050995A]

Marine Mammals

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

ACTION: Receipt of application for a scientific research permit (P524B).

SUMMARY: Notice is hereby given that the University of Hawaii at Manoa, Honolulu, HI 96822 (co-investigators: Dr. Shannon Atkinson and James Palmer), has applied in due form for a permit to obtain blood and blubber samples and to import samples from

DATES: various species of cetaceans for purposes of scientific research. Written comments or requests for a public hearing must be received on or before June 23, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250);

Director, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/893–3141);

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001);

Director, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA, 98115–0070 (206/526–6150); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kellie Foster (301/713–1401).

SUPPLEMENTARY INFORMATION: Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The applicants seek authorization to obtain blood serum and blubber samples from cetaceans taken in subsistence hunting, and incidental, stranded and captive mortalities. The applicant also requests authorization to import blood and blubber samples from Iceland, Norway, Japan, Russia, and Denmark as well as utilize samples in storage at the National Marine Mammal Lab. No specimens will be imported into the United States that were taken illegally in the country of origin. The objectives of this research are to develop a method of extracting steroid hormones from cetacean blubber and then to compare and determine a possible correlation between blood and blubber steroid concentrations.

Dated: May 18, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–12723 Filed 5–23–95; 8:45 am]

BILLING CODE 3510–22–F

[I. D. 050195F]

Marine Mammals

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

ACTION: Issuance of Scientific Research Permits Nos. 954 (P492A) and 955 (P492B).

SUMMARY: Notice is hereby given that Dr. Graham Worthy and Co-investigators Mr. Alan Abend and Ms. Lisl Shoda have been issued permits No. 954 and 955, to obtain and import/export marine mammal specimens and to take specimens from rehabilitated elephant seals, respectively, for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

(P492A) Director, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2532 (813/570–5312); (P492B) Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On March 10, 1995, notice was published in the **Federal Register** (60 FR 13121) that applications had been filed by the above named individuals to obtain tissue samples for scientific research purposes. The requested Permits have been granted under authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of

endangered fish and wildlife (50 CFR part 222).

Issuance of permit No. 954 as required by the Endangered Species Act of 1973, as amended, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act.

Dated: May 18, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–12724 Filed 5–23–95; 8:45 am]

BILLING CODE 3510–22–F

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; OMB Control Number: Telecommunications Service Priority System; SF Forms 315, 316, 317, 318, 319, and 320; OMB Control Number 0704–0305

Type of Request: Revision

Number of Respondents: 94

Responses Per Respondent: 18

Annual Responses: 1,692

Average Burden Per Response: 2.16 hours

Annual Burden Hours: 3,654

Needs and Uses: The Telecommunications Service Priority (TSP) System identifies leased telecommunications services vital to National Security and Emergency Preparedness, and provides the legal basis for vendor priority installation and restoration. The information collected hereby, provides the DoD with the data necessary to make appropriate telecommunications service priority assignments. It is additionally used to maintain the currency of associated data bases.

Affected Public: State or local governments; Businesses or other for-profit; Federal agencies or employees; and small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer 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 19, 1995.

Patricia L. Topping,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12730 Filed 5–23–95; 8:45 am]

BILLING CODE 5000–04–P

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: Technical Assistance for Public Participation in the Defense Environmental Restoration Program

Type of Request: Expedited Processing—Approval date requested: 30 days following publication in the **Federal Register**

Number of Respondents: 100

Responses Per Respondent: 1

Annual Responses: 100

Average Burden Per Response: 6 hours

Annual Burden Hours: 600

Needs and Uses: The Department of Defense (DoD) is establishing a Technical Assistance for Public Participation in the Defense Environmental Restoration Program as authorized by the National Defense Authorization Act of Fiscal Year 1995. The information collected hereby, will be utilized to assess whether one of the options DoD is proposing in the establishment of this program is feasible. A separately published Notice of Expression of Interest will propose criteria for providers, including technical expertise, management capability, and not-for-profit status, as well as offer potential providers an opportunity to submit responses expressing their interest in this program.

Affected Public: Not-for-profit institutions; State, local, or tribal government

Frequency: Onetime

Respondent's Obligation: Required to obtain or retain benefits

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer 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 19, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12731 Filed 5–23–95; 8:45 am]

BILLING CODE 5000–04–P

Office of the Secretary

Manual for Courts-Martial

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of proposed amendment.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, 1984, Executive Order No. 12473, as amended by Executive Order Nos. 12484, 12550, 12586, 12708, 12767, 12888, and 12936. The proposed changes are part of the 1995 annual review required by the Manual for Courts-Martial and DoD Directive 5500.17. ''Review of the Manual for Courts-Martial,'' January 23, 1985.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, ''Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon'', May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, ''Review of the Manual for Courts-Martial'', January 23, 1985. This notice is intended only to improve the internal management of the Federal government. It is not intended to create any right or benefit, substantive or procedural, enforceable at

law by a party against the United States, its agencies, its officers, or any person.

The proposed changes follow in their entirety: R.C.M. 305(g), *et seq.*, is amended to read as follows: (g) *Who may direct release from confinement.* Any commander of a prisoner, an officer appointed under regulations of the Secretary concerned to conduct the review under subsections (i) and/or (j) of this rule, or, once charges have been referred, a military judge detailed to the court-martial to which the charges against the accused have been referred may direct release from pretrial confinement. For the purposes of this subsection, ''any commander'' includes the immediate or higher commander of the prisoner and the commander of the installation on which the confinement facility is located. (h) *Notification and action by commander.*

(1) *Report.* Unless the commander of the prisoner ordered the pretrial confinement, the commissioned, warrant, noncommissioned, or petty officer in to whose charge the prisoner was committed shall, within 24 hours after that commitment, cause to be made a report to the commander which shall contain the name of the prisoner, the offenses charged against the prisoner, an the name of the person who ordered or authorized confinement.

(2) *Action by commander.*

(A) *Decision.* Not later than 72 hours after the commander's ordering of a prisoner into pretrial confinement, or after receipt of a report that a member of the commander's unit or organization has been confined, whichever situation is applicable, the commander shall decide whether pretrial confinement will continue. A commander complying with RCM 305(d), or this subsection, may also satisfy the probable cause review of subsection RCM (i)(1) and (2) below, provided the commander is a neutral and detached officer and acts within 48 hours of the imposition of confinement under the military's control.

(B) *Requirements for confinement.* The commander shall direct the prisoner's release from pretrial confinement unless the commander believes upon probable cause, that is, upon reasonable grounds, that:

(i) An offense triable by a court-martial has been committed;

(ii) The prisoner committed it; and

(iii) Confinement is necessary because it is foreseeable that:

(a) The prisoner will not appear at trial, pretrial hearing, or investigation, or

(b) The prisoner will engage in serious criminal misconduct; and

(iv) Less severe forms of restraint are inadequate.

Serious criminal misconduct includes intimidation of witnesses or other obstruction of justice, seriously injuring others, or other offenses which pose a serious threat to the safety of the community or to the effectiveness, morale, discipline, readiness, or safety of the command, or to the national security of the United States. As used in this rule, ''national security'' means the national defense and foreign relations of the United States and specifically includes: military or defense advantage over any foreign nation or group of nations; a favorable foreign relations position; or a defense posture capable of successfully resisting hostile or destructive action from within or without, overt or covert.

(C) *Memorandum.* If continued pretrial confinement is approved, the commander shall prepare a written memorandum which states the reasons for the conclusion that the requirements for confinement in subsection (h)(2)(B) of this rule have been met. This memorandum may include hearsay and may incorporate by reference other documents, such as witness statements, investigative reports, or official records. This memorandum shall be forwarded to the 7 day reviewing officer under subsection (i) of this rule. If such a memorandum was prepared by the commander before ordering confinement, a second memorandum need not be prepared, however, additional information may be added to the memorandum at any time.

(i) Procedures for review of pretrial confinement.

(1) Preliminary review. Review of the adequacy of probable cause to continue pretrial confinement shall be made by a neutral and detached officer within 48 hours of imposition of confinement under military control. If the prisoner was apprehended by civilian authorities and remains in civilian custody at the request of military authorities, reasonable efforts will be made to bring the prisoner under military control in a timely fashion. In calculating the number of days of confinement for purposes of this rule, the initial date of confinement shall count as one day and the date of the review shall also count as one day.

(2) By whom made. The review under subsection (1) shall be made by a neutral and detached officer. A determination made by a commanding officer under subsection (d) or (h) of this rule satisfies this requirement.

(3) 7 Day Review. Within 7 days of the imposition of confinement, a neutral and detached officer appointed in accordance with regulations prescribed by the Secretary concerned shall review the probable cause determination and necessity for continued pretrail confinement.

(4) Nature of the 7 day review.

(A) Matters considered. The review under this subsection shall include a review of the memorandum submitted by the prisoner's commander under subsection (h)(2)(C) of this rule. Additional written matters may be considered, including any submitted by the accused. The prisoner, and the prisoner's counsel, if any, shall be allowed to appear before the reviewing officer and make a statement, if practicable. A representative of the command may appear before the reviewing officer to make a statement.

(B) Rules of evidence. Except for Mil. R. Evid., Section V (Privileges) and Mil R. Evid 302 and 305, the Military Rules of Evidence shall not apply to the matters considered.

(C) Standard of proof. The requirements for confinement under subsection (h)(2)(B) of this rule must be proved by a preponderance of the evidence.

(5) Extension of time limit. The reviewing officer may, for good cause, extend the time limit for completion of the initial review to 10 days after the imposition of pretrial confinement.

(6) Action by reviewing officer. Upon completion of review, the reviewing officer shall approve continued confinement or order immediate release.

(7) Memorandum. The reviewing officer's conclusions, including the factual findings on which they are based, shall be set forth in a written memorandum. A copy of the memorandum and of all documents considered by the reviewing officer shall be maintained in accordance with regulations prescribed by the Secretary concerned and provided to the accused or the Government on request.

(8) Reconsideration of approval of continued confinement. The reviewing officer shall, after notice to the parties, reconsider the decision to confine the prisoner upon request based upon any significant information not previously considered.

(j) Review by military judge. Once the charges for which the accussed has been confined are referred to trial, the military judge shall review the propriety of the pretrial confinement upon motion for appropriate relief.

(1) Release. The military judge shall order release from pretrial confinement only if:

(A) The reviewing officer's decision was an abuse of discretion, and there is not sufficient information presented to

the military judge justifying continuation of pretrial confinement under subsection (h)(2)(B) of this rule;

(B) Information not presented to the reviewing officer establishes that the prisoner should be released under subsection (h)(2)(B) of this rule; or

(C) The provisions of subsection (i) (2) or (3) of this rule have not been complied with and information presented to the military judge does not establish sufficient grounds for continued confinement under subsection (h)(2)(B) of this rule.

(2) Pretrial Confinement Credit. The military judge shall order administrative credit under subsection (k) of this rule for any pretrial confinement served. A military judge shall order 1 day credit for each day of confinement served in anticipation of trial by courts-martial, and may order more than 1 day credit for each day served as a result of abuse of discretion or of failure to comply with the provisions of subsection (f), (h), or (i) of this rule. The military judge may order additional credit for each day of pretrial confinement considered illegal or which involves unusually harsh circumstances.

Appendix 21, R.C.M. 305 Amendments be amended by inserting the following at the end of section R.C.M. 305(i) Amendments:

1995 Amendment: The amendment to subsections (h)(2)(A) and (i) conforms military practice to the 48-hour probable cause review required by *County of Riverside* v. *McLaughlin*, 500 U.S. 44 (1991), and *United* v. *Rexroat*, 38 M.J. 292 (C.M.A. 1993). *Rexroat*, which applies *McLaughlin* to courts-martial, requires that after an accused is ordered into pretrial confinement, a neutral and detached official must review the probable cause for continued pretrial confinement within 48 hours. *Rexroat* makes clear that this neutral and detached official may be a commander, but this is not required. Additionally, nothing in this amendment prohibits the commander initially ordering an accused into pretrial confinement under subsection (d) from conducting the 48-hour probable cause review required by the subsection (i) (1) and (2), or the 72-hour review required by subsection (h)(2)(A), or all three actions, provided that commander is neutral and detached within the meaning of *United States* v. *Ezell*, 6 M.J. 307, 318–319 (C.M.A. 1979), and *United States* v. *Lopex*, 35 M.J. 35, 41 Rule 1109. Vacation of suspension of sentence Rule 1109(d), is amended to read as follows:

(d) Vacation of suspended general court-martial sentence or of a special court-martial sentence including a suspended bad-conduct discharge.

Rule 1109(d)(1)(A), is amended to read as follows:

(A) In general. Before vacation of the suspension of any general court-martial sentence, or of special court-martial sentence which, as approved, includes a suspended bad-conduct discharge, the officer having special court-martial jurisdiction over the probationer shall personally hold a hearing on the alleged violation of the conditions of suspension. If there is no officer having special court-martial jurisdiction over the accused, who is subordinate to the officer having general court-martial jurisdiction over the accused, the officer exercising general court-marital jurisdiction over the accused shall personally hold the hearing under subsection (d)(1) of this rule. In such cases, subsection (d)(1)(D) of this rule shall not apply.

(1) Action by officer having special court-martial jurisdiction over probationer.

Rule 1109(e), is amended to read as follows:

(e) Vacation of suspended special court-martial sentence not including a suspended bad-conduct discharge or of a suspended summary court-martial sentence.

Rule 1109(e)(1), is amended to read as follows:

(1) In general. Before a vacation of the suspension of the special court-marital sentence not including a suspended bad-conduct discharge or of a summary court-martial sentence, the officer having authority to convene for the command in which the probabtioner is serving or assigned to same kind of court-martial which imposed the sentence shall cause a hearing to be held on the alleged violation(s) of the conditions of suspension.

The following discussion section shall be inserted after R.C.M. 1109(e)(5):

Discussion

If the special court-martial includes an approved bad conduct discharge, and suspended lesser punishments, the special court-martial convening authority may approve the vacation of lesser punishments.

Appendix 21, R.C.M. 1109 Amendments be amended by inserting the following at the end thereof:

1995 Amendment: The Rule is amended to clarify that ''the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge,'' permits the officer exercising special court-martial jurisdiction to vacate any suspended punishments other than an approved suspended bad conduct discharge.

M.R.E. 1102 is amended to read as follows:

Substantive amendments to the Federal Rules of Evidence, in so far as they affect criminal proceedings, shall apply to the Military Rules of Evidence 180 days after the effective date of such amendments unless action to the contrary is taken by the President.

Appendix 22, Rule 1102 Amendments be amended by inserting the following at the end thereof:

1995 Amendment: The rule is modified to more clearly reflect the Committee's original intent that the Federal Rules of Evidence apply to the armed forces ''to the extent practicable''. The new language is intended to insure that only changes which affect the substantive criminal practice, as opposed to technical language of the rule, are automatically applicable to the armed forces.

Part IV of the *Manual for Courts-Martial, United States, 1984*, be amended by inserting the following new paragraph after paragraph 97:

97a. Article 134—(Parole, Violation of)

a. Text. See paragraph 60.

b. Elements.

(1) That the accused was a prisoner as the result of a court-martial conviction;

(2) That the accused was on parole;

(3) That the conditions of parole were that (_____);

(4) That the accused violated the conditions of his parole by doing an act or failing to do an act;

(5) That the conduct was to the prejudice of good or discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. Explanation.

(1) ''Prisoner'' refers only to those in confinement resulting from conviction at a court-martial or other criminal proceedings.

(2) ''Parole'' is defined as ''word or honor.'' A prisoner on parole, or parolee, has agreed to adhere to a parole plan and conditions of parole. A ''parole plan'' is a written or oral agreement made by the prisoner prior to parole to do or refrain from doing certain acts or activities. A parole plan may include a residence requirement stating where and with whom a parolee will live, and a requirement that the prisoner have an offer of guaranteed employment. ''Conditions of parole'' include the parole plan and other reasonable and appropriate conditions of parole, such as paying restitution, beginning or continuing treatment for alcohol or drug abuse, or paying a fine ordered executed as part of the prisoner's court-martial sentence. In return for giving his or her ''word of honor'' to abide by a parole

plan and conditions of parole, the prisoner is granted parole.

d. Lesser included offense. Article 80—attempts.

e. Maximum punishment. Bad conduct discharge, confinement for 6 months and forfeiture of two-thirds pay per month for 6 months.

f. Sample specification.

In that _____ (personal jurisdiction data), a prisoner on parole, did, (at/on board—location), on or about _____, 199____, violate the conditions of his parole by _____.

ADDRESSES: Copies of the proposed changes may be examined at the Office of the Judge Advocate General, Criminal Law Division, Building 111, Washington Navy Yard, Washington, DC 20374–1111. A copy of the proposed changes may be obtained by mail upon request from the foregoing address, ATTN: LT Kristen M. Henrichsen.

DATES: Comments on the proposed changes must be received no later than August 7, 1995, for consideration by the Joint Service Committee on Military Justice.

FOR FURTHER INFORMATION CONTACT: LT Kristen M. Henrichsen, JAGC, USN, Executive Secretary, Joint Service Committee on Military Justice, Office of the Judge Advocate General, Criminal Law Division, Building 111, Washington Navy Yard, Washington, DC 20374–1111; (202) 433–5895.

Dated: May 18, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12631 Filed 5–23–95; 8:45 am]

BILLING CODE 5000–04–M

Department of Defense Education Benefits Board of Actuaries; Notice of Meeting

SUMMARY: A meeting of the board has been scheduled to execute the provisions of Chapter 101, Title 10, United States Code (10 U.S.C. 2006 et. seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the G.I. Bill. Persons desiring to 1) attend the DoD Education Benefits Board of Actuaries meeting or 2) make an oral presentation or submit a written statement for consideration at the meeting must notify Patricia Robertson at (703) 696–6336 by July 28, 1995.

DATES: August 4, 1995, 10 am to 1 pm.

ADDRESSES: Room 1E801 #4.

FOR FURTHER INFORMATION CONTACT:

Benjamin I. Gottlieb, Executive Secretary, DoD Office of the Actuary, 4th floor, 1600 Wilson Boulevard, Arlington, VA 22209–2593, (703) 696–5869.

Dated: May 18, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–12629 Filed 5–23–94; 8:45 am]

BILLING CODE 5000–04–M

Joint Service Committee on Military Justice; Public Meeting

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for the 1995 annual public meeting of the JSC. This notice also describes the functions of the JSC.

DATES: Wednesday, July 12, 1995, 10 a.m. to 11 a.m.

ADDRESS: Building 111, Washington Navy Yard, Washington, DC.

FUNCTION: The JSC was established by the Judge Advocates General in 1972. The JSC currently operates under Department of Defense Directive 5500.17 of January 23, 1985. It is the function of the JSC to improve Military Justice through the preparation and evaluation of proposed amendments and changes to the Uniform Code of Military Justice and the *Manual for Courts-Martial.*

AGENDA: The JSC will receive public comment concerning its 1995 Annual Review of *Manual for Courts-Martial, United States, 1984,* as published on May 24, 1995.

FOR FURTHER INFORMATION CONTACT:

LT Kristen M. Henrichsen, JAGC, USN, Executive Secretary, Joint Service Committee on Military Justice, Building 111, Washington Navy Yard, Washington, DC 20374–1111; (202) 433–5895.

Dated: May 24, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12630 Filed 5–23–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Record of Decision (ROD) for the Disposal and Reuse of Richards-Gebaur Air Force Base (AFB), Colorado

On April 28, 1995, the Air Force signed the ROD for the Disposal and Reuse of Richards-Gebaur AFB. The decisions included in this ROD have been made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) filed with the Environmental Protection Agency on July 1, 1994.

Richards-Gebaur AFB closed on September 30, 1994, pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (Pub. L. 100–526) upon recommendation of the Secretary of Defense and findings of the Defense Base Closure and Realignment Commission. This ROD documents the Richards-Gebaur AFB disposal decisions.

The decision conveyed by the ROD is to dispose of Richards-Gebaur AFB in a manner that enables airport operation and commercial, office, and industrial areas. In addition, there will be two military reusers. This allows for the full implementation of the central theme of the proposed future land use plans discussed in the FEIS. The environmental findings and mitigation measures contained in the ROD remain fully applicable.

Consistent with the community reuse plan, the ROD balances aviation, industrial, office industrial park, commercial, and military uses throughout the base.

Several disposal methods and parcels are involved in the ROD, including a public benefit conveyance sponsored by the Federal Aviation Administration (FAA), Federal transfers to the U.S. Army and the U.S. Marine Corps, and negotiated sales to public bodies.

Of the 428 acres, the Kansas City Aviation Department (KCAD) will gain more than 178 acres in an FAA-sponsored public benefit conveyance. Another 12-acre transfer will be offered to the City of Belton, Missouri through negotiated sale. The Air Force will transfer 184 acres to the Department of the Army, and 54 acres to the U.S. Marine Corps. The electric system with appropriate easements for maintenance and repair will be conveyed through negotiated sale to an eligible public body. The other utilities (gas, telephone, water, and sewer) were transferred in a previous disposal action. Utility

easements will be granted as appropriate.

The road network is an integral part of all parcels. Primary roads will be conveyed to the KCAD. Secondary roadways that fall within a parcel completely will be included as part of the parcel.

The implementation of the closure and reuse action and associated mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State, and local statues and regulations, and all reasonable and practical efforts have been incorporated to minimize harm to the local public and environment.

Our Program Manager for the Air Force Base Conversion Agency is Ms. Teresa R. Pohlman, and she may be reached at 703–696–5561.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–12688 Filed 5–23–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Meeting of the Industry/Government Working Group for Performance Criteria of Military Clothing and Equipment

AGENCY: Army Soldiers System Command, DoD.

ACTION: Meeting announcement.

SUMMARY: The Industry/Government Working for Performance Criteria of Military Clothing and Equipment will meet on Tuesday, June 27, 1995 at the Soldiers System Command, Natick Research, Development and Engineering Center, Natick, MA. The Comfort and Durability committees will meet separately at 9 and then together as a group at 1.

The purpose of the meeting is to identify performance criteria and test methodology that will be used to measure comfort and durability of military clothing and individual equipment. The U.S. Army is interested in consumer and market research data in the areas of comfort and durability of fabrics, clothing and equipment, as well as related test methods, standards, specifications, or handbooks.

FOR FURTHER INFORMATION CONTACT: Carole A. Faria, Textile Technologist, at (508) 651–5460.

Dated: May 12, 1995.

Carole A. Faria,

Textile Technologist.

[FR Doc. 95–12645 Filed 5–23–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Public Hearing

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans.

ACTION: Notice of public hearing.

SUMMARY: This notice sets the schedule and agenda of a forthcoming Public Hearing of the President's Advisory Commission on Educational Excellence for Hispanic Americans. This notice also describes the functions of the Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES, TIMES AND LOCATIONS: Friday, June 2, 1995, 10 a.m.–6 p.m. at NY City Council Chambers, City Hall, New York, NY, 10007; 212/788–7171. Saturday, June 3, 1995, 10 a.m.–5 p.m. at Hostos Community College, 450 Grand Concourse, East Theater Academic Complex, Bronx, NY 10451; 718/518–6888 (Security Office).

FOR FURTHER INFORMATION CONTACT:

Marsha Harper, Telephone: (202) 205–2420.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanic Americans is established under Executive Order of February, 1994. The Commission is established to advise on Hispanic achievements of the National Goals, as well as other educational accomplishments. The Public Hearing panelist presentations to the Commission is open to the public. There will be an opportunity for public comment the last 1–2 hours of the Hearing. The panelist presentation topics on the agenda include: Bilingual Education; Special Education; Immigrant Education; Overcrowding and Facility Conditions; Hispanic Drop-Out Rates; Successful Programs; Parental Involvement; Access to Technology and Resources; Teacher and Administrator Recruitment, Training and Promotion; School Finance Reform and Equity; Governance and Local Control of School Systems.

Records are kept of all Commission proceedings, and are available for public inspection at the White House Initiative For Hispanic Education at 600 Independence Avenue, SW., Room 2115, Washington, D.C. 20202 from the hours of 9 a.m. to 5 p.m.

Dated: May 18, 1995.

Mario Moreno,

Assistant Secretary, Office of Intergovernmental and Interagency Affairs.

[FR Doc. 95–12651 Filed 5–18–95; 4:26 pm]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Availability of the Dual Axis Radiographic Hydrodynamic Test Facility Draft Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of availability and public hearings.

SUMMARY: The Department of Energy (DOE) announces the availability of the Dual Axis Radiographic Hydrodynamic Test (DARHT) Facility Draft Environmental Impact Statement (EIS), DOE/EIS–0228D, for public review and comment, and the dates, times and places for public hearings on the Draft EIS. The alternative actions analyzed in the Draft EIS would occur at the DOE's Los Alamos National Laboratory (LANL) in northern New Mexico.

DATES: Written comments on the Draft EIS are invited from the public. Comments must be postmarked by Monday, June 26, 1995, to ensure consideration; late comments will be considered to the extent practicable. The DOE will use the comments received to help prepare the final version of the DARHT EIS. Public hearings on the Draft EIS will be held as follows:

Wednesday, May 31, 1995, Los Alamos, New Mexico, 2:00pm–4:00pm and 6:30pm–9:00pm, Los Alamos Inn, 2201 Trinity Drive, Los Alamos, NM, (505) 662–7211.

Thursday, June 1, 1995, Santa Fe, New Mexico, 2:00pm–4:00pm and 6:30pm–9:00pm, High Mesa Inn, 3347 Cerrillos Road, Santa Fe, NM, (505) 473–2800.

The meetings will use a workshop format to facilitate dialogue among DOE, LANL, and the public and will provide opportunities for information exchange and discussion as well as submitting prepared statements.

ADDRESSES: Requests for copies of the Draft DARHT EIS, written comments on the Draft EIS, or other matters regarding this environmental review should be addressed to: Ms. Diana Webb, DARHT EIS Project Manager, Los Alamos Area Office, Department of Energy, 528 35th Street, Los Alamos, NM 87544. Ms. Webb may be contacted by telephone at (505) 665–6353 or by facsimile at (505) 665–1506.

FOR FURTHER INFORMATION CONTACT: For general information on the DARHT project, interested parties may contact Ms. Webb at the address and phone number above. For general information on the DOE NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585. Ms. Borgstrom may be contacted by leaving a message at (800) 472–2756 or by calling (202) 586–4600.

SUPPLEMENTARY INFORMATION: The Draft EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*, the Council on Environmental Quality NEPA regulations (40 CFR 1500) and the DOE NEPA regulations [10 CFR 1021].

The Department proposes to provide enhanced high-resolution radiography (x-ray) capability for the purpose of performing hydrodynamic tests and dynamic experiments in support of its national defense mission. The enhanced radiography facility would be a key component of the Department's near-term science-based stockpile stewardship and management program. These hydrodynamic tests and dynamic experiments are required to assist DOE in ensuring the continued safety, security, and reliability of existing nuclear weapons as they age.

The Draft DARHT EIS analyzes the environmental consequences of alternative ways to accomplish the proposed action. The DOE's preferred alternative would be to complete and operate the DARHT facility at LANL in northern New Mexico. Radiographic hydrodynamic testing is now conducted in two existing facilities within the DOE complex—a 30-year-old facility at LANL, and a 10-year-old facility at the DOE's Lawrence Livermore National Laboratory in California. The Draft DARHT EIS compares the environmental impacts that would be expected to occur from continuing to operate existing facilities (the No Action Alternative) with the consequences that would be expected to occur if DOE implemented the Preferred Alternative or one of four other operational alternatives. The Draft EIS has a classified supplement that provides additional information and analysis. DOE has distributed copies of the Draft DARHT EIS to appropriate Congressional members and committees, the State of New Mexico, American Indian tribal governments, local county governments, other federal agencies, and other interested parties. DOE expects to complete the Final EIS in August 1995, and reach a Record of Decision in September 1995.

Signed in Washington, D.C., this 17th day of May, 1995, for the United States Department of Energy.

Victor H. Reis,

Assistant Secretary for Defense Programs.

[FR Doc. 95–12626 Filed 5–23–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER93–523–003, et al.]

Western Resources, Inc. et al.; Electric Rate and Corporate Regulation Filings

May 17, 1995.

Take notice that the following filings have been made with the Commission:

1. Western Resources, Inc.

[Docket No. ER93–523–003]

Take notice that on March 14, 1995, Western Resources, Inc. tendered for filing its compliance filing in the above-referenced docket.

Comment date: May 31, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation, Indeck-Olean Limited Partnership

[Docket No. EL95–45–000; Docket No. QF90–154–005]

On May 15, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk) filed a petition for declaratory order requesting that the Commission revoke the qualifying status of the cogeneration facility operated by Indeck-Olean Limited Partnership (Indeck Olean). Indeck-Olean filed notices of self-certification for the facility in Docket Nos. QF90–154–000, QF90–154–001, QF90–154–002 and QF90–154–003.

In Docket Nos. EL95–11–000 and QF90–154–004 Indeck-Olean filed a petition for waiver of the Commission's operating and efficiency standards for calendar years 1993 and 1994. See 59 FR 64401 (Dec. 14, 1994) and 60 FR 2578 (Jan. 10, 1995). Niagara Mohawk has opposed waiver. Niagara Mohawk states that copies of its petition for declaratory order have been provided to Indeck-Olean and to other participants in Docket Nos. EL95–11–000 and QF90–154–004.

Niagara Mohawk states that waiver of the Commission's operating and efficiency standards is not warranted for the Indeck-Olean facility. Niagara Mohawk asks that the Commission declare that Indeck-Olean's QF certification is revoked effective June 8, 1994; that Indeck-Olean is obligated to refund any amounts collected in excess of the market value of electricity at the time of delivery; and, that Indeck-Olean must cease the sale of electricity at wholesale until such time as it has complied with Section 205 of the Federal Power Act or recertified its plant as a ''qualifying facility.''

Comment date: June 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. North American Energy Conservation, Inc.

[Docket No. ER94–152–005]

Take notice that on April 28, 1995, North American Energy Conservation, Inc. tendered for filing a summary of its activity for the quarter ending March 31, 1995.

4. Citizens Utilities Company

[Docket No. ER94–1561–001]

Take notice that on April 18, 1995, Citizens Utilities Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: May 31, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Gulfstream Energy, LLC

[Docket No. ER94–1597–002]

Take notice that on April 28, 1995, Gulfstream Energy, LLC tendered for filing a summary of its activity for the quarter ending March 31, 1995, pursuant to the Commission's letter order issued November 21, 1994 in Docket No. ER94–1597–000.

6. J. Aron & Company

[Docket No. ER95–34–003]

Take notice that on April 11, 1995, J. Aron & Company tendered for filing a letter reporting that it did not engage in any electric power purchases and sales during the calendar quarter ended March 31, 1995.

7. Mesquite Energy Services Inc.

[Docket No. ER95–74–001]

Take notice that on April 28, 1995, Mesquite Energy Services Inc. tendered for filing a quarterly informational filing for the calendar quarter ended March 31, 1995, indicating no transactions occurred.

Such filing was made pursuant to the Commission's letter order dated January 4, 1995, in Docket No. ER95–74–000.

8. Florida Power Corporation

[Docket No. ER95–457–001]

Take notice that on April 21, 1995, Florida Power Corporation tendered for filing a revised fuel adjustment clause for service to Reedy Creek Improvement

District, Inc. in compliance with the Commission's order of March 21, 1995. As directed by the Commission, the revised fuel adjustment clause eliminates the provision for imputation of fossil fuel costs incurred by Qualifying Facilities.

Comment date: June 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Union Electric Company

[Docket No. ER95–744–000]

Take notice that on May 5, 1995, Union Electric Company (UE) submitted a request to withdraw the filing of the Agreement for Maintenance Energy dated March 10, 1995 between the City of Sikeston, Missouri and UE and terminate this docket.

Comment date: June 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER95–951–000]

Take notice that on April 26, 1995, Northeast Utilities Service Company (NUSCO) tendered for filing a Service Agreement with PECO Energy Company under the NU System Companies' System Power Sales/Exchange Tariff No 6.

NUSCO states that a copy of this filing has been mailed to PECO Energy Company.

NUSCO requests that the Service Agreement become effective on May 1, 1995.

Comment date: May 31, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Company

[Docket No. ER95–999–000]

Take notice that on May 1, 1995, Southern California Edison Company (Edison) tendered for filing the following Supplemental Agreement (Supplemental Agreement) to the 1990 Integrated Operations Agreement (IOA) with the City of Riverside (Riverside), FERC Rate Schedule No. 250, and associated Firm Transmission Service Agreement:

Supplemental Agreement Between Southern California Edison Companyand City of Riverside for the integration of the Washington Water Power-Riverside Power Sale Agreement

Edison Riverside Washington Water Power Firm Transmission Agreement

The Supplemental Agreement and FTS Agreement set forth the terms and conditions by which Edison will integrate Riverside's Washington Water Power resource and provide bi-directional firm transmission service.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 31, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER95–1001–000]

Take notice that on May 1, 1995, Entergy Services, Inc. (Entergy Services), as agent for Arkansas Power and Light Company (AP&L), Gulf States Utilities Company (GSU), Louisiana Power & Light Company (MP&L) and New Orleans Public Service Inc. (NOPSI) (collectively, the Entergy Operating Companies) filed revisions to the rates under the network service tariff (NST) and the point-to-point transmission service tariff (TST) filed in Docket No. ER95–112 on October 31, 1994 and revised on January 24, 1995. Entergy Services requests that the revised rates become effective June 1, 1995, subject to refund, in accordance with the provisions of the NSI and TST.

Comment date: May 31, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12709 Filed 5–23–95; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 2225–008, et al.]

Hydroelectric Applications [Public Utility District No. 1 of Pend Oreille County, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Amendment of License.

b. *Project No.:* 2225–008.

c. *Date Filed:* December 2, 1994.

d. *Applicant:* Public Utility District No. 1 of Pend Oreille County.

e. *Name of Project:* Sullivan Creek.

f. *Location:* On Sullivan Creek, in Pend Oreille County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Michael V. Stimac, HDR Engineering, Inc., 500–108th Avenue, NE., Suite 1200, Bellevue, WA 98004, (206) 453–1523.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Comment Date:* June 23, 1995.

k. *Description of the Request:* The licensee proposes to re-establish generation at the project by constructing a new intake structure at the southwest corner of Mill Pond, placing a buried 16,340-ft., 90-inch diameter steel pipeline and penstock along the original flume right-of-way, enlarging the existing powerhouse to accommodate the installation of new electrical generating equipment, and upgrading the road surface of an existing access road to the intake site. The proposed project would have a total installed capacity of 11.2 MW.

l. This notice also consists of the following standard paragraphs: B, C2, and D2.

2 a. *Type of Application:* Transfer of License.

b. *Project No:* 4316–011.

c. *Date Filed:* April 21, 1995.

d. *Applicant:* Trans Mountain Hydro Corp.

e. *Name of Project:* Blue Valley Ranch.

f. *Location:* On the Blue River, Grand County, Colorado, near Heeney.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* David Bailey, Esq., Parcel Mauro Hultin & Spaanstra, P.C., 1801 California, Suite 3600, Denver, CO 80202, (303) 292–6400.

i. *FERC Contact:* Mark Hooper, (202) 219–2680.

j. *Comment Date:* June 26, 1995.

k. *Description of Transfer:* Applicant proposes to transfer the license to Galloway, Inc.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

3 a. *Type of Application:* Transfer of License.

b. *Project No:* 4444–013.

c. *Date Filed:* April 21, 1995.

d. *Applicant:* Trans Mountain Hydro Corp.

e. *Name of Project:* Blue Valley Ranch.

f. *Location:* On the Blue River, Grand County, Colorado, near Heeney.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* David Bailey, Esq., Parcel Mauro Hultin & Spaanstra, P.C., 1801 California, Suite 3600, Denver, CO 80202, (303) 292–6400.

i. *FERC Contact:* Mark Hooper, (202) 219–2680.

j. *Comment Date:* June 26, 1995.

k. *Description of Transfer:* Applicant proposes to transfer the license to Galloway, Inc.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

4 a. *Type of Application:* Surrender of License.

b. *Project No:* 6632–008.

c. *Date Filed:* April 20, 1995.

d. *Applicant:* John N. Webster.

e. *Name of Project:* Wiswall Dam Hydroelectric Project.

f. *Location:* Lamprey River, Strafford County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(r).

h. *Applicant Contact:* John N. Webster, Southern New Hampshire Hydroelectric Development Corp., P.O. Box 178, South Berwick, ME 03908, (207) 384–5334.

i. *FERC Contact:* Hillary Berlin, (202) 219–0038.

j. *Comment Date:* June 23, 1995.

k. *Description of Project:* The licensee states that the project is uneconomical to construct at this time.

l. The notice also consists of the following standard paragraphs: B, C1, and D2.

5 a. *Type of Application:* Subsequent License.

b. *Project No.:* 2438–007.

c. *Date filed:* November 5, 1993.

d. *Applicant:* Seneca Falls Power Corporation.

e. *Name of Project:* Waterloo and Seneca Falls Project.

f. *Location:* On the Seneca River in Seneca County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Patrick Oot, President, Seneca Falls Power Corporation, 4450 Swissvale Drive, Manlius, NY 13104, (315) 637–4761.

i. *FERC Contact:* Robert Bell (202) 219–2806.

j. *Comment Date:* July 17, 1995.

k. *Status of Environmental Analysis:* This application is accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The proposed project consists of the following two developments:

Seneca Falls Development

(1) The existing 68-foot-high, 118-foot-long dam; (2) having an impoundment with a surface area of 135 acres with a storage capacity of 2,700 acre-feet, and a normal water surface elevation of 430.5 feet Barge Canal Datum (BCD); (3) an existing intake structure; (4) the existing powerhouse having 4 generating units with a total proposed capacity of 8,500-kW; (5) the existing tailrace; (6) the existing 300-foot-long, 34.5-kV transmission line; and (7) appurtenant facilities.

Waterloo Development

(1) The existing 16.5-foot-high, 251-foot-long dam; (2) having an impoundment with a surface area of 1.1 acre with negligible storage, and a normal water surface elevation of 446.3 feet BCD; (3) an existing intake structure; (4) the existing powerhouse having 4 generating units with a total proposed capacity of 2,260-kW; (5) the existing tailrace; (6) the existing 20-foot-long, 34.5-kV transmission; and (7) appurtenant facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. Based on the expiration of December 31, 1993, the Applicant's estimated net investment in the project would amount to $3,925,242.

m. *Purpose of Project:* Project power would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Mr. Patrick Oot, President, Seneca Falls Power Corporation, 4450 Swissvale Drive, Manlius, NY 13104, (315) 637–4761.

6 a. *Type of Application:* Major License.

b. *Project No.:* 10855–002.

c. *Date filed:* May 2, 1994.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Dead River Project.

f. *Location:* On the Dead River in Marquette County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Clarence R. Fisher, President, Upper Peninsula Power Company, P. O. Box 130, 600 Lakeshore Drive, Houghton, MI 49931–0130, (906) 487–5000.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Comment Date:* July 17, 1995.

k. *Status of Environmental Analysis:* This application is accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The constructed project consists of the following developments:

Silver Lake Dam Development

(1) An existing 1,500-foot-long, 30-foot-high earth embankment Dam; (2) an existing 100-foot-long, 7.7-foot-high concrete ogee crest spillway; (3) an existing 1,491-foot-long, 34-foot-high concrete gravity outlet structure; (4) four existing earthen saddle dikes: (a) 200-foot-long, 5-foot-high dike 1; (b) 370-foot-long, 7-foot-high dike 2; (c) 170-foot-long, 6-foot-high dike 3; (d) 290-foot-long, 5-foot-high dike 4; (4) an existing reservoir having a surface area of 1,464-acres with a storage capacity of 33,513 acre-feet, and a normal water surface elevation of 1,486.25 feet NGVD. There is no generation proposed at this development.

Hoist Dam Development

(1) An existing 4,602-foot-long concrete gravity Hoist Dam with sections varying in height from 6 to 63 feet; (2) an existing reservoir having a surface area of 3,202-acres with a storage capacity of 46,998 acre-feet, and normal water surface elevation of 1.347.5 feet NGVD; (3) an existing intake structure; (4) an existing 342-foot-long, 9-foot-wide, 10-foot-high tunnel; (5) an existing 193-foot-long, 7-foot-diameter riveted steel penstock; (6) an existing powerhouse containing 3 generating units with a total installed capacity of 4.425–MW; (7) an existing tailrace; (8) an existing 33-kV transmission line; and (9) appurtenant facilities. The estimated average annual generation is 15,643–MWh.

McClure Dam Development

(1) An existing 1,874-foot-long, earth embankment and concrete gravity McClure Dam varying in height from 22 to 51.4 feet; (2) an existing reservoir having a surface area of 95.9-acres with a storage capacity of 1,870 acre-feet, and normal water surface elevation of 1,196.4 feet NGVD; (3) an existing intake structure; (4) an existing 13,302-foot-

long, 7-foot-diameter steel, wood, and concrete pipeline; (5) an existing 40-foot-high, 30-foot-diameter concrete surge tank; (6) an existing powerhouse containing 2 generating units with a total installed capacity of 9.863-MW; (7) an existing tailrace; (8) an existing 33-kV transmission line; and (9) appurtenant facilities. The estimated average annual generation is 48,452-MWh.

m. *Purpose of Project:* Project power would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., Room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Mr. Clarence R. Fisher, President, Upper Peninsula Power Company, P.O. Box 130, 600 Lakeshore Drive, Houghton, MI 49931–0130, (906) 487–5000.

7 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11531–000.

c. *Date filed:* May 1, 1995.

d. *Applicant:* City of Boulder, Colorado.

e. *Name of Project:* Silver Lake Hydroelectric Project.

f. *Location:* At the terminus of the applicant's existing Silver Lake Raw Water Pipeline, near the city of Boulder, in Boulder County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Eva June Busse, P.E., Hydro Projects Manager, City of Boulder, P.O. Box 791, Boulder, Colorado 80306, (303) 441–4271.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* July 26, 1995.

k. *Description of Project:* The proposed project would consist of: (1) The applicant's existing diversion structure and intake on Boulder Creek; (2) the applicant's existing 18-inch-diameter, 18,000-foot-long Silver Lake Raw Water Pipeline; (3) a powerhouse containing one generating unit with an installed capacity of 2,750 Kw; (4) a 1,000-foot-long transmission line interconnecting with an existing Public Service Company of Colorado transmission line; and (5) appurtenant facilities.

No new access roads will be needed to conduct the studies.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's

regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) Bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: May 17, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12708 Filed 5–23–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. PR95–8–001]

Arkansas Western Gas Co.; Notice of Amended Petition for Rate Approval

May 18, 1995.

Take notice that on may 5, 1985, Arkansas Western Gas Company (AWG) filed pursuant to section 284.123(b)(2) of the Commission's regulations, an amended petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.1596 MMBtu, plus 3.1 percent for compressor fuel and lost and unaccounted for gas, for transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). this amendment represents a prospective increase from the rate of $0.1300 per MMBtus AVG requested in this docket on March 3, 1985.

AWG states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates an intrastate pipeline system in the State of Arkansas. AWG proposes and effective date of March 3, 1995.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with section 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before June 1, 1995. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Chashell,

Secretary.

[FR Doc. 95–12634 Filed 5–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–298–000 and RP95–31–007]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

May 18, 1995.

Take notice that on May 15, 1995, National Fuel Gas Supply Corporation (National) tendered for filing, as a limited application under Section 4 of the Natural Gas Act, its filing to comply with the May 8, 1995 letter order and the Commission's April 12, 1995 order issued in these proceedings. These orders required that National allocate transmission costs either to all of its storage services or to none, and that National explain how its tariff sheets meet the Commission's objectives.

National has filed as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following primary tariff sheets reflecting the assignment of transmission costs to all of its firm storage services, with a proposed effective date of June 1, 1995:

Tenth Revised Sheet No. 5
Third Revised Sheet No. 5A
Ninth Revised Sheet No. 6
Fifth Revised Sheet No. 6A

National is also filing first and second alternative sets of tariff sheets.

National further states that it has included the relevant workpapers setting forth National's cost-of-service used to develop the rates included in its filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure. All such motions to intervene or protests should be filed on or before May 25, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12637 Filed 5–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–216–001]

Tennessee Gas Pipeline Company; Notice of Filing

May 18, 1995.

Take notice that on May 12, 1995, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a schedule displaying the effective and termination dates for contracts that caused a reduction in billing determinants in Docket No. RP95–216.

Tennessee states that the purpose of this filing is to comply with the Commission's April 27, 1995 Order in Docket No. RP95–216 requiring Tennessee to file additional information supporting the billing determinants contained in the filing. In addition, Tennessee is revising its billing determinants to correct an inadvertent reduction to NIPSCO's contract number 548 effective July 1, 1995. No change in the GSR surcharge is required as a result of this correction.

Tennessee states that copies of the filing have been mailed to all affected parties.

Any persons desiring to protest said filing should file a motion to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests should be filed before May 25, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12636 Filed 5–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–63–000, RP95–64–000, RP95–88–000, RP95–90–000, RP95–112–000, RP95–206–000]

Tennessee Gas Pipeline Co.; Notice of Technical Conference

May 18, 1995.

Take notice that a technical conference concerning the above dockets will be convened on June 1, 1995, at 9 a.m., at the Crystal City Marriott (Crystal Forum), 1999 Jefferson Davis Highway, Arlington, Virginia. The purpose of the technical conference is to continue discussions begun at the prior conference concerning Tennessee's operations.

All parties, as defined by 18 CFR 385.102(c), and all participants as defined in 18 CFR 385.102(b), are invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Jake Hiatt (713) 757–6855 at Tennessee or Chris Young (202) 208–0620 and Robert McLean (202) 208–1179 at the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12635 Filed 5–23–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34076; FRL–4954–8]

Reregistration Eligibility Decision Documents for Ethephon, et. al.; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Reregistration Eligibility Decision documents; opening of public comment period.

SUMMARY: This notice announces the availability of the Reregistration Eligibility Decision (RED) documents for the active ingredients Ethephon, Linuron and Metolachlor. This notice starts a 60–day public comment period. The REDs for the chemicals listed above are the Agency's formal regulatory assessments of the health and environmental data base of the subject chemicals and present the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Written comments on these decisions must be submitted by July 24, 1995.

ADDRESSES: Three copies of comments identified with the docket number ''OPP–34076'' and the case number (noted below), should be submitted to: By mail: OPP Pesticide Docket, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. In person, deliver comments to: OPP Pesticide Docket, Rm. 1132, Crystal Mall 2 (CM#2), 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP–34076''. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in **FOR FURTHER INFORMATION CONTACT** of this document.

FOR FURTHER INFORMATION CONTACT: Technical questions on the above listed decisions should be directed to the appropriate Chemical review managers:

List	Chemical Name	Case No.	Chemical Review Manager	Telephone No.
List A	Ethephon	Case 0382	Judy Loranger	(703) 308–8056.
List A	Linuron	Case 0047	Karen Jones	(703) 308–8047.
List A	Metolachlor	Case 0001	Jane Mitchell	(703) 308–8061.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with

procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice (including comments and data submitted electronically). The public docket and docket index, including printed paper versions of electronic comments, which does not include any information claimed as CBI will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a copy of any of the above listed RED documents, or a RED Fact Sheet, contact the OPP Pesticide Docket, Public Response and Program Resources Branch, in Rm. 1132 at the address given above or call (703) 305–5805.

Electronic copies of the REDs and RED fact sheets can be downloaded from the Pesticide Special Review and Reregistration Information System at 703–308–7224, and also can be reached on the Internet via fedworld.gov and EPA's gopher server, gopher.epa.gov.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Decision (RED) documents for the pesticidal active ingredients listed above. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of each of the chemicals listed above is substantially complete. EPA has determined that all currently registered products subject to reregistration containing these active ingredients are eligible for reregistration.

All registrants of products containing one or more of the above listed active ingredients have been sent the appropriate RED documents and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt. Products containing other active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing these REDs as final documents with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency. If any comment significantly affects a RED, EPA will amend the RED by publishing the amendment in the **Federal Register**.

List of Subjects

Environmental protection.

Dated: May 16, 1995.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 95–12566 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–F

[PF–625; FRL–4951–3]

Pesticide Tolerance Petitions; Filings and Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces initial filings and an amendment to pesticide petitions (PP) and to food and feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–625; FRL 4951–3]. No CBI should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product Manager	Office location/telephone number/e-mail	Address
Robert Taylor (PM–25)	Rm. 241, CM #2, 703-305-6027; e-mail: taylor.robert@epamail.epa.gov.	1921 Jefferson Davis Hwy., Arlington, VA.
Joanne Miller (PM–23)	Rm. 237, CM #2, 703-305-6224; e-mail: miller.joanne@epamail.epa.gov..	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions and food/feed additive petitions as follows proposing the amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filings

1. *PP 5F4440*. Valent U.S.A. Corp., 1333 North California Blvd., Suite 600, Walnut Creek, CA 94596, proposes amending 40 CFR 180.458 by establishing tolerances for the combined residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy] imino] propyl]-5-[2-(ethylthio)propenyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on the raw agricultural commodities alfalfa, forage at 10 ppm; alfalfa, hay at 15 ppm; dry bean, seeds at 2 ppm; dry bean, forage at 5 ppm; dry bean, straw/hay at 7 ppm; peanut, nut meat at 3 ppm; peanut, hulls at 2 ppm; peanut, hay at 5 ppm. Proposed analytical method for determining residues is a compound-specific method (liquid chromatography (HPLC/UV)) or a common moiety method (gas chromatography with sulfur detector). (PM-23)

2. *PP 5F4454*. E.I. duPont de Nemours & Co., Agricultural Products, Walkers Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of chlorimuron ethyl (ethyl-2-[[[[(4-chloro -6- methoxpyrimidin -2yl) amino] carbonyl] amino] sulfonyl]bensoate) in or on the raw agricultural commodities corn (field/grain); corn, (field/forage); and corn (field/fodder) at 0.05 ppm. The analytical enforcement method is column surtehony (heart cut) liquid chromatography (HPLC/UV). (PM-25)

3. *PP 5F4469*. American Cyanamid Co., P.O. Box 400, Princeton, NJ 08543, proposes to amend 40 CFR part 180 by establishing a regulation to permit combined residues of the herbicide prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea, on cereal grains, cereal grains forage, fodder, and straw (except rice and wild rice) at 0.02 ppm. (PM-25)

4. *FAP 5H5713*. Valent U.S.A. Corp., 1333 North California Blvd., Suite 600, Walnut Creek, CA 94596, proposes amending 40 CFR 186.1075 by establishing a tolerance for the combined residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propenyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety in or on the processed commodity peanut, meal at 10 ppm. Proposed analytical method for determining residues is a compound-specific method (liquid chromatography (HPLC)). (PM-23)

Amended Filing

5. *PP 3F4225*. In the **Federal Register** of October 21, 1993 (58 FR 54354), EPA issued a notice announcing that Ciba-Geigy Corp. proposed to amend 40 CFR part 180 by establishing a regulation to permit residues of triasulfuron, 3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-(2-chloroethoxy) phenylsulfonyl) urea in or on grass, forage at 7.0 ppm and grass, hay at 2.0 ppm. Ciba-Geigy is amending the petition to inlcude the establishment of a regulation permitting residues of triasulfuron in the kidney of cattle, goats, hogs, horses, and sheep at 0.5 ppm. (PM-25).

A record has been established for this notice document under docket number [PF-625; FRL 4951-3] (including any comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping

Authority: 7 U.S.C. 136a.

Dated: April 28, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–12564; Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–F

[PP 3G4184 and 3G4214/T676; FRL 4953–3]

Flutolanil; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the fungicide flutolanil in or on certain raw agricultural commodities. These temporary tolerances were requested by AgrEvo USA Company.

DATES: These temporary tolerances expire April 30, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6900; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: AgrEvo USA Company, Little Falls Centre One, 2711 Centreville Rd., Wilmington, DE 19808, has requested in pesticide petitions (PP) 3G4184 and 3G4214, the establishment of temporary tolerances for residues of the fungicide flutolanil (*N*-[3-(1-Methylethoxy)phenyl)-2-(trifluoromethyl)benzamide) in or on the raw agricultural commodities rice (whole grain) and rice straw at 7.0 parts per million (ppm), rice hulls at 25.0 ppm, and rice bran at 10.0 ppm; peanut nutmeats at 0.4 ppm, peanut hulls at 13.0 ppm, peanut meal at 1.0 ppm and peanut soapstock at 1.0 ppm. These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permits 45639–EUP–48 and 45639–EUP–50, which are being issued under the Federal Insecticide, Fungicide, and Rodenticide Act

(FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permits and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.

2. AgrEvo USA Co., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 30, 1996. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary tolerances. These tolerances may be revoked if the experimental use permits are revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 9, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–12569 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180971; FRL 4953–5]

Pirimicarb; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Idaho, Nevada, Oregon, Washington, and Wyoming Departments of Agriculture (hereafter referred to as the ''Applicants'') for use of the unregistered insecticide, pirimicarb, to control aphids and lygus bugs on alfalfa grown for seed. The proposed use would impact up to 30,000 acres in Idaho; 18,000 acres in Nevada; 10,000 acres in Oregon; 15,000 acres in Washington; and 2,000 acres in Wyoming. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before June 8, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–180971,'' should be submitted by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–180971]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information.'' Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Larry Fried, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8328; Internet address: fried.larry@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption.

The Applicants have or will request the Administrator to issue a specific exemption for the use of the insecticide, pirimicarb, formulated as Pirimor 50–DF Insecticide manufactured by Zeneca Inc. to control aphids. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicants, pirimicarb is the only known insecticide that provides control of aphids and lygus bugs without inflicting harm to the native bee populations following application. The use of the currently registered insecticides will present significant risk to beneficial organisms (native pollinating bees). The alfalfa industry heavily relies on bee pollination to ensure successful crop development. Over time, use of the registered products may be responsible for substantial bee kills that would profoundly impact the alfalfa seed industry and the ecosystem.

Under the proposed exemption Pirimor 50–DF would be used at a rate

of [(1.0 to 3.0 oz., or 0.063 to 0.188 lb. of active ingredient (a.i.))] per acre per application, applied in a minimum application spray volume of 5 gallons per acre by air or 10 gallons per acre by ground. A maximum of three applications have been requested. If approved, a maximum total rate of 6 ounces of product will not be exceeded this growing season.

The existence of state regulations/restrictions prohibit the use of any alfalfa byproducts of the seed industry for livestock feed. Applications would be made between May 1, 1995 and September 30, 1995.

This notice does not constitute a decision by EPA on the application itself. Pirimicarb is classified as a new chemical by the Agency. The regulations governing section 18 require that the Agency publish a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if the applicant proposes use of a new chemical. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

A record has been established for this notice under docket number ''[OPP-180971]'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Idaho, Nevada, Oregon, Washington, and Wyoming Departments of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions

Dated: May 8, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–12568 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5209–1]

Final NPDES General Permit for Offshore Oil and Gas Operations on the Outer Continental Shelf (OCS) and State Waters of Alaska: Arctic NPDES General Permit (No. AKG284200)

AGENCY: Environmental Protection Agency.

ACTION: Notice of final NPDES general permit.

SUMMARY: The Regional Administrator, Region 10, is issuing the final Arctic National Pollutant Discharge Elimination System (NPDES) general permit which will authorize offshore oil and gas stratigraphic test and exploration wells in the federal and state waters of the Beaufort and Chukchi Seas. Development and production wells are not authorized to discharge by this general permit.

Notice of the draft Arctic general permit was published September 20, 1995 (59 FR 48314–48324) and in two Alaskan newspapers. A brief description of the basis for the conditions and requirements of the proposed permit is given in the fact sheet published at the aforementioned **Federal Register** citation.

The final permit which follows establishes effluent limitations, standards, prohibitions, and other conditions on discharges from facilities in the area of coverage. The conditions are based on material contained in the administrative record. Changes made in response to comments received during the public comment period are addressed in full in a document entitled ''Response to Comments Received on the Proposed Issuance of the Arctic General NPDES Permit.'' This document is being sent to all commenters and is available to other parties upon request at the address provided in this document.

DATES: The general permit shall become effective June 23, 1995.

ADDRESSES: Unless other wise noted in the permit, correspondence regarding this permit should be sent to Environmental Protection Agency, Region 10, Attn: Ocean Programs Section, WD–137, 1200 Sixth Avenue, Seattle, Washington, 98101.

Administrative Record: The administrative record for the final permit is available for public review at EPA, Region 10, at the preceding address.

FOR FURTHER INFORMATION CONTACT: Anne Dailey, of Region 10, at the preceding address or telephone (206) 553–2110. Copies of the final general permit, the response to comments, and today's publication will be provided upon request from the Region 10 Public Information Center at 1–800–424–4EPA (4372) or 206–553–1200.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

I. Introduction
II. Basis for Permit Conditions
III. Changes Made from Draft to Final Permit
IV. Other Legal Requirements
A. Oil Spill Requirements
B. Endangered Species Act
C. Coastal Zone Management Act
D. Marine Protection, Research and Sanctuaries Act
E. State Water Quality Standards and State Certification
F. Executive Order 12291
G. Paperwork Reduction Act
H. Regulatory Flexibility Act
V. References
Appendix A: List of Changes from Draft to Final Permit

I. Introduction

EPA issues this general permit pursuant to its authority under sections 301(b), 304, 306, 307, 308, 401, 402, 403, and 501 of the Clean Water Act and the U.S. Coast Guard regulations (33 CFR part 151). This permit authorizes discharges from oil and gas stratigraphic and exploratory wells in the area of coverage on the Alaskan Outer Continental Shelf and contiguous state waters in the Beaufort and Chukchi Seas. The area of coverage is defined as Federal waters of the Beaufort Sea and Chukchi Sea planning basins as defined by Minerals Management Service (MMS) (see U.S. Dept. of the Interior, 1992) and State waters contiguous to the landward boundary of the Beaufort Sea and Chukchi Sea planning basins.

Public notice for the draft permit was published in the **Federal Register** on September 20, 1994 (59 FR 48314–48324) and in the Anchorage Times and

in the Arctic Sounder on September 20, 1994. The comment period was scheduled to close on November 21, 1994. In response to requests, the comment period was formally extended to close January 20, 1995. Public hearings were tentatively scheduled to be held in Barrow and Anchorage, Alaska but were canceled due to lack of interest.

The following parties submitted written comments: Alaska and Inuvialuit Beluga Whale Committee, Alaska Oil and Gas Association, American Petroleum Institute, Baker Hughes Inteq, British Petroleum, Exxon Exploration Company, Marathon Oil Company, Charles Etok Edwardsen, Jr., James McCollough, M–I Drilling Fluids, National Marine Fisheries Service, Native Village of Point Lay, Alaska, North Slope Borough, Trustees for Alaska, U.S. Department of Energy, U.S. Department of the Interior, and Unocal Energy Resources Division.

II. Basis for Permit Conditions

Section III of the fact sheet for the draft permit (59 FR 48315–48317, September 20, 1995) is incorporated by reference, as supplemented and amended below. The fact sheet for the draft permit, the response to comments document, the final Ocean Discharge Criteria Evaluation, and the 401 Certification issued by the State of Alaska set forth the principal facts and the significant factual, legal, and policy questions considered in the development of the terms and conditions of the final permit.

III. Changes Made From Draft to Final Permit

Changes have been made from the draft permit to the final permit in response to public comments received on the draft permit, the final consistency determination from the State of Alaska, and the final 401 Certification from the State of Alaska. In developing the final permit, Region 10 has considered all comments received. Every attempt has been made to thoroughly respond to comments raised during the comment period in the response to comments document, which is available upon request. In some instances, minor wording changes have been made to the proposed permit language in order to clarify some points as a result of comments. In response to other comments, there have been substantive changes made to the permit.

The following identifies several specific areas of change, among others, which have been embodied in the final permit: The mud plan requirements have been refined and clarified; toxicity testing requirements have been clarified; discharge restrictions have been placed on Omalik Lagoon, Naokok Pass, and Pingaorarok Pass; the areas requiring environmental monitoring have been revised and clarified; additional controls on sanitary wastes have been included, and a prohibition on the discharge of putrescible wastes has been added. Many comments were made regarding the Best Management Practices Plan requirements and several changes were made in response to comments. Appendix A to this notice identifies the changes made from the draft to the final permit. The detailed response to public comments is available upon request from the Region 10 Public Information Center at 1–800–424–4EPA (4372), 1–206–553–1200, or from the address listed above.

IV. Other Legal Requirements

A. Oil Spill Requirements

Oil spill requirements in the final permit have been modified to reflect Executive Order 12777 which implements provisions of the Oil Pollution Act of 1990. E.O. 12777 removed offshore facilities from jurisdiction under EPA and placed them under Department of Interior (DOI) jurisdiction. Specifically within DOI, Minerals Management Service has the responsibility.

Offshore operators are now required to submit Oil Spill Contingency Plans to MMS for review. Additionally, operators in state waters are required to submit Oil Discharge Prevention and Contingency Plans to the Alaska Department of Environmental Conservation for review. With the new requirements, operators in federal or state waters are no longer required to develop Spill Prevention, Control, and Contingency (SPCC) plans under section 311 of the Act.

B. Endangered Species Act

EPA has informally consulted with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) pursuant to section 7 consultation of the Endangered Species Act (ESA). EPA has addressed ESA issues in the Final Ocean Discharge Criteria Evaluation (U.S. EPA, 1995a) and the Final Biological Evaluation (U.S. EPA, 1995b) for the area of coverage. Based upon information in the aforementioned documents, Region 10 concluded that this final permit is not likely to adversely affect any endangered or threatened species nor adversely affect its critical habitat. EPA requested comments from USFWS and the NMFS on this determination. Comments raised by the USFWS and NMFS have been addressed. Both agencies concurred in writing with EPA's determination of no adverse effect.

C. Coastal Zone Management Act

The proposed permit and consistency determination were submitted to the State of Alaska for state interagency review at the time of public notice. The State of Alaska has concurred that the activities allowed by this permit are consistent with local and state Coastal Management Plans.

D. Marine Protection, Research and Sanctuaries Act

No marine sanctuaries as designated by this Act exist in the vicinity of the permit areas.

E. State Water Quality Standards and State Certification

The State of Alaska has certified pursuant to section 401 of the Clean Water Act that the discharges authorized in state waters by this permit comply with state water quality standards and regulations. All conditions and stipulations included in the certification have been included in the final permit.

F. Executive Order 12866

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to section 8(b) of that order.

G. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act. In addition, the environmental monitoring requirements pursuant to section 403(c) of the Clean Water Act in Part II.B.4. of this permit are similar to the monitoring requirements that were approved by OMB for the previously issued Beaufort Sea II and Chukchi Sea general permits.

H. The Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this general permit will not have a significant impact on a substantial number of small entities. This

certification is based on the fact that the regulated parties have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5024 *et seq.* (February 9, 1984). These facilities are classified as Major Group 13—Oil and Gas Extraction SIC 1311 Crude Petroleum and Natural Gas.

Dated: April 12, 1995.

Chuck Clarke,

Regional Administrator, Region 10.

V. References

U.S. Department of the Interior. 1992. Outer Continental Shelf Natural Gas and Oil Resource Management: Comprehensive Program (1992–1997). Proposed Final. Minerals Management Service.

U.S. EPA. Region 10. 1995a. Final Ocean Discharge Criteria Evaluation. Prepared with assistance from Tetra Tech, Inc. February 1995.

U.S. EPA. Region 10. 1995b. Final Biological Evaluation. Prepared with assistance from Tetra Tech, Inc. February 1995.

Appendix A: List of Changes Made From the Draft to Final Permit

Below is a list of final permit sections which have been modified since the draft permit was proposed. Along with each permit section identified below, the specific response to comment number and/or the certification stipulation which explains the rationale and basis for the change is noted.

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Part I.A.
  401 Certification, Stipulation 1
Part I.F.
  401 Certification, Stipulation 2
Part II.A.1.
  Footnote 1, 401 Certification, Stipulation 3
  Footnote 2, Response to comment 11(c)
  Footnote 3, 401 Certification, Stipulation 4
  Footnote 4, Response to comment 30(a)
Part II.A.1.c.
  Response to comment 11(c)
Part II.A.1.d.
  401 Certification, Stipulation 5 and Response to comment 12
Part II.A.1.e.
  Response to comment 12
Part II.A.1.g.
  Response to comment 13(a)
Part II.A.1.h.
  Response to comment 14(a)
Part II.A.1.k.
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Final NPDES General Permit, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM FOR OIL AND GAS EXPLORATION FACILITIES ON THE OUTER CONTINENTAL SHELF AND CONTIGUOUS STATE WATERS

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the following discharges are authorized in accordance with this National Pollutant Discharge Elimination System (''NPDES''):

Discharge name	Discharge No.
Drilling Fluid and Drilling Cuttings	001
Deck Drainage	002
Sanitary Wastes	003
Domestic Wastes	004
Desalination Unit Wastes	005
Blowout Preventer Fluid	006
Boiler Blowdown	007
Fire Control System Test Water	008
Non-Contact Cooling Water	009
Uncontaminated Ballast Water	010
Bilge Water	011
Excess Cement Slurry	012
Mud, Cuttings, Cement at Seafloor	013
Test Fluids	014

From oil and gas exploratory facilities in offshore areas (defined in 40 CFR part 435, subpart A), to all federal waters of the U.S. located in the Beaufort Sea and Chukchi Sea planning basins as defined by U.S. Department of Interior, Minerals Management Service (1992) and to all state waters contiguous to the Beaufort Sea and Chukchi Sea Minerals Management Service planning areas in accordance with effluent limitations, monitoring and reporting requirements, and other conditions set forth in Parts I through V herein. The discharge of pollutants not specifically set out in this permit is not authorized. Permittees who do not request and receive coverage under this general permit as described in Part I are not authorized to discharge to the specified waters unless an individual NPDES permit has been issued to the permittee by EPA, Region 10.

This permit shall be modified or revoked at any time if, on the basis of any new data, the Director determines that such data would have justified the application of different permit conditions at the time of issuance. Permit modification or revocation will be conducted in accordance with 40 CFR 122.62, 122.63, and 122.64. In addition to any other grounds specified herein, this permit shall be modified or revoked at any time if, on the basis of any new data, the Director determines that continued discharges may cause unreasonable degradation of the marine environment in accordance with section 403(c) and as promulgated in 40 CFR part 125, subpart M.

Under 40 CFR 122.44(c)(3), if an applicable standard or limitation is promulgated under sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

This permit shall become effective on June 23, 1995.

This permit and the authorization to discharge shall expire at midnight on June 23, 2000.

Signed this 12th day of April 1995.

Chuck Clarke,

Regional Administrator.

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I. Notification Requirements

This permit does not authorize the discharge of pollutants to waters of the United States until the following three requirements, which are set out in more detail in subparagraphs A. through C. below, are met. First, the permit applicant must send in a request to be covered by the permit and authorization to discharge. Second, the applicant must receive from EPA an authorization to discharge. Third, once authorized, the permittee must notify EPA of its intent to discharge at least seven days in advance of the discharge. Failure to comply with any of these requirements will vitiate any prior authorization to discharge under this general permit.

A. Requests for Coverage and Authorization to Discharge Under the General Permit

Persons requesting coverage under this general permit shall provide to EPA written request to be covered by this permit at least 60 days prior to initiation of discharges. All requests for coverage and authorization to discharge under the general permit shall be provided to the Alaska Department of Environmental Conservation Joint Pipeline Regional Office in Anchorage. The request shall include the following information:

1. Name and address of the permittee.

2. Lease and block numbers of operations and discharges.

3. Any discharge or operating conditions which will require special monitoring (Part II.A.4.).

B. Authorization to Discharge

The permittee's discharges are not authorized until the permittee receives from EPA written notification that EPA has assigned a permit number under this general permit to operations at the discharge site. A permit number cannot be assigned until the following information is received. This information shall be provided to EPA in the request for coverage, if possible, but in no case less than 30 days prior to commencement of discharges.

1. Name and location of discharge site, including lease block number and approximate coordinates.

2. Range of water depths (below mean lower low water) in lease block, and depth of discharge.

3. Initial date and expected duration of operations.

C. Notice of Intent to Commencement of Discharges

The permittee shall notify EPA, Region 10, no later than 7 days prior to initiation of discharges from the facility and from each well. The notification shall include the exact coordinates (latitude and longitude) and water depth of the discharge site, and may be oral or in writing. The Certification of Planning for Drilling Muds (*see* Part II.A.1.f.) and the Best Management Practices Plan Certification (*see* Part II.F.1.) shall also be submitted no later than the notification of commencement of discharges. If notification is given orally, written confirmation must follow within 7 days.

D. Sites Requiring Environmental Surveys

All operators that locate within the areas covered by this general permit shall submit to EPA copies of any exploration plans, biological surveys, and/or environmental reports required by the Regional Supervisor, Field Operations of the Minerals Management Service, State of Alaska, for the identification and/or protection of biological populations or habitats. Permittees shall notify Region 10 in writing when no exploration plan or environmental report will be sent.

E. Termination of Discharges

The permittee shall notify EPA within 30 days following cessation of discharges from each well and from the discharge site. The notification may be provided in a DMR or under separate cover.

F. Submission of Requests for Coverage and Authorization, Notice of Intent to Commence Discharge, and Other Reports

Reports and notifications required herein shall be submitted to the following addresses.

All requests for coverage and authorization and notices of intent:

Director, Water Division, U.S. Environmental Protection Agency, Reg. 10, Attn: Ocean Programs Section, WD–137, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1583

Alaska Department of Environmental Conservation, Pipeline Corridor Regional Office, Attn: Water Quality and Wastewater Programs, 411 West 4th Ave., Suite 2C, Anchorage, Alaska 99501

All monitoring reports and notifications of non-compliance:

Director, Water Division, U.S. Environmental Protection Agency, Reg. 10, Attn: Water Compliance Section, WD–135, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–6513

G. Changes from Authorization Under General Permit to Authorization Under an Individual Permit

1. The Director may require any permittee discharging under the authority of this permit to apply for and obtain an individual NPDES permit when any one of the following conditions exist:

a. The discharge(s) is (are) a significant contributor of pollution.

b. The permittee is not in compliance with the conditions of this general permit.

c. A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.

d. A Water Quality Management Plan containing requirements applicable to such point source is approved.

e. The point sources covered by this permit no longer:

(1) Involve the same or substantially similar types of operations,

(2) Discharge the same types of wastes,

(3) Require the same effluent limitations or operating conditions, or

(4) Require the same or similar monitoring.

f. In the opinion of the Director, the discharges are more appropriately controlled under an individual permit than under a general NPDES permit.

2. The Director may require any permittee authorized by this permit to apply for an individual NPDES permit only if the permittee has been notified in writing that an individual permit application is required.

3. Any permittee authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The owner or operator shall submit an application together with the reasons supporting the request to the Director no later than 90 days after the effective date of the permit.

4. When an individual NPDES permit is issued to a permittee otherwise subject to this general permit, the authorization to discharge under this general permit is automatically terminated on the effective date of the individual permit.

II. Specific Limitations and Monitoring Requirements

During the effective period of this permit, operators authorized to discharge under the general permit are authorized to discharge the enumerated pollutants subject to the restrictions set forth herein. This permit does not authorize the discharge of any waste streams, including spills and other unintentional or non-routine discharges of pollutants, that are not part of the normal operation of the facility or any pollutants that are not ordinarily present in such waste streams. This permit does not authorize the discharge of any pollutants not specifically set out in Part II.A.1. of this permit.

The operators shall limit discharges as specified in the permit below. All figures represent maximum effluent limits unless otherwise indicated. The permittee shall comply with the following effluent limits at all times unless provided for by this permit (e.g., unanticipated bypass) regardless of the frequency of monitoring or reporting required by other provisions of this permit.

A. Drilling Mud and Drilling Cuttings (Discharge 001)

1. Effluent Limitations and General Requirements

The permittee may discharge drilling muds and drilling cuttings subject to the effluent limitations and related requirements set forth herein. Permittee shall limit and monitor the following parameters in accordance with Parts II.A.2.–4., II.E., III., and the requirements set out herein.

EFFLUENT LIMITS AND MONITORING REQUIREMENTS

Effluent characteristic	Discharge limitation	Measurement frequency	Sample type/ method	Reported value(s)
Toxicity	30,000 ppm SPP minimum.	See Part II.A.1.g.,k .	Drilling Fluids Toxicity Test.	96 hr LC50.
Flow rate/Water depth [1]				
0–5 meters	No discharge	Hourly during discharge.	Estimate	Maximum hourly rate.
>5–20 meters	500 bbl/hr.			
>20–40 meters	750 bbl/hr.			
>40 meters	1000 bbl/hr.			
Oil-based fluids	No discharge	Daily and before bulk discharges.	Grab/Static Sheen Test [2].	Presence or absence.
Diesel oil [3]	No discharge	Daily and before bulk discharges.	Grab/GC	Presence or absence.
Free oil	No discharge	Daily and before bulk discharge.	Grab/Static Sheen Test [2].	Number of days sheen observed.
Hg and Cd In barite	1 mg Hg/kg barite, 3 mg Cd/kg barite.	Once per well	AAS	Concentrations (mg/kg, dry wt.).
Total volume	([4])	Daily	Estimate	Monthly total.
Mud plan	NA	Prior Certification	*See* Parts II.A.d.,e.,f	NA.
Chemical inventory	NA	Once/mud system	*See* Part II.A.i	NA.
Chemical analysis	NA	Once/mud system	*See* Part II.A.j	NA.

[1] Maximum flow rate of total muds and cuttings into waters of given depths and under open water, broken ice, and stable ice conditions. A 9:1 predilution is required in open water, under-ice, and unstable or broken ice conditions.

[2] For discharges during stable ice, below ice, to unstable ice or broken ice conditions, a water temperature that approximates surface water temperatures after breakup shall be used.

[3] The measurement for diesel oil is daily if muds and cuttings fail static sheen test, before bulk discharges, and end-of-well.

[4] Exploratory drilling discharges are limited to discharges from no more than five wells at a single drilling site. If a step-out or sidetracked well is drilled from a previously drilled well hole, the step-out well is counted as a new well. Requests to discharge the wastes from more than five wells per site will be considered by the Director on a case-by-case basis.

a. *No discharge of oil-based muds.* Permittee shall not discharge oil-based drilling muds (containing oil as the continuous phase with water as the dispersed phase).

b. *No discharge of diesel oil.* Permittee shall not discharge water-based drilling muds which have contained diesel oil or cuttings associated with any muds which have contained diesel oil. Compliance with the limitation on diesel oil shall be demonstrated by gas chromatography (GC) analysis of drilling mud collected from the mud used at the greatest well depth (''end-of-well'' sample) and of any muds or cuttings which fail the daily Static Sheen Test (Part II.A.1.c. below). In all cases, the determination of the presence

or absence of diesel oil shall be based on a comparison of the GC spectra of the sample and of diesel oil in storage at the facility. The method for GC analysis shall be that described in ''Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings'' (CENTEC, 1985) available from EPA, Region 10. Gas chromatography/mass spectrometry (GC/MS) may be used if an instance should arise where the operator and EPA determine that greater resolution of the drilling mud ''fingerprint'' is needed for a particular drilling mud sample.

The end-of-well analysis for diesel oil shall be done in conjunction with the end-of-well analyses required in Part II.A.1.j. The results and raw data, including the spectra, from the GC analysis shall be provided to the Director by written report (1) within 30 days of a positive result with the Static Sheen Test when a discharge has occurred, or (2) for the end-of-well analysis, within 45 days of well completion.

c. *No discharge of free oil.* There shall be no discharge of free oil as a result of the discharge of drill cuttings and/or drilling muds. The permittee shall perform the Static Sheen Test on separate samples of drilling muds and cuttings on each day of discharge and prior to bulk discharges. The test shall be conducted in accordance with ''Approved Methodology'': Laboratory Sheen Tests for the Offshore Subcategory, Oil and Gas Extraction Industry '' which is appendix 1 of subpart A of 40 CFR part 435. For discharges during stable ice, below ice, to unstable ice or broken ice conditions, a water temperature that approximates surface water temperatures at breakup shall be used. The discharge of drilling muds or cuttings which fail the Static Sheen Test is prohibited.

Whenever muds or cuttings fail the Static Sheen Test and a discharge has occurred in the past 24 hours, the permittee is required to analyze an undiluted sample of the material which failed the test to determine the presence or absence of diesel oil. The determination and reporting of results shall be performed according to Part II.A.1.b. above.

d. *Planned discharge of drilling muds and additives—Mud Plan.* The permittee shall develop and have on-site at all times a written procedural plan for the formulation and control of drilling mud/additive systems (hereafter ''the mud plan''). The mud plan must specify the mud/additive systems to be used. The plan shall be implemented during drilling operations.

The mud plan shall be available to the Agency upon request. Prior to commencement of discharges from a given operation, the permittee shall provide EPA and ADEC with written certification that a mud plan does exist and is available to the agencies (*See* Parts I.C. and II.A.1.f. of the permit).

At a minimum, the mud plan shall provide the following information:

(1) Types of muds proposed for discharge, the well name, well number, NPDES permit number and mud types as basic plan identification for each well drilled.

(2) Specific for use at each well and mud type, a list including commercial product names, descriptions of the products, and the maximum proposed discharge concentrations for each product. Concentrations shall be commonly stated in terms of ''lb/bbl,'' ''gal/bbl;'' although ''% (wt)'' or ''% v/v'' (% volume oil/volume mud) may be appropriate in some instances. Each mud/additive system shall be clearly labelled with respect to mud type (e.g., KCl/polymer mud, freshwater lignosulfonate mud). Components of the basic mud shall be listed separately from specialty or contingency additives which may be used.

(3) A record of the operator's determination of how discharge is expected to comply with the 30,000 ppm SPP toxicity limitation. Operator's determination must be based upon, but not necessarily limited to, the following criteria:

(a) Estimate of worst-case cumulative discharge toxicity based on additive toxicity estimations or commercially calculated discharge toxicity estimations.

(b) Estimations of discharge toxicity based on the use of mineral oil pills (and subsequent discharge of residual mineral oil concentrations (see Part II.A.1.g. below) must be estimated separately from the proposed mud/additive system.

(c) Where possible, overall toxicity shall be minimized.

(4) A clearly stated procedure for determining whether or not an additive not originally planned for or included in toxicity estimations above may be used and discharged.

(5) An outline of the mud planning process which shall be consistent with other permit requirements. Names and titles of personnel responsible for the mud planning process shall be included.

e. *Drilling mud and additive formulations.* Only those drilling muds, specialty additives, and mineral oil pills that meet the criteria of this permit and are contained in the operator's mud plan (see Part II.A.1.d. above) shall be discharged. In no case shall toxicity of the discharged mud exceed the toxicity limit of 30,000 ppm SPP (*see* Part II.A.1. above).

f. *Certification of planning for drilling mud discharge.* For each well the operator shall submit written certification which states that a mud plan is complete, on-site, and available upon request. In addition, each certification shall identify the well it pertains to by well name, well number, and the NPDES permit number. The certification shall be submitted no later than the written notice of intent to commence discharge (*see* Part I.C.).

If the operator elects to use a particular drilling mud/additive system on subsequent wells, the original mud plan may be re-used. Information identifying the plan (*see* Part II.A.1.d(1), above), however, must reflect use of the plan for the current well.

g. Restrictions on the use of a mineral oil pill in drilling fluid. The discharge of residual amounts of mineral oil pills (mineral oil plus additives) is authorized by this permit provided that the mineral oil pill and at least a 50 bbl buffer of drilling fluid on either side of the pill are removed from the circulating drilling fluid system and not discharged to the waters of the United States. In the event that more than one pill is applied to a single well, the previous pill and buffer shall be removed prior to application of a subsequent pill. Residual mineral oil concentration in the discharged mud shall not exceed 2% v/v (API Retort Test) (*see* Part II.A.1.g.[9] below). The discharged mud must comply with all permit conditions, including no discharge of free oil.

Should drilling mud containing residual mineral oil pill (after pill and buffer removal) be discharged, the following information shall be reported within 60 days of discharge:

(1) Dates of pill application, recovery, and discharge;

(2) Results of the Drilling Fluids Toxicity Test on samples of:

(a) The mud *before* each pill is added and

(b) The mud *after* removal of each pill and buffer (taken when residual mineral oil pill concentration is expected to be greatest)

(3) Name of spotting compound and mineral oil products used;

(4) Volumes of spotting compound, mineral oil, water, and barite in the pill;

(5) Total volume of mud circulating prior to pill application, volume of pill formulated, and volume of pill circulated;

(6) Volume of pill recovered, volume of mud buffer recovered, and volume of mud circulating after pill and buffer recovery;

(7) Percent recovery of the pill (include calculations);

(8) Estimated concentrations of residual spotting compound and mineral oil in the sample of mud discharged, as determined from amounts added and total mud volume circulating prior to pill application;

(9) Measured oil content of the mud samples, as determined by the API retort method; and

(10) An itemization of other drilling fluid specialty additives contained in the discharged mud.

h. *Mercury and cadmium content of barite.* The permittee shall not discharge a drilling mud to which barite was added if such barite contained mercury in excess of 1 mg/kg or cadmium in excess of 3 mg/kg (dry weight basis). The permittee shall analyze a representative sample of stock barite once prior to drilling each well and submit the results for total mercury and total cadmium in the Discharge Monitoring Report upon well completion. If more than one well is drilled at a site, new analyses are not required for subsequent wells if no new supplies of barite have been received since the previous analysis. In this case, the DMR should state that no new barite was received since the last reported analysis. Operators may provide certification, as documented by the supplier(s), that the barite will meet the above limits. The concentration of the mercury and cadmium in the barite shall be reported on the DMR as documented by the supplier. Analyses shall be conducted by atomic absorption spectrophotometry and results expressed as mg/kg (dry weight) of barite.

i. *Chemical inventory.* For each mud system discharged, the permittee shall maintain a precise chemical inventory of all constituents added downhole, including all drilling mud additives used to meet specific drilling requirements. The permittee shall report the following for *each* mud system:

(1) Base mud type (as identified in mud plan);

(2) Name and total amount of each constituent in discharged mud;

(3) The total volumes of mud created and added downhole; and

(4) Maximum concentration of each constituent in the discharged mud.

In addition, for each mud system discharged, the permittee shall report the following:

(5) The total volumes of mud discharged; and

(6) The estimated amount of each constituent discharged.

j. *Chemical analysis.* The permittee shall analyze each discharged mud system containing a mineral oil lubricity and/or spotting agent. Samples shall be collected when the mineral oil additive concentration is at its maximum value. If no mineral oil is used, the analysis shall be done on a drilling mud sample collected from the mud system used at the greatest well depth. All samples shall be collected prior to any predilution. Each drilling mud sample shall be of sufficient size to allow for both the chemical testing described here and the toxicity testing described below in Part II.A.1.k.

The chemical analysis shall include the following metals: Barium, cadmium, chromium, copper, mercury, zinc, and lead. The total concentration and total recoverable concentration shall be conducted on split samples and reported for each metal and shall be obtained by the methods given in 40 CFR part 136. The results shall be reported in ''mg/kg of whole mud (dry weight),'' and the moisture content (percent by weight) of the original drilling mud sample shall be reported.

In addition, permittees shall analyze mud samples for oil content (percent by weight and by volume). The analytical method shall be the retort distillation method for oil (American Petroleum Institute, Recommended Practice 13–1, 1990).

Results of chemical analyses shall be submitted within 45 days following well completion. Results shall be submitted with the end-of-well chemical inventory, *see* Part II.A.1.i., and shall identify the corresponding mud system from the end-of-well inventory.

k. *Toxicity test.* If no mineral oil is used, the toxicity test shall be conducted monthly to determine compliance with the toxicity limit. At end-of-well, a sample shall be collected for toxicity testing. This sample can also serve as the monthly monitoring sample. The sample shall be a representative subsample of that collected for chemical analysis (see Part I.A.1.j.). The permittee shall complete a minimum of two toxicity tests on each mud system where a mineral oil lubricity or spotting agent is used. One sample shall be collected before applying the pill and one after removing the pill (*see* Part II.A.1.g.). The ''after pill'' sample test results can be used as the monthly monitoring sample. If the well is completed within 96 hours of collection of the ''after pill'' drilling mud sample, then these test results can also serve as the end-of-well test.

The testing and reporting of results shall be in accordance with appendix 2 to subpart A of 40 CFR Part 435. Results of toxicity tests shall be reported on monthly DMRs. Full copies of the toxicity test reports shall be attached to the DMRs and be accompanied by an inventory of all base mud components and specialty additives present in the sampled mud (including concentrations of each). Results are due within 45 days following well completion.

2. Depth-Related Requirements

The total drilling muds and drill cuttings discharge rate shall not exceed the following rates where depth is measured as meters from mean lower low water (MLLW): (a) 1000 bbl/hr in water depths exceeding 40 meters, (b) 750 bbl/hr in water depths greater than 20 meters but not exceeding 40 meters, (c) 500 bbl/hr in water depths greater than 5 meters but not exceeding 20 meters, and (d) discharge of muds and cuttings are prohibited between the shore (mainland and barrier islands) and the 5 meter isobath.

3. Area and Seasonal Restrictions

a. Discharge is not authorized within 1000 meters of the Steffansson Sound Boulder Patch (near the mouth of the Sagavanirktok River) or between individual units of the Patch where the separation between units is greater than 2000 meters but less than 5000 meters. The Boulder Patch is defined as an area which has more than 10 percent of a one-hundred-square-meter area covered by boulders to which kelp is attached.

b. Discharge is not authorized within Omalik Lagoon, Kasegaluk Lagoon or within 3 miles of the following passes of the Kasegaluk Lagoon: Kukpowruk Pass, Akunik Pass, Utukok Pass, Icy Cape Pass, Alokiakatat Pass, Naokok Pass, and Pingaorarok Pass.

c. Discharge is prohibited within 1000 meters of river mouths or deltas during unstable or broken ice or open water conditions.

d. During *open-water conditions,* discharge in the area from the 5 to 20 meters isobaths as measured from MLLW shall be released no deeper than 1 meter below the surface of the receiving water.

e. During *unstable or broken ice conditions,* the following conditions apply for discharges shoreward of the 20 meters isobath as measured from MLLW:

(1) Discharge shall be prediluted to a 9:1 ratio of seawater to drilling muds and cuttings.

(2) Environmental monitoring is required as specified in Part II.A.4. below.

f. During *stable ice conditions,* unless authorized otherwise by the Director, the following conditions apply:

(1) Discharges shall be to above-ice locations and shall avoid to the

maximum extent possible areas of sea ice cracking or major stress fracturing.

(2) Predilution and flow rate restrictions do not apply.

4. Environmental Monitoring Requirements

a. *Purpose/areas to be monitored.* Monitoring is required in the following areas which have been identified as requiring further information on the fate and, in some cases, the effects of discharged drilling muds. If the location authorized for discharge of drilling muds and drill cuttings is within 4000 meters of the following areas, then environmental monitoring is required:

(1) Below-ice to water depths shallower than 20 meters as measured from MLLW,

(2) The Steffansson Sound Boulder Patch (see Part II.A.3.a. of this permit for further definition),

(3) The protected areas of Kasegaluk Lagoon and the seven identified passes (see Part II.A.3.b. for further definition),

(4) Omalik Lagoon, or

(5) River mouths or deltas during unstable or broken ice or open water conditions.

b. *Objectives.* The objectives of the monitoring shall be to:

(1) Monitor for discharge-related impacts,

(2) Determine statistically significant changes in sediment pollutant concentrations and sediment toxicity with time and distance from the discharge

(3) Monitor for discharge related impacts to the benthic community,

(4) Assess whether any impacts warrant an adjustment of the monitoring program, and

(5) Provide information for permit reissuance.

The monitoring shall include, but not be limited to, relevant hydrographic, sediment hydrocarbon, and heavy metal data from surveys conducted before and during drilling mud disposal operations and up to at least one year after drilling operations cease.

c. *Detailed monitoring proposal.* The Permittee shall submit a plan of study for the environmental monitoring program to EPA and ADEC for review with or prior to submission of the written request for authorization to discharge (Part I.B.). EPA and ADEC may require changes in the monitoring program's design. Copies of the study plan shall be sent concurrently to the North Slope Borough. The plan shall address:

(1) The monitoring objectives,

(2) Appropriate null and alternate test hypotheses,

(3) A statistically valid sampling design,

(4) All monitoring procedures and methods,

(5) A quality assurance/quality control program,

(6) A detailed discussion of how data will be used to meet, test and evaluate the monitoring objectives, and

(7) A summary of the results of previous environmental monitoring as they apply to the proposed program plan.

d. *Reporting and data submission requirements.* The Permittee shall analyze the data and submit a draft report by within 180 days following the completion of sample collection. Copies of the draft report shall be sent concurrently to ADEC and the North Slope Borough. The report shall address the environmental monitoring objectives by using appropriate descriptive and analytical methods to test for and to describe any impacts of the effluent on sediment pollutant concentrations, sediment quality, water quality and/or the benthic community. The report shall include all relevant quality assurance/quality control (QA/QC) information, including but not limited to instrumentation, laboratory procedures, detection limits/precision requirements of the applied analyses, and sample collection methodology.

EPA and ADEC will review the draft report in accordance with the environmental monitoring objectives and evaluate it for compliance with the requirements of the permit. If revisions to the report are required, the Permittee shall complete them and submit the final report to EPA and ADEC within two months of the Director's request. Copies of the final report shall be sent concurrently to the North Slope Borough. The Permittee will be required to correct, repeat and/or expand environmental monitoring programs which have not fulfilled the requirements of the permit.

e. *Modification of monitoring program.* monitoring program may be modified if EPA and ADEC, in consultation with the North Slope Borough, determine that it is appropriate. The modified program may include changes in (1) sampling stations, (2) sampling times, and/or (3) parameters.

B. Deck Drainage, Sanitary Wastes, and Domestic Wastes (Discharges 002–004)

Permittees shall limit and monitor discharges from deck drainage, sanitary wastes, and domestic wastes in accordance with Parts II.E., III, and the following requirements.

EFFLUENT LIMITS AND MONITORING REQUIREMENTS

Effluent characteristic	Discharge limitation	Measurement frequency	Sample type/method	Reported value(s)
All Discharges (002–004):				
Flow rate	NA	Monthly	Estimate	Monthly average.
Deck Drainage (002) [1]				
Free oil	No discharge	Daily, during discharge.	Visual/sheen on receiving water [2].	Number of days sheen observed.
Sanitary Wastes (003) [3]				
Solids	No floating solids	Daily	Observation [4]	Number of days solids observed.
Residual chlorine [5]	As close as possible to but no less than, 1.0 mg/l.	Monthly	Grab [6]	Concentration (mg/l).
BOD		Weekly [9]	Grab	
30 day average	30 mg/l			Monthly average.
24-hr maximum	60mg/l			Daily maximum.
TSS		Weekly [9]	Grab	
30 day average	30 mg/l		Monthly average [10]	
24-hr maximum	60mg/l		Daily maximum [10]	
Domestic Wastes (004):				

EFFLUENT LIMITS AND MONITORING REQUIREMENTS—Continued

Effluent characteristic	Discharge limitation	Measurement frequency	Sample type/method	Reported value(s)
Floating solids	No discharge	Daily	Observation [4]	Number of days solid observed.
Foam	No discharge	Daily	Observation [4]	Number of days foam observed.
All other domestic waste (garbage)	No discharge [7]	Daily	Observation [8]	Number of days solids observed.

[1] Area drains for either washdown water or rainfall that may be contaminated with oil and grease shall be separated from those area drains that would not be contaminated. Any deck drainage which is commingled with other wastes prior to discharge shall be subject at the point of discharge to the most stringent of the limitations on the individual effluents.

[2] If discharge occurs during broken, unstable, or stable ice conditions, the sample type/method shall be ''Grab/Static Sheen Test'' as described in appendix 1 to subpart A of 40 CFR part 435. For discharges during stable ice, below ice, to unstable ice or broken ice conditions, a water temperature that approximates surface water temperatures after breakup shall be used.

[3] Any facility using a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed to be in compliance with the limitations for this outfall until such time as the device is replaced or is found not to comply with such standards and regulations. The MSD shall be tested yearly for proper operation and test results maintained at the facility. In cases where sanitary and domestic wastes are mixed prior to discharge, and sampling of the sanitary waste component stream is infeasible, the discharge may be sampled after mixing. In such cases, the discharge limitations for sanitary wastes shall apply to the mixed waste stream.

[4] Monitoring by visual observation of the surface of the receiving water in the vicinity of the outfall(s), shall be done during daylight at a time of maximum estimated discharge.

[5] This limitation applies only to M10 facilities. Under ice disposal of residual chlorine is not authorized unless residual chlorine is reduced to a level to ensure compliance with the State of Alaska's Water Quality criteria of 10 μg/l residual chlorine.

[6] Residual chlorine may be monitored according to test procedures approved under 40 CFR part 136 or using a Hach Test Kit capable of measuring free chlorine in the range 0–3.5 mg/l with a sensitivity of 0.1 mg/l or better.

[7] Discharge of food waste is prohibited within 12 nautical miles from nearest land. Comminuted food waste able to pass through a 25 mm mesh screen (approximately 1 inch) may be discharged more than 12 nautical miles from nearest land. Discharge of putrescible wastes is prohibited within and beyond 12 nautical miles of nearest land.

[8] An observation shall be made during daylight by visual observation of the surface in the vicinity of domestic waste outfalls following either the morning or midday meal at a time of maximum estimated discharge.9/

[9] Based on weekly sampling and depending on the length of the calendar month, a total of 3–4 samples will be analyzed per month. The reported 30 day average value shall be the average of all weekly samples taken during the month. The highest value of all weekly samples shall be reported.

C. Miscellaneous Discharges (Discharges 005–013).

Permittee shall limit and monitor discharges from desalination unit wastes (005), blowout preventer fluid (006), boiler blowdown (007), fire control system test water (008), non-contact cooling waster (009), uncontaminated ballast water (010), bilge water (011), excess cement slurry (012), and mud, cuttings, and cement at the seafloor (013) in accordance with Parts II.E., III., and the following requirements.

EFFLUENT LIMITS AND MONITORING REQUIREMENTS

Effluent characteristic	Discharge limitation	Measurement frequency	Sample type/method	Reported value(s)
All Discharges (005–013):				
Flow rate (MGD)	NA	Monthly	Estimate	Monthly average.
Free oil	No discharge	Once/discharge for intermittent or once/day for continuous discharges.	Visual/sheen on receiving.	No. of days sheen observed.

1. Bilge water (011) shall be processed through an oil-water separator prior to discharge. If discharge of bilge water occurs during broken, unstable, or stable ice conditions, the sample type/method used to determine compliance with the no free oil limitation shall be ''Grab/Static Sheen Test.'' For discharges above stable ice, below ice, to unstable, or to broken ice, a water temperature that approximates surface water temperatures after breakup shall be used.

2. The permittee shall maintain an inventory of the quantities and rates of chemicals (other than water or seawater) added to cooling water (009) and desalination (005) systems. The inventory shall be submitted with the monthly Discharge Monitoring Report.

D. Test Fluids (Discharge 014)

Permittee shall limit and monitor test fluids in accordance with Parts II.E., III. and the following requirements.

EFFLUENT LIMITS AND MONITORING REQUIREMENTS

Effluent characteristic	Discharge limitation	Measurement frequency	Sample type/method	Reported Value(s)
Volume (bbl)	NA	Once/discharge	Estimate	Total vol./test.[1]

EFFLUENT LIMITS AND MONITORING REQUIREMENTS—Continued

Effluent characteristic	Discharge limitation	Measurement frequency	Sample type/method	Reported Value(s)
Free oil	No discharge	Once/discharge	Grab/Static Sheen Test [2].	Number of times sheen observed.
Oil and grease	42 mg/l daily max., 29 mg/l monthly avg..	Once/discharge	Grab	Daily max. and monthly avg.
pH	6.5–8.5 [3]	Once/discharge	Grab	Ph.
Oil-based fluids	No discharge	Once/discharge	Grab/GC	Presence or absence.

[1] Volume will be reported as the number of barrels of fluids sent downhole during testing and the number of barrels discharged. The chemical composition of the fluids sent downhole will also be reported.

[2] For discharges during stable ice, below ice, to unstable ice or broken ice conditions, a water temperature that approximates surface water temperatures after breakup shall be used. The static sheen test is presumed to cover the no visible sheen standard in the State of Alaska Water Quality Standards.

[3] Any spent acidic test fluids shall be neutralized before discharge such that the Ph at the point of discharge shall not be less than 6.5 or greater than 8.5.

E. General discharge limitations for all waste streams (001 Through 014).

1. *Floating solids, visible foam, or oily wastes.* There shall be no discharge of floating solids or visible foam in other than trace amounts, nor of oily wastes which produce a sheen on the surface of the receiving water.

2. *Surfactants, dispersants, and detergents.* The discharge of surfactants, dispersants, and detergents shall be minimized except as necessary to comply with the safety requirements of the Occupational Health and Safety Administration and the Minerals Management Service. The discharge of dispersants to marine waters in response to oil or other hazardous spills are not authorized this permit. *See also* Part III.G.

3. *Applicable marine water quality criteria.* There shall be no discharge of any constituent in concentrations which will result in an exceedence of applicable marine water quality criteria at the edge of a permitted mixing zone. Initial mixing in federal waters is defined at 40 CFR 227.29.

4. *Rubbish, trash, and other refuse.* The discharge of any solid material not authorized in the above permit is prohibited. Under U.S. Coast Guard regulations, discharges of garbage, including plastics, from fixed and floating platforms engaged in exploration of seabed mineral resources are prohibited with one exception -victual waste. Victual waste may be discharged beyond 12 nautical miles from nearest land if it has passed through a comminuter or grinder and can pass through a screen with openings no greater than 25 millimeters (approximately one inch). Discharge of putrescible wastes is prohibited within and beyond 12 nautical miles of nearest land.

5. *Other toxic and non-conventional compounds.* There shall be no discharge of diesel oil, halogenated phenol compounds, trisodium nitrilotriacetic acid, sodium chromate or sodium dichromate.

F. Best management practices plan requirement.

1. *Implementation.* The permittee shall develop and implement a Best Management Practices (BMP) Plan which achieves the objectives and the specific requirements listed below. The Plan shall be implemented as soon as possible but no later than 7 days prior to initiation of discharges from the facility and from each well.

The permittee shall certify that its BMP Plan is complete, on-site, and available upon request to EPA and ADEC. This certification shall identify the well it pertains to by well name, well number, and the NPDES permit number and be signed by an authorized representative of the permittee. The certification shall be submitted no later than the written notice of intent to commence discharge (*see* Part I.C.) and the Certification of Planning for Drilling Mud (*see* Part II.A.1.f.).

2. *Purpose.* Through implementation of the BMP Plan the permittee shall prevent or minimize the generation and the potential for the release of pollutants from the facility to the waters of the United States through normal operations and ancillary activities.

3. *Objectives.* The permittee shall develop and amend the BMP Plan consistent with the following objectives for the control of pollutants.

a. The number and quantity of pollutants and the toxicity of effluent generated, discharged or potentially discharged at the facility shall be minimized by the permittee to the extent feasible by managing each influent waste stream in the most appropriate manner.

b. Under the BMP Plan, and any Standard Operating Procedures (SOPs) included in the Plan, the permittee shall ensure proper operation and maintenance of the treatment facility.

c. The permittee shall establish specific objectives for the control of pollutants by conducting the following evaluations.

(1) Each facility component or system shall be examined for its waste minimization opportunities and its potential for causing a release of significant amounts of pollutants to waters of the United States due to equipment failure, improper operation, natural phenomena such as rain or snowfall, etc. The examination shall include all normal operations and ancillary activities including material storage areas, site runoff, in-plant transfer, process and material handling areas, loading or unloading operations, spillage or leaks, sludge and waste disposal, or drainage from raw material storage.

(2) Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in significant amounts of pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow and total quantity of pollutants which could be discharged from the facility as a result of each condition or circumstance.

4. *Requirements.* The BMP Plan shall be consistent with the objectives in Part 3 above and the general guidance contained in the publication entitled ''Guidance Document for Developing Best Management Practices (BMP)'' (EPA Document Number EPA 833–B–93–004, U.S. EPA, 1993) or any subsequent revisions to the guidance document. The BMP Plan shall:

a. Be documented in narrative form, and shall include any necessary plot plans, drawings or maps, and shall be developed in accordance with good

engineering practices. The BMP Plan shall be organized and written with the following structure:

(1) Name and location of the facility or operation (including identification by latitude/longitude).

(2) Statement of BMP policy.

(3) Structure, functions, and procedures of the Best Management Practices Committee.

(4) Specific management practices and standard operating procedures to achieve the above objectives, including, but not limited to, the following:

(a) Modification of equipment, facilities, technology, processes, and procedures,

(b) Reformulation or redesign of products,

(c) Substitution of materials, and

(d) Improvement in management, inventory control, materials handling or general operational phases of the facility.

(5) Risk identification and assessment.

(6) Reporting of BMP incidents.

(7) Materials compatibility.

(8) Good housekeeping.

(9) Preventative maintenance.

(10) Inspections and records.

(11) Security.

(12) Employee training.

b. Include the following provisions concerning BMP Plan review:

(1) Be reviewed by plant engineering staff and the plant manager.

(2) Be reviewed and endorsed by the permittee's BMP Committee.

(3) Include a statement that the above reviews have been completed and that the BMP Plan fulfills the requirements set forth in this permit. The statement shall be certified by the dated signatures of each BMP Committee member.

c. Establish specific best management practices to meet the objectives identified in Part 3 this section, addressing each component or system capable of generating or causing a release of significant amounts of pollutants, and identifying specific preventative or remedial measures to be implemented.

d. Establish specific best management practices or other measures which ensure that the following specific requirements are met:

(1) Ensure proper management of solid and hazardous waste in accordance with regulations promulgated under the Resource Conservation and Recovery Act (RCRA) and the Alaska Solid Waste Management Regulations (18 AAC 60). Management practices required under RCRA regulations shall be referenced in the BMP Plan.

(2) Reflect requirements within Oil Spill Contingency Plans required by the Minerals Management Service (*see* 30 CFR part 254). Permittees in state waters must also reflect the requirements within Oil Discharge Prevention and Contingency Plans as required by ADEC. Permittees may incorporate any part of such plans into the BMP Plan by reference.

(3) Reflect requirements for storm water control under section 402(p) of the Act and the regulations at 40 CFR 122.26 and 122.44, and otherwise eliminate to the extent practicable, contamination of storm water runoff.

(4) Reflect the development and implementation of the Mud Plan (*see* Part II.A.1.d.) for the formulation and control of drilling mud systems.

5. *Documentation.* The permittee shall maintain a copy of the BMP Plan at the facility and shall make the plan available to EPA and ADEC upon request. All offices of the permittee which are required to maintain a copy of the NPDES permit shall also maintain a copy of the BMP Plan.

6. *BMP Plan modification.* The permittee shall amend the BMP Plan whenever there is a change in the facility or in the operation of the facility which materially increases the generation of pollutants or their release or potential release to the receiving waters. The permittee shall also amend the Plan, as appropriate, when plant operations covered by the BMP Plan change. Any such changes to the BMP Plan shall be consistent with the objectives and specific requirements listed above. All changes in the BMP Plan shall be reviewed by the plant engineering staff and plant manager and shall be reported to EPA and ADEC in writing.

7. *Modification for ineffectiveness.* At any time, if the BMP Plan proves to be ineffective in achieving the general objective of preventing and minimizing the generation of pollutants and their release and potential release to the receiving waters and/or the specific requirements above, the permit and/or the BMP Plan shall be subject to modification to incorporate revised BMP requirements.

III. Monitoring, Recording and Reporting Requirements

A. Representative Sampling (Routine and Non-Routine Discharges)

The Permittee shall collect all effluent samples from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

In order to ensure that the effluent limits set forth in this permit are not violated at times other than when routine samples are taken, the Permittee shall collect additional samples at the appropriate outfall(s), and analyze them for the parameters limited in Part I.A.-E. of this permit (as applicable for the wastestream), whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample.

The Permittee shall collect such additional samples as soon as possible after the spill or discharge. The samples shall be analyzed in accordance with paragraph C., below. In the event of an anticipated bypass, as defined in Part IV.G. of this permit, the Permittee shall collect and analyze additional samples as soon as the bypassed effluent reaches the outfall. The Permittee shall report all additional monitoring in accordance with paragraph D., below.

B. Reporting of Monitoring Results

The Permittee shall summarize monitoring results each month on the Discharge Monitoring Report (DMR) form (EPA No. 3320–1). The Permittee shall submit reports monthly, postmarked by the 10th day of the following month. The Permittee shall sign and certify all DMRs, and all other reports, in accordance with the requirements of Part V.E. of this permit (''*Signatory Requirements*''). The Permittee shall submit the legible originals of these documents to the Director, Water Division, with copies to ADEC at the following addresses:

United States Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WD–135, Seattle, Washington 98101

Alaska Department of Environmental Conservation, Pipeline Corridor Regional Office, Attn: Water Quality & Wastewater Programs, 411 W. 4th Ave., Suite 2C, Anchorage Alaska 99501

C. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in this permit.

D. Additional Monitoring by Permittee

If the Permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136 or as specified in this permit, the Permittee shall include the results of this monitoring in the calculation and reporting of the data submitted in the DMR. The Permittee shall indicate on the DMR whenever it has performed

additional monitoring, and shall explain why it performed such monitoring.

Upon request by the Director, the Permittee shall submit results of any other sampling, regardless of the test method used.

E. Records Contents

All effluent monitoring records shall bear the hand-written signature of the person who prepared them. In addition, all records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The names of the individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The names of the individual(s) who performed the analyses;
5. The analytical techniques or methods used; and
6. The results of such analyses.

F. Retention of Records

The Permittee shall retain records of all monitoring information, including, but not limited to, all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of DMRs, a copy of the NPDES permit, and records of all data used to complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report or application, or for the term of this permit, whichever is longer. This period may be extended by request of the Director or ADEC at any time.

A copy of the final permit shall be maintained at the drilling site.

G. Twenty-four Hour Notice of Noncompliance Reporting

1. The Permittee shall report the following occurrences of noncompliance by telephone within 24 hours from the time the Permittee becomes aware of the circumstances:

a. Any noncompliance that may endanger health or the environment;

b. Any unanticipated bypass that results in or contributes to an exceedence of any effluent limitation in the permit (See Part IV.G., ''*Bypass of Treatment Facilities*'');

c. Any upset that results in or contributes to an exceedence of any effluent limitation in the permit (See Part IV.H., ''*Upset Conditions*''); or

d. Any violation of a maximum daily discharge limitation for any of the pollutants listed in the permit .

2. The Permittee shall also provide a written submission within five days of the time that the Permittee becomes aware of any event required to be reported under subpart 1 above. The written submission shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times;

c. The estimated time noncompliance is expected to continue if it has not been corrected; and

d. steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

e. The results of any monitoring data required under Paragraph III.A., above.

3. The Director may, at his or her sole discretion, waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Compliance Section in Seattle, Washington, by telephone, (206) 553–1213.

4. Reports shall be submitted to the addresses in Part III.B. (''*Reporting of Monitoring Results*'').

H. Other Noncompliance Reporting

The Permittee shall report all instances of noncompliance, not required to be reported within 24 hours, at the time that monitoring reports for Part III.B. are submitted. The reports shall contain the information listed in Part III.G.2. of this permit.

I. Changes in Discharge of Toxic Substances

The Permittee shall notify the Director and ADEC as soon as it knows, or has reason to believe:

1. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following ''notification levels'':

a. One hundred micrograms per liter (100 ug/l);

b. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

2. That any activity has occurred or will occur that would result in any discharge, on a non-routine or infrequent basis, of any toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following ''notification levels'':

a. Five hundred micrograms per liter (500 ug/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

IV. Compliance Responsibilities

A. Duty to Comply

The Permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application. The Permittee shall give reasonable advance notice to the Director and ADEC of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

B. Penalties for Violations of Permit Conditions

1. Civil and Administrative Penalties. Sections 309(d) and 309(g) of the Act provide that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil or administrative penalty, not to exceed $25,000 per day for each violation.

2. Criminal Penalties:

a. Negligent Violations. Section 309(c)(1) of the Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

b. Knowing Violations. Section 309(c)(2) of the Act provides that any person who knowingly violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

c. Knowing Endangerment. Section 309(c)(3) of the Act provides that any person who knowingly violates a permit condition implementing sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in

imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person that is an organization shall be subject to a fine of not more than $1,000,000.

d. False Statements. Section 309(c)(4) of the Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. Except as provided in permit conditions in Part IV.G., (''Bypass of Treatment Facilities'') and Part IV.H., (''Upset Conditions''), nothing in this permit shall be construed to relieve the Permittee of the civil or criminal penalties for noncompliance.

C. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for the Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of water and wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters, except as specifically authorized in Part II.

G. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The Permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this Part.

2. Notice.

a. Anticipated bypass. If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The Permittee shall submit notice of an unanticipated bypass as required under Part III.G. (''*Twenty-four Hour Notice of Noncompliance Reporting*'').

3. Prohibition of bypass.

a. Bypass is prohibited, and the Director or ADEC may take enforcement action against the Permittee for a bypass, unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment shall have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The Permittee submitted notices as required under paragraph 2 of this Part.

b. The Director and ADEC may approve an anticipated bypass, after considering its adverse effects, if the Director and ADEC determine that it will meet the three conditions listed above in paragraph 3.a. of this Part.

H. Upset Conditions

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the Permittee meets the requirements of paragraph 2 of this Part. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. Conditions necessary for a demonstration of upset. To establish the affirmative defense of upset, the Permittee shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the Permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The Permittee submitted notice of the upset as required under *Part III.G., Twenty-four Hour Notice of Noncompliance Reporting;* and

d. The Permittee complied with any remedial measures required under *Part IV.D., Duty to Mitigate.*

3. Burden of proof. In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants

The Permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

J. Planned Changes

The Permittee shall give notice to the Director and ADEC as soon as possible of any planned physical alterations or additions to the permitted facility whenever:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements under Part III.I.

The Permittee shall give notice to the Director and ADEC as soon as possible of any planned changes in process or chemical use whenever such change could significantly change the nature or increase the quantity of pollutants discharged.

K. Anticipated Noncompliance

The Permittee shall also give advance notice to the Director and ADEC of any planned changes in the permitted facility or activity that may result in noncompliance with this permit.

V. General Provisions

A. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

B. Duty to Reapply

If the Permittee intends to continue an activity regulated by this permit after the expiration date of this permit, the Permittee must apply for and obtain a new permit. The application shall be submitted at least 180 days before the expiration date of this permit.

C. Duty to Provide Information

The Permittee shall furnish to the Director and ADEC, within the time specified in the request, any information that the Director or ADEC may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The Permittee shall also furnish to the Director or ADEC, upon request, copies of records required to be kept by this permit.

D. Other Information

When the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or that it submitted incorrect information in a permit application or any report to the Director or ADEC, it shall promptly submit the omitted facts or corrected information.

E. Signatory Requirements

All applications, reports or information submitted to the Director and ADEC shall be signed and certified.

1. All permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer.

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director or ADEC shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director and ADEC, and

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company.

3. Changes to authorization. If an authorization under Part V.E.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph V.E.2. must be submitted to the Regional Administrator and ADEC prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this Part shall make the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

F. Availability of Reports

Except for data determined to be confidential under 40 CFR part 2, all reports prepared in accordance with this permit shall be available for public inspection at the offices of the state water pollution control agency and the Director and ADEC. As required by the Act, permit applications, permits, Best Management Practices Plans, Mud Plans, and effluent data shall not be considered confidential.

G. Inspection and Entry

The Permittee shall allow the Director, ADEC, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

H. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties to which the Permittee is or may be subject under section 311 of the Act.

I. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

J. Severability

The provisions of this permit are severable. If any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

K. Transfers

This permit may be automatically transferred to a new Permittee if:

1. The current Permittee notifies the Director at least 30 days in advance of the proposed transfer date;

2. The notice includes a written agreement between the existing and new Permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The Director does not notify the existing Permittee and the proposed new Permittee of his or her intent to modify, or revoke and reissue the permit.

If the notice described in paragraph 3 above is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2 above.

L. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by section 510 of the Act.

M. Reopener Clause

1. This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Act, as amended, if the effluent standard, limitation, or requirement so issued or approved:

a. Contains different conditions or is otherwise more stringent than any condition in the permit; or

b. Controls any pollutant or disposal method not addressed in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

2. This permit may be reopened to adjust any effluent limitations if future water quality studies, waste load allocation determinations, or changes in water quality standards show the need for different requirements.

VI. Definitions and Acronyms

1. *AAS* means atomic absorption spectrophotometry.

2. *Average of daily values* for 30 consecutive days means the average of the daily values obtained during any 30 consecutive day period.

3. *Ballast water* means harbor, river, and seawater added or removed to maintain the proper ship stability when not loaded with cargo.

4. *BMP* means Best Management Practices.

5. *bbl/hr* means barrels per hour. One barrel equals 42 gallons.

6. *Bilge water* means water which collects in the lower internal parts of the drilling vessel hull.

7. *Blowout preventer fluid* means fluid used to actuate hydraulic equipment on the blowout preventer.

8. *Boiler blowdown* means the discharge of water and minerals drained from boiler drums.

9. *Bulk discharge* means the discharge of more than 100 barrels in a one-hour period.

10. *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility (see Part IV.G.).

11. *Cd* means cadmium.

12. *Cooling water* means once-through non-contact cooling water.

13. *Deck drainage* means all waste resulting from deck washings, spillage, rainwater, and runoff from gutters, and drains including drip pans and work areas within facilities subject to this permit.

14. *Desalination unit wastes* means wastewater associated with the process of creating freshwater from seawater.

15. *Diesel oil* means the grade of distillate fuel, as specified in the American Society for Testing and Materials Standard Specification D975–81, that is typically used as the continuous phase in conventional oil-based drilling fluids, which contains a number of toxic pollutants. For the purpose of this permit, diesel oil includes the fuel oil present at the facility.

16. *Domestic wastes* means materials discharged from showers, sinks, safety showers, eye-wash stations, hand-wash stations, fish-cleaning stations, galleys, and laundries.

17. *Drill cuttings* means the particles generated by drilling into subsurface geological formations and carried to the surface with the drilling fluid.

18. *Drilling fluid* means the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. A water-based drilling fluid is the conventional drilling mud in which water is the continuous phase and the suspended medium for solids, whether or not oil is present. An oil-based drilling fluid has diesel oil, mineral oil, or some other oil as its continuous phase with water as the dispersed phase.

19. *Drilling Fluids Toxicity Test* means a toxicity test conducted and reported in accordance with the following approved toxicity test methodology: ''Drilling Fluids Toxicity Test'' as defined in appendix 2 to subpart A of 40 CFR part 435.

20. *Excess cement slurry* means the excess cement including additives and wastes from equipment washdown after a cementing operation.

21. *Exploratory facilities* means any fixed or mobile structure subject to subpart A of 40 CFR part 435 that are engaged in drilling of wells to determine the nature of potential hydrocarbon reservoirs (such as ice islands, gravel islands, concrete island drilling units).

22. *Fire control system test water* means the water released during the training of personnel in fire protection and the testing and maintenance of fire protection equipment.

23. *Garbage* means all kinds of victual, domestic, and operational waste, excluding fresh fish and part thereof, generated during the normal operation and liable to be disposed of continuously or periodically except dishwater, graywater, and those substances that are defined or listed in other Annexes to MARPOL 73/78.

24. *GC* means gas chromatography. GC/MS means gas chromatography/mass spectrometry.

25. *A grab sample* is a single sample or measurement taken at a specific time or over as short a period of time as is feasible.

26. *Hg* means mercury.

27. *lb/bbl* means pounds per barrel.

28. *Maximum* means the highest measured discharge or pollutant in a wastestream during the time period of interest.

29. *Maximum hourly rate as applied to drilling mud, cuttings, and washwater* means the greatest number of barrels of drilling fluids discharged within one hour, expressed as barrels per hour.

30. *MLLW* means mean lower low water.

31. *MGD* means million gallons per day.

32. *mg/kg* means milligrams per kilogram.

33. *mg/l* means milligrams per liter.

34. *Mineral oils* means a class of low volatility petroleum product, generally of lower aromatic hydrocarbon content and lower toxicity than diesel oil.

35. *Mineral oil pills* (also called mineral oil spots) are formulated and circulated in the mud system as a slug in attempt to free stuck pipe. Pills generally consists of two parts; a spotting compound and mineral oil.

36. *Minimum* means the lowest measured discharge or pollutant in a wastestream during the time period of interest.

37. *Monitoring month* means the period consisting of the calendar weeks which end in a given calendar month.

38. *Monthly average* means the average of daily discharges over a monitoring month, calculated as the sum of all daily discharges measured during a monitoring month divided by the number of daily discharges measured during that month.

39. *MSD* means marine sanitation device.

40. *Muds, cuttings, cement at sea floor* means the materials discharged at the surface of the ocean floor in the early phases of drilling operations, before the well casing is set, and during well abandonment and plugging.

41. *M9IM* means those offshore facilities continuously manned by nine (9) or fewer persons or only

intermittently manned by any number of persons.

42. *M10* means those offshore facilities continuously manned by ten (10) or more persons.

43. *No discharge of free oil* means that waste streams may not be discharged when they would cause a film or sheen upon or a discoloration of the surface of the receiving water or fail the static sheen test defined in appendix 1 to 40 CFR part 435, subpart A.

44. *No discharge of diesel oil* in drilling mud means a determination that diesel oil is not present based on a comparison of the gas chromatogram from an extract of the drilling mud and from diesel oil obtained from the drilling rig or platform. GC/MS may also be used.

45. *Oil-based drilling mud* means a drilling mud with fossil-derived petroleum hydrocarbons as the continuous phase.

46. *Open water* means less than 25 percent ice coverage within a one (1) mile radius of the discharge site.

47. *Plastics* means any garbage that is solid material, that contains as an essential ingredient one or more synthetic organic high polymers, and that is formed or shaped either during the manufacture of the polymer or polymers or during fabrication into a finished product by heat or pressure or both. ''Degradable'' plastics, which are composed of combinations of degradable starches are either (a) synthetically produced or (b) naturally produced but harvested and adapted for use, are considered to be plastics. Naturally produced plastics such as crabshells and other types of shells, which appear normally in the marine environment, are not considered to be plastics.

48. *ppm* means parts per million.

49. *Putrescible waste* means waste capable of becoming rotting, rotten, or stinking.

50. *Sanitary wastes* means human body waste discharged from toilets and urinals.

51. *Severe property damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

52. *Sidetracked well* means a new hole drilled from a main well to a different bottom hole location.

53. *Site* means the single, specific geographical location where a mobile drilling facility (jackup rig, semi-submersible, or arctic mobile rig) conducts its activity, including the area beneath the facility, or to a location on a single gravel island.

54. *Slush ice* occurs during the initial stage of ice formation when unconsolidated individual ice crystals (frazil) form a slush layer at the surface of the water column.

55. *SPP* means suspended particulate phase.

56. *Stable ice* means ice that is stable enough to support discharged muds and cuttings.

57. *Static Sheen Test* means the standard test procedure that has been developed for this industrial subcategory for the purpose of demonstrating compliance with the requirement of no discharge of free oil. The methodology for performing the static sheen test is presented in Appendix 1 to Subpart A of 40 CFR part 435.

58. *Step-out well* means a new hole drilled from a main well to a different bottom hole location.

59. *Test fluid* means the discharge which would occur should hydrocarbons be located during exploratory drilling and tested for formation pressure and content. This would consist of fluids sent downhole during testing along with water and particulate matter from the formation.

60. *Toxicity* as applied to BAT effluent limitations for drilling fluids and drill cuttings shall refer to the toxicity test procedure presented in Appendix 2 to Subpart A of 40 CFR 435.

61. *Unstable or broken ice conditions* means greater than 25 percent ice coverage within a one (1) mile radius of the discharge site after spring breakup or after the start of ice formation in the fall, but not stable ice.

62. *Upset* means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation (see Part IV.H.).

63. *v/v* means volume of oil/volume of mud (per API Retort Test).

64. *Victual waste* means any spoiled or unspoiled food waste.

65. *Waste stream* means any non-de minimis stream of pollutants within the Permittee's facility that enters any permitted outfall or navigable waters. This includes spills and other unintentional, non-routine or unanticipated discharges.

66. *Water depth* means the depth of the water between the surface and the seafloor as measured at mean lower low water (0.0).

67. *24-hour composite* sample means a flow-proportioned mixture of not less than 8 discrete aliquots. Each aliquot shall be a grab sample of not less than 100 ml and shall be collected and stored in accordance with procedures prescribed in the most recent edition of *Standard Methods for the Examination of Water and Wastewater.*

68. *96-hr LC50* means the concentration of a test material that is lethal to 50 percent of the test organisms in a toxicity test after 96 hours of constant exposure.

VII. References

CENTEC. 1985. Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings. Attachment to a letter dated 4/22/95 from David F. Tompkins, Centec Analytical Services, to Janis Hastings, EPA Region 10.

U.S. Department of Interior. 1992. Outer Continental Shelf Natural Gas and Oil Resource Management: Comprehensive Program (1992–1997). Proposed final. Minerals Management Service.

U.S. Environmental Protection Agency. 1993. Guidance Manual for Developing Best Management Practices (BMP). Office of Water. EPA 833–B–93–004. October 1993. (Note—this can be obtained free of charge from the EPA Water Resource Center by calling 202/260–7786.)

[FR Doc. 95–12370 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5210–2]

Hazardous Waste Management System: Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed approval of application to extend the approved Case-by-Case Extension of Land Disposal Restrictions Effective Date.

SUMMARY: EPA is today proposing approval of the application submitted by Great Lakes Chemical Corporation (Great Lakes), requesting an extension to the June 30, 1995, extended date of the RCRA land disposal restrictions (LDR) treatment standards applicable to wastewaters with the hazardous wastes codes K117, K118, K131, K132, and F039. To be granted such a request, the applicant must demonstrate, among other things, that there is insufficient capacity to manage its waste and has entered into a binding contractual commitment to construct or otherwise

provide such capacity, but due to circumstances beyond its control, such capacity could not reasonably be made available by the effective date. Great Lakes adequately met these requirements and was granted an initial Case-By-Case Extension for one year effective June 30, 1994 to June 30, 1995, with the option to renew this extension for up to one additional year (see FR 5151–3). Based on the Case-By-Case extension provisions and request by Great Lakes to extend the ban date, Great Lakes will be allowed, upon final approval to land dispose of its K117, K118, K131, K132, AND F039 wastes upon final approval, until September 30, 1995, without being subject to the land disposal restrictions applicable to such wastes. Final Approval of this extension, will only be valid for injection into Well Nos. 5 and 6.

EFFECTIVE DATE: This approved extension of the LDR effective date becomes effective May 11, 1995.

ADDRESSES: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W–SU), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, at (800) 424–9346 (toll free) or (703) 412–9810, in the Washington, DC metropolitan area.

Dated: May 11, 1995.

Myron O. Knudson,

Director, Water Management Division.

[FR Doc. 95–12773 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–P

Gulf of Mexico Program Technical Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Technical Advisory Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program's Technical Advisory Committee will hold a meeting at the Marriott Hotel, 555 Canal Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Lipka, Acting Director, Gulf of Mexico Program Office, Building 1103, Room 202, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, at (601) 688–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Technical Advisory Committee of the Gulf of Mexico Program will be held June 20, 1995, at the Marriott Hotel, 555 Canal Street, New Orleans, Louisiana. The committee will meet from 8 a.m. to 5 p.m. Agenda items will include: A report from Battelle on the draft QA/QC plan for the Gulf of Mexico Program; Development of a conceptual model for the Gulf of Mexico; Strategies for locating long-term monitoring sites on the Gulf coast (this will focus on possible integration of GEMS, LTER sites, LMER sites and REMAP); A research needs/coordination conference for the Gulf Program partner agencies; Hypoxia (Dead Zone) Symposium Planning; and Introduce the role of the TAC in the issue integration process. The meeting is open to the public.

Douglas A. Lipka,

Acting Director, Gulf of Mexico Program

[FR Doc. 95–12774 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5210–4]

Clean Water Act (CWA) 304(l): Availability of List of Submissions and Proposed Approval Decisions

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a list submitted to U.S. EPA pursuant to Section 304(l)(1)(C) of the CWA, 33 U.S.C. 1314(l)(1)(C) as well as U.S. EPA's proposed approval decision, and request for public comment.

DATES: Comments must be submitted to U.S. EPA on or before June 23, 1995.

ADDRESSES: Copies of these items can be obtained by writing or calling: Mr. Howard Pham, U.S. EPA—Region 5, 304(l) Coordinator, U.S. Environmental Protection Agency-Region 5, Water Division (Mail Code WQP–16J), 77 West Jackson Blvd., Chicago, Illinois 60604–3507, telephone: (312) 353–2310.

Comments on these items should be sent to Howard Pham, U.S. EPA—Region 5 at the address given above.

FOR FURTHER INFORMATION CONTACT: Howard Pham at the address and telephone number given above.

SUPPLEMENTARY INFORMATION: Section 304(l) of the CWA, 33 U.S.C. 1314(l), required each State, within 2 years after February 4, 1987, to submit to the U.S. EPA, three lists of waters, including a list of those waters in which the State does not expect to achieve applicable water quality standards, after application of technology-based controls, due to discharges of toxic pollutants from point sources (the ''B List'' or ''Short List''). 33 U.S.C. 1314(l)(1)(B). The second, or ''Mini'' list consists of waters that are not meeting the new water quality standards developed under Section 303(c)(2)(B) for toxic pollutants because of pollution from point and nonpoint sources. 33 U.S.C. 1314(l)(1)(A)(i). The third, or ''Long'' list includes all waters on the other two lists, plus any waters which, after the implementation of technology-based controls, are not expected to meet the water quality goals of the Act. 33 U.S.C. 1314(l)(1)(A)(ii).

For each water segment identified in these lists, the State was required, by February 4, 1989, to submit a ''C List'' specifying point sources discharging toxic pollutants believed to be preventing or impairing such water quality. 33 U.S.C. 1314(l)(1)(C).

For each point source identified on the State's C list as discharging toxic pollutants into a water segment on the State's B list, the State was further required to submit to U.S. EPA, an individual control strategy (ICS) that the State determined would serve to reduce point source discharges of toxic pollutants to the receiving water to a degree sufficient to attain water quality standards in that water within 3 years after the date of the establishment of the ICS. 33 U.S.C. 1314(l)(1)(D).

U.S. EPA initially interpreted the statute to require States to identify on the C list, only those facilities that discharge toxic pollutants believed to be impairing waters listed on the B list. In *Natural Resources Defense Council (NRDC)* v. *U.S. EPA*, the Ninth Circuit Court of Appeals remanded that portion of the regulation and directed U.S. EPA to amend the regulations to require the States to identify all point sources discharging any toxic pollutant that is believed to be preventing or impairing water quality of any stream segment listed on any of the three lists of waters, and to indicate the amount of the toxic pollutant discharges by each source. See *NRDC* v. *U.S. EPA*, 915 F.2d 1313, 1323–24 (9th Cir. 1990). U.S. EPA amended 40 CFR 130.10(d)(3) accordingly. See 57 FR 33040 (July 24, 1992).

Consistent with U.S. EPA's amended regulation, the State of Ohio submitted on April 20, 1992, to U.S. EPA, for approval a supplemental facility list (SFL) as required under Section 304(l)(1)(C). U.S. EPA's review of Ohio' 304(l) SFL and its procedures used to develop the list, found the procedures to be consistent with the requirements of the amended regulations. Based on the above findings, U.S. EPA noticed the availability of Ohio's SFL, as well as the Agency's proposed approval decisions and request for public comments (see U.S. EPA's Notice of Availability and Proposed Approval Decisions published at FR 12332, March 24, 1994).

On June 20, 1994, the Ohio Environmental Protection Agency (Ohio EPA) notified U.S. EPA in writing that it was withdrawing its 304(l) SFL submitted to U.S. EPA on April 20, 1992. Based upon public comments received and other information gathered by Ohio EPA during the public comment period, Ohio determined that its 304(l) SFL needed to be re-evaluated based upon criteria set forth at 40 CFR 130.10.

Ohio EPA in its re-evaluation procedures, examined each segment to be impaired to identify the specific toxicant responsible for the impairment, identify the contaminated water columns, assess data to evaluate the magnitude of contamination, incorporate newer data into the assessment, and more specifically identify the location of an impairment in relation to dischargers in the same waterbody. Using the re-evaluation procedures the State of Ohio, on February 8, 1995, resubmitted a SFL to U.S. EPA for approval. The procedures have been reviewed and accepted by U.S. EPA. The following table indicates the decisions made for the State of Ohio's SFL. Ohio's SFL contains 36 facilities. U.S. EPA notes that the National Pollutant Discharge Elimination System permits for those facilities already include requirements that meet water quality-based considerations for parameters of concern. Therefore, those permits will be considered acceptable ICSs.

U.S. EPA today proposes to approve the 304(l) SFL for the State of Ohio. U.S. EPA solicits public comment on the approval decision.

Dated: May 8, 1995.

David A. Ullrich,

Acting Regional Administrator.

U.S. ENVIRONMENTAL PROTECTION AGENCY

[Section 304(1) supplemental list]

Waterbody ID	Water body name, upper RM–lower RM	Discharge name	NPDES #/Ohio #	Parameters of concern
OH 2–12	Mill Creek, 20.9–0.0	Mahoning County Boardman WWTP.	OH0037249/3PK00002	Zn, Cu, Cr.
OH 2–20	Mahoning River (Mill Creek to Meander Creek—WWTP 28.5–20.0.	Girard–WWTP	OH0025364/3PD00010	Cr, Zn.
		Niles–WWTP	OH0026743/3PD00036	Cr, Zn.
OH 2–23	Meander Creek, 20.4–0.0	Mahoning County, Meander Creek, WWTP.	OH0045721/3PK00011	Cu, Zn.
OH 2–27	Mosquito Creek (Mosquito Creek Reservoir to Mahoning River), 12.4–0.0.	Trumbull County, Mosquito Creek.	OH0043401/3PK00009	Cu, Pb, Hg.
OH 2–35	Mahoning River (Meander Creek to Duck Creek), 43.8–28.5.	LTV Steel–Warren	OH0011274/31D00004	Cr.
		City of Warren, WWTP	OH0027987/3PE00008	Cr, Pb, Ni.
OH 10–5	Tuscarawas River (Newman Creek to Pigeon Run), 91.9–86.7.	Mercury Stainless Steel–Washington.	OH0092444/31D00067	Cr, Pb, Cu.
		Massillon–WWTP	OH0020516/3PE00007	Cr, Zn, Pb, Cu.
OH 10–19	Little Chippewa Creek, 12.9–0.0.	Orrville–WWTP	OH0020371/3PD00017	Zn.
OH 10–31	Pigeon Creek, 8.6–0.0	Polysar Resins	OH0088072/31Q00035	Organics.
OH 15–31	Tuscarawas River (Conotton Creek to Sugar Creek) 65.6–58.1.	Empire Detroit	OH0004910/01D00036	Cr+6, Pb, Zn.
OH 16–19	Rocky Fork Mohican River, 19.6–0.0.	Stone Container Corporation	OH0005649/21A00001	Cu, Zn, Pb, Cr, Ni.
		Cyclops Industries (Armco Steel).	OH0006840/21D00003	Zn, Cd, Pb, Cu, Ni.
OH 17–14	Jerome Ford Mohican River (Lang Creek to Lake Fork) 12.2–0.0.	Ashland–WWTP	OH0023906/2PD00010	Cu, Pb, Ni, Zn.
OH 22–58	Beaver Run, 4.8–0.0	Hebron–WWTP	OH0021539/4PB00005	Cd, Zn, Hg.
OH 24–106	Muskingum River (Salt Creek to Millers Run), 67.0–50.5.	Glacier Clevite/McConnellsville.	OH0048372/01C00000	Cu, Pb, Cr, Zn.
		Gould/McConnellsville	OH0048364/01C00011	Cr, Cu, Pb.
OH 44–16	Little Salt Creek (Headwaters to Buckeye Creek), 28.5–21.2.	Jackson–WWTP	OH0020834/OPD00008	Cu, Pb, Zn.
OH 50–9	Little Beaver Creek, 9.0–0.0	Montgomery County Eastern Regional–WWTP.	OH0026590/1PL00001	Cu, Zn.
OH 55–18	Blue Jacket Creek, 7.8–0.0	Bellefontaine WWTP	OH0024066/1PD00000	Cd, Cu, Pb, Zn.
OH 63–19	Wabash River (Headwaters to Stony Creek), 508.8–481.3.	Fort Recovery Industries	OH0010138/21C00001	Cu.
OH 66–3	Blanchard (Eagle Creek to Ottawa River), 58.1–45.6.	Findlay–WWTP	OH0025135/2PD00008	Zn, Hg.
OH 69–15	Town Creek, 26.3–0.0	Van Wert WWTP NOOS	OH0027910/2PD00006	Cd, Zn.
OH 72–11	Prairie Creek, 12.7–0.0	Bryan–WWTP	OH0020532/2PD00018	Cu.

U.S. ENVIRONMENTAL PROTECTION AGENCY—Continued

[Section 304(1) supplemental list]

Waterbody ID	Water body name, upper RM–lower RM	Discharge name	NPDES #/Ohio #	Parameters of concern
OH 73–26	Maumee River (Auglaize River to Wade Creek), 64.0–52.0.	GMC Defiance	OH0002666/21N00004	Zn.
		Defiance–WWTP	OH0024899/2PD00013	Zn.
OH 76–24	Otter Creek, 10.2–0.0	Sun Oil Refinery	OH0002763/21G00003	Cr.
		Libbey-Owens Ford	OH0002445/21N00020	As.
OH 83–11	Raccoon Creek, 14.9–0.0	Clyde–WWTP	OH0024686/2PD00004	Cu.
OH 88–5	Cuyahoga River (Congress Lake Out to Lower Cuyahoga), 56.8–42.3.	Kent–WWTP	OH0025917/3PD00031	Cd, Cu, Zn.
OH 89–1	Cuyahoga River (Big Creek Lake to Lake Erie).	LTV Steel Cleveland East Side (west side merge with the east side).	OH0000957/31D00003	Zn, CN.
		DuPont/Cleveland (Zaclon)	OH0000990/31E00005	Zn, CN.
OH 89–8	Tinkers Creek (Pond Brook to Cuyahoga River), 22.5–0.0.	Bedford Heights WWTP	OH0024058/3PD00006	Cu, Pb.
		Twinsburg WWTP	OH0027863/3PD00039	Cu.
OH 89–8.3	Beaver Meadow Creek, 3.0–0.0.	Solon Central WWTP	OH0027430/3PD00019	Cu, Hg.

[FR Doc. 95–12775 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1049–DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1049–DR), dated May 10, 1995, and related determinations.

EFFECTIVE DATE: May 17, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 16, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–12740 Filed 5–23–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1051–DR]

Mississippi; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–1051–DR), dated May 12, 1995, and related determinations.

EFFECTIVE DATE: May 17, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 17, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–12739 Filed 5–23–95; 8:45 am]

BILLING CODE 6718–02–M

U.S. Fire Administration

Arson Prevention Grant Program

AGENCY: U.S. Fire Administration, FEMA.

ACTION: Notice of funds and grant availability.

SUMMARY: The Federal Emergency Management Agency (FEMA), gives notice of funds and grant availability under the Arson Prevention Act of 1994. This grant program is limited to States or consortia of States for demonstration programs on arson research, prevention and control.

DATES: The grant application materials/Application for Federal Assistance will be available on or about June 19, 1995. Grant Applications must be received by the FEMA Assistance Officer not later than July 17, 1995.

ADDRESSES: Applications for assistance must be in writing to the following address: Patricia A. English, Office of Financial Management, Federal Emergency Management Agency, 500 C Street, SW., room 731, Washington, DC 20742.

Ask for Request for Assistance No. EMW–95–S–4780. Please include a self-addressed mailing label with your request.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Kuntz, Fire Studies Specialist, United States Fire Administration, 16825 South Seton Ave, Emmitsburg, MD. 21727, (301) 447–1271, (facsimile)(301) 447–1102.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) gives notice that $2,000,000 is available to support not more than ten (10) competitive grant awards for demonstration programs on arson research, prevention, and control. Under the Arson Prevention Act of 1994 this grant program is limited to States or consortia of States. Elements of local government such as fire and police

departments, public and private groups or organizations, professional associations, and similar entities, are not eligible by law to apply.

(a) Arson Prevention Act of 1994 targets the following goals as the only topics eligible for funding under this authority:

(1) To improve the training by States leading to professional certification of arson investigators in accordance with nationally recognized certification standards.

(2) To provide resources for the formation of arson task forces or interagency organizational arrangements involving police and fire departments and other relevant local agencies, such as a State arson bureau and the office of a fire marshal of a State.

(3) To combat fraud as a cause of arson and to advance research at the State and local levels on the significance and prevention of fraud as a motive for setting fires.

(4) To provide for the management of arson squads including:

(i) Training courses for fire departments in arson case management including standardization of investigative techniques and reporting methodology;

(ii) The preparation of arson unit management guides; and

(iii) The development and dissemination of new public education materials relating to the arson problem.

(5) To combat civil unrest as a cause of arson, and to advance research at the State and local levels on the prevention and control of arson linked to urban disorders.

(6) To combat juvenile arson, such as juvenile fire setter counseling programs and similar intervention programs, and to advance research at the State and local levels on the prevention of juvenile arson.

(7) To combat drug-related arson, and to advance research at the State and local levels on the causes and prevention of drug-related arson.

(8) To combat domestic violence as a cause of arson, and to advance research at the State and local levels on the prevention of arson arising from domestic violence.

(9) To combat arson in rural areas and to improve the capability of firefighters to identify and prevent arson initiated fires in rural areas and public forests.

(10) To improve the capability of firefighters to identify and combat arson through expanded training programs, including:

(i) Training courses at the State fire academies; and

(ii) Innovative courses at the National Fire Academy and made available to volunteer firefighters through regional delivery methods, including teleconferencing and satellite delivered television programs.

(b) States or consortia of States wishing to apply for these arson prevention grants must demonstrate meeting the following eligibility requirements:

(1) The applicant must be a State or consortium of States;

(2) The applicant must obtain at least 25 percent of the costs of the programs funded by the grant, in cash or in kind, from non-Federal sources;

(3) The applicant will demonstrate that as a grant recipient they will not decrease the prior level of spending of funds of the State or consortium from non-Federal sources for arson research, prevention, and control programs.

(4) The applicant will use no more than 10 percent of the funds provided under the grant for administrative costs of the program.

(5) The applicant will demonstrate the efforts it is making to ensure that all local jurisdictions will provide arson data to the National Fire Incident Reporting System (NFIRS) or the Uniform Crime Reporting (UCR) program.

(6) The applicant will demonstrate that they have a policy to promote the training of its firefighters actively in cardiopulmonary resuscitation (CPR).

(c) The following evaluation factors (numerically weighted to ensure consistent and balanced scoring) will be used by the evaluation panel(s) to select the best proposal in each distinct goal category:

(1) The degree to which the proposal is seen to address the targeted goal or each goal (component) in a combination of goals (Factor Weight: 10);

(2) The scope and effect of the proposed initiative in relation to the proposed program cost (Factor Weight: 10);

(3) The degree to which the proposed activity supports a ''model program initiative'' suitable for replication in other jurisdictions (Factor Weight: 10);

(4) The degree to which the proposed activity demonstrates an effective and efficient integration of a variety of program resources (Factor Weight: 10);

(5) The degree to which the proposed activity could sustain itself upon the completion of the grant performance period (Factor Weight: 15);

(6) The degree to which the proposed activity would target intervention strategies addressing high risk groups, properties, or specific conditions (Factor Weight: 10);

(7) The degree to which the activity proposed would produce a lasting anti-arson program, initiative or other such appropriate outcome (Factor Weight: 10);

(8) The degree to which the proposed activity promotes the introduction of new technology, innovative techniques or nontraditional approaches to reduce the nation's arson problem (Factor Weight: 10);

(9) The degree to which the proposed activity relies upon the development of intergovernmental, interorganizational, or community involving ''partnerships'' to promote goal attainment (Factor Weight: 10);

(10) The degree to which the proposed activity support the enhanced ability to collect arson data (Factor Weight: 10).

(d) We anticipate awarding competitive grants following this request for assistance, and anticipate making one award in each goal category.

Dated: May 18, 1995.

Robert R. Boyer,

Senior Procurement Executive, Office of Financial Management.

[FR Doc. 95–12738 Filed 5–23–95; 8:45 am]

BILLING CODE 6718–26–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Ocean Trade International, Inc., 9600 N.W. 25th Street, Suite 2D, Miami, FL 33172; Officers: Jaime S. Blanco, President, Ana M. Blanco, Vice President.

Pro Cargo Services, Corp., 7225 N.W. 25th Street, Suite 210, Miami, FL 33122; Officers: Alfredo M. Puig, President, Jesus F. Couso, Vice President.

P&P Group, Corp., 1862 N.W. 82nd Ave., Miami, FL 33126; Officers: Gaspar Garces, President, Maria Eugenia Garces, Vice President.

Dated: May 19, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–12669 Filed 5–23–95; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 537]

State Grants To Support Development and Evaluation of Nutrition Intervention Programs

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for grants to support the development and evaluation of State and community nutrition intervention programs.

This announcement addresses two distinct components:

I. ''Nutrition Intervention Assistance'' for supporting the implementation of nutrition interventions.

II. ''5 A Day Evaluation'' for supporting the evaluation of 5 A Day for Better Health nutrition intervention programs.

Applicants may apply for either the Nutrition Intervention Assistance component or the 5 A Day Evaluation component or both components.

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 specifically to the priority area of Nutrition and, generally, to several other priority areas of health promotion and preventive services—including Physical Activity and Fitness, Heart Disease, Cancer, and Diabetes. (For ordering a copy of ''Healthy People 2000,'' see the Section, ''Where to Obtain Additional Information.'')

Authority

This program is authorized under section 317(k)(2) (42 U.S.C. 247b (k)(2)) of the Public Health Service Act, as amended.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 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

A. Nutrition Intervention Assistance

Assistance will be provided only to the health departments of States or their bona fide agents. This includes American Samoa, the Commonwealth of Puerto Rico, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. Excluded are the States, territories and American Indian tribes of: Alaska, Alabama, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Hawaii, Iowa, Kansas, Massachusetts, Maine, Montana, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New York, North Dakota, Ohio, Rhode Island, Tennessee, Texas, Utah, Vermont, West Virginia, Washington, Bristol Bay Area Health Corporation, Poarch Band of Creek Indians, Mississippi Band of Choctaw Indians, Miccosukee Corporation, and the Virgin Islands, which were funded for nutrition intervention activities under Program Announcement 494, entitled State Grants to Support Development and Evaluation of Nutrition Intervention Programs.

B. 5 A Day Evaluation

Assistance will be provided only to the health departments of States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Eligibility for this component is restricted to States who have established, clearly defined, evaluable, long range 5 A Day for Better Health projects in a specific community channel.

Eligible applicants for nutrition intervention program grants have been restricted to official health departments of States or their bona fide agents or instrumentalities because:

1. The methodology to conduct this program has been structured to support the national goals and objectives of ''Healthy People 2000.'' In many instances, State health departments have already embraced or established their own goals and objectives which match or are synonymous with those outlined in ''Healthy People 2000.''

2. The conduct of Statewide health promotion, health education, and risk reduction programs directed towards reducing the prevalence of behavioral risks in the population lies solely with State Health Departments.

3. Program evaluation is expected to be useful to State Health Departments in program and intervention development. Because comparable methods are used from State to State and from year to year, States can compare data and intervention methods with other States and monitor the effects of interventions over time.

Availability of Funds

Approximately $740,000 is available in FY 1995 to fund approximately 22 awards. Awards may be made for the Nutrition Intervention Assistance, or 5 A Day Evaluation or both.

A. Nutrition Intervention Assistance

Approximately $450,000 is available to fund approximately 18 awards. It is expected that the average award will be $25,000 ranging from $18,000 to $32,000. States are encouraged to use these funds to expand the community involvement toward the goals of this program.

B. 5 A Day Evaluation

Approximately $290,000 is available to fund approximately 4 awards. It is expected that the average award will be $75,000 ranging from $60,000 to $90,000. Awards will be considered only for applicants who have an established, clearly defined, and evaluable long range 5 A Day for Better Health project in a specific community channel (e.g., supermarkets, schools, churches, food assistance programs, worksites, health clinics, media, etc.).

It is expected that the awards will begin on or about September 28, 1995, and will be made for a 12-month budget period within a project period of one year. Funding estimates may vary and are subject to change.

Awards under this announcement will not be sufficient to fully support an applicant's proposed activities, but are meant to be used in conjunction with other resources—whether direct funding or in-kind contributions—that the applicant may have available.

Purpose

The awards will support State efforts to develop and evaluate nutrition intervention programs. Emphasis will be placed on supporting activities of partnerships to carry out interventions

and/or evaluations designed to increase the consumption of fruits and vegetables, to decrease fat intake, and/or to increase physical activity while improving diet.

Program Requirements

A. Nutrition Intervention Assistance

Promote programmatic activities to achieve Healthy People 2000 dietary objectives that relate to increased consumption of fruits and vegetables, reduced intake of fat, and/or improving diet while increasing physical activity. Applicants should propose specific and discrete activities, but applicants are given latitude in deciding which specific activities to propose. Activities proposed by applicants might include but are not limited to the following:

1. Assist a Statewide or community-wide coalition to implement a 5 A Day for Better Health project by using effective public and private partnerships.
2. Implement an intervention to promote physical activity and improved diet among a defined low-income population.
3. Evaluate a health communication campaign. (Such campaigns could be broad-based, could target specific populations, or could support specific programs, such as Project LEAN or 5 A Day for Better Health.)
4. Integrate a nutrition education component into an existing State chronic disease program (e.g., diabetes, cancer, and heart disease prevention programs) or into appropriate services of a managed care provider.

B. 5 A Day Evaluation

An evaluation of a 5 A Day intervention in a specific community channel. Applicants should propose a plan for an evaluation of a clearly defined, long range effort in a specific community channel.

Evaluation Criteria

Applications for the Nutrition Intervention Assistance and the 5 A Day Evaluation components will be allocated 100 points each and will be reviewed and evaluated according to the following criteria:

A. Nutrition Intervention Assistance

1. Background

The degree to which the applicant succinctly describes the problems to be addressed and current activities for resolving them. (10 points)

2. Objectives

The degree to which objectives are realistic, time-phased, measurable, and specific. (20 points)

3. Program Plan

The adequacy of the applicant's plan to carry out the proposed activities and accomplish the stated objectives. (40 points)

4. Program Integration

The adequacy of the applicant's commitment to provide sufficient staff and resources necessary to achieve the program objectives. (20 points)

5. Evaluation

The extent to which the applicant presents a reasonable plan to measure progress in meeting objectives and evaluate performance. (10 points)

6. Budget

The extent to which the applicant provides a detailed budget and line item justification that is consistent with the stated objectives, program purpose, and planned activities of the project. (not weighted)

B. 5 A Day Evaluation

1. Background

The degree to which the applicant clearly describes a long range, clearly defined, evaluable 5 A Day for Better Health project, including a description of the intervention method and channel. (25 points)

2. Program Plan

The adequacy of the applicant's plan to carry out the evaluation, including the specific objectives and measures in the evaluation. (45 points)

3. Capacity

The capabilities of the personnel (including consultants where appropriate) to carry out the evaluation. (30 points)

4. Budget

The extent to which the applicant provides a detailed budget and line item justification that is consistent with the evaluation plan. (not weighted)

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Clara M. Jenkins, 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 E–13, Atlanta, GA 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. CDC does not guarantee to ''accommodate or explain'' State process recommendations it receives after the date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Clara M. Jenkins, 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 E–13, Atlanta, GA 30305. This should be done no later than 60 days after the application date. The granting agency does not guarantee to ''accommodate or explain'' for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

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 93.283.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (OMB Number 0937–0189) must be submitted to Clara M. Jenkins, 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, Mail Stop E–13, Atlanta, GA 30305, on or before June 30, 1995.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to

the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

2. Late Applications: Applications that do not meet the criteria in 1.(a) or 1.(b) 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

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Albertha Carey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers For Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–13, Atlanta, GA 30305, telephone (404) 842–6508. Programmatic technical assistance may be obtained from Judy Pruden, M.Ed., R.D., Division of Nutrition, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mail Stop K–26, Atlanta, GA, 30341–3724, telephone (404) 488–4260.

Please refer to Announcement Number 537 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 15, 1995.

Joseph R. Carter

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC)

[FR Doc. 95–12762 Filed 5–23–95; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Oncologic Drugs Advisory Committee

Date, time, and place. June 8 and 9, 1995, 8 a.m., Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, June 8, 1995, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; open committee discussion, June 9, 1995, 8 a.m. to 11:30 a.m.; closed committee deliberations, 11:30 a.m. to 4 p.m.; Adele S. Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Oncologic Drugs Advisory Committee, code 12542.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in treatment of cancer.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 5, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 8, 1995, the committee will discuss: (1) New drug application (NDA) 50–704, Daunoxome® Injection (liposomal daunorubicin, Vestar, Inc.) ''as the primary therapy for the palliative management of advanced, HIV-associated Kaposi's Sarcoma,'' and (2) NDA 20–449, Taxotere® (docetaxel, Rhone-Poulenc Rorer), for treatment of ''patients with locally advanced or metastatic breast carcinoma in whom previous therapy has failed; prior therapy should have included an anthracycline unless clinically contraindicated.'' On June 9, 1995, the committee will discuss NDA 20–221, Ethyol (amifostine injection, U.S. Bioscience, Inc.) ''as a cytoprotective agent against the cumulative renal toxicities associated with cisplatin and the cumulative hematologic toxicity associated with cyclophosphamide and cisplatin in patients with advanced solid tumors of non-germ cell origin.''

Closed committee deliberations. On June 9, 1995, the committee will discuss trade secret and/or confidential commercial information relevant to investigational new drugs (IND's) and pending NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. June 12, 1995, 8:30 a.m., Holiday Inn—Gaithersburg, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Holiday Inn—Gaithersburg. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 12 m.; closed committee deliberations, 12 m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; Paula J. Wilkerson,

Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Orthopedic and Rehabilitation Panel, code 12521.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 1, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss general issues relating to a premarket approval application for a total knee replacement device. The committee will also hear an FDA presentation on conditions of approval and the gathering of long-term data. The afternoon session will include presentations and committee discussion on hip replacement systems. Speakers will examine components of clinical protocol design including: Medical and clinical aspects, rating systems, patient selection, controls, and statistical considerations.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relating to orthopedic devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Blood Products Advisory Committee

Date, time, and place. June 23, 1995, 8 a.m., Marriott—Bethesda, Congressional Salons I, II, and III, 5151 Pooks Hill Rd., Bethesda, MD.

Type of meeting and contact person. Open committee discussion, 8 a.m. to 10:45 a.m.; open public hearing, 10:45 a.m. to 11:45 a.m., unless public participation does not last that long; open committee discussion, 11:45 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 3:30 p.m.; Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–6700, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Blood Products Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 12, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. In the morning, the committee will discuss and provide recommendations on human immunodeficiency virus (HIV) antigen screening of blood donors. In the afternoon, the committee will discuss and review the report of the intramural research site visit of the Laboratory of Cellular Hematology, Division of Hematology, Office of Blood Research and Review, Center for Biologics Evaluation and Research.

Closed committee deliberations. The committee will discuss the intramural scientific program. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, a disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits

such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 17, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–12661 Filed 5–23–95; 8:45 am]

BILLING CODE 4160–01–F

Office of Inspector General

Program Exclusions: April 1995

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of April 1995, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject, City, State	Effective Date
Program-Related Convictions	
Appel, Neal G, Brick, NJ	05/07/95
Bessette, Marcia F, Somerset, MA	05/04/95
Campbell, Rose, Lubec, ME	05/04/95
Campis, Eva B, Miami Beach, FL.	05/09/95
Casey, Kathleen M, Monson, MA	05/04/95
Chaudhry, Baber Z, Metairie, LA	05/07/95
Curtis, Marianne, Costa Mesa, CA	05/04/95
Doshi, Bhupendrakumar, Brooklyn, NY	05/07/95
Ehrlich, Leah L, Fort Collins, CA	05/04/95
Garcia, Jose A, Miami, FL	05/09/95
Garrigo, Luis E, Miami, FL	05/09/95
Gomez, Jose M, Miami, FL	05/09/95
Goss, Louis, Montgomery, PA	05/07/95
Health Careers, Inc., North Wales, PA	05/09/95
Kheang, Rithik, Ontario, CA	05/04/95
McAfee, Robert W, Firebaugh, CA	05/04/95
McDermott, Robert T, Easton, PA	05/09/95
Mom's Taxi Corp, Carmel, NY	05/07/95
Muhammad, Bilal, I, Fremont, CA	05/04/95
Nnamdie, Oku J, Miami, FL	05/09/95
Raggi, Mindi, North Wales, PA	05/09/95
Recovery Management Corp. III, Newport News, VA	05/11/95
Rodriguez-Suarez, Mercedes, FL	05/09/95
Tan, Teresita V, Brooklyn, NY	05/07/95
Vallen, Jerry, Carmel, NY	05/07/95
Waters, Larry E, Canal Point, FL	05/04/95
Patient Abuse/Neglect Convictions	
Araujo, Maria, Medford, MA	05/04/95

Subject, City, State	Effective Date
Booth, Felicia T, Oklahoma City, OK	05/04/95
Dennise, Jacqueline, Rochester, NY	05/07/95
Donaldson, Denise, Lakehurst, NJ	05/07/95
Haggerty, Lula Ann, Waskom, TX	05/04/95
Hatter, Clarice, Little Rock, AR	05/04/95
Hunnicutt, Monica M, Springfield, MA	05/04/95
Jeanpierre, Linda Ann, New Orleans, LA	05/04/95
Leggett, Joseph Edward, Huntsville, TX	05/04/95
Reyes, Lucio A, El Paso, TX	05/04/95
Russell, Laura A, Pineville, LA	05/04/95
Shelton, Vanessa, Vicksburg, MS	05/04/95
Walsh, Patricia, Lawrence, MA	05/04/95
Conviction for Health Care Fraud	
Alexander, Merrill, Brooklyn, NY	05/07/95
Dixon, Richard L, Brunswick, ME	05/04/95
Garcia, Louis, Corpus Christi, TX	05/04/95
Jackson, Mark M, Duluth, MN	05/04/95
Martinez, Robert Jr, Pearland, TX	05/04/95
Controlled Substance Convictions	
Velez, Afdiel, Atlanta, GA	05/04/95
License Revocation/Suspension	
Acosta, Romeo Duque, Pompano Beach, FL	05/04/95
Berndt, Jack, Watertown, SD	05/04/95
Feiner, Neil F, Providence, RI	05/04/95
Geick, Vance E, Lincoln, NE	05/04/95
Gold, Carl G, Newton, MA	05/04/95
Koontz, Jennifer A, Rockport, ME	05/04/95
Limberopoulos, Nicholas V, Lowell, MA	05/04/95
Magrito, Pamela J, East Providence, RI	05/04/95
McCarty, Deborah A, Wellington, OK	05/04/95
McFarland, Robert B, Boulder, CO	05/04/95
Miller, John J, Kalispell, MT	05/04/95
Orndoff, Robert K, Cambridge, OH	05/04/95
Osoba, William, Wichita, KA	05/04/95
Popick, Edward Robert, St. Petersburg, FL	05/04/95
Smith, John I, Dillion, CO	05/04/95
Storm, Roger L Jr, Springfield, OH	05/04/95
Sullivan, Richard T, Providence, RI	05/04/95
Wilkinson, Toby L, Westminster, CO	05/04/95
Williams, Joseph, Bridgeport, CT	05/04/95
Federal/State Exclusion/Suspension	
Porter, Thomas E, Goreville, IL	05/04/95
Entities Owned/Controlled by Convicted	
Cane Run Dental Center, Louisville, KY	05/04/95
Gargo Dental Associates, Inc., South Miami, FL	05/09/95
Lazaro, Dejesus Jr Diagnostic, Miami, FL	05/09/95
Trufaith Health Services, Inc., Miami, FL	05/09/95
Default on Health Loan	
Aamodt, Wayne Garth, Grand Rapids, MI	05/04/95
Atwell, Sandra L, Shawnee, OK	05/09/95
Aufderheide, Dean H, Ft. Walton Beach, FL	05/04/95
Bauwens, David M, Steele, ND	05/04/95
Beavers, John E, Oklahoma City, OK	05/09/95
Benedict, Susan E, Santa Monica, CA	05/04/95
Berry, Alphonso, Southfield, MI	05/04/95
Betelman, Genady, Brooklyn, NY	05/07/95
Blount, Steve A, De Soto, TX	05/09/95
Brown, Wilbur E, Dunwoody, GA	05/04/95
Buck, Larry A, Iola, KA	05/04/95
Coello-Chavarri, Carlos A, Boca Raton, FL	05/04/95
Covek, Robert J, Grayslake, IL	05/04/95
Crandon, David J, Westminster, CA	05/04/95
Dang, Dung Duc, Channelview, TX	05/09/95

Subject, City, State	Effective Date
Dannels, Douglas Gale, Duuglasville, GA	05/04/95
Davis-Wiese, Jacqueline S, Tempe, AZ	05/04/95
Dewees, Randel K, Los Gatos, CA	05/04/95
Dinofer, Jeffrey S, Miami, FL	05/04/95
Etienne, Ivan Joseph, Miami, FL	05/04/95
Fair, Benny Jr, Fort Wayne, IN	05/04/95
Fine, Mitchell L, Delray Beach, FL	05/04/95
Foxworth, Raymond, Jackson, MS	05/04/95
Fuller, Martin C, Chicago, IL	05/04/95
Gelbard, Steven D, Coral Springs, FL	05/09/95
Haggard, Joe R, Mapleton, UT	05/04/95
Holyway, Craig T, Detroit, MI	05/04/95
Howell, Richard W, Oklahoma City, OK	05/09/95
Hudson, Donald L, St Johns, MI	05/04/95
Jasper, Charles S, San Rafael, CA	05/04/95
Lanzarotta, Suzette T, Grass Valley, CA	05/04/95
Lee, John H, Port Arthur, TX	05/09/95
Luu, Kham Ngoc, Houston, TX	05/09/95
Marek, Michael L, Houston, TX	05/09/95
McKenzie, Janell T, Vincent, AL	05/04/95
McNair, Lawrence, Gulfport, MS	05/04/95
Melville, Carl J, Crestline, CA	05/04/95
Monahan, Michael L, Carlsbad, CA	05/04/95
Monbarren, John W, Lakewood, OH	05/04/95
Nugent, Richard E, Las Vegas, NV	05/04/95
Olson, Robert M III, Sierra Madre, CA	05/04/95
Otto, David E, Willoughby, OH	05/04/95
Pearman, Darrell W, Oklahoma City, OK	05/09/95
Pickett, Jan W, Colony, TX	05/09/95
Platt, Caroline M, Portland, OR	05/04/95
Pryor, Cornelius M III, Los Angeles, CA	05/04/95
Reischman, Grace A, Charlotte, NC	05/04/95
Reischman, Timothy J, Charlotte, NC	05/04/95
Rivera, Nelson E, Hartford, CT	05/04/95
Saunders, Robert D, Kingsport, TN	05/04/95
Scanlon, Mark J, Cincinnati, OH	05/04/95
Sensenig, Barry W, Boulder, CO	05/04/95
Seyfarth, Huey Augusta Jr, Baton Rouge, LA	05/09/95
Shanefelter, Charles D III, Saratoga, CA	05/04/95
Spogen, Frederick C III, Cocoa Beach, FL	05/04/95
Stewart, Barry A, Knoxville, TN	05/04/95
Stiggers, Donald, Cleveland, OH	05/04/95
Tessmer, Jon F, Brownwood, TX	05/09/95
Thornton, James G, Nevada City, CA	05/04/95
Tucker, James A, Arlington, TX	05/09/95
Unruh, Steve L, Baytown, TX	05/09/95
Ward, William F III, Norristown, PA	05/09/95
Werrell, Sandra M, Mt Laurel, NJ	05/07/95
Whitaker, Gary W, San Antonio, TX	05/09/95
White, Jeffrey Richard, Chattaroy, WA	05/04/95
Wiest, Gregory J, Baton Rouge, LA	05/09/95
Wiggins, William H III, Dunwoody, GA	05/04/95
Williams, Joanne, Sherman Oaks, CA	05/04/95
Section 1128Aa	
Evans, Harry D, Gilmer, TX	02/23/95
Home Bound Eyecare, Gilmer, TX	02/23/95

Dated: May 15, 1995.

William M. Libercci,

Director, Health Care Administrative Sanctions, Office of Civil Fraud and Administrative Adjudication.

[FR Doc. 95–12689 Filed 5–23–95; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–95–1409; FR–2383–N–06]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: The information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for expedited review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject requirements.

ADDRESSES: Interested persons are invited to submit comments regarding

this proposal. Comments must be received within ten (10) working days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone No. (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, an information collection package with respect to Restrictions on Assistance to Noncitizens final rule, published on March 20, 1995.

The March 20, 1995 final rule implements Section 214 of the Housing and Community Development Act of 1980. This statute prohibits the Department from making financial assistance available to persons other than United States citizens, nationals, or certain categories of eligible noncitizens in certain HUD programs.

The Department has submitted the information collection package, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35):

(1) The title of the information collection proposal;

(2) the office of the agency to collect the information;

(3) the description of the need for the information and its use;

(4) the agency form number, if applicable;

(5) what members of the public will be affected by the information collection requirements;

(6) how frequently information submission will be required;

(7) an estimate of the total number of hours needed to prepare the information submission including numbers of respondents, frequency of response, and hours of response;

(8) whether the requirements reflect a new or an extension, reinstatement, or revision of an information collection requirement; and

(9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 8, 1995.

Nelson A. Díaz,

General Counsel.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Restrictions on Assistance to Noncitizens (FR–2383).

Office: Secretary.

Discription of the Need For The Information and Its Proposed Use: This rule implements Section 214 of the Housing and Community Development Act of 1980, as amended. Section 214 prohibits HUD from making housing assistance under certain covered programs available to persons who are not U.S. citizens, nationals, or eligible noncitizens under the categories specified in the statute.

Form Number: None.

Respondents: Individuals or Households, Business or Other For-Profit, and State, Local, or Tribal Government.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	hours per response	=	Burden hours
Information collection	3,030,547		varies		varies		405,458

Total Estimated Burden Hours: 405,458.

Status: New.

Contract: Bruce Vincent (PIH), HUD, (202) 708–0744; Linda Flister (Housing), HUD, (202) 708–2300; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 8, 1995.

Supporting Statement for FR–2383—Restrictions and Assistance to Noncitizens

A. Justification

1. This request for OMB approval seeks clearance for information collections related to the implementation of Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a), that prohibits the Secretary of HUD from making financial assistance available for the benefit of any person, who is not a U.S. citizen, national, or who is not a noncitizen of legal immigration status under one of the six categories of legal immigrant status specified in the statute. (Attachment #1 is a copy of Section 214.)

Implementation of Section 214 through Issuance of Regulations. The March 20, 1995, final rule implements Section 214 by adding certain regulatory provisions to the HUD existing regulations, listed below. (Attachment #2 is a copy of the March 20, 1995 final rule.)

- 24 CFR part 200, 215 (the Rent Supplement Program);
- 24 CFR part 200, 235 (Section 235 Program—Sec. 235 of the National Housing Act);
- 24 CFR part 200, 236 (Section 236 Program—Sec. 236 of the National Housing Act);
- 24 CFR part 812 (Section 8 Housing Assistance Payments Program);
- 24 CFR part 950 (Indian Housing Program) [Note: HUD's Indian Housing program was moved from part 905 to 950];
- 24 CFR part 912 (Public Housing Program);
- Applicable conforming amendments (for purposes of cross-referencing the Section 214 requirements contained in the above listed parts) were made to several other parts: 247, 850, 880, 881, 882, 883, 883, 886, 887, 900, 904 and 960.

The Information Collection Requirements in the March 20, 1995 final rule. The majority of the information collection requirements contained in the March 20, 1995 final rule flow directly from the statute. The statute specifies a declaration shall be submitted by each individual family member, and that alien registration documentation must be submitted for those individuals that indicate legal immigration status. Additionally, the statute provides for certain procedures such as an INS appeal process, a hearing process provided by the owner or housing authority that necessitate appropriate notices to the individual advising of the availability of processes. The statute also provides for certain actions to occur if immigration status is not confirmed (i.e., denial or termination of assistance) which also, for due process considerations, necessitate certain notices to provide fair notice of the possibility of these occurrences.

2. The following provides information on the frequency of the submission of information collection requirements.

- *Notice to applicants and tenants of requirements of Section 214.* The rule provides that notification of the requirements of Section 214 must be given to each applicant at the time of application for assistance, and to each tenant at the time of, and together with, any notice of regular reexamination of tenant income, but not later than one year following the effective date of the final rule.
- The notice is intended to facilitate the implementation of Section 214 and to ensure that applicants are not passed over for admission because they did not have sufficient knowledge of this new admission procedure and sufficient time to obtain

evidence of their eligible immigration status, when applicable.

• For applicants whose applications are pending, the final rule provides that notification must be given as soon as possible, but leaves precise timing to the discretion of the housing authority or project owner.

• Again, for existing tenants, the rule provides that notice be given when the housing authority or project owner gives notice of its up-coming reexamination of income. Generally, housing authorities and project owners provide notice to tenants that a reexamination is about to occur.

• Accordingly, no new times are established for notification of the requirements of Section 214 that are different from those periods when the housing authority or project owner would otherwise provide notice to the applicant or tenant or certain important information. (See §§ 200.183(f)(1), 812.6(f)(1), 912.6(f)(1) and 950.310(g)(1).)

• The information that needs to be included in the notice is described in the regulation. (See §§ 200.183(f)(2), 812.6(f)(2), 912.6(f)(2), and 950.310(g)(2).) However, no specific form is required, but model notices will be provided.

• *Declaration of citizenship or eligible immigration status.* Section 214(d)(1)(A) requires that applicants and tenants for HUD housing assistance programs covered by Section 214 must submit a declaration signed under penalty of perjury, in which individual indicates that he or she is a citizen or noncitizen with eligible immigration status. (See §§ 200.183(c), 812.6(c), 912.6(c), and 950.310(e)(3).)

• Every member of an applicant or tenant family must submit this document. An adult member of the family must execute this form on behalf of any children.

• The declaration need only be executed and submitted one time.

• No specific form of declaration is prescribed, but model language will be made available. The declaration may be incorporated as part of the application for housing assistance. (See §§ 200.183(c)(2), 812.6(c)(2), 912.6(c)(2), and 950.310(e)(3).)

• *No declaration necessary if individual is not a citizen or does not of eligible immigration status.* The March 20, 1995 final rule provides if one or more members of a family elect not to contend that they have eligible immigration status if other members of the family establish their citizenship or eligible immigration status. (see §§ 200.183(e), 812.6(e), 912.6(e), and 950.310(f).

• Section 214(c)(1)(A) provides that for existing tenants ''continued assistance'' is available if the head of the household or spouse is a U.S. citizen, national, or has eligible immigration status (as specified in Section 214). The regulatory provision permitting individuals to elect not to declare in certain situations should reduce the information collection requirements and processing requirements.

• *Verification consent form.* Section 214(d)(3) requires that those individuals who declare eligible immigration status, must have their status verified with the INS. Accordingly, so that these individuals will know that verification will be undertaken, the rule provides for a verification consent form to be signed by each noncitizen who declares eligible immigration status. (See §§ 200.183(d), 812.6(d), 912.6(d), 950.310(e)(4).) The consent form puts the family member on notice that his immigration status will be confirmed with INS.

Only members of a family who declares eligible immigration status must execute the verification consent form.

No specific form is prescribed, but model language will be made available.

• *Proof of age.* Section 214(d)(2)(A) provides that for noncitizens who are 62 years of age or older and receiving assistance under a Section 214 covered program on June 19, 1995 [the effective date of the final rule], in addition to a declaration the 62-year or older noncitizen may submit proof of age in lieu of submission of documents that evidence immigration status. (See §§ 200.813(b)(92)(ii), 812.6(b)(2)(ii), 912.6(b)(2)(ii), and 950.310(e)(2)(ii)(B).)

Only members of families who are existing tenants and who declare eligible immigration status and are 62 years of age or older must submit proof of age.

Types of documents that constitute proof of age are not prescribed in the rule. Since there is no prescribed list of acceptable documentation, it is anticipated that this burden should be minimal, and less burdensome for elderly persons than submission of immigration documents.

• *Evidence of immigration status.* Section 214 (d)(2)(A) requires that persons who declare that they are noncitizens with eligible immigration status must submit acceptable evidence of eligible immigration status. In accordance with INS requirements, the rule specifies which documents constitute acceptable evidence of immigration status. (See §§ 200.184, 812.7, 912.7, 950.310 (k)(2).

Only individuals who declare eligible immigration status (and are not existing tenants who are 62 years of age or older) must submit evidence of immigration status.

Evidence of immigration status need only be submitted one time, unless the individual's status changes, and the individual wants the housing authority's or project owner's record to reflect the changed immigration status.

The applicant or tenant noncitizen must submit the original documents, but they will be photocopied and returned by the project owner or housing authority. Note these are documents that already should be in the possession of the individual, and therefore there should be minimal burden associated with this requirement.

One-time submission of immigration documents. For each family member, evidence of immigration status is required to be submitted only one time during continuously assisted occupancy under any covered program.

• *Notice extending time to submit documentation, or denying extended time to submit documentation.* Section 214(d)(4)(A) requires that individuals must be given a reasonable opportunity to submit documentation if they submit the declaration required by Section 214. The rule provides consistent with Section 214 that project owners and housing authorities grant a reasonable extension. The period is to be determined by the project owner or housing authority, and must be definite in time (i.e., cannot be for an indefinite period). To avoid any difference of opinion concerning if in fact an extension was granted, the extension must be in writing. (See §§ 200.183(h), 812.6(h), 912.6(h) and 950.310(i).)

No specific form of notice is prescribed.

• *Primary verification through SAVE system.* The housing authority and project owner must verify with INS the immigration status of the applicant or tenant who declares eligible immigration status. This is done through means of an automated system that provides access to alien names, file an admission numbers (generally through a computer or touch tone telephone). Immigration status will be verified at the time of application for applicants, and at the time of the first annual reexamination for existing tenants. The time involved in making the primary verification is anticipated to be minimal.

• *Secondary verification through manual search.* If the primary verification fails to confirm eligible immigration status, then the housing authority or project owner requests the INS to conduct a manual search.

• *Notice when secondary verification fails to confirm immigration status.* If secondary verification (the manual search that follows the automated primary verification which fails to confirm immigration status) fails to confirm immigration status, the housing authority or project owner must issue a notice to the family advising that immigration status was not confirmed by INS records. (See §§ 200.185(c)(3), 812.8(c)(3), 912.8(c)(3), and 950.310(1)(3)(iii).)

No specific form or notice is prescribed.

Note that the notice required under these regulatory sections is the same as that required under the provisions described in the following paragraph 8 in the supporting statement.

• *Notice of denial or termination of assistance.* If the family fails to produce the immigration documents within a reasonable period, including any extension thereof, or if the immigration status is not concerned, the housing authority and project owner must issue a notice to the family that puts them on notice of the possibility of denial or termination of assistance, and advises them of their rights and responsibilities. (See §§ 200.186(d), 812.9(d), 912.9(d) and 950.310(m)(4).)

The information to be included in the notice is set forth in the rule, but no specific form of notice is prescribed.

• *Temporary deferral of termination of assistance—notification requirements connected with deferral of termination of assistance.* Section 214(c)(1)(B) provides that a housing authority or project owner may defer termination of financial assistance if necessary to permit the orderly transition of the family (that is determined ineligible under Section 214 for HUD financial assistance) to other affordable housing. The deferral may be up to a period for three years, and is available in increments of six month

periods. Section 214(c)(1)(B) requires that ''at the beginning of each deferral period,'' the housing authority or project owner shall inform the family of their ineligibility for financial assistance and offer assistance in finding other affordable housing.

The notification required by Section 214(c)(1)(B) and the ways in which assistance may be offered (also required by Section 214(c)(1)(B) reflected in the rule (see §§ 200.187(c), 812.10(d), 912.10(d), and 950.310(r)(3).)

• *Proration of assistance.* For mixed families, the final rule provides for housing authorities and project owners to prorate assistance, that is determine rental subsidy on the basis of the number of family members that are eligible for assistance. The formula for determining proration is set forth in the statute. (See §§ 200.188, 812.11, 912.11 and 950.310(s).)

Paperwork Matrix contained in August 25, 1994 Proposed Rule

The following duplicates the paperwork matrix that was contained in the published August 25,1994 proposed rule.

TABULATION OF ANNUAL REPORTING BURDEN NONCITIZENS RULE—RESTRICTION ON ASSISTANCE TO NONCITIZENS

Description of information collection	Section of 24 CFR affected	No. of respondents	No. of responses per respondent	Total annual responses	Hours per responses	Total hours
Notification to tenants and applicants in Public & Indian Housing.	905.310(g) 912.6	3,300	700	2,310,000	.01	23,100
Denials, terminations, extensions, deferrals.	905.310(m)(4), (r) 912.9, 912.10.	3,300	19	62,700	.10 (6 minutes)	6,270
Notification and verification, denial, termination in section 8.	812.6, 812.9, 912.10	2,470,777	1	2,470,777	.05 (3 minutes)	123,539
Notification and verification, denial, termination in FHA subsidized.	200.183, 200.186 200.187, 235.13.	412,315	1	412,315	.05	20,616
Extensions	812.6(h), 200.183(h)	144,155	1	144,155	.16	23,065 (10 min.)
Recordkeeping—Public and Indian Housing.	905.310(q), 912.9(h)	3,300	761	2,511,300	.01	25,113
Recordkeeping in section 8	812.9(h)	2,470,777	1	2,470,777	.05	125,539
Recordkeeping in FHA subsidized.	200.186(h) 235.13	412,315	1	412,315	.05	20,616
Total Annual Burden						405,458

3. *Information Technology.* INS's Systematic Alien Verification Entitlement (SAVE) is an automatic system that should reduce the verification burden on responsible entities. This system can be operated by a touch-tone telephone or computer. This technology allows the housing authority or project owner to confirm the immigration status of an individual without the necessity for substantial paperwork.

4. *Minimizing Duplication.* While HUD has attempted to reduce the frequency of verifying immigration status (see the response to #2 above) by requiring only a one-time verification and by providing that verification of immigration status should occur when all other verifications occur, unfortunately, no other documents or system currently exist that will verify immigration status other than as set forth in the rule. This is the first time that housing authorities and project owners are being asked to verify immigration status.

5. *No Significant Impact on a Substantial Number of Small Entities.* As stated in both HUD's proposed rule (59 FR 43916) and final rule (60 FR 14823), HUD maintains that there is no significant impact on a substantial number of small entities.

6. *Consequences if Information Collection is Not Conducted.* If the information is collected as required by the rule, the consequence will be that persons who are not here legally in the United States or who do not meet one of the six immigration categories specified in the status will receive scarce housing resources.

7. *Special Circumstances that Require Collection to be Made Inconsistent with 5 CFR 1320.6.* None.

8. *Consultation with Persons Outside the Agency.* No formal consultation was undertaken. INS provided HUD with copies of its SAVE manual that HUD followed in describing the SAVE verification systems in the rule. Through its proposed rule, HUD received comments from housing authorities and project owners on data collection, frequency of collection, etc. These comments were taken into consideration in the development of the final rule.

9. *Assurance of Confidentiality.* INS's SAVE system carries its own protective measures. HUD's rule provides that individuals asked to submit evidence of immigration status shall be advised that this evidence will only be released to INS for purposes of establishing eligibility for financial assistance and not for any other purpose. (See §§ 200.183(d)(3), 812.6(d)(3), 912.6(d)(3), 950.310(e)(3)(iii).).

10. *Questions of a Sensitive Nature.* The only information required of a sensitive nature is citizenship/immigration status. This information is required by statute. No other sensitive information is sought under this rule.

11. *Estimates of Annualized Costs to the Federal Government.* The statute provides that HUD is to pay each public housing agency or other entity an amount equal to 100 percent of the costs incurred in implementing and operating an immigration verification system. At this point in time, before implementation, it is difficult to estimate the cost. Because HUD believes that the percentage of illegal aliens who have access to HUD housing assistance is minimal, and because of the technology involved (technology which can be operated through use of a touch tone telephone), the cost is not anticipated to be substantial. Any cost to respondent (housing authority or project manager) is assumed to be covered within the basic application, verification and reexamination processes of each of the programs covered by this rule.

12. *Provide Estimates of Burden Hours.* Please see matrix that is provided in the response to number 2.

13. *Amendments to Existing Collections.* Not applicable.

14. *Publication of Results.* Not applicable.

Summary. HUD believes that the administrative burden imposed by implementation of Section 214 will not be substantial. Although tracking of citizenship and noncitizenship status has not been undertaken to date, HUD believes that the number of noncitizens with ineligible immigration status residing in HUD public housing or assisted housing is low. HUD bases this belief on the fact that waiting for HUD housing assistance can take several years, the paperwork, to the completed to obtain HUD housing assistance is not insignificant, and citizenship and noncitizenship verification is already undertaken with other forms of Federal benefits (e.g., food stamps, Aid to families forms of Federal benefits (e.g., food stamps, Aid to Families with Dependent children), and frequently families for HUD housing assistance also will be recipients of other forms of benefits.

HUD believes that the burden on housing authorities and project owners will not be onerous for the reason set forth above, and also because documentation of citizenship or noncitizenship status is similar to and can be undertaken at the same time as determination of income eligibility. Additionally the house authority and project owner is not required to assist the family in obtaining evidence or to determine the validity of the evidence submitted.

For family members, the burden should be minimal because for citizens only a declaration is required. For noncitizens with eligible immigration status, such noncitizens should have with them their evidence of eligible immigration status.

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BILLING CODE 4210–32–M

[Docket No. N–95–3918; FR–3907–N–01]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; FY 1995 Funding Availability for HUD—Approved Housing Counseling Agencies

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Fiscal Year 1995 notice of funding availability for HUD-approved housing counseling agencies.

SUMMARY: This Notice announces the availability of Fiscal Year (FY) 1995 funding from the U.S. Department of Housing and Urban Development (HUD) for HUD-approved housing counseling agencies to provide housing counseling to homebuyers, homeowners, and renters. HUD anticipates that a maximum of $9.5 million dollars will be available through this Notice of Funding Availability (NOFA). All housing counseling agencies approved by HUD as of the publication date of this NOFA may apply for FY 1995 funding. This includes: (1) Multi-State, regional, or national intermediary organizations, and (2) local housing counseling agencies that do not elect to affiliate with a HUD-approved intermediary organization.

This NOFA contains additional information on the purpose and background of the NOFA and funding levels available to local counseling agencies and intermediary organizations respectively; eligible activities and funding criteria; and application requirements and procedures.

DATES: Completed applications must be submitted no later than 4 p.m. E.S.T. on June 23, 1995. As further described below, any completed application must be physically *received* by this deadline date and hour at the appropriate local HUD office (for local applicants) *or* at the Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9282, Washington D.C. 20410 (for national, regional or multi-State applicants). In the interest of fairness to all applicants, late applications will be treated as ineligible for consideration. Applicants should take this requirement into account and make early submission of their applications to avoid loss of eligibility brought about by any unanticipated delays or other delivery-related problems. It is not sufficient for an application to be postmarked within the deadline. Applications sent by facsimile (FAX) will not be accepted. HUD will not waive this submission deadline for any reason.

ADDRESSES: For local housing counseling agency applicants: An original and two copies of the completed application must be submitted to the local HUD office having jurisdiction over the locality or area in which the proposed program is located. These copies should be sent to the attention of the Single Family Division Director, and the envelope should be clearly marked, ''FY 1995 Counseling Application''. A list of Single Family Division Directors and local HUD Offices appears at the end of this NOFA. Failure to submit an application to the correct office in accordance with the above procedures will result in disqualification of the application.

For national, regional and multi-State housing counseling agencies: An original and two copies of the completed application must be submitted to the person listed below in HUD Headquarters. The envelope should be clearly marked, ''FY 1995 Counseling Application.''

FOR FURTHER INFORMATION CONTACT: Marion F. Connell, Program Advisor, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9282, Washington D.C. 20410; telephone (202) 708–0614, extension 2315 (voice), or (202) 708–4594 (TDD number). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0261.

I. Purpose and Substantive Description

A. Authority and Purpose

HUD's housing counseling program is authorized under section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x). The purpose of the program is to promote and protect the interests of housing consumers participating in HUD and other housing programs, as well as to help protect the interests of HUD and mortgage lenders. The Housing Counseling program is generally governed by HUD Handbook 7610.1, REV–3, which is currently under revision.

The new version of the Handbook is expected to be in effect by the time funding under this NOFA is provided. The new Handbook will differ from the current Handbook in that national, regional, and multi-State housing counseling intermediaries may be approved as counseling agencies and reimbursement will no longer be made on a ''counseling unit'' basis. Procedures for the approval of housing counseling intermediaries were published on April 25, 1995 (60 FR 20360). New reimbursement procedures are explained in the grant application kit for this NOFA. To the extent that this NOFA and its accompanying application kit are inconsistent with the current Handbook, the Handbook is superseded.

Section 106 authorizes HUD to provide counseling and advice to tenants and homeowners with respect to property maintenance, financial management, and such other matters as may be appropriate to assist tenants and homeowners in improving their housing conditions and in meeting the responsibilities of tenancy and homeownership. In addition, HUD-approved counseling agencies are permitted and encouraged by HUD to conduct community outreach activities and provide counseling to individuals with the objective of increasing awareness of homeownership opportunities and improving access of low and moderate income households to sources of mortgage credit. HUD believes that this activity is key to the revitalization and stabilization of low income and minority neighborhoods. (See the recently published notice inviting the application by national, multi-State and regional organizations for housing counseling agency approval, described above.)

Under the housing counseling program, HUD contracts with qualified public or private nonprofit organizations to provide the services authorized by the statute. When Congress appropriates funds for this

purpose, HUD announces the availability of such funds, and invites applications from eligible agencies, through a notice published in the **Federal Register**. Currently there are 661 HUD-approved housing counseling agencies, serving over 1,000 locations. Annually, all HUD-approved agencies are eligible to apply for housing counseling grants. However, an agency that is approved by HUD does not automatically receive HUD funding, and HUD expects that all counseling agencies will continually work to develop other funding resources. In FY '94, 431 HUD-approved agencies received housing counseling funding from HUD.

B. Allocation Amounts

Approximately $12 million has been appropriated for FY 1995. Of this amount, $9.5 million is being made available under this NOFA for lump-sum, performance-based grants, as defined at 24 CFR part 84, subpart E. Approximately $3.5 million is being set aside to fund national, regional and multi-State organizations that apply for funding under this NOFA. No national, regional, or multi-State agency may receive more than $1 million. Approximately $6 million has been made available for grants to local HUD approved housing counseling agencies, and it has been allocated to each of the 10 HUD geographical areas (formerly Regions) by a formula that gives equal weight to the percentage of HUD insured single family mortgage defaults within each geographical area as of January 31, 1995, compared to the nationwide total the percentage of first-time homebuyers that were approved for FHA-insured mortgages by geographical area during 1994 compared to the nationwide total for those periods. This formula reflects the increased emphasis that HUD is placing on the expansion of homeownership opportunities for first-time homebuyers. For FY 1995, no individual local housing counseling agency may be awarded more than $100,000.

Amounts allocated for use in local agency programs, by HUD geographical area, are as follows:

Geographical areas	Default data		Allocation amount	First-time homebuyer data			Total allocation
	No. of defaults	Percent of nat'l defaults		No. of 1st timers	Percent of nat'l 1st timers	Allocation amount	
New England	3,052	1.95	58,623	13,720	2.99	89,589	148,213
NY/NJ	13,145	8.42	252,491	27,593	6.01	180,178	432,669
Mid-Atlantic	17,453	11.17	335,239	52,515	11.43	342,915	678,154
SE/Caribbean	38,973	24.95	748,598	89,713	19.53	585,812	1,334,410
Midwest	25,174	16.12	483,545	86,977	18.93	567,946	1,051,491
Southwest	22,486	14.40	431,914	50,966	11.09	332,800	764,714
Great Plains	4,040	2.59	77,601	17,613	3.83	115,010	192,611
Rocky Mts	4,125	2.64	79,233	26,062	5.67	170,181	249,414
Pac/Hawaii	25,020	16.02	480,587	74,670	16.25	487,584	968,171
NW/Alaska	2,716	1.74	52,169	19,600	4.27	127,985	180,154
Totals	156,184	100	3,000,000	459,429	100	3,000,000	6,000,000

Allocations of program funding already made are: $650,000 specifically to provide training and technical assistance to Home Equity Conversion Mortgage (HECM) counselors and to develop HECM distance learning and outreach materials; $500,000 to establish a Housing Counseling Clearinghouse as recommended by the National Homeownership Strategy; $400,000 to develop software for HUD-approved counseling agencies to computerize record-keeping and create a communications network; and $250,000 to extend the toll-free 800 number (800/569–4287) housing counseling referral service for public use.

If funds remain after HUD has funded all approvable grant applications in a HUD geographical area, or if any funds become available due to deobligation, that amount shall be reallocated and used in keeping with the statute and in a manner that will improve the delivery of housing counseling service nationwide. Any balance will be used to fund training for counselors from HUD approved agencies as provided by the Appropriations Act and requested by program users. HUD already has earmarked a minimum of $500,000 for this purpose.

C. Eligible Applicants

1. General

There are two types of HUD-approved organizations that are eligible to submit applications pursuant to this NOFA: (1) National, regional, or multi-State housing counseling organizations (also known as ''intermediaries'' or ''umbrella groups''); and (2) local housing counseling agencies.

National, regional, and multi-State nonprofit, intermediary organizations must identify all their proposed affiliates in their application. These intermediaries must assure that their proposed affiliates are unique to their team and will not undertake a separate application for funds either as an affiliate of another intermediary or directly as a HUD-approved local counseling agency. Should any duplication occur, both the intermediary organization and the local agency involved will automatically be ineligible for further consideration to receive FY 1995 housing counseling funds. In addition, an intermediary-applicant must also assure that it has executed a sub-agreement with its affiliates that clearly delineates their mutual responsibilities for program management, incorporating appropriate timeframes for reporting results to HUD.

Once funded, the national, regional, and multi-State intermediaries will be given broad discretion in implementing their housing counseling programs. On behalf of HUD, the intermediaries will act as managers in the housing counseling process and, as such, may determine funding levels and counseling activity for each of their affiliates, except that no single affiliate may receive more than $100,000. HUD will hold the intermediary organization accountable for the performance of its affiliates.

Local counseling agencies may apply either directly to HUD for funding, or as a part of an affiliated intermediary network. Since HUD is not requesting a continuation of funding for housing counseling activities as a separate and discrete program for FY 1996 and thereafter, it encourages local agencies to consider affiliating with a larger entity as one avenue of possible future

funding and support for local programs. Local housing counseling agencies that are not currently HUD-approved may receive FY 1995 funding only as an affiliate of a HUD-approved national, regional, or multi-State intermediary's application for FY 1995 funds. In this instance, the intermediary organization must certify that the quality of services provided will meet, or exceed, standards for local HUD-approved agencies.

2. Civil Rights Prerequisites

Applicants that fall into any one of the following categories will be ineligible for funding under this NOFA:

a. The Department of Justice has brought a civil rights suit against the applicant and the suit is pending;

b. There has been an adjudication of a civil rights violation in a civil action brought against the applicant by a private individual, unless the applicant is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance;

c. There are outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance; or

d. HUD has deferred application processing by HUD under one of the following authorities:

i. Title VI of the Civil Rights Act of 1964 and the implementing guidelines of the Attorney General (28 CFR 50.3) and the HUD regulations (24 CFR 1.8);

ii. Section 504 of the Rehabilitation Act of 1973 and the HUD section 504 regulations (24 CFR 8.57);

iii. Executive Order 11063, as amended by Executive Order 12892 and HUD regulations (24 CFR Part 107);

iv. Title II of the Americans with Disabilities Act of 1990 and applicable regulations (28 CFR Part 36); or

v. The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations (24 CFR Part 146).

3. Requirements Applicable to Religious Organizations

Where the applicant is, or proposes to contract with, a primarily religious organization, or a wholly secular organization established by a primarily religious organization, to provide, manage, or operate a housing counseling program, the organization must undertake its responsibilities under the counseling program in accordance with the following principles:

a. It will not discriminate against any employee or applicant for employment under the program on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

b. It will not discriminate against any person applying for counseling under the program on the basis of religion and will not limit such assistance or give preference to persons on the basis of religion; and

c. It will provide no religious instruction or religious counseling, conduct no religious services or worship, engage in no religious proselytizing, and exert no other religious influence in the provision of assistance under the housing counseling program.

D. Eligible Activities

Eligible activities will vary depending upon whether the applicant is a HUD-approved local counseling agency or a HUD-approved national, regional, or multi-State housing counseling intermediary.

1. Local Housing Counseling Agencies

Local housing counseling agencies funded under this NOFA may use HUD funds to deliver comprehensive housing counseling or to specialize in the delivery of particular housing counseling services according to the housing needs they identified for their target area in the plan that was previously approved by HUD. HUD recognizes that local housing counseling agencies may offer a wide range of services, including:

a. Renter assistance, including information about rent subsidy programs, rights and responsibilities of tenants, lease and rental agreements, etc.;

b. Outreach initiatives, including providing general information about housing opportunities within the community and providing appropriate information to persons with disabilities;

c. Pre-purchase homeownership counseling, covering such issues as purchase procedures, mortgage financing, downpayment/closing cost fund accumulation, accessibility requirements of the property—if appropriate, credit improvement, debt consolidation, etc.;

d. Post-purchase counseling, including such issues as property maintenance, personal money management, home equity conversion mortgages, etc.; or

e. Mortgage delinquency and default resolution, including restructuring debt, arrangement of reinstatement plans, loan forbearance, assignment of mortgage to HUD, etc.

HUD-funded local counseling agencies may elect to offer their services to a wide range of clients or may elect to serve a more limited audience. Potential clients include: renters; potential homebuyers; homeowners eligible for and applying for HUD-related, VA, FmHA, State, local, or conventionally financed housing or housing assistance; or persons who occupy such housing and seek the assistance of a HUD-approved housing counseling agency to resolve a housing need (including the need of a person with a disability for accessible housing) or problem. Local housing counseling agencies may elect to offer this assistance in conjunction with any HUD housing program but must be familiar with FHA's single family and multifamily housing programs.

2. National, Regional, or Multi-State Counseling Intermediaries

The primary activity of national, regional, or multi-State nonprofit housing counseling intermediaries will be to manage the use of HUD housing counseling funds, including the distribution of counseling funding to affiliated local housing counseling organizations. Local affiliates of the selected national, regional, or multi-State counseling intermediaries are eligible to undertake any or all of the housing counseling activities outlined above for the HUD-approved local housing counseling agencies. The local affiliates receiving funding through intermediaries do not need to be HUD-approved in order to receive these funds from the intermediary. However, the national, regional, or multi-State intermediary organization must be HUD-approved as of the NOFA publication date.

E. Selection Process

1. Local Housing Counseling Agencies

All applications meeting the requirements of this NOFA will be selected for funding, if sufficient funds are available within the HUD geographic allocation area for local housing counseling agency applicants.

a. Criteria/Ranking Factors

All applications will be rated and ranked by staff in the appropriate local HUD office using the following criteria:

i. Capability of the applicant as determined by HUD, including competent delivery of counseling services and timely drawdown of any HUD funds awarded in the prior Fiscal Year—up to 50 points;

ii. Adequacy of the activities proposed by the applicant in response to housing needs identified in the applicant's housing counseling plan as previously approved by HUD—up to 25 points;

iii. Evidence of private funding sources contributing to the applicant's operating budget over the past calendar year—up to 15 points; and

iv. Evidence of current funding support from units of government located within the target area which the applicant intends to serve—up to 10 points.

b. Selection Procedure

National, regional, and multi-State applications will be ranked in Headquarters and selected for funding, in rank order, until all funds for such agencies are depleted. Local agency applications will be reviewed by the Field Office and assigned points under the selection criteria. Then the Field Office will submit its recommendations for funding to HUD Headquarters for final review, to ensure appropriate geographical distribution of program funds and consistent application of the criteria described above. HUD Headquarters will then rank the local agency applications within the geographical areas and select for funding, in rank order, all acceptable applications to the point at which all funds are depleted.

i. Breaking a Tie

If two or more applications receive the same number of points and sufficient funds are not available to fund all such applications, first the application or applications requesting the smallest grants will be selected, if a sufficient amount remains to fund them. If two or more tied applications request the same amount and sufficient funds are not available to fund all such applications, the following system will be used to break the ties:

A. If the tied applications are for programs to be carried out in different jurisdictions, applications with the highest number of points for the rating criterion a. ii. (adequacy of activities) stated above will be selected, if sufficient funds remain.

B. If the tied applications are to be carried out in the same jurisdiction, applications with the highest number of points for the rating criterion a. i. (capability) stated above will be selected, if sufficient funds remain.

ii. Reallocations

Funds remaining after applying the procedures described in paragraph E.1.b. will be reallocated to fund the highest ranking remaining applications without regard to their location.

iii. Procedural Errors

Procedural errors by HUD discovered after initial ratings, but before notification to Congress of selected applicants, will be corrected and rankings will be revised.

iv. Reductions

HUD will approve an application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines that:

A. The amount requested for one or more eligible activities is unreasonable, unnecessary, or unjustified;

B. An activity proposed for funding does not qualify as an eligible activity;

C. The applicant is not able to carry out all the activities requested; or

D. Insufficient amounts remain in that funding round to fund the full amount requested in the application.

v. Limitation of Geographic Scope

HUD may reduce the geographic scope of the proposed program if it determines that:

A. Two or more fundable applications substantially overlap; or

B. The proposed geographic scope is overly large given the capacity of the organization.

2. National, Regional, and Multi-State Counseling Organizations

If more applications are submitted to HUD Headquarters from national, regional, and multi-State organizations that meet all the requirements of this NOFA than can be funded with the amount allocated for this purpose, they will be rated by staff in HUD Headquarters using the above ranking criteria stated in paragraph 1. a., and the top-rated applicants will be selected. Paragraphs 1. c. iii., iv., and v., above also apply to the selection of national, regional, and multi-State counseling organizations.

3. Notification of Approval or Disapproval

After completion of the selection process, but no later than six months after the deadline date for submission of the applications, as stated in this NOFA, HUD will notify, in writing, the applicants that have been selected and the applicants that have not been selected.

F. Funding Levels

Funding levels will be based on the amount authorized by the Congress, geographical distribution as described above, the performance record of each counseling agency as determined by HUD's analysis of prior year counseling workload and results of the most recent biennial performance review, competent delivery of counseling services and timely drawdown of funds awarded, and the agency's needs, as specified in the application according to its housing counseling plan previously approved by HUD. In addition, applicants that can demonstrate successful efforts to obtain non-HUD funding in their applications will receive extra consideration in HUD's rating and ranking process. HUD funding provided *must* be less than the total actual cost of the agency's housing counseling program.

1. Local Housing Counseling Agencies

HUD will fund local agencies according to the budget submitted with the application, in an amount not to exceed $100,000. Amounts requested by local housing counseling agencies should reflect anticipated operating needs for housing counseling activities, based upon counseling experience during the last year and existing agency capacity. To the maximum extent possible, local counseling agencies also must seek other private and public sources of funding to supplement HUD funding. HUD never intends for its counseling grant funds to cover all costs incurred by an agency participating in the program.

Local housing counseling agencies may use the HUD grant to undertake any of the eligible counseling activities described in this NOFA and included in their HUD-approved plan. FY 1995 housing counseling grant funds also may be used for ''capacity building'' as defined in this NOFA. Up to $4,000 of the grant amount may be used to: purchase computer equipment that meets, or exceeds, HUD specifications; enhance existing telephone service, such as purchasing a Telecommunications Device for the Deaf (TDD) to serve persons with hearing impairments (as an alternative to using TDD relay service); and install FAX machines. The Department will require that all funded grantees that do not currently have adequate computer systems use all or a portion of their $4,000 capacity building portion of the grant to purchase computer hardware according to HUD specifications. Computer training for one staff person also may be paid from the $4,000 set-aside, as may training on how to use a TDD. Title to equipment acquired by a recipient with program funds shall vest in the recipient, subject to the provisions of 24 CFR part 84, subpart E.

2. National, Regional, or Multi-State Counseling Intermediaries

The intermediary organization will distribute the majority of funds awarded to their proposed local housing counseling affiliates. Intermediaries should budget an amount which reflects their best estimate of cost to oversee and fund these counseling efforts, as well as the funding needs of their affiliates. Note that HUD housing counseling funding is not intended to fully fund either the intermediary's housing counseling program or the housing counseling programs of the local affiliates. To the maximum extent possible, intermediaries and their local affiliates are expected to seek other private and public sources of funding for housing counseling to supplement HUD funding.

An intermediary may use up to $5,000 of its total grant amount for capacity building expenses such as: purchasing computer equipment; enhancing telephone service, such as purchasing a Telecommunications Device for the Deaf (TDD) to serve persons with hearing impairments (as an alternative to using TDD relay service); installing FAX machines; and preparing or publishing counseling materials. If the intermediary does not have an adequate computer system, the Department will require that the $5,000 capacity building portion of the grant be used to purchase necessary equipment meeting HUD specifications. Title to equipment acquired by a recipient with program funds shall vest in the recipient, subject to the provisions of 24 CFR part 84, subpart E.

HUD will give the selected nonprofit intermediaries wide discretion to implement the housing counseling program with their affiliates. The intermediary may decide how to allocate funding among its affiliates and may determine funding levels at or below $100,000 for individual affiliates with the understanding that a written record will be kept of how this determination is made. This record shall be made available to the agencies affiliated with the intermediary.

III. Checklist of Application Submission Requirements

A. General

Contents of an application will differ somewhat for local housing counseling agencies and for national, regional, or multi-State intermediaries; however, all applicants are expected to submit:

1. Standard Form 424, Application for Federal Assistance.

2. Standard Form 424B, Assurances-Non-construction Programs.

3. Certification of a Drug Free Workplace, in accordance with the Drug-Free Workplace Act of 1988, and HUD's regulations at 24 CFR part 24, subpart F.

4. Anti-lobbying certification in accordance with section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352), and the regulations at 24 CFR part 87.

5. Form HUD–2880, Applicant/Recipient Disclosure Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

6. Disclosure of Lobbying Activities on SF–LLL must be used to disclose lobbying with other than Federal funds at the time of application.

7. HUD Form 9902–Housing Counseling Agency Fiscal Year Activity Report for 1994. Where an applicant did not participate in HUD's Housing Counseling Program during FY 1994, this report should be completed to reflect the agency's counseling workload during that period in any case. This form must be fully completed and submitted by every applicant for FY 1995 HUD funding. HUD will reject any application that does not include this form.

8. Assurance that, if funded, it will administer its housing counseling program in keeping with the provisions of HUD Handbook 7610.1, as revised.

9. A description of the counseling services to be offered in response to housing needs in the agency's target area, according to the plan previously approved by HUD, with any modifications necessitated by changing housing market conditions in the agency's target area(s).

10. A realistic, proposed budget for use of HUD funds if awarded. This should be broken down into two categories: direct counseling costs and capacity building costs. Note that the budget submitted by a local agency may not exceed a total of $100,000. Capacity building costs for local agencies may not exceed $4,000. National, regional and multi-state organizations may submit a proposed budget up to $1 million. Capacity building costs for these organizations may not exceed $5,000.

B. National, Regional, and Multi-State Intermediaries

National, regional, and multi-State intermediaries must submit an application which covers both their network organization and their affiliated agencies. This application must include:

1. Description of affiliated agencies. For each, list the following information:

a. Organization name

b. Address

c. Director and contact person (if different)

d. Phone/FAX numbers (including TDD, if appropriate)

e. Federal tax identification number

f. ZIP code service areas

g. Number of staff providing counseling

h. Type of services offered (defined by renter assistance, outreach initiatives, pre-purchase counseling, post-purchase counseling, and mortgage default and delinquency counseling)

i. Number of years of housing counseling experience

2. Relationship with affiliates. Briefly describe the intermediary's relationship with affiliates (i.e. membership organization, field or branch offices, subsidiary organizations, etc.).

3. Oversight system. Describe the process that will be used for determining affiliate funding levels, distributing funds, and monitoring affiliate performance.

IV. Corrections to Deficient Applications

After the submission deadline, applicants may cure only non-substantial, technical deficiencies that surface during HUD screening of their application. Applicants will have a ''cure period'' to correct such deficiencies that are not integral to HUD's review of the application. Applicants have 14 calendar days from the date HUD notifies them of any problem to submit the appropriate information to HUD. Notification of a technical deficiency may be in writing or by telephone. If the HUD notification is by telephone, a written confirmation will be transmitted by HUD to the applicant. Where HUD determines that an application as initially submitted is fundamentally incomplete, or would require substantial revisions, it will not consider the application further. Note: HUD will not inform applicants regarding application deficiencies other than as described in this section.

V. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332, in connection with the Notice of Funding Availability published in connection with the Housing Counseling program on March 21, 1994 (59 FR 13366). That Finding is applicable to this NOFA and is available

for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have ''federalism implications'' because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. This NOFA only affects nonprofit or public organizations who seek funding for their housing counseling activities.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this NOFA has potential significant impact on family formation, maintenance, and general well-being only to the extent that the entities who qualify for participation in HUD's housing counseling program under this notice will provide families with the counseling and advice they need to avoid rent delinquencies or mortgage defaults, and to develop competence and responsibility in meeting their housing needs. Since the potential impact on the family is considered beneficial, no further review under the Order is necessary.

Documentation and Public Access Requirements: HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b).)

Prohibition Against Advance Information on Funding Decisions: HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice) or (202) 708–1112 (TDD). (These are not toll-free numbers.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Assistant General Counsel or Headquarters counsel for the program to which the question pertains.

Influence on Awards: HUD Reform Act

Section 112 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence the award of HUD assistance, if the fees are tied to the amount of assistance received, or if they are contingent upon the receipt of assistance. See 24 CFR part 86.

Any questions about these requirements should be directed to the Office of Ethics, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–0500. Telephone: (202) 708–3815 (voice); (202) 708–1112 (TDD). (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of 24 CFR part 87. That regulation prohibits recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Catalog

The Catalog of Federal Domestic Assistance Program number is 14.169.

Dated: May 12, 1995.

Jeanne K. Engel,

General Deputy, Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix A—HUD Offices

Note: The title of all those listed is: Director, Single Family Division, U.S. Department of Housing and Urban Development. Telephone numbers are not toll-free.

Applicants within the Oklahoma State/Southwest Area who would have submitted applications to the HUD Oklahoma State Office in Oklahoma City, should send their applications to the Tulsa, Oklahoma Area Office.

HUD—New England Area

Connecticut State Office

Mr. Ronald T. Black, First Floor, 330 Main Street, Hartford, CT 06106–1860, (203) 240–4569.

Massachusetts State Office

Mr. Edward T. Bernard, Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, MA 02222–1092, (617) 565–5101.

New Hampshire State Office

Mr. Loren Cole, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, (603) 666–7755.

Rhode Island State Office

Mr. Michael Dziok, Sixth Floor, 10 Weybosset Street, Providence, RI 02903–2808, (401) 528–5351.

HUD—New York, New Jersey Area

New Jersey State Office

Ms. Encarnacion Loukatos, Thirteenth Floor, One Newark Center, Newark, NJ 07102–5260, (201) 622–7900 X3400.

New York State Office

Mr. Juan Baustista, 26 Federal Plaza, New York, NY 10278–0068, (212) 264–0777 X3746.

Albany Area Office

Mr. Robert S. Scofield, Jr., 52 Corporate Circle, Albany, NY 12203–5121, (518) 464–4204.

Buffalo Area Office

Mr. Glenn Ruggles, Fifth Floor, Lafayette Court, 465 Main Street, Buffalo, NY 14203–1780, (716) 846–5732.

Camden Area Office

Mr. Philip Caulfield, Second Floor, Hudson Building, 800 Hudson Square, Camden, NJ 08102–1156, (609) 757–5083.

HUD—Midatlantic Area

District of Columbia Office

Ms. Carole Catineau, 820 First Street, NE, Washington, D.C. 20002–4502, (202) 275–9200 X3055.

Maryland State Office

Ms. Candace Simms, Fifth Floor, City Crescent Building, 10 South Howard Street, Baltimore, MD 21201–2505, (410) 962–2520 X3094.

Pennsylvania State Office

Mr. Mike Perretta, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, (215) 656–0507.

Virginia State Office

Ms. Rheba G. Gwaltney, The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, VA 23230–0331, (804) 278–4512.

West Virginia State Office

Mr. Peter Minter, Kanawha Valley Building, Suite 708, 405 Capitol Street, Charleston, WV 25301–1795, (304) 347–7064.

Pittsburgh Area Office

Mr. Richard Nemoytin, 412 Old Post Office Courthouse, 7th Avenue and Grant Street, Pittsburgh, PA 15219–1906, (412) 644–6940.

HUD—Southeast/Caribbean Area

Alabama State Office

Ms. Martha Andrus, Suite 300, Beacon Ridge Tower, 600 Beacon Parkway, West, Birmingham, AL 35209–3144, (205) 290–7648.

Caribbean Office

Ms. Margarita Delgado, New San Juan Office Building, 159 Carlos Chardon Avenue, San Juan, PR 00918–1804, (809) 766–5402.

Georgia State Office

Ms. Janice Cooper, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, GA 30303–3388, (404) 331–4801.

Kentucky State Office

Mr. David A. Powell, 601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, (502) 582–6167.

Mississippi State Office

Mr. Jerry F. Perkins, Suite 910, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, MS 39269–1016, (601) 965–4930.

North Carolina State Office

Mr. Robert Dennis, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, (910) 547–4053.

South Carolina State Office

Mr. David L. Ball, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, (803) 765–5593.

Coral Gables Area Office

Ms. Sara D. Warren, Gables 1 Tower, 1320 South Dixie Highway, Coral Gables, FL 33146–2911, (305) 662–4527.

Jacksonville Area Office

Ms. Martha A. Littlefield, Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, FL 32202–5121, (904) 232–2811.

Knoxville Area Office

Mr. John Robbins, Third Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, TN 37902–2526, (615) 545–4377.

Memphis Area Office

Ms. Bonnie G. Johnson, Suite 1200, One Memphis Place, 200 Jefferson Avenue, Memphis, TN 38103–2335, (901) 544–3403.

Tennessee State Office

Mr. Ed M. Phillips, Suite 200, 251 Cumberland Bend Drive, Nashville, TN 37228–1803, (615) 736–7154.

Orlando Area Office

Mr. Robert K. Osterman, Suite 270, Langley Building, 3751 Maguire Boulevard, Orlando, FL 32803–3032, (407) 648–6441.

Tampa Area Office

Ms. Nikki A. Spitzer, Suite 700, Timberlake Federal Building Annex, 501 East Polk Street, Tampa, FL 33602–3945, (813) 228–2504.

HUD—Midwest Area

Illinois State Office

Ms. Debra F. Robinson, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 886–9043.

Indiana State Office

Ms. Brenda Laroche, 151 North Delaware Street, Indianapolis, IN 46204–2526, (317) 226–7034.

Michigan State Office

Mr. John Frelich, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, (313) 226–6885.

Minnesota State Office

Mr. John E. Buenger, 220 Second Street, South, Minneapolis, MN 55401–2195, (612) 370–3053.

Ohio State Office

Mr. Verlon Shannon, 200 North High Street, Columbus, OH 43215–2499, (614) 469–5536.

Wisconsin State Office

Mr. Larry Milewski, Suite 1380, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2289, (414) 297–3156.

Cincinnati Area Office

Ms. Louistine Tuck, 525 Vine St., Suite 700, Cincinnati, OH 45202–3253, (513) 684–2233.

Cleveland Area Office

Mr. Kendel King, Fifth Floor, Renaissance Building, 1350 Euclid Avenue, Cleveland, OH 44115–1815, (216) 522–2784.

Flint Area Office

Mr. Gary Levine, Room 200, 605 North Saginaw Street, Flint, MI 48502–1953, (810) 766–5107.

Grand Rapids Area Office

Ms. Shirley Bryant, 2922 Fuller Avenue, NE, Grand Rapids, MI 49505–3499, (616) 456–2146.

HUD—Southwest Area

Arkansas State Office

Ms. Susan E. Finister, Suite 900, TCBY Tower, 425 West Capitol Avenue, Little Rock, AR 72201–3488, (501) 324–5961.

Louisiana State Office

Mr. Byron D. Duplantier, 9th Floor, Hale Boggs Federal Building, 501 Magazine St., New Orleans, LA 70130–3099, (504) 589–6833.

New Mexico State Office

Ms. Carol G. Johnson, 625 Truman Street, NE, Albuquerque, NM 87110–6443, (505) 262–6269.

Texas State Office

Mr. Louis Ybarra, 1600 Throckmorton Street, P.O. Box 2905, Fort Worth, TX 76113–2905, (817) 885–6255.

Houston Area Office

Mr. Henry Hadnot, Suite 200, Norfolk Tower, 2211 Norfolk, Houston, TX 77098–4096, (713) 834–3289.

Lubbock Area Office

Mr. Miguel Rincon (Acting), Federal Office Building, 1205 Texas Avenue, Lubbock, TX 79401–4093, (806) 743–7262.

San Antonio Area Office

Mr. Antonio C. Cabral, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, (210) 229–6898.

Shreveport Area Office

Ms. Martha Sakre, Suite 1510, 401 Edwards Street, Shreveport, LA 71101–3107, (318) 676–3387.

Tulsa Area Office

Ms. Jeanne King, 50 East 15th Street, Suite 110, Tulsa, OK 74119–4032, (918) 581–7442.

HUD—Great Plains

Iowa State Office

Mr. Patrick Liao, Room 239, Federal Building, 210 Walnut Street, Des Moines, IA 50309–2155, (515) 284–4804.

Kansas/Missouri State Office

Mr. Deryll Sellmeyer, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, (913) 551–6820.

Nebraska State Office

Ms. Nancy Sheets, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, (402) 492–3135.

Saint Louis Area Field Office Mr. Art Pearrow, Third Floor, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103–2836, (314) 539–6388.

HUD—Rocky Mountains Area

Colorado State Office

Ms. Sheryl S. Miller, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607, (303) 672–5343.

Montana State Office

Mr. Gerald Boone, Room 340, Federal Office Building, Drawer 10095, 301 S. Park, Helena, MT 59626–0095, (406) 449–5205.

Utah State Office

Mr. Richard P. Bell, Suite 550, 257 Tower, 257 East, 200 South, Salt Lake City, UT 84111–2048, (801) 524–5241.

HUD—Pacific/Hawaii Area

Arizona State Office

Ms. Bernice Campbell, Suite 1600, Two Arizona Center, 400 North 5th Street, Phoenix, AZ 85004–2361, (602) 379–6704.

California State Office

Mr. Keith Axtell (Acting), Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, (415) 556–0796.

Hawaii State Office

Ms. Jill B. Hurt, 7 Waterfront Plaza (Suite 500), 500 Ala Moana Boulevard, Honolulu, HI 96813–4918, (808) 522–8190.

Nevada State Office

Mr. Benjamin F. Davis, Suite 700, Atrium Building, 333 No. Rancho Drive, Las Vegas, NV 89106–3714, (702) 388–6500.

Fresno Area Office

Ms. Yvielle Edwards-Lee, Suite 138, 1630 E. Shaw Avenue, Fresno, CA 93710–8193, (209) 487–5032.

Los Angeles Area Office

Mr. Malcolm Findley, 1615 West Olympic Boulevard, Los Angeles, CA 90015–3801, (213) 251–7217.

Reno Area Office

Mr. William Fattic, Suite 114, 1575 Delucchi Lane, Reno, NV 89502–6581, (702) 784–5388.

Sacramento Area Office

Mr. Ron M. Johnson (Acting), Suite 200, 777 12th Avenue, Sacramento, CA 95814–1997, (916) 498–5254.

San Diego Area Office

Mr. Danny E. Mendez, Mission City Corporate Center, 2365 Northside drive (Suite 300), San Diego, CA 92108–2712, (619) 557–2608.

Santa Ana Area Office

Mr. David A. Westerfield, Suite 500, 3 Hutton Centre, Santa Ana, CA 92707–5764, (714) 957–7352.

Tucson Area Office

Ms. Sharon K. Atwell, Suite 700, Security Pacific Bank Plaza, 33 North Stone Avenue, Tucson, AZ 85701–1467, (520) 670–6000.

HUD—Northwest/Alaska Area

Alaska State Office

Mr. Paul O. Johnson, Suite 401, University Plaza Building, 949 East 36th Avenue, Anchorage, AK 99508–4399, (907) 271–4610.

Idaho State Office

Mr. Gary L. Gillespie, Suite 220, Plaza IV, 800 Park Boulevard, Boise, ID 83712–7743, (208) 334–1991.

Oregon State Office

Ms. Pamela D. West, 520 S.W. 6th Avenue, Portland, OR 97204–1596, (503) 326–2684.

Washington State Office

Mr. David L. Rodgers, Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, WA 98104–1000, (206) 220–5200 X3252.

[FR Doc. 95–12729 Filed 5–23–95; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1220–00; Closure Notice No. NV–030–95–03]

Emergency Closure of Federal Lands

SUMMARY: Notice is hereby given that certain public lands in the vicinity of Golden Valley, Washoe County, Nevada, are closed to all motorized vehicles. This closure is necessary due to unauthorized road construction and off-road vehicle use which is causing considerable adverse effects to soil, vegetation and wildlife habitat in the area.

DATES: This closure goes into effect on June 1, 1995, and will remain in effect until the Carson City District Manager determines it is no longer needed.

FOR FURTHER INFORMATION CONTACT: James M. Phillips, Lahontan Resource Area Manager, Carson City District, 1535 Hot Springs Road, Carson City, Nevada 89706. Telephone (702) 885–6100.

SUPPLEMENTARY INFORMATION: The authorities for this closure are 43 CFR 8341.2,43 CFR 8342.3 and 43 CFR 8364.1. Any person who fails to comply with a closure order is subject to arrest and fines in accordance with applicable provisions of 18 USC 3571 and/or imprisonment not to exceed 12 months.

This closure applies to all motorized vehicles excluding (1) any emergency or law enforcement vehicle while being used for emergency purposes, and (2) any vehicle whose use is expressly authorized in writing by the Lahontan Resource Area Manager.

The public lands affected by this closure are located in Golden Valley, and while excluding the main access road running from the west-southwest to the east-northeast through these lands, include all other lands within:

Mt. Diablo Meridian

T.20N., R.19E.,
Sec. 2, E½SE¼SW¼, W½SW¼SE¼.

A map of the area closed to motorized vehicles is posted in the Carson City District Office.

Dated: May 16, 1995.

John O. Singlaub,

Carson City District Manager.

[FR Doc. 95–12706 Filed 5–23–95; 8:45 am]

BILLING CODE 4310–HC–M

[WY–920–05–1320–01; WYW136447]

Invitation for Coal Exploration License; Campbell County, WY

May 15, 1995.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration license.

SUMMARY: .Pursuant to section 2(b) of the Mineral Leasing Act of February 25, 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201 (b), and to the regulations adopted as Subpart 3410, Title 43, Code of Federal Regulations, all interested parties are hereby invited to participate with Antelope Coal Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United State of America in the following-described lands in Campbell County, Wyoming:

T. 41 N., R. 71 W., 6th P.M., Wyoming,
Sec. 22: Lots 2, 10;
Sec. 23: Lots 11, 12, 14, 15;
Sec. 27: Lots 6, 11;

Containing approximately 33.60 acres.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to conduct off-lease exploration by drilling.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of

Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW136447): Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003; and, Bureau of Land Management, Casper District Office, 1701 East 'E' Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in the *The News-Record* of Gillette, Wyoming, Once each week for two consecutive weeks beginning the week of May 22, 1995, and in the **Federal Register.** Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Antelope Coal Company no later than thirty days after publication of this invitation in the **Federal Register.** The written notice should be sent to the following addresses: Antelope Coal Company, Attn: Tom Suchomel, Caller Box 3009, Gillette, Wyoming 82717, and the Bureau of Land Management, Wyoming State Office, Home Base Chief, Minerals and Lands Authorization Group, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to Title 43 Code of Federal Regulations, Section 3410.2–1(c)(1).

Michael J. Madrid,

Chief, Minerals/Lands Authorization Group, Wyoming State Office.

[FR Doc. 95–12701 Filed 5–23–95; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–05–1320–10; WYW136504]

Invitation for Coal Exploration License; Campbell County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Invitation for Coal Exploration License.

SUMMARY: Cordero Mining Co., a wholly owned subsidiary of Kennecott Energy and Coal Company, hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning federally-owned coal underlying the following described land in Campbell County, Wyoming:

T. 46 N., R. 71 W., 6th P.M., Wyoming,
Sec. 1: Lots 5 thru 20;
Sec. 11: Lot 16;
Sec. 12: Lots 4, 5, and 9 thru 16;
Sec. 13: Lots 1 thru 4, 7 and 8;
Sec. 14: Lot 1.
Containing 1,376.20 acres.

All of the coal in the above land consists of unleased Federal coal within the Powder River Basin Known Coal Resource Area. The purpose of the exploration program is to conduct exploration drilling on the above listed land.

ADDRESSES: A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under serial number *WYW136504*): Bureau of Land Management, Wyoming State Office, 4th Floor Public Room, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003; *and*, Bureau of Land Management, Casper District Office, Branch of Solid Minerals, 1701 East ''E'' Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in the News-Record of Gillette, Wyoming, once each week for two (2) consecutive weeks and is expected to be published beginning no later than the week of May 22, 1995, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management *and* the Cordero Mining Co., no later than thirty (30) days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Bureau of Land Management, Wyoming State Office (WSO 925–9), Home Base Chief, Mineral/Lands Authorization Group, Division of Land and Minerals Authorization, P.O. Box 1828, Cheyenne, WY 82003–1828 *and* to Cordero Mining Co., Attn: Mr. John Trummel, Kennecott Energy Co., 505 S. Gillette Avenue, Gillette, WY 82716.

The foregoing is published in the **Federal Register** pursuant to Title 43 Code of Federal Regulations, Section 3410.2–1(c)(1).

Pamela J. Lewis,

Supervisory Land Law Examiner, Wyoming State Office.

[FR Doc. 95–12702 Filed 5–23–95; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Offshore Pipelines

AGENCIES: Minerals Management Service (MMS), Interior. Research and Special Programs Administration (RSPA), Transportation.

ACTION: Notice of proposed revision of memorandum of understanding (MOU) and public meeting.

SUMMARY: The Department of the Interior (DOI) and the Department of Transportation (DOT) are proposing to revise their May 6, 1976, MOU on their respective responsibilities concerning offshore pipelines. This action will redefine the boundary lines over which MMS and RSPA exercise their inspection and enforcement roles, giving MMS greater inspection responsibilities over offshore pipelines previously inspected by RSPA. The intent of the new MOU is to put, to the extent practicable, all flowlines and gathering lines under DOI responsibility, while transmission lines remain under DOT responsibility. This will result in more efficient utilization of government resources for offshore pipeline inspection. DOI and DOT will hold a public meeting on this proposed revision in New Orleans, Louisiana, on August 1, 1995.

DATES: Comments must be submitted on or before August 22, 1995.

ADDRESSES: Written comments should be directed concurrently to: (a) Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch, and (b) Department of Transportation; Office of Pipeline Safety Regulatory Programs, Research and Special Programs Administration; 400 Seventh Street SW.; Room 2335; Washington, D.C. 20590; Attention: L.E. Herrick.

PUBLIC MEETING: DOI and DOT will hold a public meeting to receive comments and to discuss the proposed MOU on August 1, 1995, 8:30 a.m. to 5:00 p.m., Room 111; Minerals Management Service; Gulf of Mexico Outer Continental Shelf Region; 1201 Elmwood Park Boulevard; New Orleans, Louisiana 70123–2394.

FOR FURTHER INFORMATION CONTACT: Carl W. Anderson, Engineering and Standards Branch, MMS; telephone (703) 787–1600; or L.E. Herrick, Office of Pipeline Safety Regulatory Programs; telephone (202) 366–5523.

SUPPLEMENTARY INFORMATION:

Introduction

There are about 18,300 miles of active Outer Continental Shelf (OCS) oil and gas pipelines jointly regulated by DOI and DOT under an MOU agreed upon in 1976 (41 FR 23746; June 11, 1976). Under the existing MOU, DOI has

primary responsibility for about 4,500 miles of these pipelines delegated to the Minerals Management Service (MMS). DOT has primary responsibility for about 13,800 miles of these pipelines delegated to RSPA. The MMS regulations for pipelines in the OCS are in 30 CFR part 250, Subpart J. The RSPA pipeline safety regulations are in 49 CFR parts 190–199.

The primary concerns with operating pipelines offshore include protecting life and property offshore, and protecting the OCS from environmental damage resulting from pipeline spills. These issues are of paramount importance to both MMS and RSPA. The National Academy of Sciences reported that while offshore oil and gas production operations contribute less than 2 percent by volume of the oil that is spilled into the sea, pipelines accounted for over 97 percent by volume of that oil spilled from OCS operations. These spills resulted almost entirely from anchors, construction operations, or fishing trawls that struck the pipelines and caused them to rupture.

Corrosion-related pipeline spills tend to be minor compared to spills resulting from external damage; however, because the pipeline system is extensive and aging, MMS and RSPA are also concerned about oil spills resulting from corrosion.

Separate MOU on Oil-Spill Response

Under a separate MOU among DOI, DOT, and the U.S. Environmental Protection Agency pursuant to the Oil Pollution Act of 1990, the agencies have divided their respective responsibilities for oil-spill prevention and response according to the definition of ''coast line'' contained in the Submerged Lands Act, 43 U.S.C. 1301(c). (See 59 FR 9494; February 28, 1994.) Nothing herein is intended to affect the implementation or administration of that MOU.

Background

The DOT and DOI are proposing to revise the current MOU that delineates DOI's and DOT's respective boundaries with respect to inspection of offshore pipelines in the OCS. The MOU has never been updated, even though there have been many legislative, regulatory, and administrative changes during the past 19 years affecting the respective inspection responsibilities that each agency performs. These changes, coupled with the differing regulatory priorities and operating responsibilities of the two organizations (MMS and RSPA) charged with promulgating and enforcing regulation over pipeline safety and environmental protection in the OCS, have rendered the MOU outdated. For example, the current MOU predates the following legislative and regulatory developments:

(1) The formation of RSPA in 1977,
(2) The 1978 OCS Lands Act Amendments,
(3) The formation of MMS in 1982,
(4) Amendments to the pipeline safety laws (see 49 U.S.C. 60101 et seq.), and
(5) The Federal Water Pollution Control Act as amended by the Oil Pollution Act of 1990 and implemented under Executive order 12777 of October 1991.

Under the current MOU, RSPA is responsible for enforcing its design, construction, operation, and maintenance requirements on pipelines transporting hazardous liquids and natural gas ''to the shore from the outlet flange at——

(i) Each OCS facility where hydrocarbons are produced, or

(ii) Each OCS facility where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream, including subsequent on-line transmission equipment but not including any subsequent production equipment.''

Also under the current MOU, MMS is responsible for enforcing its design, construction, operation, and maintenance regulations on offshore pipelines extending upstream from the outlet flange described above into each production well in the OCS. In this regard, MMS has responsibilities for promulgating and enforcing regulations for the prevention of waste, protection of the environment, conservation of natural resources, production measurement, and safety of OCS lessee and right-of-way holder activities.

MMS has regulatory responsibilities relating to activities performed in the OCS. RSPA has responsibilities for inspecting and enforcing its regulations over all onshore pipeline systems in the country. The revised MOU would result in MMS assuming a greater inspection responsibility for pipelines currently under DOT responsibility. MMS would integrate these additional pipelines into its current inspection program.

Because the revised MOU would shift the boundaries being used by MMS and RSPA in inspecting under their regulations, some OCS pipelines that are currently subject to DOT regulations governing their design, construction, maintenance, and operations, would become subject to DOI regulations governing such requirements. This shift in boundary for areas of responsibility—generally from the *first* OCS facility where hydrocarbons are produced, separated, dehydrated, or otherwise processed to the *last* such facility—will require subsequent public rulemaking changes by both DOT and DOI. Following the final approval and signing of the revised MOU, DOT and DOI will separately propose changes to their respective regulations to reflect the new regulatory boundaries. The principal regulations that would be affected are found at 49 CFR parts 191.1, 192.1, 195.1 and 199 for DOT and at 30 CFR part 250.150 for DOI.

DOI anticipates that existing offshore pipelines that shift from DOT to DOI responsibility will not be immediately subject to MMS design and construction requirements unless: (1) those requirements were a condition of MMS approval for the right-of-way on which the pipelines are located, or (2) the pipeline undergoes major repair or modification. Design and construction requirements are those requirements that are established when the pipeline is initially designed and constructed, such as pipe specifications, design of pipeline components, and welding procedures. Retrofitting existing pipelines to conform to different design and construction standards can involve considerable risk to personnel and be extremely costly. Therefore, DOI will be cautious in imposing changes of this type on pipeline operators heretofore operating under DOT design and construction requirements. On the other hand, DOI operation and maintenance regulations, such as corrosion protection, operation and maintenance plans, periodic inspections, and periodic tests are requirements that can be applied to pipelines any time after construction. There are differences between DOT and DOI regulations with respect to these types of requirements and their compliance costs. therefore, any operator currently under DOT responsibility who is shifted to DOI responsibility—after implementation of the revised MOU and appropriate changes are promulgated for 30 CFR part 250.150—will immediately become subject to DOI operation, maintenance, and inspection requirements.

Operators of pipelines that will become subject to MMS regulatory responsibility are reminded that MMS has regulatory procedures under which departures from its requirements may be granted on a case-by-case basis, provided there is sound engineering analysis that shows the operation, practice, or situation will provide an equal or greater level of operational safety or of environmental protection.

Comments are invited concerning (1) the effect that the new MOU will have

on offshore oil and gas lessees and pipeline operators, (2) the time required for operations currently operating under DOT regulations to come into compliance with DOI regulations, (3) regulatory difficulties that may be involved in complying with new regulations, and (4) changes to the proposed MOU that would facilitate the implementation of the MOU.

Upon signing the proposed revised MOU by both the Secretary of the Interior and Secretary of Transportation, the 1976 MOU will be terminated and revised MOU will become effective. The revised MOU will be published final in a subsequent **Federal Register** Notice.

Dated: April 4, 1995.

Cynthia Quarterman,

Director, MMS.

Dated: May 16, 1995.

D.K. Sharma,

Administrator, RSPA.

The proposed revised MOU is as follows:

Memorandum of Understanding Between the Department of Transportation and the Department of the Interior Regarding Offshore Pipelines

I. Introduction

This memorandum of Understanding (MOU) replaces the MOU between the Department of Transportation (DOT) and the Department of the Interior (DOI) regarding offshore pipelines which was signed and became effective May 6, 1976, and which terminates as of the effective date of this MOU. Nothing in this MOU relieves an offshore pipeline owner or operator from complying with the regulations of any State or Federal agency.

In recognition of each of the parties' respective regulatory responsibilities, DOI and DOT agree that an MOU is needed to assure coordination and consultation during the development and implementation of regulatory requirements and to facilitate comparable regulatory requirements for all offshore pipelines whether under DOI or DOT jurisdiction.

II. Legislative and Regulatory Responsibilities of the Parties

The DOT has the responsibility for promulgating and enforcing regulations for the safe and environmentally sound transportation of gases and hazardous liquids by pipeline. DOT administers the following laws as they relate to pipelines: (1) the pipeline safety laws (49 U.S.C. 60101 *et seq.*), (2) the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524), and (3) the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1251–1375), as amended by the Oil Pollution Act of 1990 (OPA) (Pub. L. 101–380) and implemented under Executive Order (E.O.) 12777.

The DOI has responsibilities for promulgating and enforcing regulations for the prevention of waste, protection of the environment, and conservation of the natural resources of the Outer Continental Shelf (OCS) as that area is defined in the OCS Lands Act (OCSLA) (43 U.S.C. 1331 *et seq.*). These responsibilities include production measurement and safety of OCS lessee and right-of-way holder activities, including transportation of oil and natural gas by pipeline. DOI also has certain responsibilities for granting rights-of-way and rights of use and easement for the construction of pipelines and associated facilities in the OCS. DOI administers the following laws as they relate to offshore piplines: (1) the OCSLA for the production of minerals which includes their transportation to shore, (2) the Federal Oil and Gas Royalty Management Act of 1982 for oil and gas production measurement, and (3) the FWPCA, as amended by OPA and implemented under E.O. 12777.

Under a separate MOU pursuant to the OPA, DOI and DOT have divided their respective responsibilities for oil-spill prevention and response according to the definition of ''coast line'' contained in the Submerged Lands Act, 43 U.S.C. 1301(c).

III. Division of Responsibilities

DOI and DOT agree to the following division of off shore pipeline regulatory responsibilities with respect to design, construction, operations, and maintenance regulations for all pipelines in the OCS pursuant to OCSLA. The Appendix contains nine hypothetical cases to illustrate how this MOU would be interpreted in practice.

DOI Responsibilities

1. DOI will establish and enforce design, construction, operation, and maintenance and regulations and investigate significant accidents pursuant to the OCSLA for all pipelines that connect to downstream production or processing facilities in the OCS. The DOI area of responsibility will extend from producing wells to 50 meters (164 feet) downstream from the base of the departing pipeline riser on the last OCS production or processing facility (Cases 1, 7, and 9). Additionally, DOI will have responsibility for the following pipelines:

a. That portion of a pipeline otherwise subject to DOT responsibility that crosses an OCS production or processing facility from 50 meters upstream of the base of the incoming riser to 50 meters downstream of the base of the department riser (Case 2).

b. A pipeline from an OCS producing well or production or processing facility to the first subsea tie-in with a larger-diameter pipeline in the OCS (Cases 3, 7, and 9). However, if the first subsea tie-in with a larger-diameter pipeline is in State waters, DOI responsibility extends to the Federal-State boundary (Case 6).

c. The OCS portion of a pipeline that connects directly to a production well or a production or processing facility in State waters (Cases 4, 8, and 9).

d. The OCS portion of a pipeline from an OCS producing well that connects directly to production or processing facilities located onshore (Case 5).

e. OCS production service and water lines.

2. DOI will consult with DOT during the development of regulatory requirements and will send a copy of each draft notice of proposed rulemaking (NPR) concerning offshore pipelines to DOT for review at least 30 days before the NPR is published in the **Federal Register**. Publication of the NPR by DOI is not contingent upon the concurrence of DOT with the proposal contained in the NPR.

3. Upon approval of right-of-way applications for pipelines under DOT responsibility, DOI will provide copies of its approval letters to DOT. When DOI grants rights-of-way for pipelines which are under DOT responsibility, DOI will condition its approval on the pipelines being designed, constructed, operated, and maintained in compliance with DOT regulations.

4. The DOI will allow DOT to utilize, on a reimbursable basis, DOI-contracted helicopters for the inspection of offshore pipelines, subject to helicopter availability.

5. For pipelines under DOT responsibility, DOI will report to DOT in writing any apparent violation of DOT regulations that is identified during the course of DOI inspections.

DOT Responsibilities

1. DOT will establish and enforce design, construction, operation, and maintenance regulations and investigate significant accidents for all offshore pipelines beginning 50 meters (164 feet) downstream from the base of the departing pipeline riser on the last OCS production or processing facility, except as provided for in paragraphs 1, 1(a), 1(b), 1(c), 1(d), and 1(e) under ''DOI Responsibilities;'' and paragraph 7 under ''Joint Responsibilities.''

2. DOT will consult with DOI during the development of regulatory requirements and will send a copy of each draft NPR concerning offshore pipelines to DOI for review at least 30 days before the NPR is published in the **Federal Register**. Publication of the NPR by DOT is not contingent upon the concurrence of DOI with the proposal contained in the NPR.

3. For pipelines under DOI responsibility, DOT will report to DOI in writing any apparent violation of DOI regulations that is identified during the course of DOT inspections.

Joint Responsibilities

1. DOI and DOT will consult and coordinate all of their respective rulemaking efforts affecting offshore pipelines. Supporting regulatory analyses (e.g., Determination of Effects of Rules, Regulatory Impact Analyses, and information collection burdens, etc.) will also be coordinated, although the analyses will be appropriate for each agency and the industry segments it regulates.

2. DOI and DOT will coordinate all of their respective research and development projects concerning offshore pipelines.

3. DOI and DOT may perform joint inspections of pipeline segments that are subject to both DOI and DOT regulations.

4. DOI and DOT may perform joint or independent investigations of accidents involving offshore pipeline segments that are subject to either or both DOI and DOT responsibility.

5. DOI and DOT will provide each other with any agreement or MOU with any Federal or State agency concerning offshore pipelines.

6. At least once each calendar year, DOI and DOT will jointly review existing standards, regulations, orders, operating practices, and environmental and safety issues concerning offshore pipelines.

7. The DOI and DOT may, through their enforcement agencies, agree to exceptions to this MOU on a facility by facility or area by area basis. Affected parties shall be notified of such exceptions.

IV. Implementation

Within 120 days of the signing of this MOU, DOI and DOT will develop and initiate a joint implementation plan. The plan will take into account differences in the regulatory requirements of DOI and DOT that could cause regulatory conflicts or incompatible requirements for those offshore pipeline segments that are subject to both DOI and DOT jurisdiction.

The respective points of contact for the provisions of this MOU are:

Associate Administrator for Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590

Associate Director for Offshore Minerals Management, Minerals Management Service, Mail Stop 4000, 1849 C Street, NW., Washington, D.C. 20240

Thereafter, DOI and DOT will meet periodically to review and update the joint implementation plan and to review this MOU for any needed revisions.

V. Modification

Either party to this agreement may propose modifications by submitting them in writing to the head of the other Department. No modification may be adopted except with the consent of both parties. Both parties shall indicate their consent to or disagreement with any proposed modification within 60 days of receipt. Upon the request of either party, representatives of both parties shall meet for the purpose of considering modifications to this agreement.

VI. Termination

This MOU may be terminated by either party upon 60-day written notice to the other party.

VII. Administration

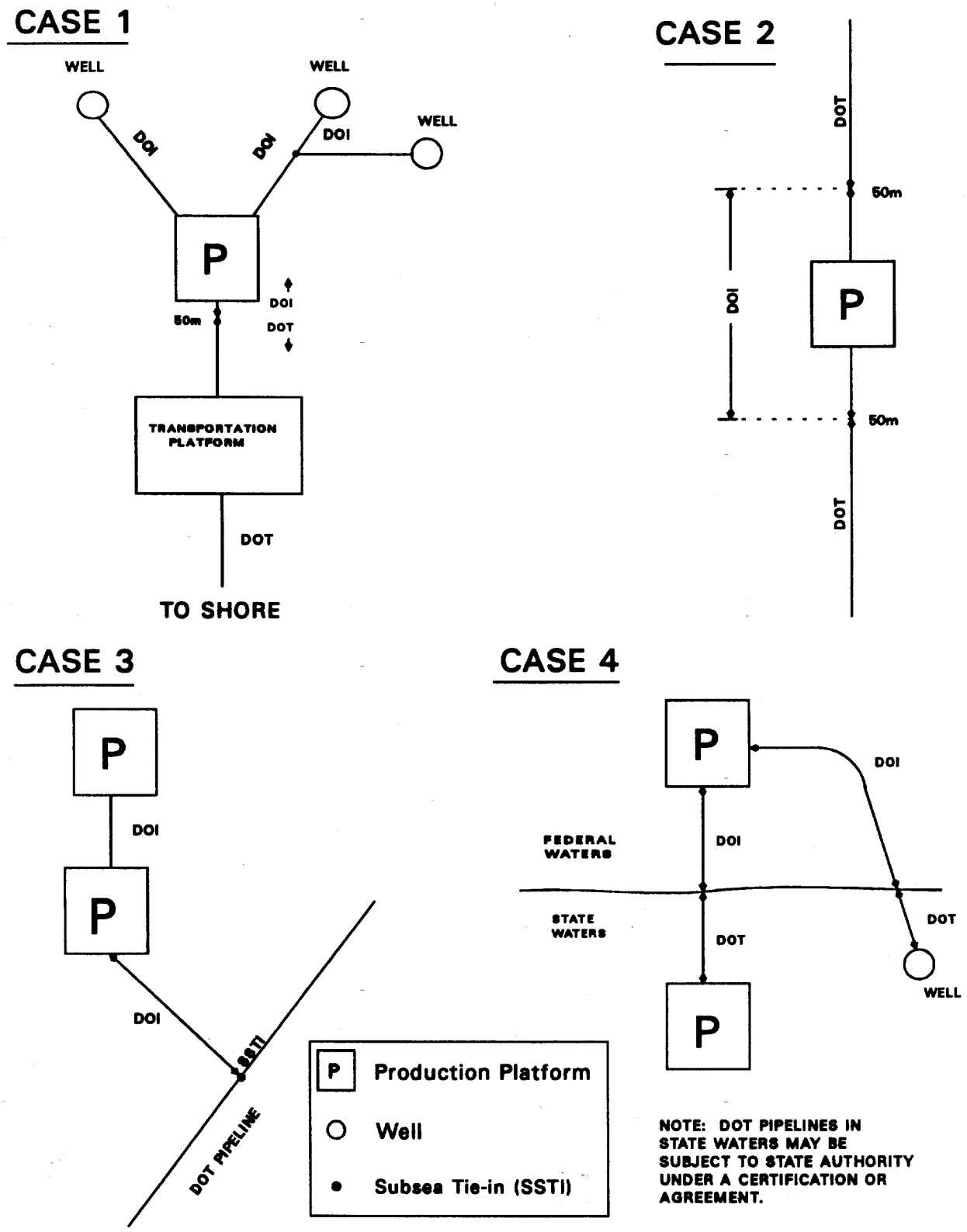
This MOU will be administered by DOI's Minerals Management Service and DOT's Research and Special Programs Administration or such successor agencies as may be designated by the respective Secretaries.

VIII. Effective Date

This MOU is in effect upon signature.

BILLING CODE 4310–MR–M

APPENDIX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CASE 4
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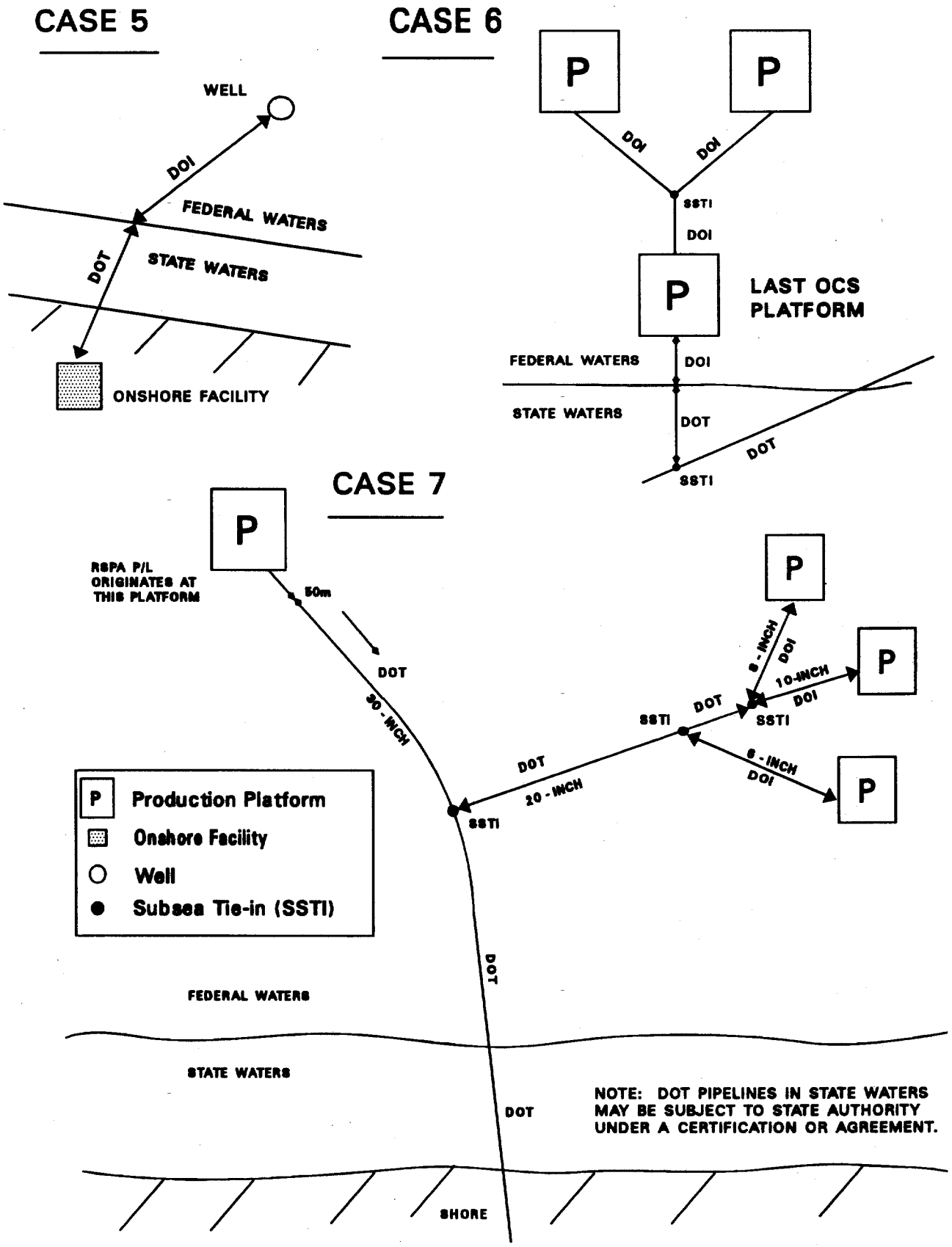
NOTE: DOT PIPELINES IN STATE WATERS MAY BE SUBJECT TO STATE AUTHORITY UNDER A CERTIFICATION OR AGREEMENT.


CASE 5
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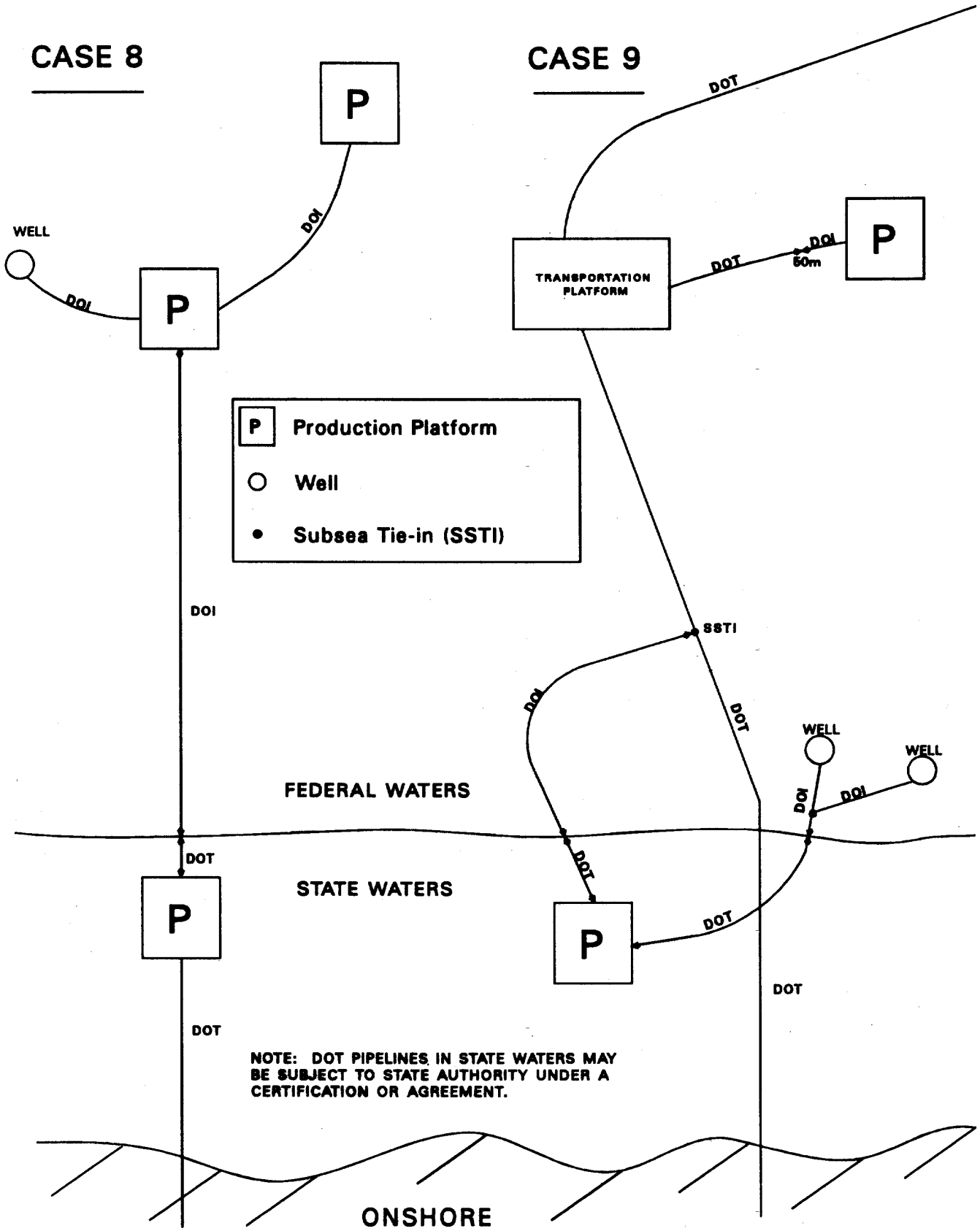
NOTE: DOT PIPELINES IN STATE WATERS MAY BE SUBJECT TO STATE AUTHORITY UNDER A CERTIFICATION OR AGREEMENT.
SHORE



[FR Doc. 95–12633 Filed 5–23–95; 8:45 am]

BILLING CODE 4310–MR–C

DEPARTMENT OF THE INTERIOR

National Park Service

Final Rock Creek Tennis Stadium Environment Impact Statement, Washington, DC

AGENCY: National Park Service (Interior).

ACTION: Notice to distribute the final environmental impact statement.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service (NPS) announces the release of the Final Environmental Impact Statement (FEIS) for the Rock Creek Tennis Stadium. The FEIS presents the NPS preferred alternative for future management and use of the Rock Creek Tennis Stadium. The preferred alternative, Alternative 2, allows for only one professional tennis tournament a year, in addition to amateur and league tennis events. Mitigation to relieve the park and surrounding neighborhood of parking and traffic congestion will be required for every professional tennis tournament. At a minimum, mitigation will include elimination of parking on turf areas in the park, measures to prevent tournament related parking on neighborhood streets, use of remote parking and shuttle buses, and dedication of some existing paved parking areas in the park for shuttle bus loading and storage. No major physical alterations to the park for buses or parking are proposed.

ADDRESSES: For copies of the FEIS, please contact: Superintendent Rock Creek Park, 3545 Williamsburg Lane, Washington, DC 20008. Copies can also be reviewed at the Rock Creek Park Nature Center.

The responsible official is Mr. Robert G. Stanton, Regional Director, National Capitol Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

A final public record of decision will be released stating the NPS selected alternative, environmental mitigation strategies adopted, and the rationale for the decisions no sooner than 30 days from the publication of this notice.

Dated: May 18, 1995.

Terry R. Carlstrom,

Acting Regional Director, National Capital Region.

[FR Doc. 95–12624 Filed 5–23–95; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

Investigation No. 337–TA–375

Certain Clog Style Articles of Footwear; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 18, 1995, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of R. G. Barry Corporation, 13405 Yarmouth Road, N.W., Pickerington, Ohio 43147. A supplement to the complaint dated May 8, 1995 was filed on May 10, 1995. The complaint, as supplemented, alleges a violation of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain clog style articles of footwear by reason of alleged infringement of claims 1–5 of U.S. Letters Patent 5,392,532, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2577.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's Final Rules of Practice and Procedure, 59 Fed. Reg. 39020, 39043 (August 1, 1994).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on May 16, 1995, Ordered That —

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain clog style articles of footwear by reason of alleged infringement of claims 1–5 of U.S. Letters Patent 5,392,532, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—R. G. Barry Corporation, 13405 Yarmouth Road, N.W., Pickerington, Ohio 43147

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Mervyn's, Inc., 25001 Industrial Blvd., P.O. Box 5020, Hayward, CA 94545–2801

S. Goldberg & Co., Inc., 20 E. Broadway, Hackensack, NJ 07601.

(c) Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Room 401K, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Final Rules of Practice and Procedure, 59 FR 39020, 39045 (August 1, 1994). Pursuant to 19 CFR 201.16(d) and 210.13(a) of the Commission's Final Rules, 59 FR at 39045, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this

notice, and to authorize the administrative law judge and the Commission, without further notice to such respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: May 17, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–12728 Filed 5–23–95; 8:45 am]

BILLING CODE 7020–02–P

Investigation No. 731–TA–705 (Final)

Furfuryl Alcohol From Thailand

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–705 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Thailand of furfuryl alcohol, provided for in subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: May 5, 1995.

FOR FURTHER INFORMATION CONTACT: Fred H. Fischer (phone: 202–205–3179; e-mail: fred.fischer@itc.sprint.com), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative final determination by the Department of Commerce that imports of furfuryl alcohol from Thailand are being sold in the United States at less than fair value within the meaning of section 735 of the Act (19 U.S.C. § 1673d). This investigation was requested in a petition filed on May 31, 1994, by counsel on behalf of QO Chemicals, Inc., West Lafayette, IN.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under An Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on May 25, 1995, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on June 13, 1995, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 5, 1995. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 6, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera.*

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § ection 207.22 of the Commission's rules; the deadline for filing is June 6, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is June 21, 1995; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before June 21, 1995. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: May 17, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–12727 Filed 5–23–95; 8:45 am]

BILLING CODE 7020–02–P

Investigation No. 731–TA–725 (Final)

Manganese Sulfate From The People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–725 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China (China) of manganese sulfate, provided for in subheading 2833.29.50 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

[1] The product covered by this investigation is manganese sulfate, including manganese sulfate monohydrate ($MnSO_4 \cdot H_2O$) and any other forms, whether or not hydrated, without regard to form, shape, or size, the addition of other elements, the presence of other elements as impurities, and/or the method of manufacture.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of manganese sulfate from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigation was requested in a petition filed on November 30, 1994, by American MicroTrace Corporation, Virginia Beach, VA.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on September 20, 1995, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on October 3, 1995, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 22, 1995. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 26, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera.*

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is September 27, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is October 12, 1995; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before October 12, 1995. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: May 19, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–12725 Filed 5–23–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–370]

In the Matter of: Certain Salinomycin Biomass and Preparations Containing Same

Notice is hereby given that the prehearing conference in this matter will commence at 10:00 a.m. on June 5, 1995, in Courtroom B (Room 111), U.S. International Trade Commission Building, 500 E St. S.W., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: May 16, 1995.

Sidney Harris,

Administrative Law Judge.

[FR Doc. 95–12726 Filed 5–23–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) Who will be asked or required to respond, as well as a brief abstract;
(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(5) An estimate of the total public burden (in hours) associated with the collection; and,
(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) COPS Standard Hiring Program Application.
(2) COPS 010/01. Office of Community Oriented Policing Services, United States Department of Justice.
(3) Primary=State, Local or Tribal Government, Others=None. The COPS Standard Hiring Program Application is to be used to apply for grants for additional police hiring or to establish new municipal police agencies to address crime and related problems through community policing.
(4) 3200 annual respondents at 5.5 hours per response.
(5) 24,000 annual burden hours.
(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: May 18, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–12657 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–21–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Composite Materials Characterization, Inc.

Notice is hereby given that, on March 27, 1995, pursuant to the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), parties to the Composite Materials Characterization, Inc. (''CMS'') have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in it's membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the Sikorsky Aircraft Division of United Technologies Corporation has been replaced by Sikorsky Aircraft Corporation, a subsidiary of United Technologies Corporation located in Stratford, CT; and Grumman Aerospace Corporation is no longer a member.

No other changes have been made in either the membership, corporate name, or planned activities of the venture. Membership in the project remains open, and the members intend to file additional written notifications disclosing all changes in membership.

On December 18, 1987, CMC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 15, 1988 (53 FR 1074).

The last notification was filed with the Department on June 15, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 19, 1993 (58 FR 38585).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12683 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Computer Integrated Revision Total Hip Replacement Surgery Project

Notice is hereby given that, on February 23, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Computer Integrated Revision Total Hip Replacement Surgery Project, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Integrated Surgical Systems, Inc., Sacramento, CA, and International Business Machines Corporation, Yorktown, NY.

The nature and objective of this joint venture is to develop and clinically demonstrate a computer-integrated

system to assist surgeons in revision total hip replacement surgery.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12680 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Collaboration Agreement Between E.I. Du Pont De Nemours and Company and Cambridge Industries, Inc.

Notice is hereby given that, on February 22, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), E.I. du Pont de Nemours and Company have filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are E.I. du Pont de Nemours and Company, Advanced Material Systems Division, Newark, DE; and Cambridge Industries, Inc., Madison Heights, MI. The general area of collaboration is to develop structural thermoplastic composites for automotive applications at a minimum twenty-five percent reduction in investment cost versus steel and to commercialize high performance composite materials for structural applications in the automotive market in connection with the award by National Institute of Standards and Technology, Department of Commerce under the Advanced Technology Program pursuant to 15 U.S.C. 278n.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 12685 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Engineered Surfaces for Rolling and Sliding Contacts Program

Notice is hereby given that, on March 15, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* (''the Act''), the participants in the Engineered Surfaces for Rolling and Sliding Contacts Program (''ESRSCP'') have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties and the general area of planned activity are: Caterpillar Inc., Peoria, IL; The Timken Company, Canton, OH; General Motors Corporation, Romulus, MI.

The nature and objective of the research program performed in accordance with ESRSCP is to develop the process and material technology base to manufacture engineered surfaces for improved contact fatigue, scuffing, and wear of critical, high technology components such as gears, bearings, and fuel system components.

Information about participation in ESRSCP may be obtained by contacting Phil J. Shankwitz, Caterpillar Inc., Peoria, IL; Harvey P. Nixon, The Timken Company, Canton, OH; or Ron Leachman, General Motors Corporation, Romulus, MI.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12682 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on January 18, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Financial Services Technology Consortium, Inc. (the ''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following parties were admitted as Associate Members of the Consortium: R.D.M. Corporation, Ontario, CANADA; National Semiconductor Corporation, Sunnyvale, CA; Equifax Credit Information Services, Atlanta, GA; and Lifecycle Technology, Fairfax, VA. The following party was admitted as an Advisory Member of the Consortium: Electronic Check Clearing House Organization, Dallas, TX.

No other changes have been made in either the membership or planned activity of the Consortium. Membership remains open, and the Consortium intends to file additional written notifications disclosing all changes in membership.

On October 21, 1993, the Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on December 21, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 13, 1995 (60 FR 18857).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12676 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—''Ultra-Low Emission Engine Program''

Notice is hereby given that, on March 10,1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute (''SwRI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Fuji Heavy Industries, Ltd. and Isuzu Motors, Ltd. have withdrawn their participation; and the period of performance has been extended for one year to September 30, 1995.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On November 13, 1991, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act December 9, 1991, 56 FR 64276.

The last notification was filed with the Department on May 13, 1994. A notice was published in the **Federal**

Register pursuant to section 6(b) of the Act on June 9, 1994, 59 FR 29826.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12675 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Hart Communication Foundation

Notice is hereby given that, on March 16, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Hart Communication Foundation (''HCF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members are: Apparatebau Hundsbach GmbH, Baden-Baden, GERMANY; BESTA AG, Uster, SWITZERLAND; BTG Kalle Inventing AB, Saffle, SWEDEN; Elsag Bailey Process Automation, Warminster, PA; EMCO Flowmeters, Longmont, CO; Fieldbus International AS, Oslo, NORWAY; Helios AG, Therwil, SWITZERLAND; MACTek Corporation, Twinsburg, OH; Magnetrol International, Downers Grove, IL; Milltronics Ltd., Peterborough, Ontario, CANADA; Schlumberger Measurement North America, Greenwood, SC; Valmet Automation Inc., Tampere, FINDLAND; VEGA-Grieshaber KG, Schiltach, GERMANY; MTS System Corporation, Cary, NC; and MESCO Engineering GmbH, Lorrach, GERMANY. The following are no longer members of HCF: Fisher & Porter Company; Oyster Terminal Ltd.; and Prime Technology, Inc.

No other changes have been made in either membership or planned acitvity of the group research project. Membership remains open, and HCF intends to file additional written notification disclosing all changes in membership.

On March 17, 1994, HCF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 5, 1994 (59 FR 23234). The last notification was published in the **Federal Register** pursuant to section 6(b) of the Act on November 17, 1994 (59 FR 59433).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12678 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Health Information Infrastructure Joint Venture

Notice is hereby given that, on March 27, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act), Health Information Infrastructure Joint Venture has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recover of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Andersen Consulting LLP, Chicago, IL; Automation Engineering, Garland, TX; Enigma Logic, Inc., Concord CA; Expersoft Corporation, San Diego, CA; MedicaLogic, Inc., Beavertron, OR; and Medical Records Corporation, Cleveland OH. The general area of planned activity is to design, develop, and the demonstrate key technologies and components of an integrated medical information system, pursuant to a Cooperative Agreement with the Advanced Technology Program administered by the National Institute of Standards and Technology.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12687 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IBACOS, Inc.

Notice is hereby given that, on January 24, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IBACOS, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Carrier Corporation, Syracuse, NY has become a new member of IBACOS. In addition, Honeywell, Inc. has withdrawn membership with IBACOS.

No other changes have been made in either the membership or planned activity of the group research project. Membership remains open and IBACOS, Inc. intends to file additional written notifications disclosing all changes in membership.

On April 6, 1992, IBACOS, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act May 6, 1992, 57 FR 19442.

The last notification was filed with the Department on February 23, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 20, 1994, 59 FR 18829–30.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12684 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Minnesota Mining and Manufacturing, and Solon Consulting Group, Ltd.

Notice is hereby given that, on February 13, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Minnesota Mining and Manufacturing, and Solon Consulting Group, Ltd. have filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Minnesota Mining and Manufacturing, St. Paul, MN; and Solon Consulting Group, Ltd., Silver Spring, MD. The general area of planned activity is to develop technology to define espisodes of treatment for the diseases and conditions found in the enrolled population of typical managed care organizations.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12671 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Automated Highway System Consortium

Notice is hereby given that, on February 7, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), General Motors Corporation has filed on behalf of the National Automated Highway system Consortium (NAHSC) and the Department of Transportation (DOT) written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are General Motors Corporation, Detroit, MI; Parsons Brinckerhoff, Washington, DC; Caltrans, Sacramento, CA; Carnegie Mellon University—Robotics Institute, Pittsburgh, PA; Bechtel, Gaithersburg, MD; Delco Electronics (a subsidiary of General Motors Corporation), Kokomo, IN; Hughes Aircraft Company (a subsidiary of General Motors Corporation), Fullerton, CA; Martin Marietta Technologies In., Littleton, CO; and University of California—Berkeley—PATH, Berkeley, CA. The NAHSC was established in response to a U.S. Department of Transportation (DOT) request for application initiated to implement a provision of the Intermodal Surface Transportation Efficiency Act of 1991. The objective of the resultant cooperative agreement between the NAHSC and DOT is to make major improvements in the safety, productivity and environmental quality of the U.S. surface transportation system. The NAHSC intends to promote enhanced international competitiveness of U.S. industry and encourage the civilian sector to capitalize on decades of public investment in defense technologies, focussing on systems designed feasibility, definition and prototyping of a safe, reliable, cost-effective automated highway system capable of substantially improving throughput, safety and air quality along high-demand travel corridors.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12673 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Management Forum

Notice is hereby given that, on March 14, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Network Management Forum (''the Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damage under specified circumstances. Specifically, the identities of the new members to the venture are as follows: US West Technologies, Inc., Boulder, CO; and Accugraph Corporation, El Paso, TX are Corporate Members. Database Server Systems Limited, Wokingham, Berkshire, UNITED KINGDOM; Korea Telecom, Seoul, KOREA; Legent Corporation, Bellevue, WA; Object Design, Inc., Burlington, MA; and Remedy Corporation, Mountain View, CA are Associate Members. Consultancy & Projects Group, Rome, ITALY; Instituto Costarricense De Electricidad, Miami, FL; ITT-Team Telecom Inc., Givat Shmuel, ISRAEL; and University of Maryland at College Park, College Park, MD are Affiliate Members.

No other changes have been made, since the last notification filed with the Department, in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on October 19, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 16, 1995 (60 FR 9052).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12674 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Consortium for Non-Contact Gauging

Notice is hereby given that, on March 7, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the participants in the Consortium for Non-Contact Gauging (''CNCG''), have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objective of the venture. The notifications were filed for the purpose of extending the protection of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties and its general area of planned activities are: Cleveland Advanced Manufacturing Program, Cleveland, OH; Caterpillar Incorporated, Peoria, IL; Chrysler Corporation, Detroit, MI; CyberOptics Corporation, Minneapolis, MN; Eaton Corporation, Cleveland, OH; GE Aircraft Engines, Cincinnati, OH; GE Corporate Research and Development, Schenectady, NY; the Sheffield Measurement Division of Giddings & Lewis, Dayton, OH; the Industrial Technology Institute, Ann Arbor, MI; NASA Lewis Research Center, Cleveland, OH; the Ohio Aerospace Institute, Cleveland, OH; the Department of Electrical & Computer Engineering of the University of Cincinnati, Cincinnati, OH; Central State University, Wilberforce, OH; and Intelligent Automation Systems, Cambridge, MA. The nature and objective of the research program, performed in accordance with CNCG, is to design and develop a flexible, high-speed, high-accuracy measurement system based on combining a low-resolution pre-inspection system, high-resolution optical sensors, and a precision five-axis positioner with an integrated control system to tie the subsystems together and link to other shop systems. The proposed system is referred to as the Rapid Agile Metrology for Manufacturing (RAMM) system.

Participation in this project remains open. Information regarding participation in the project may be obtained from Eileen Picket, Ohio Aerospace Institute, Cleveland, Ohio.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12670 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Northrop Grumman Corporation Research and Development Venture

Notice is hereby given that, on March 22, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Northrop Grumman Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are: Grumman Aerospace Company, Bethpage, NY (a subsidiary of Northrop Grumman Corporation); The Cyril Bath Company, Monroe, NC; and Massachusetts Institute of Technology, Cambridge, MA. The objective of the venture is to conduct joint research to develop commercially viable technology for reconfigurable tooling for sheet metal forming and other potential low rate production applications for an adaptive factory environment.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12681 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Passive Millimeter Wavelength Camera Technology Reinvestment Project (''PMMWC TRP'')

Notice is hereby given that, on February 1, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. (''the Act''), TRW Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the projects. The notifications were fled for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act; the identities of the parties are: TRW Inc., Redondo Beach, CA; and McDonnell Douglas Aerospace, Long Beach, CA. The nature and objectives of the Passive Millimeter Wave Camera (PMMWC) Consortium is to provide the most advanced and affordable US military systems, and the most competitive commercial products in the global marketplace for the civilian airlines, parcel carriers, fire and rescue, and related industries through the development of a PMMW camera that ''sees'' through weather and projects a TV-like image of the forward scene. To accomplish this objective, a partnership comprised of a radiometric sensor developer and an aircraft manufacturer has been established forming a fully integrated team. This will avoid inefficient duplication of effort and expense while performing research in this area. The Parities intend to cooperate in the collection, exchange and, where appropriate, dissemination of the research results, to work closely with various government and private agencies, and perform further acts allowed by the National Cooperative Research and Production Act that would advance the PMMWC TRP's objectives.

Membership in the venture remains open, and the parties intend to file additional written notifications disclosing all changes in the membership or planned activities.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12679 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on March 1, 1995, pursuant to the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the participants in the Petroleum Environmental Research Forum (''PERF'') Project No. 93–19 have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties and the general area of planned activity are: Amoco Oil Company, Naperville, IL; Marine Spill Response Corporation, Washington, DC; and University of West Florida, Pensacola, FL.

The nature and objectives of the research program performed in accordance with PERF Project No. 93–19 is to determine the effect of bioemulsifers on the bioremediation of open water oil spills.

Information about participation in Project 93–19 may be obtained by contacting David E. Fritz, Amoco Oil Company, Naperville, IL.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12672 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum—Project No. 93–08

Notice is hereby given that, on March 15, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Participants in the Petroleum Environmental Research Forum (''PERF'') Project No. 93-08, titled ''Environmentally Acceptable Thread Compounds'', have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Mobil Research and Development Corporation, Dallas, Texas; Siderca S.A.I.C., Buenos Aires, ARGENTINA; Texaco Inc., Bellaire, Texas; and U.S. Steel Group, Fairfield, Alabama. The general area of planned activity is to investigate and evaluate the behavior and acceptability of certain candidate environmentally acceptable alternative line pipe, casing and tubing (LP–C&T) thread compounds on full-size API tubing. Research and development work required in furtherance of PERF Project No. 93–08 is to be carried out by Centre For Frontier Engineering Research.

Participation in this Project will remain open to any and all interested parties until issuance of the final Project Report, which is presently expected to occur approximately Six (6) months after the Project commences. The participants intend to file additional written notifications disclosing all changes in membership of the group of participants involved in this Project. Information regarding participation in the Project may be obtained from Mobil Research and Development Corporation,

P.O. Box 650232, Dallas, Texas 75265–0232, attention Mr. Thomas E. Becker.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12686 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1943—Unixware Technology Group Inc.

Notice is here given that, on March 28, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), UnixWare Technology Group Inc. (UTG) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specially, the identities of the new members are: Hitachi, Ltd., Atsugi-Shi, JAPAN; Pyramid Technology Corp., San Francisco, CA; Super Computer Inc. Eau Claire, WI; and Sybase Inc., Emeryville, CA.

No other changes have been made in either membership or planned activity of the group research project. Membership remains open and UTG plans to file additional written notification disclosing all changes in membership.

On July 19, 1994, UnixWare Technology Group, Inc., filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 23, 1995 (60 FR 15305).

The last notification was filed with the Department on December 12, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 13, 1995 (60 FR 18858).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12677 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,920]

Goody Products, Inc., Kearney, NJ; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance Operating in the Following States

TA–W–29,920A Alabama
TA–W–29,920B California
TA–W–29,920C Georgia
TA–W–29,920D Florida
TA–W–29,920E Kentucky
TA–W–29,920F Virginia
TA–W–29,920G Ohio
TA–W–29,920H Pennsylvania
TA–W–29,920I New York
TA–W–29,920J North Carolina
TA–W–29,920K Washington
TA–W–29,920L Connecticut
and Opti-Ray, Inc., Farmingdale, New York

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 10, 1994, applicable to all workers of the subject firm. The Notice was published in the **Federal Register** on August 25, 1994 (59 FR 43867). The certification was subsequently amended February 23, 1995, and published in the **Federal Register** March 10, 1995 (60 FR 13180).

The Department is again amending the certification. The Department has received new information from the company that Opti-Ray located in Farmingdale, New York was a subsidiary of Goody Products, and was inadvertently omitted from the original certification. New findings show Opti-Ray distributed sunglasses for Goody Products promotional packages.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports. Accordingly, the Department is amending the certification to include workers at Opti-Ray, Inc., Farmingdale, New York.

The amended notice applicable to TA–W–29,920 is hereby issued as follows:

All workers of Goody Products, Inc., Kearney, New Jersey and operating in the following States: Alabama, California, Georgia, Florida, Kentucky, Virginia, Ohio, Pennsylvania, New York, North Carolina, Washington and Connecticut engaged in employment related to the production and sale of hair barrettes; and all workers of Opti-Ray, Inc., Farmingdale, New York engaged in the sale and distribution of sunglasses, who became totally or partially separated from employment on or after May 18, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 11th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12639 Filed 5–23–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,963]

Goody Products, Inc. Opti-Ray Division Farmingdale, New York; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 24, 1995 in response to a worker petition which was filed on behalf of workers at the Opti-Ray Division of Goody Products, Inc., Farmingdale, New York.

An active certification covering the petitioning group of workers remains in effect (TA–W–30,920I). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 12th day of May, 1995.

Victor J. Trunzo,

Program Manager, Policy, and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12643 Filed 5–23–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,001; TA–W–30,001A]

Jencraft Manufacturing Company, Incorporated Elsa, Texas, et al.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 15, 1994, applicable to all workers of Jencraft Manufacturing Company, Incorporated, located in Elsa, Texas. The notice was published in the **Federal Register** on August 15, 1994 (57 FR 41793).

At the request of the State Agency, the Department examined the certification for workers of the subject firm. New findings show that when Jencraft closed the Elsa, Texas facility on August 1, 1994, the company relocated production to McAllen, Texas. Layoffs are continuing at Jencrafts' McAllen, Texas location.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Jencraft Manufacturing Company, Incorporated, who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,001 is hereby issued as follows:

All workers of Jencraft Manufacturing Company, Incorporated, Elsa, Texas and McAllen, Texas engaged in employment related to the production of mini and vertical blinds who became totally or partially separated from employment on or after June 5, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 11th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12638 Filed 5–23–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,768]

Kelley Oil Corporation Headquartered in Houston, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Operating at Various Locations in the Following States:

TA–W–30,768A New York
TA–W–30,768B Lousisiana
TA–W–30,768C Texas (excluding Houston)

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) The Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 30, 1995, applicable to all workers of Kelley Oil Corporation, headquartered in Houston, Texas and operating at various locations in New York and Louisiana. The notice was published in the **Federal Register** on April 27, 1995 (60 FR 20764).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. Findings show that in addition to the headquarters in Houston, Kelley Oil Corporation operated at various locations within the State of Texas. The Department is amending the certification to cover the Kelley Oil workers within the State of Texas.

The intent of the Department's certification is to include all workers of Kelly Oil Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,768) is hereby issued as follows:

All workers of Kelley Oil Corporation, headquartered in Houston, Texas (TA–W–30,768) and operating at various locations in the following cited States who became totally or partially separated from employment on or after February 7, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–30,768A New York
TA–W–30,768B Lousiana
TA–W–30,768C Texas (excluding Houston)

Signed at Washington, D.C. this 11th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12641 Filed 5–23–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,688]

Union Camp Corp.; Retail Packaging of the Flexible Packaging Division Savannah, GA; Notice of Affirmative Determination Regarding Application for Reconsideration

On April 24, 1995, the union requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers of the subject firm. The denial notice was signed on March 30, 1995 and published in the **Federal Register** on April 27, 1995 (60 FR 20763).

The issue is whether plastic bags are like and directly competitive with paper bags.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 11th day of May, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12640 Filed 5–23–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00420]

ITT Automotive Body Systems Division, Roscommon, MI; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on May 1, 1995, applicable to all workers at the subject firm. The notice will soon be published in the **Federal Register**.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. Findings show workers of ITT Automotive, Body Systems Division, produced tire winches (spare tire holders) and other automotive components. The workers are separately identifiable. Only those workers of ITT's Body Systems Division producing tire winches were adversely affected by the shift in production to a company affiliate facility in Mexico. Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The amended notice applicable to NAFTA–00420 is hereby issued as follows:

All workers of ITT Automotive, Body Systems Division, Roscommon, Michigan engaged in the production of tire winches who became totally or partially separated from employment on or after March 23, 1994 are eligible to apply for NAFTA–TAA Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 11th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12642 Filed 5–23–95; 8:45 am]

BILLING CODE 4510–30–M

LEGAL SERVICES CORPORATION

Audit Guide for LSC Recipients and Auditors

AGENCY: Legal Services Corporation.

ACTION: Proposed guideline.

SUMMARY: The Legal Services Corporation (LSC or Corporation) hereby publishes for comment by interested parties a proposed Audit Guide for Legal Services Corporation Recipients and Auditors (Audit Guide). The Audit Guide will replace the audit portions of both editions of the current Audit and Accounting Guide for Recipients and Auditors (Audit and

Accounting Guide). The Audit Guide will be maintained as a separate document, under the authority of the LSC Office of Inspector General. The accounting and financial reporting requirements of the Audit and Accounting Guide will remain in effect until amended in the future.

The proposed Audit Guide prescribes the use of Government Auditing Standards (GAS or GAGAS), with guidance under Office of Management and Budget (OMB) Circular A–133. The Audit Guide establishes a uniform standard under which recipient audits will be conducted; it simplifies audit requirements by adopting standards that are widely recognized in the federal and nonprofit audit communities; it provides for the effective implementation of recommendations designed to streamline the monitoring of recipients for compliance; and it eliminates the obsolescence of LSC audit requirements that date from the 1980's.

There will be five appendices to the new Audit Guide, which in themselves establish no new rules, regulations or guidelines for recipients.

DATES: Comments should be received in writing on or before June 23, 1995. Late comments will be considered to the extent practicable. Where possible comments should reference applicable paragraph numbers in the proposed revision. To facilitate conversion of the comments in computer format for analysis, respondents are asked to send a copy of the comments on either a 3.5 or 5.25 inch diskette in ASCII format.

ADDRESSES: Comments should be submitted to the Office of Inspector General, Legal Services Corporation, 750 First St., NE., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Karen M. Voellm, Chief of Audits (202) 336–8830.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation Act, Sec. 1009(c)(1) requires that the Corporation either directly ''conduct, or require each grantee, contractor, or person or entity receiving financial assistance'' from the Corporation to provide for an annual financial audit. Historically, the Corporation has chosen to require recipients to provide the audit pursuant to Corporation audit guidance provided in the Audit and Accounting Guide.

On Tuesday, July 30, 1976, the Legal Services Corporation published in the **Federal Register** its Audit and Accounting Guide for Recipients and Auditors (41 FR 29951–29979). Pursuant to section 1008(e) of the Legal Services Corporation Act (42 U.S.C. 2996(g)(c)), the Corporation thereafter requested (41 FR 32794) and received comments from interested persons. The Audit and Accounting Guide became effective on October 4, 1976.

On July 19, 1977, the Corporation published a notice instructing recipients to use the revised Audit and Accounting Guide that had been distributed in June of 1977. (42 FR 37077). The instruction was effective immediately upon publication. There were additional unpublished revisions in September 1979 and 1981 and a separate Fundamental Criteria of an Accounting and Financial Reporting System; each was issued directly to grant recipients.

On February 20, 1985, the Corporation published a notice of availability of a revised Audit and Accounting Guide that had been distributed February 11, 1985. (50 FR 7150). The notice established a ninety-day period for the submission of comments. On November 29, 1985, after adoption by the Corporation's Board of Directors, the final publication of the revised Audit and Accounting Guide appeared in the **Federal Register.** (50 FR 49276). This version of the Audit and Accounting Guide became effective January 1, 1986. Shortly thereafter, however, the Corporation gave recipients the option of using either the September 1981 or the January 1986 version of the Audit and Accounting Guide. Today, recipients are still permitted to follow either Audit and Accounting Guide.

The proposed Audit Guide makes one major change in current standards. All financial statement audits for periods ending on or after December 31, 1995, will be conducted pursuant to GAGAS rather than just the less comprehensive Generally Accepted Audit Standards (GAAS). As a result of the change to GAGAS, much of the detail of the audit portions of the current Audit and Accounting Guides is replaced by reference to the well-established and documented GAGAS.

GAGAS requires auditors, in the conduct of an audit of an entity's financial statements, to plan and design audit procedures to assess compliance with laws and regulations that have a material effect on the financial statements, and to assess the related internal controls. GAGAS also contains requirements relating to the auditor's professional qualifications, the quality of the audit effort, and the contents of meaningful audit reports. GAGAS is widely recognized as audit requirements that provide audit coverage that is broad enough to help fulfill the reasonable needs of potential users of the audit report, and is more comprehensive than the current GAAS requirements of the Corporation's Audit and Accounting Guides. GAGAS standards are the ones that nonprofit organizations receiving federal assistance are required to follow pursuant to the requirements of OMB Circular A–133. Currently, LSC recipients receiving significant amounts of federal funds are already required to arrange for audits conducted under GAGAS, and at least 45% of LSC recipient audits for FY1993 were conducted under GAGAS.

For LSC, for its grant recipients and for Congress, a switch to GAGAS produces a number of benefits.

First, as already noted, the most obvious benefit of GAGAS audits is that a more thorough examination of the recipient's financial activities is made and a more comprehensive report on compliance with laws and regulations and on the maintenance of internal controls is provided to the Corporation and the public. In addition, auditors qualified to perform GAGAS audits are more likely to provide a high quality service than auditors not so qualified. As a result, the recipients' boards of directors and the Corporation will be provided higher quality and more extensive oversight information regarding the activities of local recipients and their staffs. For reasons such as these, GAGAS are the standards deemed by Congress to provide the appropriate level of accountability for audits involving taxpayer funds. Adopting GAGAS demonstrates the Corporation's and recipients' commitment to ensuring high levels of such accountability.

Second, a requirement that recipient annual financial statement audits be done in accordance with GAGAS simplifies the content of the Audit Guide and reduces the resources needed to develop it and keep it up-to-date. With audit requirements defined by the American Institute of Certified Public Accountants (AICPA) (GAAS) and the Comptroller General of the United States (GAGAS), the Corporation needs only to identify for the auditor supplemental, Corporation-specific requirements imposed by the Corporation's Act, appropriations laws or regulations. Along with these savings to the Corporation, recipients will also benefit from simplification; the potential for conflicting audit requirements among varied grant sources will be reduced.

Third, with the advent and development of the Corporation's Office of Inspector General and its special responsibility for and expertise in areas of audit policy, it has become advantageous and prudent to separate

the audit and accounting guidance into two separate Guides and to place authority over the Audit Guide in the OIG. Consistent with the Inspector General Act of 1978, as amended, and with practice throughout the federal government, the OIG will develop Corporation audit policy, establish audit requirements, maintain the Audit Guide and its appendices and review recipient audited financial statements to assure that they meet the standards of the Audit Guide. The Corporation, its recipients and the Congress will all benefit by having expert and centralized audit guidance to refer to.

Fourth, it is arguable that the Corporation is required by the Inspector General Act of 1978, as amended, to adopt GAGAS. Under Section 4 of that Act, the Inspector General is to provide policy direction for Corporation audits and to assure that audits conducted by non-Federal auditors complies with standards established by the Comptroller General, of which GAGAS is a prime example. Moreover, GAGAS are now the standards for audits of substantial amounts of federal funds distributed to nonprofit service providers either directly by federal agencies, or through state and local government intermediaries. The Corporation's special status as a DC private nonprofit corporation distributing funds that are federal in origin may not be a sufficient practical or legal reason to distinguish Corporation audits from other federal audits.

Fifth, the two current Audit and Accounting Guides have both become out of date. Both accounting principles and auditing standards have evolved significantly during the past decade. In addition, the persistence of two versions of the Audit and Accounting Guide, as the result of an unresolved controversy dating to 1986, causes continuing confusion regarding applicable standards and inconsistency in financial reporting by recipients. A new, single Audit Guide will bring the Corporation's audit guidance up to date and eliminate the confusion.

Sixth, in May of 1994, the OIG published its *Audit Report of Grantee Monitoring.* The audit reviewed LSC's performance of its on-site monitoring function. It disclosed, in part, that the former monitoring system duplicated to a large degree the work of the independent public accountants. The audit disclosed that about half of the recommendations made as a result of LSC monitoring dealt with accounting, financial management systems, and internal controls—areas covered in annual audits by the grantees' independent public accountants (IPAs). This duplication was costly and unnecessary. In addition the report noted that monitoring activities were believed to be overly invasive by LSC grantees.

The findings and recommendations of the *Audit Report of Grantee Monitoring,* as well as the obsolescence of LSC's audit guidance, signaled a need to adopt auditing standards that would permit the effective assessment of certain fiscal areas by the IPA as part of the annual audit, as well as promote uniformity in the audits of LSC recipients. Adoption of GAGAS facilitates the implementation of an expanded role in testing and reporting on compliance requirements by recipients' IPAs. For this reason, one of the major recommendations of the performance audit of monitoring—that the Corporation expand its use of IPAs in monitoring—is workable and efficient only if GAGAS are applied to the audits.

There will be five appendices to the proposed Audit Guide. One of the appendices to the Audit Guide will be a new Compliance Supplement which will identify the financial-related regulations that auditors should examine in the course of the recipients' annual audit and will contain suggested audit procedures for the auditor to assess compliance with applicable laws and regulations. The other appendices will include a sample audit agreement, a model format for audited financial statements, the Corporation's pre-existing Fundamental Criteria for an Accounting and Financial Reporting System for LSC Recipients and a Guide for Procurement of Audit Services. Because the appendices themselves establish no new rules, regulations, or guidelines for recipients, they are not published for comment and will be promulgated without formal adoption by the Corporation's Board of Directors.

For the reasons set forth above, LSC proposes the Audit Guide read as follows:

Legal Services Corporation Audit Guide for Recipients and Auditors

Foreword

Under the Legal Services Corporation (LSC) Act, LSC provides financial support to organizations that furnish legal assistance to eligible clients. The Act requires that LSC either conduct or require each recipient of LSC funds to provide for an annual financial statement audit.

In 1976, LSC adopted an Audit and Accounting Guide for Recipients and Auditors of LSC funds. The Audit and Accounting Guide was amended several times through 1981. Then, effective January 1, 1986, a fully revised Audit and Accounting Guide was published, but LSC subsequently declared the 1986 Audit and Accounting Guide to be just an alternative to rather than a binding replacement of the amended original Audit and Accounting Guide.

In 1995, LSC promulgated the following Audit Guide to replace the audit portions of both the original and the 1986 Audit and Accounting Guide. In addition, LSC will attach five appendices to this Audit Guide for use by recipients and auditors.

Appendix A. A Sample Audit Agreement which contains provisions LSC recommends recipients consider incorporating in their audit agreements.

Appendix B. Model Format for Audited Financial Statements and Footnotes.

Appendix C. The Compliance Supplement provides notice to both recipients and their auditors of the general federal requirements and the specific LSC regulations which are to be tested for compliance. The Compliance Supplement will change as LSC rules, regulations and guidelines are adopted, amended or revoked, but it establishes no new rules, regulations or guidelines itself.

Appendix D. The Fundamental Criteria of an Accounting and Financial Reporting System, previously promulgated by LSC. It establishes minimum standards for the elements of an adequate accounting and financial reporting system.

Appendix E. A Guide for Procurement of Audit Services, prepared by the LSC Office of Inspector General (OIG) in the spring of 1994 and revised in 1995. This Guide is intended to assist recipients in planning and procuring audit services.

It is anticipated that the accounting portions of both the original and the 1986 Audit and Accounting Guide will also be replaced in the future.

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Appendix E Guide for Procurement of Audit Services by Legal Services Corporation Recipients

Authorities: The Legal Services Corporation Act of 1974, as amended, sec. 1008(a) and (b),(42 U.S.C.2996g(a) and (b)); sec. 1009(c)(1),(42 U.S.C. 2996h(c)(1)); and sec. 1010(c),(42 U.S.C.2996i(c)); The Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, sec. 4(a)(1); and sec. 4(b)(1).

Introduction

The Office of Inspector General (OIG) of the Legal Services Corporation (LSC) is responsible for establishing and interpreting LSC audit policy pursuant to a resolution adopted by the LSC Board of Directors on May 13, 1995. The OIG will periodically revise the Audit Guide and related audit policies and will review audit reports to ensure compliance with appropriate auditing standards and the policies prescribed by the Audit Guide. The OIG will examine the audits to identify reported control deficiencies, questioned costs and financial-related instances of noncompliance. Program-related findings and issues identified in the review of the audit reports will be forwarded to management for action.

I–1. Purpose

This Audit Guide provides a uniform approach for audits of LSC recipients and describes recipients' financial responsibilities with respect to the audit. The Audit Guide is to be used in conjunction with the Compliance Supplement (Appendix C). The Audit Guide and the Compliance Supplement provide the auditor flexibility in planning and performing the audit, encourage professional judgement in determining the audit steps necessary to accomplish audit objectives, and do not supplant the auditor's judgement of the audit work required in particular situations. The suggested procedures included in the Compliance Supplement do not cover all the circumstances or conditions likely to be encountered during the course of an audit.

I–2. Required Standards and Guidance

Audits of recipients, contractors, persons or entities receiving financial assistance from LSC (all hereinafter referred to as ''recipients'') are to be performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (GAS or GAGAS) issued by the United States General Accounting Office (GAO); Office of Management and Budget (OMB) Circular A–133, Audits of Institutions of Higher Education and Other Not-for-Profit Organizations; and this Audit Guide.

For purposes of OMB Circular A–133, LSC is to be considered a major program. The Compliance Supplement (Appendix C) is to be followed for LSC funds. Accordingly, the OMB Compliance Supplement for Audits of Institutions of Higher Learning and Other Non-Profit Institutions does not apply to LSC programs.

The requirements of the Audit Guide apply to all recipients and subrecipients of LSC funds, except where specific provisions have been otherwise made through grant or subgrant agreements. This Audit Guide is not intended to apply to grants to law schools, universities or other special grants, which are covered by special provisions. Exceptions to these requirements will be determined by the OIG in conjunction with LSC management.

I–3. Authority

This Audit Guide has been prepared under the authority provided by the following sections of the LSC Act and the IG Act:

Records and Reports—LSC Act sec. 1008:

(a) The Corporation is authorized to require such reports as it deems necessary from any recipient, contractor, or person or entity receiving financial assistance under this title regarding activities carried out pursuant to this title.

(b) The Corporation is authorized to prescribe the keeping of records with respect to funds provided by grant or contract and shall have access to such records at all reasonable times for the purpose of insuring compliance with the grant or contract or terms and conditions upon which financial assistance was provided.

Audit—LSC Act sec. 1009(c)(1):

The corporation shall conduct or require each recipient, contractor, or person or entity receiving financial assistance under this title to provide for an annual financial audit.

Recipients' Non-LSC Funds—LSC Act sec. 1010(c):

Non-Federal funds received by the Corporation, and funds received by any recipient from a source other than the Corporation, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds. * * *

Duties and Responsibilities * * *—IG Act sec. 4(a)(1) and 4(b)(1):

4(a) It shall be the duty and responsibility of each Inspector General, with respect to the establishment within which his Office is established—(1) to provide policy direction for and to conduct, supervise, and coordinate audits * * * relating to the programs and operations of such establishment. * * *

4(b)(1) In carrying out the responsibilities specified in subsection (a)(1), each Inspector General shall * * * (C) take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General. * * *

I–4. Effective Date

This Audit Guide is effective for audits of LSC programs for periods ending on or after December 31, 1995.

I–5. Revisions and Supplements to the Guide

The OIG will periodically revise the Audit Guide and its appendices through bulletins or replacement sections. Revisions may reflect changes to corporate regulations, auditing standards, funding requirements, or other published guidelines. Revisions should be incorporated into the recipient's copy of the Audit Guide, and furnished to the IPAs by the recipients. If there are any questions regarding the content of any revisions or supplements, please contact the OIG prior to the audit.

I–6. Cumulative Status of Revisions

Effective date	Description
August 1976	Original Edition of ''Audit and Accounting Guide for Recipients and Auditors'' Issued.
June 1977	Revised Original Edition of Audit and Accounting Guide Issued.
September 1979	Revision to Pages 4–1 and 6–6.
September 1981	Revision to Pages ii, 4–1, 6–6, VIII–3, and addition of Page 4–2.
January 1, 1986	Revised 1986 Edition of Audit and Accounting Guide Effective.

Effective date	Description
August 13, 1986	Regulation 1630 replaces Chapter 4 of both the Original and 1986 Edition of the Audit and Accounting Guide.
December 31, 1995.	Chapter 6 of both Original and 1986 Audit and Accounting Guide replaced by ''Audit Guide.''

I–7. Financial Responsibilities of Recipients

A. Maintain Adequate Accounting System

Recipients, under the direction of their boards of directors, are required to establish and maintain adequate accounting records and internal control procedures. Until revised, guidance with regard to these responsibilities is found in both LSC's Original and 1986 Edition of the ''Audit and Accounting Guide for Recipients and Auditors,'' referred to in I–6, above. An effective financial system should accomplish the following objectives:

1. Resources are safeguarded against waste, loss and misuse;
2. Resources are used consistent with LSC regulations and grant conditions;
3. Management is provided with timely, accurate financial information sufficient to manage the resources of the recipient; and
4. Reporting is reliable and in sufficient detail to demonstrate to funding sources and the general public the recipient's commitment to accountability for the resources with which it has been entrusted.

B. Provide Audited Financial Statements

Recipients are responsible for preparing annual financial statements and arranging for an audit of those statements to be completed within ninety days of the recipient's fiscal year end. The recipients' boards of directors have the final responsibility for the appointment of the auditor. However, consistent with the authority granted in the LSC Act sec. 1009(c)(1), LSC reserves the right to preclude the appointment of an auditor if experience has shown the auditor's work to be unsatisfactory or if a conflict of interest exists.

A written agreement between the recipient and the IPA must be executed and, at a minimum, is to specifically include all matters described in Section II–1 of this Audit Guide (Subsections A through F).

Appendix A is a sample audit agreement that includes the required matters described in Section II–1, and additional provisions that can be used to document the understanding between the recipient and the IPA. Recipients should consider incorporating these additional provisions in their audit.

In connection with the procurement of audit services, recipients should refer to the Guide for Procurement of Audit Services (Appendix E).

II. Audit Performance Requirements

II–1. Audit Requirements

A. Objectives

The primary audit objectives are to determine whether:

1. The financial statements present fairly the financial position and the results of operations in accordance with Generally Accepted Accounting Principles (GAAP);
2. The internal control structure provides reasonable assurance that the institution is managing Corporation funds in compliance with applicable laws and regulations, and controls ensure compliance with the laws and regulations that could have a material impact on the financial statements; and
3. The recipient has complied with applicable provisions of federal law, Corporation regulations and the grant agreement that may have a direct and material effect on its financial statement amounts.

B. Reports

The IPA will prepare the following audit reports:

1. Opinion (or disclaimer of opinion) that the financial statements have been prepared in accordance with GAAP;
2. Report on the Internal Control Structure;
3. Report on Compliance with Laws and Regulations; and
4. A Management Letter, if appropriate.

C. Qualifications of the IPA

The comprehensive nature of auditing performed in accordance with *GAS* places on the IPA the responsibility for ensuring that: (1) the audit is conducted by personnel who collectively have the necessary skills; (2) independence is maintained; (3) applicable standards are followed in planning and conducting audits and reporting the results; (4) the IPA has an appropriate internal quality control system in place; and (5) the IPA undergoes an external quality control review. IPAs must meet the qualifications stated in Government Auditing Standards.

D. Audit Working Papers

The audit working papers will be prepared in accordance with *GAS*, and will be retained by the IPA for at least eight [1] years from the date of the final audit report.

E. Access to Audit Working Papers

The audit working papers will be available for examination upon request by representatives of LSC and the Comptroller General of the United States. The audit working papers will be subject to Quality Assurance Review conducted by the LSC OIG.

F. Disclosure of Irregularities, Illegal Acts and Other Non-Compliance

If, during an audit, matters are uncovered relative to actual, potential, or suspected defalcations, or other similar irregularities, the IPA will comply with SAS Numbers 53 and 54. In addition, the IPA shall notify immediately the Office of Inspector General at (202) 336–8830.

G. Privileged or Confidential Information

GAS paragraphs 5.30 and 5.31 state: Certain information may be prohibited from general disclosure by federal, state, or local laws or regulations. Such information may be provided on a need-to-know basis only by persons authorized by law or regulation to receive it. If such requirements prohibit auditors from including pertinent data in the report, they should state the nature of the information omitted, and the requirement that makes the omission necessary. The auditors should obtain assurance that a valid requirement for the omission exists and, when appropriate, consult with legal counsel.

II–2. Review of Internal Controls

In accepting LSC funds, recipient management asserts that its accounting system is adequate to comply with LSC requirements. As part of the review of internal controls the auditor is required to evaluate the effectiveness of the recipient's accounting system and internal controls. The primary objectives of this evaluation are to ensure that resources are safeguarded against waste, loss and misuse and that resources are used consistent with LSC regulations and grant conditions.

Appendix D is the Fundamental Criteria of an Accounting and Financial Reporting System (Fundamental Criteria). It establishes minimum standards for the elements of an

[1] See GSA General Records Schedule 22, Transmittal No. 3, February 22, 1991.

adequate accounting and financial reporting system. The criteria contained in the Fundamental Criteria should be considered in an auditor's assessment of the recipient's internal control structure. The Fundamental Criteria is in addition to, rather than a substitute for, standard internal control checklists, and does not preclude the exercise of appropriate auditor's judgement in assessing internal controls.

II–3. Assessing Compliance With Laws and Regulations

The requirements set out in the Compliance Supplement (Appendix C) are those that could have a material impact on an organization's financial statements. Accordingly, examination of these compliance requirements are to be included as part of the audit.

The Compliance Supplement specifies the objectives and provides suggested procedures to be considered in the auditor's assessment of a recipient's compliance with laws and regulations. The suggested procedures can be used to test for compliance with laws and regulations, as well as to evaluate the related controls. Auditors should use professional judgement to decide which procedures to apply, and the extent to which reviews and tests should be performed. Some procedures require a review and evaluation of internal controls. If the reviews and evaluations were performed as part of the internal control structure review, audit procedures can be modified to avoid duplication. Auditors should also refer to the grant agreements for additional requirements.

In certain cases non-compliance may result in questioned costs. Auditors are to ensure that sufficient information is obtained to support the amounts questioned. Working papers should adequately document the basis for any questioned costs and the amounts reported.

II–4. Audit Follow-up

Consistent with *GAS* paragraph 4.10, the auditor is required to follow-up on known material findings and recommendations from previous audits that could affect the financial statement audit. The objective is to determine whether timely and appropriate corrective action has been taken. Auditors are required to report the status of uncorrected material findings and recommendations from prior audits. In addition, these requirements are also applicable to findings and recommendations issued in a management letter.

III. Audit Reporting Requirements

III–1. Audit Reports

The IPAs are to issue the reports called for in Paragraph II–1(C) and should follow the requirements of *GAS* and Statement on Auditing Standards (SAS) 74 (and any revisions thereto) for the content and format of the reports.

III–2. Views of Responsible Officials

Consistent with *GAS* paragraph 7.38, auditors should report the views of responsible program officials concerning the auditors' findings, conclusions, and recommendations, as well as corrections planned.

III–3. Report Distribution

Four copies of the audit reports are to be submitted to the LSC OIG within ninety days of the recipient's year end. Under extenuating circumstances, an extension of the ninety-day requirement may be granted. Requests for extensions should be in writing, and directed to the Chief for Audits of the OIG.

IV. Reference Materials

A. Title X—Legal Services Corporation Act of 1974, 42 USC 2996; Pub. L. 93–355, amended by Pub. L. 95–222 and 98–166.
B. 45 CFR Part 1600, *et seq.*
C. *Government Auditing Standards,* issued by the Comptroller General of the United States, 1994 Revision.
D. OMB Circular A–133, Audits of Institutions of Higher Education and Other Non-Profit Institutions.
E. AICPA Professional Standards, Volume I.
F. AICPA Integrated Practice System, Not-For-Profit Organizations Audit Manual.
G. Practitioners Publishing Company *Guide to Audits of Nonprofit Organizations,* Seventh Edition (June 1994).
H. AICPA Statement of Position (SOP) 92–9, *Audits of Not-for-Profit Organizations Receiving Federal Awards,* December 28, 1992.
I. Pursuant to LSC Regulations, 45 CFR 1630.4(g):

The Circulars of the Office of Management and Budget shall provide guidance for all allowable cost questions arising under this part when relevant policies or criteria therein are not inconsistent with the provisions of the Act, applicable appropriations acts, this part, the Audit and Accounting Guide for Recipients and Auditors, and Corporation rules, regulations, guidelines, and instructions.

Among the OMB Circulars which might be referred to if LSC policies are not dispositive:

1. Office of Management and Budget (OMB) Circular A–50 (Revised), *Audit Follow-up.*
2. OMB Circular A–110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.*
3. OMB Circular A–122, *Cost Principles for Nonprofit Organizations.*
4. OMB Circular A–123, *Internal Control Systems.*
5. OMB Circular A–127, *Financial Management Systems.*

Dated: May 19, 1995.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–12764 Filed 5–23–95; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Media Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Advisory Panel (Arts on Radio Section) to the National Council on the Arts will be held on June 6, 1995 from 9 a.m. to 6:30 p.m. on June 6, 1995. This meeting will be held in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m. to 9:15 a.m. for introductory remarks and from 5:30 p.m. to 6:30 p.m. for a guideline and policy discussion.

The remaining portion of this meeting, from 9:15 a.m. to 5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994 this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: May 19, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–12797 Filed 5–22–95; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Services to the Field Section) to the National Council on the Arts will be held on June 8, 1995 from 9:30 a.m. to 4 p.m. This meeting will be held in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9:30 a.m. to 10 a.m. for introductory remarks and a discussion of review criteria.

The remaining portion of this meeting from 10 a.m. to 4 p.m. is for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: May 19, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–12798 Filed 5–22–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974: New System of Records

AGENCY: National Science Foundation.

ACTION: Notice of new system of records and routine uses.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the National Science Foundation is providing notice of a new system of records—NSF–59, ''Science and Technology (STC) Database.''

This system is established and maintained by NSF. The records are to be used to help evaluate the Science and Technology Centers' achievements of program goals, such as diversity of participants and enhancements of skills. Evaluation will include followup surveys of Center participants.

EFFECTIVE DATE: Sections 552a(e) (4) and (11) of Title 5 of the U.S. Code requires that the public have thirty days to comment on the routine uses of systems of records. The new routine uses that are the subject of this notice will take effect thirty days from date of this publication, unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: Written comments should be submitted to the NSF Privacy Act Officer, National Science Foundation, Division of Contracts, Policy and Oversight, 4201 Wilson Boulevard, room 485, Arlington, Virginia 22230.

Dated: May 18, 1995.

Herman G. Fleming,

NSF Privacy Act Officer.

NSF–59

SYSTEM NAME:

Science and Technology Centers (STC) Database.

SYSTEM LOCATION:

Office of Science and Technology Infrastructure, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals participating in NSF funded Science and Technology Center activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the names, SSNs, areas of research, race, ethnicity, genders, and other related information. They may also include the results of followup surveys of Center participants. The records will be used to help evaluate the Centers' achievement of program goals, such as diversity of participants and enhancement of skills. Evaluation will include followup surveys of Center participants. The results of the evaluations will be statistical and will not identify individual participants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from the system may be given to contractors and other individuals who perform a service to or work under a contract, cooperative agreement or other arrangement for the Federal government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All original materials are kept at NSF.

RETRIEVABILITY:

By Center and then alphabetically by individual.

SAFEGUARDS:

Building is locked during non-business hours. Records at NSF are kept in rooms that are locked during non-business hours. Records maintained by NSF contractors are kept in similar rooms and some records are locked in cabinets. Records maintained in electronic forms are accessible only to those employees within the Office of Science and Technology Infrastructure.

RETENTION AND DISPOSAL:

A records retention schedule has not yet been approved.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Office of Science and Technology Infrastructure, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification'' above.

RECORD SOURCE CATEGORIES:

Science and Technology Centers.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 95–12632 Filed 5–23–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

North Atlantic Energy Service Corporation Seabrook Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. NPF–86, issued to North Atlantic Energy Service Corporation (the licensee or North Atlantic), for operation of the Seabrook Station, Unit No. 1 (Seabrook) located in Rockingham County, New Hampshire.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to North Atlantic's application of February 17, 1995. The proposed action would exempt North Atlantic from the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), to the extent that a one-time interval extension would be granted for Type A testing. The interval between the first and second Type A tests in the first 10-year containment inservice inspection period would be extended by approximately 22 months from the November 1995 refueling outage to the September 1997 refueling outage.

The Need for the Proposed Action

The proposed action would permit North Atlantic to defer the Type A test from the November 1995 refueling outage, thereby saving the cost of performing the test and eliminating the test period from the critical path time of the outage. North Atlantic has stated that the exemption request meets the requirements of 10 CFR 50.12, paragraphs (a)(1) and (a)(2)(ii). The historical Type A tests have demonstrated that Seabrook has a low leakage containment. All three Type A tests have been performed without a single failure with as-found leak rates being significantly lower than the acceptance and design limits. The Type B and C testing programs, i.e., the local leak rate tests, are not being modified and will continue effectively to detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. It has been the experience at Seabrook that any significant containment leakage paths are detected by the Type B and C tests and that the Type A test results have only been confirmatory of the results of the Type B and C test results.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed one-time exemption would not increase the probability or consequences of accidents previously analyzed and the proposed one-time exemption would not affect facility radiation levels or facility radiological effluents. North Atlantic has analyzed the results of previous Type A tests performed at Seabrook to show good containment performance and they will conduct the Type B and C local leak rate tests which historically have been shown to be the principal means of detecting containment leakage paths with the Type A tests confirming the Type B and C test results. It is also noted that North Atlantic will perform the visual containment inspection although it is only required by Appendix J to be conducted in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Seabrook Station, Unit No. 1.

Agencies and Persons Consulted

In accordance with its stated policy, on April 11, 1995 the NRC staff consulted with the New Hampshire state official, Mr. George Iverson of the New Hampshire Emergency Management Agency regarding the environmental impact of the proposed action. On April 12, 1995 the NRC staff consulted with the Massachusetts state official, Mr. James Muckerheid of the Massachusetts Emergency Management Agency. The state officials had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see North Atlantic's letter dated February 17, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Exeter Public Library, Fonders Park, Exeter, NH 03833.

Dated at Rockville, Maryland, this 16th day of May 1995.

For the Nuclear Regulatory Commission.

Phillip F. McKee,

Director, Project Directorate I–3 Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–12665 Filed 5–23–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Company; (Comanche Peak Steam Electric Station, Units 1 and 2); Exemption

I

Texas Utilities Electric Company (the licensee) is the holder of Facility Operating License Nos. NPF–87 and NPF–89 for the Comanche Peak Steam Electric Station, Unit Nos 1 and 2 (CPSES) respectively. The operating licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facilities consists of two pressurized water reactors at the licensee's site in Somervell County, Texas.

II

It is stated in 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' paragraph (a), that ''The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.''

It is specified in 10 CFR 73.55(d), ''Access Requirements,'' paragraph (1), that ''the licensee shall control all points of personnel and vehicle access into a protected area.'' It is specified in 10 CFR 73.55(d)(5) that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort * * *'' It also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *''

The licensee proposed to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badges with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated January 16, 1995 (TXX–95012), as supplemented by letters dated March 1 (TXX–95064), and April 3, 1995 (TXX–95089), the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide measures for protection against radiological sabotage provided the licensee demonstrates that the measures have ''the same high assurance objective'' and meet ''the general performance requirements'' of the regulation, and ''the overall level of system performance provides protection against radiological sabotage equivalent'' to that which would be provided by the regulation.

At the CPSES site, unescorted access into protected areas is controlled through the use of a photograph on a combination badge and keycard. (Hereafter, these are referred to as badges.) The security officers at the entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both licensee employees and contractor personnel who have been granted unescorted access are issued upon entrance at the entrance/exit location and are returned upon exit. The badges are stored and are retrievable at the entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges offsite. In accordance with the plant's physical security plan, neither licensee employees nor contractors are allowed to take badges offsite.

Under the proposed system, each individual who is authorized for unescorted access into protected areas would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual enters the badge into the card reader and places their hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template in the access control system to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badges with them when they depart the site and thus eliminate the process to issue, retrieve and store badges at the entrance stations to the plant. Badges do not carry any information other than a unique identification number.

All other access processes, including search function capability, would remain the same. This system would not be used for persons requiring escorted access, i.e., visitors.

Based on a Sandia report entitled, ''A Performance Evaluation of Biometric Identification Devices'' (SAND91–0276 UC–906 Unlimited Release, printed June 1991), and on the licensee's experience with the current photo-identification system, the licensee stated that the false acceptance rate for the hand geometry system is comparable to that of the current system. The biometric system has been in use for a number of years at several sensitive Department of Energy facilities. The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plan for CPSES will be revised to include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges offsite.

The licensee will control all points of personnel access into a protected area under the observation of security personnel through the use of a badge and verification of hand geometry. A numbered picture badge identification system will continue to be used for all individuals who are authorized unescorted access to protected areas. Badges will continue to be displayed by all individuals while inside the protected area.

Since both the badges and hand geometry would be necessary for access into the protected areas, the proposed system would provide for a positive verification process and the potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed

alternative measures for protection against radiological sabotage meet ''the same high assurance objective,'' and ''the general performance requirements'' of the regulation and that ''the overall level of system performance provides protection against radiological sabotage equivalent'' to that which would be provided by the regulation.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, as long as the license uses the hand geometry access control system, the Commission hereby grants Texas Utilities Electric Company an exemption from those requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges upon exit from the protected area such that individuals not employed by the licensee, i.e., contractors, who are authorized unescorted access into the protected area, may take their picture badges offsite.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (60 FR 21835). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of May 1995.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–12666 Filed 5–23–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35734; File No. SR–Amex–95–17]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Regarding Depository Eligibility Requirements

May 18, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 16, 1995, the American Stock Exchange, Inc. (''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by Amex. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to adopt a rule which will set forth depository eligibility requirements for issuers that apply to list their securities on Amex.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex 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 self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, Amex will adopt a uniform depository eligibility rule for issuers that desire to list their securities on Amex. The uniform rule has been developed by the Legal and Regulatory Subgroup of the U.S. working Committee of the Group of Thirty in coordination with each of the national securities exchanges and the National Association of Securities Dealers (''NASD''). It is anticipated that each national securities exchange and the NASD will file rule changes proposing adoption of depository eligibility standards substantially similar to Amex's proposed rule and will seek to make such changes effective contemporaneously with the effective date of the transition from a five-day (''T+5'') to a three-day (''T+3'') settlement cycle. The transition is set to occur June 7, 1995.[3]

The proposed model depository eligibility rule is intended to encourage issuers and underwriters to take the simple steps necessary to make the issuers' securities depository eligible although it is carefully structured so that it will not preclude from listing idiosyncratic securities which cannot be made to meet all depositories' requirements. The proposed rule will require that before any issue of securities of a domestic issuer (excluding American Depository Receipts for securities of a foreign issuer) is listed on Amex, Amex must have received a representation from the issuer that a CUSIP number identifying the securities has been included in the file of eligible issues maintained by a securities depository registered as a clearing agency under Section 17A of the Act.[4] This requirement will not apply to a security if the terms of such security cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories.

The need of syndicate managers to monitor ''flipping'' also has been recognized. As a result, the proposed rule change sets forth additional requirements that must be met before a security will be deemed to be ''depository eligible,'' as such term is used in Part IV, Section 3, Rule 776 of the Amex rules (''book-entry settlement of transactions rule'').[5] The proposed rule specifies different requirements for depository eligiblilty depending upon whether a new issue is distributed by an underwriting syndicate before or after the date a securities depository system is available for monitoring repurchases of the distributed shares by syndicate members (''flipping tracing system'').

Currently, a flipping tracking system is being developed that will include a securities depository service that (i) can be activated upon the request of the managing underwriter for a period of time that the managing underwriter specifies, (ii) in certain circumstances, will require the delivering participant to provide to the depository information sufficient to identify the seller of such shares as a precondition to the processing of book-entry delivery instructions for distributed shares, and (iii) will report to the managing underwriter the identity of any other syndicate member or selling group member whose customer(s) sold distributed shares (but will not report to the managing underwriter the identity of such customer[s]) and, in certain circumstances, will report to such syndicate member or selling group member the identity of such customer(s). Prior to the availability of

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the language in these sections.

[3] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (change of effective date of Rule 15c6–1 from June 1, 1995 to June 7, 1995).

[4] 15 U.S.C. 78q–1 (1988).

[5] Pursuant to Amex's book-entry settlement of transactions rule, trades by a member in depository eligible securities generally must be settled by book-entry through a securities depository.

a flipping tracking system, the managing underwriter may delay the date a security is deemed ''depository eligible'' for up to three months after trading has commenced in the security. After the availability of a flipping tracing system, a new issue will be deemed to be depository eligible upon commencement of trading on Amex.

The proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. That proposed rule change is designed to improve clearing and settlement practices in the industry while reducing risk to investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no 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 thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Amex 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.

Amex has requested accelerated effectiveness of the proposed rule change in order that the rule can become effective on June 7, 1995.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of Amex. All submissions should refer to file number SR–Amex–95–17 and should be submitted by June 14, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12691 Filed 5–23–95; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f(b)(5) (1988).

[7] *Supra* note 3 and accompanying text.

[8] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35735; File No. SR–BSE–95–09]

Self-Regulatory Organizations; Boston Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change Regarding Depository Eligibility Requirements

May 18, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 18, 1995, the Boston Stock Exchange, Incorporated (''BSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by BSE. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BSE proposes to adopt a rule which will set forth depository eligibility requirements for issuers that apply to list their securities on BSE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSE 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 self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, BSE will adopt a uniform depository eligibility rule for issuers that desire to list their securities on BSE. The uniform rule has been developed by the Legal and Regulatory Subgroup of the U.S. Working Committee of the Group of Thirty in coordination with each of the national securities exchanges and the National Association of Securities Dealers (''NASD''). It is anticipated that each national securities exchange and the NASD will file rule changes proposing adoption of depository eligibility standards substantially similar to BSE's proposed rule and will seek to make such changes effective contemporaneously with the effective date of the transition from a five-day (''T+5'') to a three-day (''T+3'') settlement cycle. The transition is set to occur June 7, 1995.[3]

The proposed rule change will require issuers to ensure that securities to be listed on BSE have been included in the file of eligible issues maintained by a securities depository registered as a clearing agency under Section 17A of the Act.[4] This requirement will not apply to a security if the terms of such security cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories.

The proposed rule change sets forth additional requirements that must be met before a security will be deemed to be ''depository eligible,'' as such term is used in Chapter III, Section 7 of the BSE rules (''uniform book-entry settlement rule'').[5] The proposed rule specifies different requirements for depository eligibility depending upon whether a new issue is distributed by an

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the language in these sections.

[3] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (change of effective date of Rule 15c6–1 from June 1, 1995 to June 7, 1995).

[4] 15 U.S.C. 78q–1 (1988).

[5] Pursuant to BSE's uniform book-entry settlement rule, trades by a member in depository eligible securities generally must be settled by book-entry through a securities depository.

underwriting syndicate before or after the date a securities depository system is available for monitoring repurchases of the distributed shares by syndicate members (''flipping tracking system'').

Currently, a flipping tracking system is being developed that will include a securities depository service that (i) can be activated upon the request of the managing underwriter for a period of time that the managing underwriter specifies, (ii) in certain circumstances, will require the delivering participant to provide to the depository information sufficient to identify the seller of such shares as a precondition to the processing of book-entry delivery instructions for distributed shares, and (iii) will report to the managing underwriter the identity of any other syndicate member or selling group member whose customer(s) sold distributed shares (but will not report to the managing underwriter the identity of such customer[s]) and, in certain circumstances, will report to such syndicate member or selling group member the identity of such customer(s). Prior to the availability of a flipping tracking system, the managing underwriter may delay the date a security is deemed ''depository eligible'' for up to three months after trading has commenced in the security. After the availability of a flipping tracking system, a new issue will be deemed to be depository eligible upon commencement of trading on BSE.

The proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The proposed rule is designed to reduce the number of transactions in depository eligible securities for which settlement is effected by the physical delivery of securities. By requiring that transactions between member firms and transactions between member firms and clients that settle on a delivery-versus-payment or receipt-versus-payment basis occur only with rare exceptions in a book-entry environment, the efficiency of the U.S. settlement system will be enhanced and the systemic risk of that system will be reduced.

(B) Self-Regulatory Organization's Statement on Burden on Competition

BSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

BSE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which BSE 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.

BSE has requested accelerated effectiveness of the proposed rule change in order that the rule can become effective on June 7, 1995.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of BSE. All submissions should refer to file number SR–BSE–95–09 and should be submitted by June 14, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12692 Filed 5–23–95; 8:45 am]

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[6] 15 U.S.C. 78f(b)(5) (1988).

[7] *Supra* note 3 and accompanying text.

[8] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35738; File Nos. SR–Amex–95–13, SR–CBOE–95–13, SR–NYSE–95–04, SR–PSE–95–05, and SR–PHLX–95–10]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the New York Stock Exchange, Inc., the Pacific Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc. Relating to Permanent Approval of the Hedge Exemption Pilot Programs

May 18, 1995.

On February 1, 1995, the Chicago Board Options Exchange, Inc. (''CBOE''); on February 3, 1995, the Philadelphia Stock Exchange, Inc. (''PHLX''); on February 21, 1995, the Pacific Stock Exchange, Inc. (''PSE''); on February 28, 1995, the New York Stock Exchange, Inc. (''NYSE''); and on March 14, 1995, the American Stock Exchange, Inc. (''Amex'') (each individually referred to as an ''Exchange'' and two or more collectively referred to as ''Exchanges''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') proposed rule changes seeking permanent approval of the Exchanges' hedge exemption pilot programs.

The proposed rule changes were published for comment in the **Federal Register** on March 28, 1995.[3] No comments were received regarding the Exchanges' proposals.

The proposals filed by the Exchanges seek permanent approval of the Exchanges' pilot programs for exemptions from equity position limits for certain hedged positions.[4] In addition, the proposals filed by the CBOE, the NYSE, and the PSE also seek permanent approval of the Exchanges' pilot programs for position limit exemptions for certain hedged broad-based stock index option positions.[5]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35523 (March 22, 1995), 60 FR 15947.

[4] Position limits impose a ceiling on the aggregate number of options contracts on the same side of the market that can be held or written by an investor or group of investors acting in concert.

[5] Under the equity option hedge exemption pilots, the applicable position and exercise limits can never exceed twice the existing position limit. Under the CBOE's and the PSE's broad-based index hedge exemption pilots, the exempted positions

Continued

In 1988, the Commission approved pilot programs by the Amex, and the PHLX providing exemptions from position limits for certain fully hedged equity option positions.[6] In addition, the Commission approved pilot programs proposed by the CBOE, the NYSE, and the PSE providing exemptions from position limits for certain fully hedged equity option positions and/or stock index option positions.[7] Most recently, the Exchanges' pilot programs were extended through May 17, 1995.[8]

The pilot programs for equity option positions allow an exemption from equity option position and exercise limits for accounts that have established one of the four most commonly used hedged positions on a limited one-for-one basis (*i.e.*, 100 shares of stock for one option contract). The four hedged positions are: (1) Long stock and short call; (2) long stock and long put; (3) short stock and long call; and (4) short stock and short put. Under the equity option programs, the maximum position limit (including the allowed exemptions) may not exceed twice the established option position limit.

The index hedge exemption programs allow public customers to apply for position limit exemptions for positions in broad-based index options that are hedged with Exchange-approved qualified portfolios of stock.[9] Under the broad-based index option hedge exemption program a public customer must receive specific Exchange approval to exceed the position limits by a specified amount before establishing a position in reliance upon the hedge exemption requirements. Under these requirements, a qualified portfolio is comprised of net long or short positions in common stocks or securities readily convertible into common stocks in at least four industry groups and contains at least twenty stocks, none of which accounts for more than 15% of the value of the portfolio. To remain qualified, a portfolio must meet these standards at all times, regardless of trading activity in the stocks.

Subject to the maximum number of exempt option contracts allowed under the Exchanges' broad-based index option hedge exemption programs,[10] the broad-based index option hedge exemption applies to positions in broad-based index options to the extent that the underlying value of the option positions does not exceed the unhedged value of the qualified portfolio. The unhedged value is determined as follows: (1) The value of the net long or short positions for each of the stocks or their equivalents are totaled; and (2) the value of (a) any opposite side of the market calls and puts in broad-based index options, (b) any opposite side of the market positions in stock index futures, and (c) any economically equivalent opposite side of the market positions in other stock index options and in options on stock index futures, is subtracted from the total.

Under the broad-based index option hedge exemption programs, hedge exemption customers agree to, among other things, establish and liquidate options and stock positions or their equivalents in an orderly fashion; not establish or liquidate positions in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes; not establish or liquidate a stock position or its equivalent contemporaneously with the establishment or liquidation of an equivalent broad index stock group option position with a view toward taking advantage of any differential between the prices of the stocks or their equivalents and the options; and liquidate an offsetting portion of the options position prior to or contemporaneously with any decrease in the available hedge value of the qualified portfolio.

Each of the pilot programs allow the underlying hedged positions to include securities that are readily convertible into common stock.[11] Under all of the pilot programs, exercise limits continue to correspond to position limits, so that investors are allowed to exercise, during five consecutive business days, the number of option contracts set forth as the position limit, as well as those contracts purchased pursuant to the pilot program.[12]

The Exchanges believe that the proposed rule changes are consistent with Section 6(b) of the Act, in general, and further the objectives of Section 6(b)(5), in particular, in that they are designed to protect investors and the public interest and to remove impediments to and perfect the mechanism of a free and open market.

The Commission finds that the proposed rule changes seeking permanent approval of the Exchanges' hedge exemption pilot programs are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) thereunder.[13] The Commission concludes, as it did when originally approving each of the pilot programs, that providing for increased position and exercise limits for equity options and broad-based stock index options in circumstances where those excess positions are fully hedged with offsetting stock positions will provide greater depth and liquidity to the market and will allow investors to hedge their stock portfolios more effectively,

may not exceed 75,000 same-side of the market option contracts in a class of broad-based index options. Under the NYSE's broad-based index hedge exemption pilot, the exempted positions may not exceed 125,000 same-side of the market contracts. Unlike the equity option hedge exemption, each exemption to position limits under the broad-based index option hedge exemption must be specifically approved by the Exchange for each customer and each position. *See* CBOE Rule 24.4, ''Position Limits for Broad-Based Index Options,'' Interpretation and Policy .01; NYSE Rule 704, ''Position Limits,'' Supplementary Material .70; and PSE Rule 7.8, ''Terms of Option Contracts,'' Commentary .02.

[6] *See* Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201 (June 2, 1988) (order approving File Nos. SR–Amex–87–13, SR–CBOE–87–27, and SR–PHLX–87–37).

[7] *See* Securities Exchange Act Release Nos. 25738 (May 24, 1988), 53 FR 20204 (June 2, 1988) (order approving File No. SR–CBOE–87–25) (establishing CBOE's stock index option hedge exemption pilot program); 27786 (March 8, 1990), 55 FR 9523 (March 14, 1990) (order approving File No. SR–NYSE–89–09) (establishing NYSE's equity option and stock index option hedge exemption pilot programs); 25811 (June 20, 1988), 53 FR 23821 (June 24, 1988) (order approving File No. SR–PSE–88–09) (establishing PSE's equity option hedge exemption pilot program); 32900 (September 14, 1993), 58 FR 49077 (September 21, 1993) (order approving File No. SR–PSE–92–38) (extending PSE's stock index option hedge exemption pilot program); and 32903 (September 14, 1993), 58 FR 49068 (September 21, 1993) (order approving File No. SR–CBOE–91–44) (extending the CBOE's index option hedge exemption program).

[8] *See* Securities Exchange Act Release Nos. 34986 (November 18, 1994) 59 FR 60856 (November 28, 1994) (order approving File Nos. SR–Amex–94–49, SR–CBOE–94–41, SR–PSE–94–33, and PHLX–94–53); and 85194 (January 5, 1995), 60 FR 2800 (January 11, 1995) (order approving File No. SR–NYSE–94–47).

[9] The CBOE's broad-based index hedge exemption program does not apply to A.M.-settled, European-style Standard & Poor's (''S&P'') 500 Index options and Quarterly Index Expiration options on the S&P 500.

[10] *See* note 5, *supra.*

[11] The Commission expects the Exchanges to determine on a case-by-case basis whether an instrument that is being used as the basis for an underlying hedged position is readily and immediately convertible into the security underlying the corresponding option position. In this regard, the Commission finds that an instrument which will become convertible into a security at a future date, but which is not presently convertible, is not a ''convertible'' security for purposes of the equity option position limit hedge exemption until the date it becomes convertible. In addition, if the convertible security used to hedge an options position is called for redemption by the issuer, the security would have to be converted into the underlying security immediately or the corresponding options position reduced accordingly. *See, e.g.,* Securities Exchange Act Release No. 32903, *supra* note 7.

[12] Exercise limits prohibit the exercise by an investor or group of investors acting in concert of more than the number of options contracts specified in the position limit rule within five consecutive business days.

[13] 15 U.S.C. § 78f(b)(5) (1988 & Supp. V 1993).

without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options market or the underlying stock market.

In this regard, the Commission notes that the Exchanges' hedge exemption programs have operated on a pilot basis since 1988 and that the Exchanges have not experienced any significant difficulties with the pilots since their inception or observed any market disruptions resulting from the increased positions. In addition, the Exchanges have submitted reports to the Commission describing, among other things, the frequency with which the exemptions have been utilized, the types of investors using the exemptions, the size of the positions assumed pursuant to the programs, and the market impact of the programs. The reports indicate that the Exchanges have not observed any negative impact on their markets as a result of the hedge exemption programs. Finally, the Exchanges have established surveillance procedures designed to monitor compliance with the position limit hedge exemption programs. The Commission expects the Exchanges to continue to monitor utilization of the hedge exemptions to ensure compliance with the programs' requirements.

With regard to the equity option hedge exemption, the Commission believes, as it has concluded in the past,[14] that the exemption will not disrupt the options or equity markets or substantially increase the possibility of manipulation in the underlying stocks or options. In this regard, the Commission notes that the position and exercise limit exemption is limited to accounts that have established one of four hedged positions. Moreover, market disruption concerns are lessened because any option positions in excess of current position limits must be hedged fully with an offsetting stock position on a one-for-one basis; thus, the holder of the options position would not be required to enter the market to buy or sell the stock if the options were exercised or assigned. The Commission also believes that a maximum position of double the existing position and exercise limits will help to ensure that any potential market disruptions are minimal.

With regard to the broad-based index option hedge exemption programs, the Commission believes, as it has concluded previously,[15] that the programs will allow more effective hedging of stock portfolios and may increase the depth and liquidity of the stock index options market. In this regard, public customers with long or short stock portfolios (or instruments convertible into such securities) will be able to utilize the broad-based index hedge exemption, thereby making an alternative hedging technique more available to such customers and facilitating their use of index options to hedge their portfolios, rather than financially equivalent index futures products.

As noted above, the broad-based index option hedge exemption applies only to public customers and each request for the exemption must be specifically approved by the appropriate Exchange. This should ensure that the hedges are appropriate for the position being taken and in compliance with Exchange rules.

In addition, the Commission notes that the broad-based index option hedge exemptions have additional safeguards that will make it difficult to use the exempted positions to disrupt or manipulate the market. In this regard, the qualified stock portfolio must be broad-based, and correspond in value to the value of the options hedge so that the increased positions could not be used in a leveraged manner. Both the options and stock positions must be initiated and liquidated in an orderly manner. The requirement that a reduction in the options position must occur at or before the corresponding reduction in the stock portfolio position should ensure that the stock transactions are not used to impact the market so as to benefit the options position. Moreover, because the exemption may not be used for arbitrage in stock baskets and overlying stock index options, the broad-based index option hedge exemption should not exacerbate stock market volatility. Finally, the Commission notes that the index option hedge exemption applies only to options on broad-based indexes, where the potential for manipulation is minimal and thus regulatory concerns are decreased.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule changes (SR–Amex–95–13, SR–CBOE–95–13, SR–NYSE–95–04, SR–PSE–95–09, and SR–PHLX–95–10) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12690 Filed 5–23–95; 8:45 am]

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[14] *See* Securities Exchange Act Release No. 25738, *supra* note 6.

[15] *See* Securities Exchange Act Release Nos. 32903 and 32900, *supra* note 7.

[16] 15 U.S.C. 78s(b)(2)(1982).

[17] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35725; File No. SR–CBOE–95–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Telephones at the S&P 100 Index Option Trading Post on the Floor of the Exchange

May 17, 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 12, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 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 CBOE proposes to treat as a rule of the Exchange the conditions governing the use of member-owned and Exchange-owned telephones located at the S&P 100 Index option (''OEX'') trading post on the floor of the Exchange. The text of the proposed rule change is available at the Office of the Secretary, the CBOE, 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 CBOE included statements concerning the purpose of and basis for 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

The purpose of the proposed rule change is to apply the policy currently governing the use of telephones at

equity option trading posts[1] to the member-owned or Exchange-owned telephones at the OEX trading post on the floor of the Exchange. With the exception of the prohibition on the use of telephone at the OEX trading posts to receive incoming calls, the Exchange represents that the telephone policy described below is substantively identical to the policy approved by the Commission for the use of telephones at equity option trading posts on the floor of the CBOE.[2]

Exchange Rule 6.23 prohibits members from establishing or maintaining any telephone or other wire communications between their offices and the Exchange floor, and it authorizes the Exchange to direct the discontinuance of any communication facility terminating on the Exchange floor. Pursuant to Rule 6.23, the Exchange is instituting this policy for use at the OEX trading post. The Exchange believes that the proposed rule change will allow market-makers to obtain and transmit information more efficiently which may result in benefits to investors by improving the execution of orders.

The proposed rule change also imposes user fees on members who are approved to use Exchange-installed telephones located at the OEX trading post. This action is being taken pursuant to CBOE Rule. 2.22, which permits the Exchange to impose fees on members for the use of Exchange facilities or for any services or privileges granted by the Exchange.

As with the use of telephones at the equity trading posts, the Exchange has determined to file this policy for the use of telephones at the OEX trading post and make it a formal rule of the Exchange. Accordingly, the Exchange undertakes that it will surveil for violations of the policy and that members will be subject to formal disciplinary proceedings for violations of the policy. The conditions imposed by the Exchange's policy include:

1. The telephones may not be used to receive orders, although quotes that have been publicly disseminated pursuant to CBOE Rule 6.43 may be provided.

2. Members may give their clerks their PIN access code. Although both members and clerks may use the telephones, members will have priority. Each member will be responsible for all calls made using that Member's PIN access code.

3. Headsets will not be permitted on the telephones in the OEX post pit. Portable or cellular telephones also will not be permitted.

4. Clerks will not be permitted to establish a base of operations utilizing telephones at the OEX post.

5. Members and their clerks using the telephones consent to the Exchange requiring that any telephone or line be subject to tape recording.

6. The telephones will be used for voice service only. Data services (PC's, fax, etc.) will remain subject to Exchange consent under a separate program.

7. Incoming calls are not permitted on the telephones at the OEX post. There will be no restrictions on where a Member may call.

Upon the approval of these conditions as rules of the Exchange, the Exchange will publish a Regulatory Circular, substantially in the form filed by the CBOE with the Commission, in order to inform members that these conditions are rules, and that violations may lead to disciplinary proceedings.

By restricting floor telephones to hard-wired devices only and not allowing cellular, portable, or headset telephones, the Exchange believes it will better be able to monitor and control telephone usage on the floor. In addition, the Exchange believes that currently available technology would not permit a large number of portable or cellular telephones to be used in the environment of the trading floor without significant deterioration or interruption of service.

As with the use of telephones at the equity trading posts, the Exchange intends to police compliance with these conditions by means of its customary floor surveillance procedures, including reliance on surveillance by floor officials and Exchange employees. In addition, the Exchange has in place a surveillance sharing agreement with the Chicago Mercantile Exchange (''CME'') whereby transaction information is continually made available to the CBOE regarding futures transaction activity by CBOE members that is above certain defined parameters. In addition, the Exchange also receives surveillance information through its participation in the Intermarket Surveillance Group (''ISG'').[3]

Because the telephone policy does not restrict where a member may call, the telephones may be used to place orders in equity of futures markets,[4] which raises the possibility of orders being entered based on non-public information. Because the S&P 100 index, on which OEX options are based, is a capitalization-weighted index of 100 different ''blue chip'' stocks, however, the Exchange believes that non-public information is not likely to be significant in predicting future changes in the value of the OEX. In any event, the Exchange believes that the surveillance procedures it has in place will detect and deter any attempts at manipulation through the using of OEX options.

The fees the Exchange will charge for the use of the telephones will generally be the same as those charged for the use of telephones at the equity option trading posts. Specifically, local calls over Exchange telephones will be charged at 10 cents per minute. Long distance calls over Exchange telephones will be charged at a rate 25% greater than the Exchange's direct costs. In addition, the Exchange will charge a $5 monthly fee for the use of the telephones located at the OEX trading post.

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that the proposal is designed to improve communications to and from the Exchange's trading floor in a manner that prevents fraudulent and manipulative acts and practices, promotes just and equitable principles of trade, perfects the mechanism of a free and open market, and protects investors and the public interest.

In addition, the Exchange believes the proposed rule change with respect to

[1] *See* Securities Exchange Act Release No. 33701 (March 2, 1994), 59 FR 113336 (March 10, 1994).

[2] *Id.*

[3] The ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the American Stock Exchange, Inc.; the Boston Stock Exchange, Inc.; the CBOE; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc. (''NASD''); the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[4] This telephone policy also allows members to use the floor telephones located at the OEX trading post for the purpose of providing quotations on OEX options. In use telephones for this purpose, the CBOE represents that members may only provide quotations that have been publicly disseminated pursuant to CBOE Rule 6.43.

the fees to be charged by the CBOE in connection with the telephones located at the OEX trading post is consistent with Section 6(b)(4) of the Act in that it is designed to provide for the equitable allocation of reasonable dues, fees, and charges among CBOE members.

(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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from May 12, 1995, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.[5]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–15 and should be submitted by June 14, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12693 Filed 5–23–95; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 240.19b–4(e)(6) (1994).

[6] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35736; File No. SR–DTC–95–08]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees Charged for Various Services

May 18, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 25, 1995, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. 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 purpose of the proposed rule change is to adjust DTC's fee schedule for various services.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change, which will be effective for services provided on and after May 1, 1995, is to adjust the fees charged for various services to bring them closer to or to their respective estimated service costs for 1995.

Continuing DTC's annual practice of aligning service fees with estimated service costs, DTC's Board of Directors completed a review of its unit service costs for 1995 and adjusted many DTC service fees accordingly. The 1995 fee schedule has been set to yield $11.4 million less in operating revenue on an annual basis than the 1994 fee schedule would have yielded. This will mark the ninth consecutive year in which DTC has not had to increase its overall schedule of service fees to users. Moreover, for the fourth consecutive year a significant fee reduction will be implemented.[4]

Section 17A(b)(3)(D) of the Act[5] requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(D) of the Act because its new fee schedule allocates its fees more equitably among its participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

DTC informed participants and other users of its services of the proposed fee

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The revised fee schedule is available for review in the Annex to Exhibit A of File No. SR–DTC–95–08. The file is available for review in the Commission's Public Reference Room and at the principal office of DTC.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] While some service fees were increased, others remained unchanged or were decreased making the net result an overall decrease in service fees. Telephone conversation between Piku Thakkar, Attorney, DTC, and Margaret J. Robb, Attorney, Division of Market Regulation, Commission (April 27, 1995).

[5] 15 U.S.C. 78q–1(b)(3)(D) (1988).

revisions by a memorandum dated March 10, 1995, entitled ''1995 Revisions of DTC Service Fees.'' Because participants have supported cost-based fees in the past and because overall the subject fee changes are modest, DTC believes that a formal period for participant comment was not necessary this year.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[6] of the Act and Rule 19b–4(e)(2)[7] thereunder because the rule change establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–95–08 and should be submitted by June 14, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12699 Filed 5–23–95; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[7] 17 CFR 240.19b–4(e)(2) (1994).

[8] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35724; File No. SR–CSE–95–04]

Self-Regulatory Organizations; The Cincinnati Stock Exchange Incorporated; Order Approving Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

May 17, 1995.

On April 4, 1995, The Cincinnati Stock Exchange Incorporated (''CSE'') filed a proposed rule change (File No. SR–CSE–95–04) with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on April 17, 1995, to solicit comments from interested persons.[2] The Commission did not receive any comments. As discussed below, this order approves the proposed rule change.

I. Description

In October 1993, the Commission adopted Rule 15c6–1 under the Act which will become effective June 7, 1995.[3] The rule establishes three business days after the trade date (''T+3''), instead of five business days (''T+5''), as the standard settlement cycle for most securities transactions. Several of the CSE's rules are interrelated with the standard settlement time frame. The purpose of the proposed rule change is to amend CSE's rules in order that they are consistent with a T+3 settlement standard for securities transactions.

The following changes to CSE rules are needed to implement the new settlement standard established by Rule 15c6–1. Rule 3.8(b)(1)(iii) will require that members receive reasonable assurance from the customer that a security will be delivered within three business days of the execution of the order. Rule 3.8(b)(2) will require that members note on order tickets that the customer has the ability to deliver stock within three business days. Rule 11.4 will provide that transactions in stocks (other than those made for ''cash'') shall be ''ex-dividend'' or ''ex-rights'' on the second business day preceding the record date fixed by the company or the date of the closing of transfer books except when the Board of Trustees of CSE rules otherwise. When the record date or closing of transfer books occur upon a day other than a business day, transactions in stocks shall be ''ex-dividend'' or ''ex-rights'' on the third preceding business day.

CSE has requested that the proposed rule change become effective on the same date as Rule 15c6–1, which will be June 7, 1995. The transition from five day settlement to three day settlement will occur over a four day period.[4]

II. Discussion

The Commission believes the proposal is consistent with the requirements of Section 6 of the Act.[5] Specifically, Section 6(b)(5) states that the rules of the exchange must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information. On June 7, 1995, the new settlement cycle of T+3 will be established, as mandated by the Commission's Rule 15c6–1. As a result, the CSE's current rules based on a T+5 settlement cycle will be inconsistent with this rule. This proposal will amend the CSE's rules to harmonize them with the Commission Rule 15c6–1 and with a T+3 settlement cycle.

In addition, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it protects investors and the public interest by reducing the risk to clearing corporations, their members, and public investors which is inherent in settling securities transactions. The reduction of the time period for settlement of most securities transactions will correspondingly decrease the number of unsettled trades in the clearance and settlement system at any given time. Thus fewer unsettled trades will be subject to credit and market risk.[6]

IV. Conclusion

For the reasons stated above, the Commission finds that CSE's proposal is consistent with Section 6 of the Act.[7]

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 35580 (April 7, 1995), 60 FR 19312.

[3] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adopting Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (changing effective date from June 1, 1995, to June 7, 1995).

[4] Friday, June 2, will be the last trading day with five business day settlement. Monday, June 5, and Tuesday, June 6, will be trading days with four business day settlement. Wednesday, June 7, will be the first trading day with three business day settlement. As a result, trades from June 2 and June 5 will settle on Friday, June 9. Trades from June 6 and June 7 will settle on Monday, June 12.

[5] 15 U.S.C. 78f (1988).

[6] The release adopting Commission Rule 15c6–1 stated, ''[T]he value of securities positions can change suddenly causing a market participant to default on unsettled positions. Because the markets are interwoven through common members, default at one clearing corporation or by a major market participant or end-user could trigger additional failures resulting in risk to the national clearance and settlement system.'' Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

[7] 15 U.S.C. 78f (1988).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–CSE–95–04) be and hereby is approved, effective June 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12697 Filed 5–23–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35732; File No. SR–NASD–94–9]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change to Provide Non-member Viewing Access to SelectNet and that the Transmission of Broadcast Orders Through SelectNet be Solely on an Anonymous Basis

May 18, 1995.

I. Introduction

On January 30, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The NASD seeks to amend SelectNet in two ways: (a) to provide real-time access to non-members to view all ''broadcast'' orders in SelectNet; and (b) to provide that the transmission of broadcast orders through SelectNet be solely on an anonymous basis.

Notice of the proposed rule change appeared in the **Federal Register** on April 28, 1994[3] and March 7, 1995.[4] The Commission received letters from four commenters in response to the NASD's proposal. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Background

Originally referred to as the Order Confirmation Transaction Service (''OCT'') and approved by the Commission in January 1988,[5] the NASD developed SelectNet in response to the difficulties experienced in the Nasdaq market during the market break of October 1987. SelectNet is an electronic screen-based order routing system allowing market makers and order-entry firms (collectively referred to as ''participants'') to negotiate securities transactions in Nasdaq securities through computer communications rather than relying on the telephone.

To enter an order in SelectNet, a participant enters the normal trade information: security symbol, side (buy or sell), transaction size, and price. Participants may enter orders priced at, above or below the inside bid or ask and, thus, SelectNet offers the opportunity to negotiate for a price superior to the current inside quote. In addition, participants may provide that an order or counter-offer will be in effect for anywhere from 3 to 99 minutes, specify a day order, or indicate whether price or size are negotiable or whether a specific minimum quantity is acceptable. Participants may accept, counter, or decline a SelectNet order. In the event that a participant elects to counter an offer, the service allows negotiations to be conducted between the participants by exchanging counter-offers until an agreement is reached. Once agreement is reached, the execution is ''locked-in'' and reported to the tape.

Through SelectNet, participants may either direct an order to a particular market maker in the security, broadcast to all market makers in the security, or broadcast to all participants watching a particular security (a feature known as ''all call''). The participants then may negotiate the terms of the order through counter-offers entered into the system. SelectNet's default setting provides anonymity for broadcast orders. However, a participant currently entering a broadcast order may elect to identify itself. After an anonymous broadcast order is executed, each participant to the transaction learns the identity of the other. In contrast, directed orders always display to the receiving participant the identity of the participant entering the order.

III. Description of the Rule Change

The NASD seeks to modify SelectNet in two ways. First, it proposes to permit non-member viewing access to orders broadcast through SelectNet. Second, the NASD proposes to require that broadcast orders be entered on an anonymous basis only.

A. Non-member Viewing Access to Broadcast Orders

Under the NASD's proposal, non-members will be permitted to view on a real-time basis all orders broadcast through SelectNet. Specifically, non-members will be able to view all unexecuted broadcast SelectNet orders, including the security name, the side of the order (buy or sell), the quantity available, the order price, the original size of the order, the outstanding portion, and the duration of the order (from 3 to 99 minutes or all day). The NASD will provide this information via the Level 2 Nasdaq Workstation service, to which non-members may subscribe. In addition, the NASD will provide a data feed of the broadcast SelectNet information to data vendors who in turn may provide the information to non-members. Under either alternative, dissemination of SelectNet information will be provided on a real-time basis.

Non-members, however, will not be permitted to interact through SelectNet with the order or be provided access to orders directed from one participant to another. Moreover, because the NASD's proposal will restrict all broadcast orders to an anonymous basis, neither members nor non-members will be able to determine the identity of the participant entering a broadcast order.

B. All Broadcast Orders will be on an Anonymous Basis

As currently configured, SelectNet allows a participant broadcasting an order to elect either to identify itself or to send the order anonymously. Under this proposal, however, participants will be limited to entering broadcast orders on an anonymous basis.[6] If two firms begin negotiating the terms of a broadcast order, however, the participant that entered the order may choose to identify itself to the contra side.

IV. Comments

As noted above, the Commission received letters from four commenters in response to the proposal. Three of the commenters addressed the proposal to provide non-member viewing access, with one of these commenters supporting the proposal and the other two opposing it; the fourth commenter

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[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Securities Exchange Act Release No. 33938 (Apr. 20, 1994), 59 FR 22033 (Apr. 28, 1994) (notice of original proposal and Amendment No. 1).

[4] Securities Exchange Act Release No. 35428 (Feb. 28, 1995), 60 FR 12583 (Mar. 7, 1995) (notice of Amendment No. 2).

[5] Securities Exchange Act Release No. 25263 (Jan. 11, 1988), 53 FR 1430 (Jan. 19, 1988) (order approving SelectNet, previously referred to as the Order Confirmation Transaction Service, on a temporary, accelerated basis). *See also,* Securities Exchange Act Release No. 25523 (Mar. 28, 1988), 53 FR 10965 (Apr. 4, 1988) (order extending temporary approval of SelectNet); Securities Exchange Act Release No. 25690 (May 11, 1988), 53 FR 17523 (May 17, 1988) (order granting permanent approval of SelectNet).

[6] In contrast, directed orders will continue to identify the participant transmitting an order to another participant.

expressed opposition to the proposal to require anonymity for broadcast orders. The NASD responded to these comments in Amendment No. 2[7] and by a letter dated April 8, 1995.[8]

Commenters responding to the NASD's original proposal criticized it because it would have limited non-member viewing access to Nasdaq WorkStation Level 2 subscribers.[9] These commenters argued that the NASD should provide this access through a vendor data feed. In response, the NASD amended its filing to provide to vendors a separate data feed of broadcast orders.[10]

The NYSE and American Stock Exchange (''Amex'') generally opposed the proposal because of their concerns about the broader policy issues surrounding SelectNet. Specifically, the NYSE and Amex argue that ''orders'' entered in SelectNet are actually quotations for purposes of the Quote Rule[11] and, therefore, the NASD should include them for dissemination in the calculation of the best bid and offer.[12] In response, the NASD argues that SelectNet orders lack the characteristics that trigger an obligation to include an order in the calculation of the best bid or offer in a Nasdaq security. Specifically, the NASD contends that unlike quotes, SelectNet orders are generally limited in duration[13] and subject to price and size negotiation. The NASD concludes that classifying SelectNet orders as ''indications of interest'' would be more appropriate than treating them as bids or offers.[14] Moreover, the NASD argues that reassessing whether market maker orders broadcast through SelectNet should be reflected in the market maker's quote would necessarily include a similar assessment concerning market maker orders entered in Instinet.

One commenter opposed the NASD's proposal to modify the operation of SelectNet to provide that all broadcast orders be entered anonymously.[15] This commenter argued that it identifies itself regularly with the hope that market makers will contact it to negotiate the order further. This commenter noted that it often wishes to be associated with certain buy or sell interest and that, paradoxically, the NASD's proposal to provide more information to non-members will result in less information to members.

In response, the NASD reiterated the two concerns set forth in its original filing as the basis for the proposal. First, the NASD believes that orders entered on an anonymous basis will act to maintain the incentives for dealers to continue to make markets that provide needed liquidity. The depth and liquidity of the Nasdaq market is dependent upon the presence of market makers who, among other duties, are required to maintain firm, continuous, two-sided quotations and participate in automated execution systems.[16] The NASD is concerned about allowing order-entry firms to advertise buy and sell interest without having to satisfy these obligations. Specifically, the NASD believes that it would be inappropriate to allow a firm to pose as a dealer by posting identified positions in SelectNet without registering as a market maker. To allow this, the NASD argues, would reduce the incentive for firms to undertake market making responsibilities and consequently adversely affect market liquidity.

Second, the NASD is concerned that allowing a participant to identify itself provides the opportunity for the participant to condition or influence the market in one direction or another. For example, in the situation where a particular participant is considered a lead market maker or a major institutional block positioner in a security, if it were interested in buying shares in the stock, it might broadcast a sell order in SelectNet and identify itself. The influence associated with the participant's name might trigger a decrease in the bid in reaction to the sell interest. This reaction would allow the participant to purchase the security at a lower price than would otherwise have been the case, simply because it was advertising its name, or conditioning the market.[17]

Finally, the NASD noted that once two firms begin negotiating an order, the firm entering the order may choose to identify itself to the contra side. Thus, two participants negotiating an order that find the need to continue negotiations over the telephone rather than through SelectNet may arrange to do so.

V. Discussion

The Commission believes that the rule change is consistent with the requirements of Sections 11A and 15A of the Act and the rules and regulations thereunder applicable to the NASD and, therefore, has determined to approve the proposal.

Section 11A sets forth the Congressional goal of achieving more efficient and effective market operations and the economically efficient execution of transactions through new data processing and communications techniques.[18] Section 11A also expresses the Congressional finding that the public interest, the protection of investors and the maintenance of fair and orderly markets are enhanced by assuring: (a) fair competition among brokers and dealers, and (b) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[19] Section 15A requires that the rules of the NASD, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and

[7] Securities Exchange Act Release No. 35428 (Feb. 28, 1995), 60 FR 12583 (Mar. 7, 1995) (notice of Amendment No. 2).

[8] Letter from Richard Ketchum, Executive Vice President & Chief Operating Officer, NASD, to Jonathan G. Katz, Secretary, SEC (Apr. 28, 1995).

[9] Letters from James E. Buck, Senior Vice President and Secretary, NYSE (June 2, 1994), Daniel Parker Odell, Assistant Secretary, NYSE (Mar. 28, 1995), and Craig S. Tyle, Vice President & Senior Counsel, Investment Company Institute (May 19, 1994), to Jonathan G. Katz, Secretary, SEC.

[10] Securities Exchange Act Release No. 35428 (Feb. 28, 1995), 60 FR 12583 (Mar. 7, 1995) (notice of Amendment No. 2). In response to this amendment, the Investment Company Institute submitted a second comment letter, expressing its support for the proposal. Letter from Craig S. Tyle, Vice President & Senior Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC (Mar. 28, 1995).

[11] 17 CFR 240.11Ac1–1.

[12] The NYSE also notes in its comment letters that the SelectNet rules are contained in the *SelectNet User Guide*, but are not included in the *NASD Manual*. *See SelectNet User Guide* (Nov. 1990). The NASD has committed to submit to the Commission a package of SelectNet rules by the end of 1995. Letter from Richard Ketchum, Executive Vice President & Chief Operating Officer, NASD, to Jonathan G. Katz, Secretary, SEC (Apr. 28, 1995).

[13] The NASD represents that SelectNet orders are usually either executed immediately or expire after three minutes. Thus, the NASD further argues, SelectNet orders fall within the exception that allows the NASD to exclude from the best bid or offer calculation an order which is executed immediately. 17 CFR 240.11Ac1–1(b)(1)(ii).

[14] Under rules promulgated pursuant to the Act, ''indications of interest'' are not considered bids or offers. 17 CFR 240.11Ac1–1(a)(8).

[15] Letter from John C. Helmer, President, Caldwell Securities Incorporated, to Jonathan G. Katz, Secretary, SEC (Mar. 15, 1994).

[16] 17 CFR 240.11Ac1–1 and *NASD Manual*, Schedules to the By-Laws, Schedule D, Sec. 2(a) and (b), (CCH) ¶ 1819.

[17] Indeed, the Commission and the NASD also have expressed concern that other types of market conditioning may violate just and equitable principles of trade. *See, e.g., NASD Manual*, Rules of Fair Practice, Art. III, Sec. 6, (CCH) ¶ 2156 (no member shall offer to buy or sell a security unless the member is prepared at the time to honor the offer).

[18] 15 U.S.C. § 78k–1(a)(1)(B).

[19] *Id.* 78k–1(a)(C)(ii) and (iii).

open market, and, in general, to protect investors and the public interest.[20]

A. Non-member Viewing Access

In its *Market 2000* report,[21] the Commission's Division of Market Regulation (''Division'') expressed concern that the limited transparency of SelectNet orders often conceals from the broader market the best trading interest in a security and, in turn, impedes competition and price discovery.[22] The Division, therefore, recommended that the NASD consider ways to enhance SelectNet transparency.[23] The Commission believes that this proposal is a positive response to the Division's recommendation in *Market 2000.*

The NASD's proposal to provide non-members viewing access to orders broadcast through SelectNet will help achieve more efficient and effective market operations by increasing transparency of market information. Increased transparency, in turn, will facilitate more efficient price discovery and enhance price competition among all market participants. This change to SelectNet will allow non-members to obtain with relative ease and low cost important pricing information about Nasdaq securities. Moreover, investors will be better able to assess the overall supply and demand for a particular Nasdaq security and, thus, effect transactions in a more cost-effective manner. They will now be able to view, although not participate directly in, an important system for trading Nasdaq securities.[24]

In response to the NASD's proposal, the NYSE and Amex raised broad policy concerns about the operation of SelectNet in the context of the Quote Rule. The NYSE and Amex argued that orders broadcast through SelectNet constitute quotations for purposes of the Quote Rule and, therefore, should be reflected in market maker quotations.

The Commission believes that this issue reaches beyond the broadcast of SelectNet orders to non-members. For example, it raises question about whether the widespread dissemination of orders through broker-dealer trading systems, such as Instinet, constitute quotations for purposes of the Quote Rule. Thus, the Commission believes that this issue is beyond the scope of this proposal and that the policy issue raised by the NYSE and Amex deserve continued examination. Moreover, the Commission believes that this proposal is a meaningful advance in the effort to enhance transparency in the Nasdaq market and, therefore, should not await further debate of this issue.

B. The Anonymous Display of All Broadcast Orders

As noted above, the NASD will not identify the origin of SelectNet orders when pricing information is made available through Nasdaq or vendor facilities. One commenter opposed this feature for the reasons described above.

The Commission currently believes the NASD's proposal incorporating anonymity in the display of orders broadcast through SelectNet is consistent with the goals of the Act. The Commission believes requiring anonymity will promote just and equitable principles of trade by removing a mechanism for a participant to induce market movement simply by associating its name with a particular order.

In addition, the Commission finds that the rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. While the imposition of the anonymity requirement may alter certain existing trading practices, the Commission believes that the proposal furthers the purposes of the Act by enhancing SelectNet transparency for non-members. The Commission believes that expanded dissemination of SelectNet information will better inform public investors regarding the prices at which investors and dealers are willing to transact business in a particular security.

VI. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the requirements of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–94–9 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12698 Filed 5–23–95; 8:45 am]

BILLING CODE 8010–01–M

[20] *Id.* 78*o*–3(b)(6).

[21] *Market 2000: An Examination of Current Equity Market Developments,* Division of Market Regulation, United States Securities and Exchange Commission (Jan. 1994).

[22] *Id.* at IV–7.

[23] *Id.* at 19 and IV–7.

[24] The NASD has represented that SelectNet usage has grown from a daily average of 3,000 transactions and 6 million shares in the first half of 1991 to over 10,550 transactions and more than 12.6 million shares in the first quarter of 1995.

[25] 17 CFR 200.30–3(a)(12).

[Investment Company Act Release No. 21081; 811–0407]

SBM Company; Notice of Application

May 17, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (''Act'').

APPLICANT: SBM Company.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an amended order eliminating prior conditions, thus permitting applicant to sell substantially all of its assets, including a subsidiary that is a registered investment company, to another company.

FILING DATE: The application was filed on April 5, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 12, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 8400 Normandale Lake Boulevard, Suite 1150, Minneapolis, Minnesota 55437.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Minnesota corporation, is a financial holding company that also acts as investment adviser, transfer agent, and dividend disbursing agent for certain mutual funds. Applicant's wholly-owned subsidiaries are State Bond and

Mortgage Life Insurance Company (''SBM Life''), a Minnesota insurance company, and SBM Financial Services, Inc., a registered broker-dealer. SBM Certificate Company (the ''Certificate Company''), a registered face-amount certificate company, is a wholly-owned subsidiary of SBM Life.

2. In 1990, the Certificate Company was formed for the purpose of acquiring all of the assets and assuming all of the liabilities of applicant's face-amount certificate business in order to permit applicant to deregister as an investment company. On January 29, 1991, the SEC issued an order (the ''Existing Order'') [1] under section 8(f) of the Act declaring that applicant had ceased to be an investment company because, among other things, it primarily was engaged, through wholly-owned subsidiaries, in businesses that are excepted from the definition of an investment company under sections 3(c)(3) and 3(c)(6) of the Act.[2] The Existing Order was issued subject to the following conditions: (i) applicant will not issue any additional face-amount certificates; (ii) applicant will maintain 100% ownership of the Certificate Company so long as any face-amount certificates that applicant issued (the ''Certificates'') are outstanding and the Certificate Company is a registered investment company; (iii) applicant will require the Certificate Company to maintain reserves for the Certificates as required by section 28 and comply with all other applicable provisions of the Act so long as any Certificates are outstanding and the Certificate Company is a registered investment company; and (iv) until released from such obligation by the Certificate holders or such obligations are paid in accordance with their terms upon maturity or surrender, applicant will remain liable to the Certificate holders for all amounts due them under the Certificates.

3. Since the time the Certificate Company assumed applicant's face-amount certificate business, applicant represents that the Certificate Company has conducted such business in accordance with applicable federal law, including maintaining deposits of qualified assets with an independent custodian and making all payments required by the terms of the Certificates. During 1994, however, the Certificate Company and SBM Life experienced significant capital pressures as a result of increasing interest rates and the fact that a large portion of the investment portfolios of both companies was invested in mortgage pass-through securities and collateralized mortgage obligations. The market value and cash flows of these securities were adversely affected by rapid increases in interest rates during 1994. The capital position of these companies also was adversely affected by the adoption of FASB 115, which requires that certain debt securities be reflected at market value rather than at amortized cost. As a result of the Minnesota Department of Commerce's annual examination of the Certificate Company, the Minnesota Department, in a letter dated November 9, 1994, recommended an increase in the capital of the Certificate Company. In March 1995, SBM Life invested $1.5 million cash into the Certificate Company to satisfy concerns of the Minnesota Department. After extensive efforts to raise up to $15–20 million of additional capital, it was decided that the sale of control of applicant or of its operating assets was necessary.

4. Consequently, applicant intends to sell substantially all of its assets, including the stock of SBM Life and the Certificate Company, to ARM Financial Group, Inc. (''ARM''), a Delaware corporation. Approximately 86% of the outstanding voting shares of ARM is owned by an investment fund sponsored by Morgan Stanley & Co. The balance of ARM is owned chiefly by ARM's executives, certain employees, managers, and independent directors. ARM has committed to contribute up to $20 million to the capital of SBM Life and the Certificate Company, up to $2.5 million of which is expected to be used to strengthen the capital of the Certificate Company. ARM intends that its subsidiary, ARM Capital Advisors, will manage the assets transferred from the Certificate Company. Following the sale, applicant intends to liquidate and dissolve in accordance with Minnesota law.

Applicant's Legal Analysis

1. Applicant requests that the Existing Order be amended to remove all of the conditions thereto to permit the sale of assets to ARM. The requested amendment is necessary to assure that the proposed sale of applicant's assets does not conflict with the Existing Order. Applicant believes that the proposed sale will afford additional protection to Certificate holders and is in the best interests of these investors. ARM, relative to applicant, has greater and more ready access to capital by reason of its financial and operating characteristics, as well as its affiliation with Morgan Stanley.

2. Applicant believes that the Act is not intended to limit the power of an entity to engage in fundamental corporate acts such as a sale of assets and dissolution. Applicant asserts that the conditions to the Existing Order did not contemplate the proposed sale, nor, in the view of applicant, could the conditions reasonably have been intended to inhibit such sale. The conditions may afford Certificate holders additional safeguards while applicant is a going concern, but have no continuing utility once applicant ceases to conduct business.

3. Applicant notes that the Certificate Company is a registered investment company that has operated as a stand-alone entity for more than four years. The Certificates and their holders will continue to be protected following the proposed sale by all applicable provisions of the Act, including the maintenance of deposits of qualified assets and the capital requirements of section 28 of the Act. Applicant contends that nothing contemplated by its proposal will result in any failure to comply with the Act.

4. Applicant also represents that substantially all existing Certificate holders have renewed their Certificates at least once since the Certificate Company assumed the liabilities of such Certificates from applicant in 1991. In so doing, these holders received and had an opportunity to review the then current prospectus relating to the Certificates prior to the date of renewal. The prospectus primarily describes the Certificate Company and its business, and disclaims applicant as a potential source of capital strength to the Certificate Company. Accordingly, applicant believes that the vast majority of the Certificate holders have made their decision to renew their Certificates largely in reliance on the financial strength and other operating characteristics of the Certificate Company, and not on applicant's continuing liability with respect to the Certificates.

5. Applicant, moreover, states that Certificate holders may surrender their Certificates to the Certificate Company for payment at any time before or after the proposed sale. Applicant states its proposed dissolution will not affect the obligations created by the Certificates,

[1] *State Bond and Mortgage Company,* Investment Company Act Release Nos. 17826 (Oct. 29, 1990) (notice) and 17965 (Jan. 29, 1991) (order).

[2] Section 8(f) provides that ''[w]henever the [SEC], on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the taking effect of such order the registration of such company shall cease to be in effect. If necessary for the protection of investors, an order under this subsection may be made upon appropriate conditions.'' Sections 3(c)(3) and 3(c)(6) provide in relevant part that a person is not an investment company if it is an insurance company or a company that primarily is engaged, directly or through majority-owned subsidiaries, in the insurance company business.

which obligations were expressly assumed by the Certificate Company. For the reasons discussed above, applicant believes that an amended order is appropriate.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12695 Filed 5–23–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21080; 811–3902]

Sentry Investors Variable Account II; Notice of Application

May 17, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Sentry Investors Variable Account II.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on March 29, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 12, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicant, c/o Sentry Investors Life Insurance Company, 1800 North Point Drive, Stevens Point, Wisconsin 54481.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942–0654, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a life insurance separate account established pursuant to Massachusetts insurance law to fund certain individual flexible purchase payment deferred variable annuity contracts (the ''Contracts''). On November 10, 1983, applicant registered under the Act as a unit investment trust. On the same date, applicant filed a registration statement on Form S–6 to register the Contracts as securities under the Securities Act of 1933. The registration statement became effective on July 23, 1984. Sentry Investors Life Insurance Company is applicant's depositor (the ''Depositor''), and Sentry Equity Services, Inc. is applicant's principal underwriter.

2. On November 1, 1994, applicant transferred all of its assets and liabilities to Sentry Variable Account II (the ''Sentry Account''), an existing registered separate account, pursuant to an assumption reinsurance agreement. The agreement provided that Sentry Life Insurance Company would assume legal ownership of applicant's assets, as well as responsibility for satisfying all liabilities and obligations arising under the Contracts. The transaction was effected pursuant to an SEC order.[1] The transfer of applicant's assets and liabilities to the Sentry Account was achieved by combining each of applicant's subaccounts with the identical subaccounts of the Sentry Account. The share transfer was made at the relative net asset values of the subaccounts in conformance with section 22(c) of the Act and rule 22c–1 thereunder. No charges or other deductions were made with respect to the Contracts. As a result of the transaction, applicant's Contract owners received certificates reflecting the new depositor and the new separate account supporting their Contracts. The net asset value of the subaccount units acquired in the transaction was identical to the net asset value of the subaccount units supporting applicant's Contracts before the transfer.

3. The transaction was approved by the Depositor's board of directors, and by the board of directors of Sentry Life Insurance Company, the Sentry Account's depositor. Applicant also obtained approvals from state insurance authorities of those states in which applicant's Contract owners reside.

4. Immediately prior to the merger, applicant had 70 Contract owners. At the time of filing the application, applicant has no remaining Contract holders. All of applicant's Contract holders had the assets underlying their contracts transferred to the Sentry Account.

5. Sentry Life Insurance Company bore all direct and indirect costs incurred in connection with the merger.

6. Applicant has no remaining assets, outstanding debts, or liabilities. Applicant is current with all of its filings under the Act, including all Form N–SAR filings. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it intend to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12694 Filed 5–23–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21082; File No. 812–9280]

T. Rowe Price Equity Series, Inc. et al.

May 17, 1995.

AGENCY: Securities and Exchange Commission (the ''SEC'' or ''Commission'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''1940 Act'' or ''Act'').

APPLICANTS: T. Rowe Price Equity Series, Inc., T. Rowe Price International Series, Inc. and T. Rowe Price Fixed Income Series, Inc. (the ''Fund(s)'') and T. Rowe Price Associates, Inc. and Rowe Price-Fleming International, Inc. (the ''Adviser(s)'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the Act for exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order of exemption to the extent necessary to permit shares of the Funds to be issued to and held by registered and unregistered variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies.

FILING DATE: The application was filed on October 11, 1994 and amended on May 4, 1995.

HEARING OR NOTIFICATION HEARING: An order granting the application will be

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[1] Sentry Life Insurance Company, *et al.*, Investment Company Act Release Nos. 20576 (Sep. 26, 1994) (notice) and 20654 (Oct. 25, 1994) (order).

issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on June 12, 1995 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, 100 East Pratt Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, on (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each Fund is a Maryland corporation registered under the Act as an open-end diversified management investment company. The authorized capital stock of each Fund may be issued as one or more classes (each a ''Series'') of stock, each Series representing an interest in a different investment portfolio. T. Rowe Price Equity Series, Inc. currently consists of three Series. T. Rowe Price Associates, Inc. is the investment adviser for the three Series. T. Rowe Price International Series, Inc. currently consists of one Series of stock for which Rowe Price-Fleming International, Inc. serves as investment adviser. T. Rowe Price Fixed Income Series, Inc. currently consists of one Series for which T. Rowe Price Associates, Inc. Serves as the investment adviser. The registration statements for the funds on Form N–1A are incorporated by reference into the application (File Nos. 33–52161, 33–52171 and 33–52749 for T. Rowe Price Equity Series, Inc., T. Rowe Price International Series, Inc. and T. Rowe Price Fixed Income Series, Inc. respectively).

2. Shares of the Funds will be offered to insurance companies as investment vehicles for their separate accounts that support variable annuity contracts and/or variable life insurance contracts (collectively, ''variable contracts''). Insurance companies whose separate accounts do or will own shares of the Funds are referred to herein as ''participating insurance companies,'' respectively.

3. Each participating insurance company will design its own variable annuity or variable life insurance contracts for issuance through its participating separate account. Each participating insurance company will have the legal obligation of satisfying all requirements applicable to it under the federal securities laws. It is anticipated that participating insurance companies and their registered separate accounts will rely on Rule 6e–2 or 6e–3(T) under the Act, although some may rely on individual exemptive orders as well, in connection with variable life insurance contracts. The Funds' role vis-a-vis the variable contracts, so far as the federal securities laws are applicable, will be limited to that of offering their shares to participating separate accounts of participating insurance companies, and fulfilling any conditions the Commission may impose upon granting the Order requested in the application.

4. Applicants anticipate that certain participating insurance companies may have a separate account investing in the Funds that will not be registered as an investment company under the Act in reliance on relevant exemptions (an ''unregistered separate account''). Applicants represent that these participating insurance companies would be parties to participation agreements with the Funds, as contemplated by the conditions set forth in the application, and the same conditions would be imposed by such agreements on unregistered separate accounts as on registered separate accounts. Further, with respect to voting privileges, shares attributable to variable contracts supported by unregistered separate accounts will be deemed to be shares owned by the insurance company for purposes of the conditions set forth in the application relating to voting of Fund shares, unless voting privileges have been extended to the variable contracts supported by such unregistered separate accounts. Where voting privileges have been extended, Fund shares attributable to the variable contracts will be voted in accordance with instructions received from the owners thereof.

Applicants' Legal Analysis

1. In connection with scheduled premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the Act. The exemptions granted to a separate account (and any investment adviser, principal underwriter and depositor thereof) by Rule 6e–2(b)(15), however, are not available with respect to a scheduled premium variable life insurance separate account that owns shares of an investment company that also offers its shares to a variable annuity separate account of the same or of any affiliated or unaffiliated insurance company (''mixed funding''). In addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying investment company are offered to variable annuity or variable life insurance separate accounts of unaffiliated insurance companies (''shared funding''). ''Mixed and shared funding'' denotes the use of a common management investment company to fund a variable annuity separate account of one insurance company and the variable annuity or variable life separate accounts of other affiliated and unaffiliated insurance companies. Accordingly, Applicants seek an order exempting scheduled premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) from Sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rule 6e–2(b)(15) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold in connection with both mixed funding and shared funding.

2. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Act. The exemptions granted to a separate account (and to any investment adviser, principal underwriter and depositor thereof) by Rule 6e–3(T)(b)(15) permit mixed funding of flexible premium variable life insurance but preclude shared funding. Accordingly, Applicants seek an order exempting flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) from Sections 9(a), 13(a), and 15(b) of the Act, and Rule 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold to separate accounts in connection with shared funding.

3. Section 9(a) provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated

person of that company is subject to a disqualification enumerated in Sections 9(a) (1) or (2). Rules 6e–2(b)(15)(i) and ii), and 6e–3(T)(b)(15)(i) and (ii), provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying management investment company.

4. The application states that the partial relief granted in Rules 6e–2(b)(15) and 6e-3(T)(b)(15) from the requirements of Section 9 of the Act limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. The Applicants state that those Rules recognize that it is not necessary for the protection of investors or the proposes fairly intended by the policy and provisions of the Act to apply the provisions of Section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in (or invested in by) that organization. Applicants state that it is also unnecessary to apply Section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Funds as the funding medium for variable contracts. Applicants argue that applying the requirements of Section 9(a) because of investment by other insurers' separate accounts would be unjustified and would not serve any regulatory purpose. The application states that the participating insurers are not expected to play any role in the management or administration of the Funds and that those individuals who participate in the management or administration of the Funds will remain the same regardless of which separate accounts or insurance companies use the Funds. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners.

5. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants state that pass-through voting privileges will be provided with respect to all owners of variable contracts registered with the Commission so long as the Commission interprets the Act to require pass-through voting privileges for variable contract owners. Applicants anticipate that contracts supported by separate accounts that are not registered under the Act, will not provide for pass-through voting privileges. Applicants represent that shares of the Funds that are attributable to those contracts will be voted in the same proportion as those shares for which voting instructions have been received.

6. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Both Rules provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority. Voting instructions may also be disregarded by the insurance company if the contract owners initiate any change in the investment company's investment policies, principal underwriter or any investment adviser provided that disregarding such voting instructions is reasonable and based on a specific good faith determination as required under the Rules. Applicants assert that the rights of an insurance company or of a state insurance regulator to disregard contract owner's voting instructions are not inconsistent with mixed or shared funding. According to the Applicants, there is no reason why the investment policies of any portfolio of the Funds would or should be materially different from what it would or should be if it funded only annuity contracts or only scheduled or flexible premium life contracts and that there is no reason to believe that different features of various types of contracts will lead to different investment policies for different types of variable contracts. Applicants represent that the Funds will not be managed to favor or disfavor any particular insurer or type of insurance product.

7. The Application states that mixed and shared funding should provide several benefits to variable contract holders. It would permit a greater amount of assets available for investment, thereby promoting economies of scale, permitting a greater diversification, and making the addition of new portfolios more feasible. The Applicants believe that making the Funds available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

8. The Applicants see no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts have historically been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. The Applicants do not believe that mixed and shared funding will have any adverse federal income tax consequences.

Applicants' Conditions

Applicants consent to the following conditions if an order is granted:

1. A majority of the Board of Directors of each Fund (the ''Board'') shall consist of persons who are not ''interested persons'' of the Fund, as defined by Section 2(a)(19) of the Act and the Rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification or bona fide resignation of any director or directors, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board of Directors; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its Fund for the existence of any material irreconcilable conflict between the interests of the life insurance contract owners and annuity contract owners and any future contract owners in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Series are being managed; or (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners.

3. Participating insurance companies and the Advisers will report any potential or existing conflicts to the Board. Participating insurance companies and the Advisers will be responsible for assisting each Board in carrying out its responsibilities under

these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the board will be a contractual obligation of all participating insurance companies under the agreements governing participation in a Fund and these responsibilities will be carried out with a view only to the interests of the contract owners.

4. If it is determined by a majority of the Board, or a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (1) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any Series and reinvesting such assets in a different investment medium, including another Series of the Fund, or submitting the question whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners, variable life insurance contract owners or variable contract owners or one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (2) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a participating insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies under their agreements governing participation in a Fund.

For purposes of condition 4, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or the applicable Adviser be required to establish a new funding vehicle for any variable contract. No participating insurance company shall be required by this condition 4 to establish a new funding vehicle for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the irreconcilable material conflict, but in no event will a Fund or the Advisers be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by this condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by a vote of a majority to contract owners materially adversely affected by the irreconcilable material conflict.

5. A Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known promptly to all participating insurance companies.

6. Participating insurance companies will pass-through voting privileges to owners of variable contracts registered with the Commission so long as the Commission continues to interpret the Act as requiring pass-through voting privileges for such variable contracts. As to such owners and owners of any other variable contracts to which voting privileges have been extended, participating insurance companies will vote shares of the applicable Fund held in their separate accounts in a manner consistent with timely voting instructions received from such contract owners. Each participating insurance company will vote shares of the Fund held in its separate accounts for which no timely voting instructions from contract owners are received, as well as shares it owns (including shares held by unregistered separate accounts supporting variable contracts for which not voting privileges have been granted to the owners thereof), in the same proportion as those shares for which voting instructions have been received. Participating insurance companies will be responsible for assuring that each of their separate accounts participating in the Funds calculates voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with other separate accounts investing in the Funds shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Funds.

7. All reports received by a Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying participating insurance companies of a conflict and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. Each Fund will comply with all provisions of the Act requiring voting by shareholders, and, in particular, will either provide for annual meetings (except insofar as the Commission may interpret Section 16 as not requiring such meetings), or comply with Section 16(c) of the Act (although the Funds are not trusts described in Section 16(c) of the Act) as well as with Section 16(a) and, if and when applicable, 16(b). Further, the Funds will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

9. Each Fund will disclose in its prospectus that (1) the Fund is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by various insurance companies, (2) material irreconcilable conflicts may possibly arise, and (3) the Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflict and determine what action, if any, should be taken in response to such conflict. Each Fund will notify all participating insurance companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate.

10. If and to the extent that Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this application, then the Funds and/or participating insurance companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), or Rule 6e–3, to the extent such amended rules are applicable.

11. The participating insurance companies shall at least annually submit to the relevant Board such

reports, materials or data as the Board may reasonably request so that the Board or the Fund may fully carry out the obligations imposed upon them by the conditions contained in this application, and such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the participating insurance Companies to provide these reports, materials and data to the Board, when it so reasonably requests, shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Funds.

Conclusion

For the reasons stated above, Applicants believe that the requested exemptions in accordance with the standards of Section 6(c), are appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12696 Filed 5–23–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21084; 812–9570]

WNC Housing Tax Credit Fund V, L.P., Series 3 Through 8, and WNC & Associates, Inc.; Notice of Application

May 18, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: WNC Housing Tax Credit Fund V, L.P. Series 3, WNC Housing Tax Credit Fund V, L.P., Series 4, WNC Housing Tax Credit Fund V, L.P., Series 5, WNC Housing Tax Credit Fund V, L.P., Series 6, WNC Housing Tax Credit Fund V, L.P., Series 7, WNC Housing Tax Credit Fund V, L.P., Series 8 (individually, a ''Series,'' and collectively, the ''Fund''), and WNC & Associates, Inc. (the ''General Partner'').

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit each Series to invest in limited partnerships that engage in the ownership and operation of apartment complexes for low and moderate income persons.

FILING DATE: The application was filed on April 14, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 12, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicants, 3158 Redhill Avenue, Suite 120, Costa Mesa, California 92626–3416.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Series was formed as a California limited partnership on March 28, 1995. Each Series will operate as a ''two-tier'' partnership, *i.e.*, each Series, as a limited partner, will invest in other limited partnerships (''Local Limited Partnerships''). The Local Limited Partnerships in turn will engage in the ownership and operation of apartment complexes expected to be qualified for low income housing tax credit under the Internal Revenue Code of 1986.

2. The objectives of each Series are to (a) provide current tax benefits primarily in the form of low income housing credits which investors may use to offset their Federal income tax liabilities, (b) preserve and protect its capital, and (c) provide cash distributions from sale or refinancing transactions.

3. On April 13, 1995, the Fund filed a registration statement under the Securities Act of 1933, pursuant to which the Fund intends to offer publicity, in one or more series of offering, 50,000 units of limited partnership interest (''Units'') at $1,000 per unit. The minimum investment will be five Units. Purchasers of the Units will become limited partners (''Limited Partners'') of the Series offering the Units.

4. A Series will not accept any subscriptions for Units until the requested exemptive order is granted or the Series receives an opinion of counsel that it is exempt from registration under the Act. Subscriptions for Units must be approved by the General Partner. Such approval will be conditioned upon representations as to suitability of the investment for each subscriber. The suitability standards provide, among other things, that investment in a Series is suitable only for an investor who either (a) has a net worth (exclusive of home, furnishings, and automobiles), of at least $35,000 and an annual gross income of at least $35,000, or (b) irrespective of annual income, has a net worth (exclusive of home, furnishings, and automobiles) of at least $75,000. Units will be sold only to investors who meet these suitability standards, or more restrictive standards as may be established by certain states for purchases of Units within their respective jurisdictions. In addition, transfers of Units will be permitted only if the transferee meets the same suitability standards as had been imposed on the transferor Limited Partner.

5. Although a Series' direct control over the management of each apartment complex will be limited, the Series' ownership of interests in Local Limited Partnerships will, in an economic sense, be tantamount to direct ownership of the apartment complexes themselves. A Series normally will acquire at least a 90% interest in the profits, losses, and tax credits of the Local Limited Partnerships. However, in certain cases, the Series may acquire a lesser interest. In these cases, the Series normally will acquire at least a 50% interest in the profits, losses, and tax credits of the Local Limited Partnership. From 95% to 100% of the proceeds from a sale or refinancing of an apartment complex normally will be paid to the Series until it has received a full return of that portion of the net proceeds invested in the Local Limited Partnership (which may be reduced by any cash flow distributions previously received). A Series also will receive a share of any remaining sale of refinancing proceeds. A Series' share of these proceeds may range from 10% to 90%.

6. Each Series will have certain voting rights with respect to each Local Limited Partnership. The voting rights will include the right to dismiss and replace the local general partner on the basis of performance, to approve or

disapprove a sale or refinancing of the apartment complex owned by such Local Limited Partnership, to approve or disapprove the dissolution of the Local Limited Partnership, and to approve or disapprove amendments to the Local Limited Partnership agreement materially and adversely affecting the Series' investment.

7. Each Series will be controlled by the General Partner, pursuant to a partnership agreement (the ''Partnership Agreement''). The Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Series. However, a majority-in-interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), to remove any General Partner and elect a replacement, and to dissolve the Series. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Series.

8. The Partnership Agreement and prospectus of the Series contain numerous provisions designed to insure fair dealing by the General Partner with the Limited Partners. All compensation to be paid to the General Partner and its affiliates is specified in the Partnership Agreement and prospectus. While the fees and other forms of compensation that will be paid to the General Partner and its affiliates will not have been negotiated at arm's length, applicants believe that the compensation is fair and on terms no less favorable to the Series than would be the case if such arrangements had been made with independent third parties.

9. During the offering and organizational phase, the General Partner and its affiliates will receive a nonaccountable expense reimbursement equal to 1% of capital contributions. The General Partner also will be reimbursed by each Series for the actual amount of expenses incurred in connection with organizing the Series and conducting the offering. However, the General Partner has agreed to pay any organization and offering expenses (including selling commissions and the nonaccountable expense reimbursement) in excess of 14.5% of capital contributions.

10. During the acquisition phase, each Series will pay the General Partner or its affiliates a selection fee equal to 7.5% for analyzing and evaluating potential investments in Local Limited Partnerships. The General Partner and its affiliates will be reimbursed by each Series for the actual amount of any partnership acquisition expenses advanced by them, provided that acquisition expenses will not exceed 1% of capital contributions. Aggregate acquisition fees and acquisition expenses paid in connection with the acquisition of Local Limited Partnership interests by each Series will be limited by the Partnership Agreement and will comply with guidelines published by the North American Securities Administration Association. These guidelines require that a specified percentage (generally 80%, but subject to reduction) of the aggregate Limited Partners' capital contributions to a Series be committed to Local Limited Partnership interests.

11. During the operating phase, the General Partner will receive 1% of any cash available for distribution and each Series may pay certain fees and reimbursements to the General Partner or its affiliates. An asset management fee will be payable for services related to the administration of the affairs of each Series in connection with each Local Limited Partnership in which the Series invests. Other fees may be paid in consideration of property management services provided by the General Partner or its affiliates as to the management and leasing agents for some of the apartment complexes. In addition, the General Partner and its affiliates generally will be allocated 1% of profits and losses of each Series for tax purposes and tax credits.

12. During the liquidation phase, and subject to certain prior payments to the General Partner or its affiliates a fee equal to 1% of the sales price of the properties sold in which the General Partner or its affiliates had provided a substantial amount of services. The General Partner also will receive 10% of any additional sale or refinancing proceeds remaining after the return of the General Partner's capital contribution, subject to certain prior payments.

13. All proceeds from any Series of the public offering of Units initially will be placed in an escrow account with the National Bank of Southern California (''Escrow Agent''). Pending release of offering proceeds to an individual Series, the Escrow Agent will deposit escrowed funds in short-term United States Government securities, securities issued or guaranteed by the United States Government, and certificates of deposit or time or demand deposits in commercial banks. Upon receipt of a prescribed minimum amount of capital contributions for a Series, funds in escrow will be released to an individual Series and held by its pending investment in Local Limited Partnerships.

14. If investment opportunities may be invested in by more than one entity that the General Partner or its affiliates advises or manages, the decision as to the particular entity which will be allocated the investment will be based upon such factors as the effect of the acquisition on diversification of each entity's portfolio, the estimated income tax effects of the purchase on each entity, the amount of funds of each entity available for investment, and the length of time such funds have been available for investment. Priority generally will be given to the entity having uninvested funds for the longest period of time. However, (a) any partnership which was formed to invest primarily in apartment complexes eligible only for Federal low income housing credits will be given priority with respect to any investment which is not eligible for California low income housing credits and (b) each Series and any other partnership which was formed to invest primarily in apartment complexes eligible for California low income housing credits as well as for Federal credits will be given priority with respect to any investment which is eligible for the California credits.

Applicants' Legal Analysis

1. Applicants believe that the Fund and its Series will not be ''investment companies'' under sections 3(a)(1) or 3(a)(3) of the Act. If the Fund and its Series are deemed to be investment companies, however, applicants request an exemption under section 6(c) from all provisions of the Act.

2. Section 3(a)(1) of the Act provides that an issuer is an ''investment company'' if it is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Applicants, however, believe that the Partnership will not be an investment company under section 3(a)(1) because the Partnership will be in the business of investing in and being beneficial owner of apartment complexes, not securities.

3. Section 3(a)(3) of the Act provides that an issuer is an ''investment company'' if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire ''investment securities'' having a value exceeding 40% of the value of such issuer's total assets (exclusive of government securities and cash items). Applicants, however, believe that the Local Limited Partnership interests should not be considered ''investment securities'' because those interests are not readily marketable, have no value

apart from the value of the apartment complexes owned by the Local Limited Partnerships, and cannot be sold without severe adverse tax consequences.

4. Applicants believe that the two-tier structure is consistent with the purposes and criteria set forth in the SEC's release concerning two-tier real estate partnerships (the ''Release'').[1] The Release states that investment companies that are two-tier real estate partnerships that invest in limited partnerships engaged in the development and operation of housing for low and moderate income persons may qualify for an exemption from the Act pursuant to section 6(c). Section 6(c) provides that the SEC may exempt any person from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. The Release lists two conditions, designed for the protection of investors, which must be satisfied by two-tier partnerships to qualify for the exemption under section 6(c). First, interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable. Second, requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company.

6. Applicants assert, among other things, that the suitability standards set forth in the application the requirements for fair dealing provided by the Partnership Agreement, and pertinent governmental regulations imposed on each Local Limited Partnership by various Federal, state, and local agencies provided protection to investors in Units comparable to that provided by the Act. In addition, applicants assert that the requested exemption is both necessary and appropriate in the public interest.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Maragret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12700 Filed 5–23–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Investment Company Act Release No. 8456 (Aug. 9, 1974).

SMALL BUSINESS ADMINISTRATION

Investment Advisory Council; Public Meeting

The U.S. Small Business Administration Investment Advisory Councils will hold a public meeting on Thursday, June 8, 1995, from 10:00 a.m. to 3:00 p.m. at the ANA Hotel, located at 2401 M Street, N.W., Washington, DC, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ed Cleveland, Office of Investments, U.S. Small Business Administration, 409 Third Street SW., Washington, DC, (202) 205–6510.

Dorothy A. Overal,

Director, Office of Advisory Councils.

[FR Doc. 95–12656 Filed 5–23–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 USC Chapter 35).

DATE: May 18, 1995.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on May 18, 1995:

DOT No: 4052
OMB No: 2133–0025
Administration: Maritime Administration
Title: Position Reporting System for Vessels (AMVER/USMER)
Need for Information: Section 204(b), 212(A), 1203(a)—Merchant Marine Act 1936, as amended (46 U.S.C. 1114(b), 1122.a, 1283; Public Law 97–31 (95 Stat. 157 August 6, 1981); 46 CFR 307 (51 18329 May 19, 1986); 49 CFR 1.66 (46FR 47458 September 28, 1981.
Proposed Use of Information: The information will provide a current plot of U.S. flag and certain non-flag ships to allow for immediate marshalling of ships for national defense purposes and for search and rescue for safety of life at sea.
Frequency: Every 48 hours at sea, arrival and departure, and changes to previous informaton
Burden Estimate: 11,600
Respondents: Ship Operators
Form(s): CG–4796–A, CG–4796–A (MA)
Average Burden Hours Per Response: 53.53 hours

DOT No: 4053
OMB No: 2115–0073
Administration: United States Coast Guard
Title: Alternate Compliance—International Navigation Rules, Alternate Compliance—Inland Navigation Rules
Need for Information: The International Regulations for Preventing Collisions at Sea, 1972 (33 U.S.C. 1601 et. seg.) and the Inland Navigational Rules Act of 1980 (33 U.S.C. 2001 et. seq.) adopted a uniform system of

navigation rules for international and inland waters, respectively. Both allow vessels to deviate from technical requirements when it is determined by the Coast Guard, that they cannot fully comply for reasons of configuration of special use.

Proposed Use of Information: Coast Guard will use this information to determine if alternative compliance is justified.

Frequency: On occasion

Burden Estimate: 135 hours

Respondents: Vessel Owners, Operators, Builders and Agents

Form(s): None

Average Burden Hours Per Response: 1 hour and 30 minutes reporting and 5 minutes recordkeeping

DOT No: 4054

OMB No: 2115–0094

Administration: United States Coast Guard

Title: Safety Approval of Cargo Containers

Need for Information: Public Law 95–208, International Safe Container Act, and Title 49, Code of Federal Regulations, Part 1.46, gives Coast Guard the authority to approve new and existing cargo containers.

Proposed Use of Information: Coast Guard will use this information to ensure that: (1) no unauthorized changes are made to new cargo containers being manufactered, (2) periodic examinations are carried out as required and (3) container handlers and authorities in other countries will allow free movement of U.S. containers in foreign trade.

Frequency: On Occasion

Burden Estimate: 99,129 hours

Respondents: Container owners, operators, manufacturers and delegated approval authorities

Form(s): None

Average Burden Hours Per Response: 10 minutes reporting and 1 hour recordkeeping

DOT No: 4055

OMB No: 2133–0020

Administration: Federal Aviation Administration

Title: Maintenance, Preventive Maintenance, Rebuilding and Alteration FAR 43

Need for Information: The information collections required by FAR 43 are authorized principally by 49 U.S.C. Section 44701(a)(2) which authorizes the Secretary of Transportation to prescribe reasonable rules and regulations and minimum standards governing, in the interest of safety, inspecting, servicing, and overhauling of aircraft, aircraft engines, propellers, and appliances, including provision of examinations and reports the Secretary may accept in lieu of those made by its officers and employees.

Proposed Use of Information: The information is used by the FAA to ensure this work is performed by qualified persons, and at proper intervals.

Frequency: As needed for reporting and recordkeeping

Burden Estimate: 5,509,531 hours

Respondents: Individuals

Form(s): FAA Form 337

Average Burden Hours Per Response: 30 minutes per response for the form and 3 minutes per entry for recordkeeping

DOT No: 4056

OMB No: 2115–New

Administration: U.S. Coast Guard

Title: Inflatable Personal Flotation Devices (PFD) for Recreational Vessels PFD Marking, Inflation Mechansim Marking, Manufacturer Records, Information Pamphlet and Owner's Manual

Need for Information: Title 46 U.S.C. Section 4302(a) gives Coast Guard the authority to prescribe regulations establishing minimum safety standards for recreational vessels and associated equipment.

Proposed Use of Information: This information will be used by law enforcement officers to determine if the PFD's are Coast Guard approved.

Frequency: Once

Burden Estimate: 503.33 hours

Respondents: Manufacturers of Personal Flotation Devices

Form(s): None

Average Burden Hours Per Response: 101 hours per reporting.

Issued in Washington, D.C. on May 18, 1995.

Paula R. Ewen,

Chief, Information Management Division.

[FR Doc. 95–12662 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Proposed Advisory Circular; Continued Airworthiness Assessment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability of Advisory Circular (AC), No. 39–XX, Continued Airworthiness Assessments.

DATES: Comments must be received on or before June 23, 1995.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA, 01803–5299.

FOR FURTHER INFORMATION CONTACT: Thomas Boudreau, Engine and Propeller Standards Staff, ANE–110, at the above address, telephone (617) 238–7117, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed AC, and to submit such written data, views, or arguments as they desire. Commenters must identify the subject of the AC, and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Engine and Propeller Directorate, Aircraft Certification Service, before issuance of the final AC.

Background

This AC is on the subject of continued airworthiness assessments of turbine engines, propellers, and Auxiliary power units (APU's) for use on Federal Aviation Regulation (FAR) part 25 certified aircraft. The methods presented in this AC facilitate the understanding of safety related problems and suggest a consistent and measured response to identified safety problems.

This advisory circular, published under the authority granted to the Administrator by 49 U.S.C. 106(g), 49 U.S.C. App. 1354(a), 1421 and 1423, provides guidance for these proposed requirements.

Issued in Burlington, Mass., on May 16, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–12755 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Noise Certification Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory

Committee to discuss noise certification issues.

DATES: The meeting will be held on June 21, 1995, at 9 a.m. Arrange for oral presentations by June 7, 1995.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, suite 801, 1400 K Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Carolina Forrester, Federal Aviation Administration, Office of Rulemaking (ARM–206), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–9690; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on June 21, 1995, at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW., Washington, DC 20005. The agenda will include:

- Opening Remarks.
- Committee administration.
- Presentation of Work Plan by the FAR/JAR Harmonization Working Group for Helicopters.
- Presentation of Work by the FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes.
- Status Report from the FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes.
- A discussion of future meeting dates, activities, and plans.
- Adjourn.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by June 7, 1995, to present oral statements at the meeting. The public may present written statements to the Committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on May 19, 1995.

Paul R. Dykeman,

Assistant Executive Director for Noise Certification Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–12752 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 182; Minimum Operational Performance Standards (MOPS) for an Avionics Computer Resource (ACR)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 182 meeting to be held July 18–20, 1995, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue NW., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes from Fifth Meeting held April 5–7; (4) Discussion of ACR Objectives/Benefits—Review Input from Avionics Manufacturers; (5) Establish ''Story Board'' Topical Sentence for Major Sections of MOPS Document; (6) Continue Development of ACR Functional, Operational and Performance Specifications; (7) Joint Session with AEEC APEX Working Group (Wednesday, July 19, AM); (8) Review Definition of Terms, ''Application,'' ''Partition and Process''; (9) Other Business; (10) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information, should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, May 18, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–12625 Filed 5–23–95; 8:45 am]

BILLING CODE 4810–13–M

RTCA, Inc., Special Committee 183; Standards for Airport Security Access Control

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 183 meeting to be held June 12–13, 1995. The first day Plenary session will begin at 9:30 a.m.; the second day Editorial Working Group session will be 9:30–11:30 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Administrative Announcements; (2) General Introductions; (3) Review and Approval of Meeting Agenda; (4) Review and Approval of Minutes of Eighth Meeting held May 17; (5) Review of SC–183 Meeting Schedule July–September 1995; (6) Review of Draft Material; (7) Working Group Issues; (8) Other Business; (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information, should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 18, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–12626 Filed 5–23–95; 8:45 am]

BILLING CODE 4810–13–M

RTCA, Inc., Special Committee 184; Minimum Performance and Installation Standards for Taxi-Hold Position Lights

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 184 meeting to be held June 5–6, 1995, starting at 9:00 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Administrative Announcements; (2) Chairman's Introductory Remarks; (3) Review and Approval of meeting Agenda; (4) Review and Approval of Minutes of May 3–4 Meeting; (5) Review Status of Action Items; (6) Review of Draft Document Inputs; (7) Working Group Drafting Session; (8) Other Business; (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information, should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public

may present a written statement to the committee at any time.

Issued in Washington, DC, on May 18, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–12627 Filed 5–23–95; 8:45 am]

BILLING CODE 4810–13–M

Notice of Intent To Rule on Applications To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at John F. Kennedy International Airport, Jamaica, NY; LaGuardia Airport (LGA), Flushing, NY, and Newark International Airport (EWR), Newark, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on applications.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC and to amend previous PFC applications at JFK, LGA and EWR Airports under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 23, 1995.

ADDRESSES: Comments on these applications may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito, Manager New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York, 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. George J. Marlin, Executive Director of the Port Authority of New York & New Jersey at the following address: One World Trade Center, Suite 1973, New York, New York 10048.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port Authority of New York & New Jersey under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager of the New York Airports District Office, Manager New York Airports District Office 600 Old Country Road, suite 446, Garden City, NY, 11530. The applications may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the applications to impose and use the revenue from a PFC at JFK, LGA and EWR Airports as well as applications to amend previous PFC approvals at all three airports under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). On May 8, 1995, the FAA determined that the applications to impose and use the revenue from a PFC submitted by Port Authority of New York & New Jersey were substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the applications, in whole or in part, no later than July 9, 1995.

The following is a brief overview of the applications.

Level of the proposed PFC: $3.00

Proposed charge effective date: October 1, 1995

Proposed charge expiration date: August 31, 2001

Total estimated PFC revenue: $663,000,000

Brief description of proposed projects:

JFK Projects

—Automated Guideway Transit System—Planning and Design To impose and use an additional $38 million in PFC funds to reimburse the Port Authority for $19 million in planning previously authorized by the Board of Commissioners, to complete the planning studies for the AGT system, and to advance the design procurement and local permitting efforts prior to the implementation phase. Approximately $2 million of this total is for planning studies for the EWR Monorail-NEC (FGT) project beyond the $7 million approved by the FAA in 1992.

—Automated Guideway Transit System—Howard Beach Component To impose $325 million in PFC funds for the remainder of the on-airport portion of the AGT system at JFK. This segment would extend from the CTA to Federal Circle along the Van Wyck and extend to serve the employee parking lot, the long term parking lots and the Howard Beach subway station.

LGA Projects

—Automated Guideway Transit System—On-Airport Component To impose $61 million in PFCs to fund a portion of the on-airport component of the AGT system at LGA.

—Second Grand Central Parkway to LGA Flyover To amend previous PFC to withdraw this project.

EWR Projects

—EWR Monrail
To impose and use an additional $50 million, also to use $50 million in PFCs already imposed, for the construction of a monorail linking various areas within the airport.

—Landside Access—Phase 1A
To impose and use $50 million for on-airport roadway improvements and modifications to reduce congestion.

—EWR I–78 Flyover
To amend previous PFC to withdraw this project.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi, except commuter air carriers.

Any person may inspect the applications in person at the FAA office listed above under ''**FOR FURTHER INFORMATION CONTACT**'' and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the applications, notice and other documents germane to the application in person at the Port Authority of New York & New Jersey.

Issued in Jamaica, New York on May 11, 1995.

William DeGraaff,

Manager, Planning & Programming Branch, Eastern Region.

[FR Doc. 95–1754 Filed 5–3–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[FRA Docket Nos. PB–95–1 and SA–95–2]

MK Rail Corporation (MKRC) and CSX Transportation, Inc. (CSXT)

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Change of hearing date.

SUMMARY: On May 5, 1995, FRA published in the **Federal Register** a Notice of Petition for Waivers or Compliance (60 FR 22427) regarding the future operations of a train known as the ''Iron Highway.'' FRA scheduled a public hearing for May 25, 1995. Due to scheduling constraints, FRA must change the date of the public hearing. As a consequence, FRA is rescheduling the public hearing to June 29, 1995, in room 4436 of the Nassif Building, DOT Headquarters Building, 400 Seventh

Street SW., Washington, DC. We apologize for any inconvenience this rescheduling may cause.

DATES: A public hearing will be held at 10 a.m. on June 29, 1995.

ADDRESSES: A public hearing will be held in room 4436 of the Nassif Building, 400 Seventh Street SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold Morick, Motive Power & Equipment Division, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone 202–366–4094), or Mark Tessler, Trial Attorney, Office of Chief Council, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone 202–366–0628).

Issued in Washington, DC, on May 18, 1995.

E.R. English,

Director, Office of Safety Enforcement.

[FR Doc. 95–12663 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

[Docket No. 94–107; Notice 2]

Excalibur Automobile Corp.; Grant of Application for Decision of Inconsequential Noncompliance

Excalibur Automobile Corporation (Excalibur) of Milwaukee, Wisconsin, determined that some of its vehicles failed to comply with the automatic restraint system requirements of 49 CFR 571.208, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant Crash Protection,'' and filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Excalibur has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on January 5, 1995 (60 FR 1823). This notice grants the application.

Paragraph S4.1.4 of FMVSS No. 208 requires that vehicles manufactured on or after September 1, 1989, be equipped with a restraint system at each front outboard designated seating position that meets the standard's frontal crash protection requirements by means that require no action by vehicle occupants. This type of system is referred to as an automatic restraint system.

Excalibur manufactured 59 model year 1993, 1994, and 1995 JAC 427 Cobras without automatic restraint systems. These vehicles all contain Type 2, three-point harness active restraint systems. However, as Excalibur noted in its part 573 Report filed concurrently with the application under consideration, ''36 JAC 427 Cobras are in dealers' possession and 15 have been acquired by ultimate purchasers. The remaining automobiles remain in the possession of Excalibur.'' NHTSA granted Excalibur's application for temporary exemption on March 6, 1995 (60 FR 12281), an agency action that covers the 36 unsold cars in dealer stock and in Excalibur's possession. Therefore, only the 15 cars that have been sold remain subject to the application under consideration.

Excalibur supported its application for inconsequential noncompliance with the following. The 15 JAC 427 Cobras all contain Type 2, three-point harness active restraint systems. Bringing these vehicles into compliance with paragraph S4.1.4 of FMVSS 208 would be very difficult from an engineering perspective, and whatever feasible solutions may be available, would most likely result in significant expense for Excalibur, a small financially-strapped company.

As set forth below, Excalibur argued that the overall safety risk from noncompliance with paragraph S4.1.4 of FMVSS 208 is inconsequential because of (1) the vehicle's specialized and limited use and small number and (2) Excalibur's belief that Cobra owners have a relatively high level of safety belt use and (3) Excalibur's proposal to boost further Cobra safety belt use by placing a warning label in the vehicle.

1. The Overall Safety Risk From Noncompliance of Excalibur's (15) JAC 427 Cobras With FMVSS 208 Is Inconsequential Given Their Specialized And Limited Use And Small Number

The JAC 427 Cobra is not an ordinary passenger automobile designed for daily use. It is a classically-styled automobile viewed as a collector's item by automobile purchasers. * * * The JAC 427 Cobra is a convertible which seats two persons, and has a small trunk. As a result, it is not designed to be used as a family's primary passenger vehicle. Instead, the JAC 427 Cobra is typically driven only short distances from an owner's home. Owners of these (sic) type of automobiles generally drive these automobiles no more than 4000 miles per year.

Excalibur has never planned to produce many JAC 427 Cobras due to the limited capacity of its manufacturing facilities and the nature of its manufacturing process. For example, the highest monthly total of JAC 427 Cobra automobiles ever produced was 17. Only 59 of these automobiles were produced for sale in the U.S. between January 1993 and September 1994, a 21-month period. In 1995, Excalibur's total planned production is only 100–180 JAC 427 Cobras for sale worldwide, or no more than 15 per month. Of the 100–180, only 60% of the JAC 427 Cobras, or 60–108, are proposed for sale in the U.S.

The collector's nature of the JAC 427 Cobra, the low number of miles that these types of vehicles are driven on any consistent basis, and the small number of actual JAC 427 Cobras that do not comply with FMVSS 208 illustrate the overall reduced safety risk of these vehicles, especially when compared to the overall risk posed by the average use of the standard family passenger vehicle. Thus, the total effect of the existence of only (15) JAC 427 noncomplying automobiles—which are meant for weekend pleasure driving—is inconsequential in relation to the overall level of motor vehicle safety in the U.S.

2. The Safety Risk From Noncompliance Of Excalibur's (15) JAC 427 Cobras With FMVSS 208 Is Inconsequential Due To Probable Existing Cobra Safety Belt Use And To Excalibur's Proposal To Boost Cobra Safety Belt Use

The use of safety belts has been shown to significantly reduce injuries and fatalities in automobile crashes. *See generally* NHTSA, *Evaluation of the Effectiveness of Occupant Protection—FMVSS 208 Interim Report, June 1992* (hereinafter referred to as ''Interim Report''). Use of safety belts has increased dramatically since 1983 due to the enactment of state mandatory safety belt laws and the installation of automatic safety belt systems. By May of 1992, 42 states plus the District of Columbia and Puerto Rico had enacted laws requiring the use of safety belts. Interim Report at v. Safety belt use overall increased nationwide to nearly 59% in late 1991, ranging from 24% in Mississippi to 83% in Hawaii. NHTSA, *Effectiveness of Occupant Protection Systems and Their Use—Report to Congress, January 1993.* Manual safety belt use nationwide reached 56% in 1991, and may be even higher today due to increased safety awareness. *See* Interim Report at viii.

An informal survey of Excalibur automobile owners, including those of the JAC 427 Cobra, revealed that these owners on average are 45 year-old males with greater incomes and higher levels of education than the general population. Unlike youthful segments of the population who are more prone to reckless driving, Excalibur automobile owners are predominantly established, responsible people who value their personal safety and the quality and uniqueness of their investment in an Excalibur automobile. As a result, Excalibur opines that the owners of the JAC 427 Cobras are more likely to be wearing a safety belt while driving than other segments of the population, such as young single males.

To ensure even higher safety belt use in its JAC 427 Cobras, and thereby increase the safety of the driver and passenger, Excalibur proposes reminding in the strongest terms possible both the driver and passenger of the consequences of not using their safety belts. Excalibur would accomplish this by posting a warning label plainly and clearly visible to both the driver and passenger which states as follows:

WARNING: YOU MUST USE THE SEATBELT PROVIDED IN THIS VEHICLE. IT IS THE LAW. FAILURE TO USE THE SEATBELT COULD RESULT IN SERIOUS INJURY OR DEATH SINCE THIS CAR DOES NOT HAVE AN AIRBAG OR AUTOMATIC RESTRAINT SYSTEM.

Such a label should boost safety belt use by the drivers and passengers of the 59 JAC 427 Cobras, making the safety risk inconsequential by comparison to the safety risk associated with automobiles having automatic restraint systems.

No comments were received on the application.

As noted, the agency has granted Excalibur's application for temporary exemption, on grounds that immediate compliance would cause it substantial economic hardship. An additional finding was that the exemption would be consistent with the public interest and motor vehicle safety. This finding was reached in part on the limited number of vehicles that will be covered by the exemption during its life. Given the fact that there are far fewer vehicles covered by the application under consideration, and that the noncompliance apparently cannot be remedied by repair, the agency wishes to reach a decision that is consistent with that reached in granting the application for temporary exemption. Given the fact that there are 15 vehicles involved here, and that they comply with the requirements of FMVSS No. 208 that were once in effect, Excalibur's noncompliance may be deemed inconsequential to safety.

NHTSA concurs with Excalibur's plan to provide a warning label, but points out to Excalibur that not all States have mandatory seatbelt laws. Further, the label implies that it is not important to use the seatbelt if a vehicle does not have an airbag or other automatic restraint system. It is important to use the seatbelts regardless of whether there is an automatic restraint system. The agency calls this to the manufacturer's attention with the expectation that the label provided will be modified to reflect these comments.

In consideration of the foregoing, it is hereby found that the applicant has met its burden of persuasion that the noncompliance herein described is inconsequential to safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: May 18, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–12664 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances (Polybutylene, et. al); Notice of Determinations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces determinations, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include polybutylene and polybutylene/ethylene.

EFFECTIVE DATE: This modification is effective July 1, 1990.

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:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether the substance should be listed as a taxable substance. The Secretary shall add the substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce the substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On May 16, 1995, the Secretary determined that polybutylene and polybutylene/ethylene should be added to the list of taxable substances in section 4672(a)(3), effective July 1, 1990.

The rate of tax prescribed for polybutylene, under section 4671(b)(3), is $4.70 per ton. This is based upon a conversion factor for butylene of 0.966.

The rate of tax prescribed for polybutylene/ethylene, under section 4671(b)(3), is $4.86 per ton. This is based upon a combined conversion factor for butylene and ethylene of 0.999.

The petitioner is Pecten Chemicals, a manufacturer and exporter of these substances. No material comments were received on these petitions. The following information is the basis for the determinations.

Polybutylene

HTS number: 3902.90.00.10
CAS number: 25036–29–7

Polybutylene is derived from the taxable chemical butylene. Polybutylene is a solid produced predominantly by the Zeigler-Nata Catalyzed, Bulk, Polymerization Process.

The stoichiometric material consumption formula for polybutylene is:

$$n\ (C_4H_8)\ \text{(butylene)} \longrightarrow (C_4H_8)_n\ \text{(polybutylene)}$$

Polybutylene has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

Polybutylene/Ethylene

HTS number: 3902.90.00.10
CAS number: 54570–68–2

Polybutylene/ethylene is derived from the taxable chemicals butylene and ethylene. Polybutylene/ethylene is a solid produced predominantly by the Zeigler-Nata Catalyzed, Bulk, Polymerization Process.

The stoichiometric material consumption formula for polybutylene/ethylene is:

$$n\ (C_4H_8)\ \text{(butylene)} + m\ (C_2H_4)\ \text{(ethylene)} \longrightarrow (C_4H_8)_n(C_2H_4)_m\ \text{(polybutylene/ethylene)}$$

Polybutylene/ethylene has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–12765 Filed 5–23–95; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Definition of Substance

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice modifies the definition of *substance* as that term relates to synthetic organic chemicals under Notice 89–61. It affects manufacturers and importers of taxable chemicals that are used in manufacturing taxable substances, and importers and exporters of those substances.

EFFECTIVE DATE: May 24, 1995.

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:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether that substance should be listed as a taxable substance. The Secretary shall add the substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce the substance. This determination is to be made on the basis of the predominant method of production.

Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process. Under Notice 89–61, for synthetic organic chemicals the term *substance* excludes textile fibers, yarns, and staple, and fabricated products that are molded, formed, woven, or otherwise finished into end-use products.

Modification of Definition of Substance

Certain polymers (resins) are initially produced as intermediate products in pellet, powder, or fiber form. Under Notice 89–61, a polymer in the form of pellet or powder, but not fiber, is eligible for listing as a taxable substance. This Notice modifies the definition of *substance* to include polymers extruded in fiber form.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–12766 Filed 5–23–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Complaints, 38 CFR 18.542; and Notice to Subrecipients, 38 CFR 18.532

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ron Taylor, Information Management Service (045A4), 810 Vermont Avenue, NW, Washington, DC 20420, (202) 523–3412.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before June 23, 1995.

Dated: May 15, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

Reinstatement

1. Age Discrimination Complaints, 38 CFR 18.542; and Notice of Subrecipients, 38 CFR 18.532.
2. This information collection pertains to the recordkeeping requirement that Federally funded recipients process complaints of age discrimination in their respective programs and that these recipients notify subrecipients of their obligations under the law and VA's implementing regulations.
3. Individuals or households—Businesses or other for-profit—Not-for-profit institutions—State, Local or Tribal Governments.
4. The estimated total annual report hours and recordkeeping burden is 409 hours. However, the burden placed on the public in this reporting and recordkeeping requirement is not unique to the Federal government. Therefore, VA will be indicating a burden hour of one for the OMB reports management system. The information being requested from the public is retained or requested as a matter of practice.
5. 1½ hours.
6. On occasion.
7. 234 recordkeepers.

[FR Doc. 95–12654 Filed 5–23–95; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Request for Estate Information, VA Form Letter 27–439

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 15, 1995.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

Reinstatement

1. Request for Estate Information, VA Form Letter 27–439.

2. The form letter provides Veterans Benefits Administration the information necessary to determine whether size of the estate is within legal boundaries for discontinuance of benefits to incompetent veterans when specific conditions exist.
3. Individuals or households—Business or other for-profit—Not-for-profit institutions—State, Local or Tribal Government.
4. 5,060 hours.
5. 10 minutes.
6. On occasion.
7. 13,800 respondents.

[FR Doc. 95–12653 Filed 5–23–95; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Appeal to Board of Veteran's Appeals, VA Form 9; Withdrawal of Services by a Representative; Fee Agreement; Motion for Review of Expenses; Requests for Changes in Hearing Date; and Motion for Reconsideration

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted OMB for following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ron Taylor, Information Management Service (045A4), 810 Vermont Avenue, NW, Washington, DC 20420, (202) 523–3412.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by no later than June 23, 1995.

Dated: May 15, 1995.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

Reinstatement

1. Appeal to Board of Veterans' Appeals, VA Form 9; Withdrawal of Services by a Representative; Fee Agreement; Motion for Review of Expenses; Requests for Changes in Hearing Date; and Motion for Reconsideration.
2. The information collection is judicial in nature and is required in processing appeals from denial of claims for VA benefits and in regulation of representatives' fees.
3. Individuals or households.
4. 51,598 hours.
5. Estimate of Burden Hour Per Respondent: 58 minutes (*Average*).
   a. Appeal to Board of Veterans' Appeals—1 hour.
   b. Withdrawal of Services by a Representative—30 minutes.
   c. Fee Agreement—6 minutes (basic filing); 4 hours (motion filing).
   d. Requests for Changes in Hearing Date—10 minutes (basic request); 1 hour (requests requiring preparation of a motion).
   e. Motion for Review of Expenses—4 hours.
6. On occasion.
7. 53,397 responses.

[FR Doc. 95–12652 Filed 5–23–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 100
Wednesday, May 24, 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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, May 30, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 19, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12821 Filed 5–22–95; 9:12 am]

BILLING CODE 6210–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Thursday, June 1, 1995.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6431B Special Investigation Report: Safety of the Air Tour Industry in the United States.

6554 Briefs of Aviation Accidents.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: May 19, 1995.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 95–12804 Filed 5–22–95; 9:12 am]

BILLING CODE 7533–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [60 FR 26481, May 17, 1995].

STATUS: Open Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: May 17, 1995.

CHANGE IN THE MEETING: Deletion.

The following item will not be considered at an open meeting scheduled for Friday, May 19, 1995, at 11:00 a.m.

Whether to propose amendments to the all-holder's/best price provisions of: (i) Rule 13e–4; and (ii) 14d–10 to prohibit a tender offeror from paying a soliciting dealer fee to a security holder with respect to any tender by that holder for its own account.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: May 18, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–12822 Filed 5–22–95; 9:12 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of May 22, 1995.

A closed meeting will be held on Monday, May 22, 1995, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Monday, May 22, 1995, at 11:00 a.m., will be:

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Settlement of administrative proceedings of an enforcement nature.

Dismissal of injunctive action.

Amendment of administrative proceeding of an enforcement nature.

Modify settlement of administrative proceeding of an enforcement nature.

Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: May 22, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–12924 Filed 5–22–95; 3:45 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 60, No. 100
Wednesday, May 24, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 950411099–5099–01]

RIN 0651–AA52

Amendment to Rules for Extension of Patent Term

Correction

In rule document 95–11787 beginning on page 25615 in the issue of Friday, May 12, 1995, make the following corrections:

1. On page 25616, in the second column, in the third full paragraph, in the fourth line, insert ''term'' after ''patent''.

2. On the same page, in the same column, in the fourth paragraph, in the fifth line, remove ''further''.

3. On page 25617, in the second column, in the first full paragraph, in the first sentence, ''Section 1750'' should read ''Section 1760''.

4. On the same page, in the third column, under the heading **Other Considerations**, in the first full paragraph, in the last line, ''35091'' should read ''3501''.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD–FRL–5115–7]
RIN 2060–AC14

National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

Correction

In rule document 95–65 beginning on page 4948 in the issue of Wednesday, Janaury 25, 1995, make the following corrections:

On page 4950, Tables 3 and 4 should be removed. They appear correctly on page 4951.

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1688–95]
RIN 1115–AD89

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

Correction

In rule document 95–12272 beginning on page 26676 in the issue of Thursday, May 18, 1995, make the following correction:

§ 212.7 [Corrected]

On page 26681, in the second column, amendatory instruction 2. to § 212.7 should read as set forth below.

''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) is added to read as follows:''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–95–031]

RIN 2115–AA97

Safety Zone: Macy's 1995 Fourth of July Fireworks, East River, NY

Correction

In proposed rule document 95–11659 beginning on page 25189 in the issue of Thursday, May 11, 1995, make the following correction:

§ 165.T01–031 [Corrected]

On page 25190, in the third column, in § 165.T01-031(c)(3)(ii), in the sixth line, insert the following after ''between'':

''the Williamsburg Bridge and the charted position of Buoy 18 (LLNR 27335). These vessels may enter the zone and proceed to this area between''.

BILLING CODE 1505–01–D

federal register

Wednesday
May 24, 1995

Part II

Department of Housing and Urban Development

Supportive Housing for Persons With Disabilities; Fund Availability; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–95–3904; FR–3903–N–01]

Notice of Fund Availability (NOFA) for Supportive Housing for Persons With Disabilities

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for Fiscal Year (FY) 1995.

SUMMARY: This NOFA announces HUD's funding for supportive housing for persons with disabilities. This document describes the following: (a) The purpose of the NOFA and information regarding eligibility, submission requirements, available amounts, and selection criteria; and (b) application processing, including how to apply and how selections will be made.

APPLICATION PACKAGE: The Application Package can be obtained from the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850, telephone 1–800–685–8470; and from the appropriate HUD Office identified in appendix A to this NOFA. The Application Package includes a checklist of steps and exhibits involved in the application process.

DATES: The deadline for receipt of applications in response to this NOFA is 4 p.m. local time on July 24, 1995. The application deadline is firm as to *date* and *hour*. In the interest of fairness to all applicants, HUD will not consider any application that is received after the deadline. Sponsors should take this into account and submit applications as early as possible to avoid the risk of unanticipated delays or delivery-related problems. In particular, Sponsors intending to mail applications must provide sufficient time to permit delivery on or before the deadline date. Acceptance by a Post Office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

ADDRESSES: Applications must be delivered to the Director of the Multifamily Housing Division in the HUD Office for your jurisdiction. A listing of HUD Offices, their addresses, and telephone numbers is attached as appendix A to this NOFA. HUD will date and time stamp incoming applications to evidence timely receipt, and upon request will provide the applicant with an acknowledgement of receipt.

FOR FURTHER INFORMATION CONTACT: The HUD Office for your jurisdiction, as listed in appendix A to this NOFA.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB Control Number 2502–0267.

I. Purpose and Substantive Description

A. Authority

Section 811 of the Cranston-Gonzalez National Affordable Housing Act (the NAHA) (Pub. L. 101–625, approved November 28, 1990), as amended by the Housing and Community Development Act of 1992) (HCD Act of 1992) (Pub. L. 102–550, approved October 28, 1992), authorized a new supportive housing program for persons with disabilities, and replaced assistance for persons with disabilities previously covered by section 202 of the Housing Act of 1959 (section 202 continues, as amended by section 801 of the NAHA, and HCD Act of 1992, to authorize supportive housing for the elderly). HUD provides the assistance as capital advances and contracts for project rental assistance in accordance with 24 CFR part 890. Capital advances may be used to finance the construction, rehabilitation, or acquisition with or without rehabilitation, including acquisition from the Resolution Trust Corporation (RTC), of structures to be developed into a variety of housing options ranging from group homes and independent living facilities, to dwelling units in multifamily housing developments, condominium housing, and cooperative housing. Acquisition without rehabilitation is permitted only for group homes or properties acquired from the RTC. This assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for persons with disabilities.

For supportive housing for persons with disabilities, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994) provides $387,000,000 for capital advances for supportive housing for persons with disabilities, as authorized by section 811 of the NAHA, and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for persons with disabilities, as authorized by section 811 of the NAHA.

In accordance with an agreement between HUD and the Administration for Rural Housing and Economic Development Services (ARHEDS) (formerly the Farmers Home Administration (FmHA)), which facilitates the coordination between the two agencies in administering their respective rental assistance programs, HUD is required to notify ARHEDS of applications for housing assistance it receives. This notification gives ARHEDS the opportunity to comment if it has concern about the demand for additional assisted housing and possible harm to existing projects in the same housing market area. HUD will consider the ARHEDS comments in its review and project selection process.

B. Allocation Amounts

In accordance with 24 CFR part 791, the Assistant Secretary will allocate the amounts available for capital advances for supportive housing for persons with disabilities. HUD reserves project rental assistance funds sufficient for 20-year project rental assistance contracts in support of the units selected for capital advances, consistent with current operating cost standards.

The allocation formula for Section 811 funds consists of the following two data elements:

1. A measure of the number of persons identified as having a public transportation disability; and

2. A measure of the number of persons identified as having a work disability.

Due to the elimination of the 10 HUD Regional Offices, the Section 811 capital advance funds have been allocated, based on the formula above, to 51 HUD Offices as shown on the following chart:

FISCAL YEAR 1995 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

[Fiscal Year 1995 Section 811 Allocations]

Offices	Capital advance authority	Units
New England:		
Massachusetts	$4,053,040	52
Connecticut	2,175,115	28
New Hampshire	1,202,081	20
Rhode Island	1,157,571	15
Total	8,587,807	115
New York/New Jersey:		
New York	12,284,104	158
Buffalo	2,926,426	43
New Jersey	5,985,522	77
Total	21,196,052	278
Mid-Atlantic:		
Maryland	2,039,706	32
West Virginia	1,332,779	23
Pennsylvania	5,926,132	86
Pittsburgh	2,421,348	40
Virginia	2,107,107	40
DC	2,160,322	33
Total	15,987,394	254
Southeast/Caribbean:		
Georgia	3,452,517	68
Alabama	2,683,292	51
Caribbean	2,695,997	41
South Carolina	2,175,093	40
North Carolina	4,583,069	70
Mississippi	1,793,626	36
Jacksonville	8,103,682	143
Kentucky	2,353,307	42
Knoxville	1,222,748	24
Tennessee	1,507,819	30
Total	30,571,150	545
Midwest:		
Illinois	7,742,486	107
Cincinnati	1,389,418	24
Cleveland	3,445,072	54
Ohio	1,363,677	24
Michigan	4,268,202	67
Grand Rapids	1,056,716	19
Indiana	2,819,986	49
Wisconsin	2,222,256	35
Minnesota	1,886,433	28
Total	26,194,246	407
Southwest:		
Texas/New Mexico	4,033,221	77
Houston	2,361,150	44
Arkansas	1,452,576	31
Louisiana	2,497,047	49
Oklahoma	1,582,766	32
San Antonio	2,057,581	41
Total	13,984,341	274
Great Plains:		
Iowa	1,150,920	22
Kansas/Missouri	2,012,074	37
Nebraska	779,167	15
St. Louis	1,927,154	31
Total	5,869,315	105
Rocky Mountains:		
Colorado	2,629,947	46
Total	2,629,947	46
Pacific/Hawaii:		
Hawaii (Guam)	1,752,779	15
Los Angeles	12,903,390	169

FISCAL YEAR 1995 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES—Continued

[Fiscal Year 1995 Section 811 Allocations]

Offices	Capital advance authority	Units
Arizona	1,564,195	30
Sacramento	1,537,871	21
California	6,495,719	86
Total	24,253,954	321
Northwest/Alaska:		
Alaska	1,752,779	15
Oregon	1,759,232	29
Washington	2,159,783	32
Total	5,671,794	76
National Total	154,946,000	2,421

C. Eligibility

Nonprofit organizations are the only eligible applicants under this program. A single Sponsor shall not request more units in a given HUD Office than permitted for that HUD Office in the Invitation.

D. Initial Screening, Technical Processing, and Selection Criteria

1. Initial Screening

HUD will review applications for section 811 capital advances that HUD receives at the appropriate address by 4:00 p.m. local time on July 24, 1995 to determine if all parts of the application are included. HUD will not review the content of the application as part of initial screening. HUD will send deficiency letters, by certified mail, informing Sponsors of any missing parts of the application. Sponsors must correct such deficiencies within 14 calendar days from the date of the deficiency letter. Any document requested as a result of the initial screening may be executed or prepared within the deficiency period, except for Forms HUD–92016–CAs, Articles of Incorporation, IRS exemption rulings, Forms SF–424, Board Resolution committing the minimum capital investment, and site control documents (all of these excepted items must be dated no later than the application deadline date).

Note: SPONSORS OF PROJECTS IN OKLAHOMA MAY SUBMIT THE SUPPORTIVE SERVICES CERTIFICATION AND THE CERTIFICATION OF CONSISTENCY WITH THE CONSOLIDATED PLAN AFTER THE APPLICATION DEADLINE BUT NO LATER THAN AUGUST 25, 1995. If these are the only deficiencies discovered during initial screening, affected Sponsors will not receive a deficiency letter.

2. Technical Processing

All applications will be placed in technical processing upon receipt of the response to the deficiency letter or at the end of the 14-day period. All applications will undergo a complete analysis. If a reviewer finds that clarification is needed to complete the review or an exhibit is missing that was not requested after initial screening, the reviewer shall immediately advise the Multifamily Housing Representative, who will: (a) Request, by telephone, that the Sponsor submit the information within five (5) working days; and (b) follow up by certified letter. Communications must be attached to the technical review and findings memorandum. As part of this analysis, HUD will conduct its environmental review in accordance with 24 CFR part 50 only on those applications containing satisfactory evidence of site control.

Examples of reasons for technical processing rejection include an ineligible Sponsor, ineligible population to be served, lack of legal capacity, or a Supportive Services Certification on which the appropriate State or local agency indicated that the provision of services is not well-designed to meet the needs of persons with disabilities, or that the Sponsor did not demonstrate sufficiently that supportive services will be provided on a consistent, long-term basis. The Secretary will not reject an application based on technical processing without giving notice of that rejection with all rejection reasons and affording the applicant an opportunity to appeal. HUD will afford an applicant 14 calendar days from the date of HUD's written notice to appeal a technical rejection to the HUD Office. The HUD Office must respond within five working days to the Sponsor. The HUD Office shall make a determination on an appeal prior to making its selection recommendations. All applications will be either rated or technically rejected at the end of technical processing.

Technical processing will also assure that the Sponsor has complied with the requirements in the civil rights certification (24 CFR 890.265(b)(9)(i)). There must not have been an adjudication of a civil rights violation in a civil action brought against the Sponsor by a private individual, unless the Sponsor is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance. There must be no pending civil rights suits against the Sponsor instituted by the Department of Justice, and no pending administrative actions for civil rights violations instituted by HUD (including a charge of discrimination under the Fair Housing Act). There must be no outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, nor any charges issued by the Secretary against the Sponsor under the Fair Housing Act, unless the Sponsor is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance. Moreover, there must not be a deferral of the processing of applications from the Sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, HUD's implementing regulations (24 CFR 1.8), procedures (HUD Handbook 8040.1), and the Attorney General's Guidelines (28 CFR 50.3); or under section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations (24 CFR 8.57), and the Americans with Disabilities Act.

Upon completion of technical processing, all acceptable applications will be rated according to the selection

criteria in 24 CFR 890.300(d) (also below in section I.D.3. of this NOFA). Applications that have a total score of 50 points or more will be eligible for selection and will be placed in rank order. These applications will be selected based on rank order to and including the last application that can be funded out of the local HUD Office's allocation. Local HUD Offices will no longer skip over any applications in order to select one based on the funds remaining. Any funds remaining after this process has been completed will be returned to Headquarters for selecting applications based on a national rank order.

3. Selection Criteria

Applications for Section 811 capital advances that successfully complete technical processing will be rated using the following selection criteria:

(a) The Sponsor's ability to develop and operate the proposed housing on a long-term basis, considering the following (70 points maximum—60 base points plus 10 bonus points):

(1) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to those proposed to be served by the project and the scope of the proposed project (*i.e.*, number of units, services, relocation costs, development, and operation) in relationship to the Sponsor's demonstrated development and management capacity.(32 points);

(2) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to minority persons or families (8 points);

(3) The scope, extent, and quality of the Sponsor's experience in providing opportunities for minority- and women-owned business enterprises participation (5 points);

(4) Applications submitted by Sponsors whose boards are comprised of at least 51 percent persons with disabilities (5 bonus points);

(5) The extent of local community support for the project and for the Sponsor's activities, including previous experience in serving the area where the project is to be located, and the Sponsor's demonstrated ability to enlist volunteers and raise local funds (15 points); and

(6) The Sponsor's involvement of persons with disabilities (including minority persons with disabilities) in the development of the application, and its intent to involve persons with disabilities (including minority persons with disabilities) in the development of the project (5 bonus points).

(b) The need for supportive housing for persons with disabilities in the area to be served, the extent to which the Sponsor has site control, suitability of the site, and the design of the project, considering (50 points maximum—40 base points plus 10 bonus points):

(1) The extent of the need for the project in the area based on a determination by the HUD Office. This determination will be made by considering the Sponsor's evidence of need in the area based on the guidelines in § 890.265(b)(18), as well as other economic, demographic, and housing market data available to the HUD Office. The data could include the availability of existing Federally assisted housing (HUD and ARHEDS) for persons with disabilities and current occupancy in such facilities, Federally assisted housing for persons with disabilities under construction or for which fund reservations have been issued, and, in accordance with an agreement between HUD and ARHEDS, comments from ARHEDS on the demand for additional assisted housing and the possible harm to existing projects in the same housing market area (8 points);

(2) Applications containing acceptable evidence of control of an approvable site (10 bonus points);

(3) The proximity or accessibility of the site to shopping, medical facilities, transportation, places of worship, recreational facilities, places of employment, and other necessary services to the intended occupants; adequacy of utilities and streets, and freedom of the site from adverse environmental conditions (site control projects only); and compliance with the site and neighborhood standards (15 points);

(4) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority persons with disabilities (7 points); and

(5) The extent to which the proposed design will meet any special needs of persons with disabilities the housing is intended to serve and will accommodate the provision of any necessary on-site supportive services for the proposed residents (10 points).

(c) The project will be located within the boundaries of a Federally-designated Empowerment Zone, Urban Supplemental Empowerment Zone, Enterprise Community, or Urban Enhanced Enterprise Community (5 bonus points).

The maximum number of points an application can earn without bonus points is 100. An application can earn an additional 25 bonus points for a maximum total of 125 points.

II. Application Process

All applications for Section 811 capital advances submitted by eligible Sponsors must be filed with the appropriate HUD Office receiving an allocation and must meet the requirements of this NOFA. No application will be accepted after 4 p.m. local time on July 24, 1995, unless that date and time is extended by a Notice published in the **Federal Register**. HUD will not accept applications received after that date and time, even if postmarked by the deadline date. Applications submitted by facsimile are not acceptable.

Immediately upon publication of this NOFA, if names have not already been provided to the Multifamily Housing Clearinghouse, HUD Offices shall notify minority media and media for persons with disabilities, all persons and organizations on their mailing lists, minority and other organizations within their jurisdiction involved in housing and community development, and groups with special interest in housing for disabled households.

Organizations interested in applying for a Section 811 capital advance should contact the Multifamily Housing Clearinghouse at 1–800–685–8470 for a copy of the Application Package, and advise the appropriate HUD Office if they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. HUD Offices will advise all organizations on their mailing list of the date, time, and place of workshops at which HUD will explain the Section 811 program.

HUD strongly recommends that prospective applicants attend the local HUD Office workshop. Interested persons with disabilities should contact the HUD Office to assure that any necessary arrangements can be made to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, Application Packages can also be obtained from the Multifamily Housing Clearinghouse (see address and telephone number in the ''Application Package'' section, above). However, Sponsors must contact the appropriate HUD Office with any questions regarding the submission of applications and for any additional application requirements. At the workshops, HUD will distribute Application Packages and will explain application procedures and requirements. Also, HUD will address concerns such as local market conditions, building codes, historic preservation, floodplain management,

displacement and relocation, zoning, and housing costs.

III. Application Submission Requirements

A. Application

Each application shall include all of the information, materials, forms, and exhibits listed in section III.B., below, of this NOFA (with the exception of applications submitted by Sponsors selected for a Section 811 fund reservation within the last three funding cycles), and must be indexed and tabbed. Previously selected Section 811 Sponsors are not required to submit the information described in B.2. (a), (b), and (c), below, of this NOFA (Exhibits 2.a., b., and c. of the application), which are the articles of incorporation (or other organizational documents), by-laws, and the IRS tax exemption, respectively. If there has been a change in any of the eligibility documents since its previous HUD approval, the Sponsor must submit the updated information in its application. The HUD Office will base its determination of the eligibility of a new Sponsor for a reservation of Section 811 capital advance funds on the information provided in the application. HUD Offices will verify a Sponsor's indication of previous HUD approval by checking the project number and approval status with the appropriate HUD Office. In addition to this relief of paperwork burden in preparing applications, applicants will be able to use information and exhibits previously prepared for prior applications under Section 811, Section 202, or other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include, among others, those on previous participation in the Section 202 or Section 811 programs; applicant experience in the provision of housing and services; supportive services plan; community ties; and experience serving minorities.

B. General Application Requirements

1. Form HUD–92016–CA, Application for Section 811 Supportive Housing Capital Advance.

Note: A SPONSOR MAY APPLY FOR A SCATTERED SITE PROJECT PROVIDED EACH SITE CONTAINS THE SAME FACILITY TYPE (*E.G.*, GROUP HOME, INDEPENDENT LIVING FACILITY, CONDOMINIUM UNIT). IF THE SPONSOR PROPOSES A MIX OF FACILITY TYPES, IT MUST SUBMIT ONE APPLICATION PER FACILITY TYPE.

2. Evidence of *each* Sponsor's legal status as a nonprofit organization, including the following:

(a) Articles of Incorporation, constitution, or other organizational documents;

(b) By-laws;

(c) IRS section 501(c)(3) tax exemption ruling (this must be submitted by all Sponsors, including churches). Previously, nonprofit organizations in Puerto Rico were exempt from this requirement provided they were exempt from income taxation under Puerto Rico law, have never been liable for payment of Federal income taxes, and do not pay patronage dividends. HUD has learned, however, that nonprofit organizations in Puerto Rico may apply and be granted IRS section 501(c)(3) tax exemption rulings. This requirement also applies to nonprofit organizations in Guam. Therefore, to the extent permitted within the application period for this NOFA, Sponsors should pursue a tax exemption ruling under 501(c)(3). If a Sponsor is unable, after using its best efforts, to secure such a ruling, it may use the regulatory exemption described in this paragraph (c), above.

Note: SPONSORS WHO HAVE RECEIVED A SECTION 811 FUND RESERVATION WITHIN THE LAST THREE FUNDING CYCLES ARE NOT REQUIRED TO SUBMIT THE DOCUMENTS DESCRIBED IN (a), (b), and (c), ABOVE. INSTEAD, SPONSORS MUST SUBMIT THE PROJECT NUMBER OF THE LATEST APPLICATION SUBMITTED AND THE HUD OFFICE TO WHICH IT WAS SUBMITTED. IF THERE HAVE BEEN ANY MODIFICATIONS OR ADDITIONS TO THE SUBJECT DOCUMENTS, INDICATE SUCH, AND SUBMIT THE NEW MATERIAL.

(d) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation that has or will have a contract with the Owner and that includes a current listing of all duly qualified and sitting officers and directors by title and the ending date of each person's term.

(e) The number of people on the Sponsor's board and the number of those people who have a disability.

3. Sponsor's purpose, community ties, and experience, including the following:

(a) Description of Sponsor's purpose and current activities;

(b) Description of Sponsor's ties to the community at large and to the disabled community in particular;

(c) Description of Sponsor's housing and/or supportive services experience. The description should include any rental housing projects and/or medical facilities sponsored, owned, and operated by the Sponsor, the Sponsor's past or current involvement in any programs other than housing that demonstrates the Sponsor's management capabilities and experience, and the Sponsor's experience in serving persons with disabilities and minorities.

(d) Description of Sponsor's experience in contracting with minority- and women-owned businesses, including a summary of the total amount awarded in each of the two categories for the preceding three years, and the percentage that amount represents of all contracts awarded by the Sponsor in the relevant time period;

(e) A certified Board Resolution acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership. Also, evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the estimated start-up expenses, the Minimum Capital Investment (one-half of one-percent of the HUD-approved capital advance, not to exceed $10,000) (see § 890.250), and the estimated cost of any amenities or features (and operating costs related thereto) that would not be covered by the approved capital advance;

(f) Description, if applicable, of the Sponsor's efforts to involve persons with disabilities in the development of the application, as well as its intent to involve persons with disabilities in the development of the project.

4. Project information including the following:

(a) Evidence of need for supportive housing. An identification of the proposed population and evidence demonstrating sustained effective demand for the housing for the proposed population in the area to be served, such as a description of market conditions in existing Federally assisted housing for persons with disabilities (occupancy, waiting lists, etc.), State or local needs assessments of persons with disabilities in the area, the types of supportive services arrangements currently available in the area, and the use of such services as evidenced by data from local social service agencies.

(b) Description of the project, including the following:

(1) Number and type of structure(s), number of bedrooms if group home, number of units with bedroom distribution if independent living units (including condos), number of residents with disabilities, and resident staff per structure.

(2) An identification of all community spaces, amenities, or features planned for the housing. A description of how the spaces, amenities, or features will be used, the extent to which they are necessary to accommodate any special needs of the proposed residents, and the provision of any on-site supportive services also must be included. If these community spaces, amenities, or features would not comply with the design and cost standards of § 890.220, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities, or features; and

(3) Description of whether and how the project will promote energy efficiency, and, if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(c) A supportive services plan (a copy of which must be sent to the appropriate State or local agency as instructed in section IV.B., below, of this NOFA) that includes:

(1) A detailed description of whether the housing is intended to serve persons with physical, mental, or emotional impairments, developmental disabilities, or chronic mental illness. Include how and from whom persons will be referred and admitted to the project. The Sponsor may, with the approval of the Secretary, limit occupancy within housing developed under this part to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment.

(2) A detailed description of any supportive service needs of the proposed population and the extent to which the supportive services will be needed.

(3) The manner in which such services will be provided, either by residents taking responsibility for acquiring their own services, to the extent needed, on an individual basis, or by a comprehensive service plan organized by the Sponsor.

(4) If services will be organized or provided by the Sponsor, include the following:

(i) The name(s) of the agency(s) (if other than the Sponsor) that will be responsible for providing the supportive services;

(ii) The evidence of each service provider's capability and experience in providing such supportive services;

(iii) A description of how, when, how often, and where (on/off-site) the services will be provided;

(iv) A description of residential staff, if needed;

(v) Identification of the extent of State and local funds to assist in the provision of supportive services;

(vi) Letters of intent from service providers or funding sources, indicating commitments to fund or to provide the supportive services, or indication that a particular service will be available to proposed residents. If the Sponsor will be providing any supportive services or will be coordinating the provision of any of the supportive services, a letter indicating its commitment to either provide the supportive services or ensure their provision for the life of the project;

(vii) If any State or local government funds will be provided, a description of the State or local agency's philosophy/policy concerning residential facilities for the population to be served, and a demonstration by the Sponsor that the application is consistent with State or local plans and policies governing the development and operation of facilities for the same disabled population.

(5) If the proposed residents will be taking responsibility for acquiring their own supportive services, a description of appropriate services in the community from which the residents can choose.

(6) Assurances that the proposed residents will receive supportive services based on their individual needs, and a commitment that accepting supportive services will not be a condition of occupancy.

(7) Form HUD 92013E, Supplemental Application Processing Form—Housing for Persons with Disabilities. Identify all supportive services, if any, to be provided to the persons occupying such housing.

(d) Supportive Services Certification. A certification from the appropriate State or local agency identified in the Application Package that the provision of supportive services is well designed to serve the special needs of persons with disabilities, that the necessary supportive services will be provided on a consistent, long-term basis, and that the proposed facility is consistent with State or local plans and policies governing the development and operation of facilities to serve individuals of the proposed occupancy category. (The name, address, and telephone number of the appropriate agency can be obtained from the appropriate HUD Office.)

Note: SPONSORS OF PROJECTS IN OKLAHOMA MAY SUBMIT THE SUPPORTIVE SERVICES CERTIFICATION AFTER THE APPLICATION DEADLINE DATE BUT NO LATER THAN AUGUST 25, 1995.

(e) Evidence of control of an approvable site, or identification of a site for which the Sponsor provides reasonable assurances that it will obtain control within 6 months from the date of fund reservation (if Sponsor is approved for funding).

(1) If the Sponsor has control of the site, it must submit the following information:

(i) Evidence that the Sponsor has entered into a legally binding option agreement to purchase or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold, a request with all supporting documentation, submitted either prior to or with the Application for Capital Advance, for a partial release of a site covered by a mortgage under a HUD program, or other evidence of legal ownership of the site (including properties to be acquired from the RTC). The option agreement period must extend through the end of the current fiscal year and contain a renewal provision so that the option can be renewed for at least an additional six months. The Sponsor must also identify any restrictive covenants, including reverter clauses. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of Section 811 capital advance, and identification of any restrictive covenants, including reverter clauses. However, in localities where HUD determines that the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) that are necessary to convey publicly-owned sites, a letter in the application from the mayor or director of the appropriate local agency indicating their approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the HUD Office if it has satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and identification of any restrictive covenants, including reverter clauses. For properties to be acquired from the RTC, include a copy of the RTC prepared Transaction Screen Checklist or Phase I Environmental Site Assessment, and applicable

documentation, per the RTC Environmental Guidelines.

Note: A PROPOSED PROJECT SITE MAY NOT BE ACQUIRED OR OPTIONED FROM A GENERAL CONTRACTOR (OR ITS AFFILIATE) THAT WILL CONSTRUCT THE SECTION 811 PROJECT OR FROM ANY OTHER DEVELOPMENT TEAM MEMBER.

(ii) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for the belief that the proposed action will be completed successfully before the submission of the commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*).

(iii) Narrative description of site and area surrounding the site, characteristics of neighborhood, how the site will promote greater housing opportunities for minorities, and any other information that affects the suitability of the site for persons with disabilities and including:

(A) If acquisition, evidence that the structure has been constructed or occupied for at least three years (other than RTC properties);

(B) A statement that the Sponsor is willing to seek a different site if the preferred site is unapprovable and that site control will be obtained within six months of notification of fund reservation;

(C) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated;

(D) A Transaction Screen Process, in accordance with the American Society for Testing and Material (ASTM) Standards E 1528–93 and E 1527–93, as amended. If the completion of the Transaction Screen Questionnaire results in either a ''yes'' or ''unknown'' response, further study is required, and the Sponsor must complete a Phase I Environmental Site Assessment in accordance with the ASTM and submit it with the application. If the Phase I study indicates the possible presence of contamination and/or hazards, further study must be undertaken. At this point, the Sponsor must decide whether to continue with this site or choose another site. Should the Sponsor choose another site, the same environmental site assessment procedure identified above must be followed for that site. Since all Transaction Screen processes and Phase I studies must be completed and submitted with the application, it is important that the Sponsor start the site assessment process as soon after the publication of this NOFA as possible.

If the Sponsor chooses to continue with the original site, then it must undertake a detailed Phase II Environmental Site Assessment by an appropriate professional.

Note: THIS COULD BE AN EXPENSIVE UNDERTAKING. THE COST OF THE STUDY WILL BE BORNE BY THE SPONSOR IF THE APPLICATION IS NOT SELECTED.

If the Phase II Assessment reveals site contamination, the extent of the contamination and a plan for clean-up of the site must be submitted to the local HUD Office. The plan for clean-up must include a contract for remediation of the problem(s) and an approval letter from the applicable Federal, State, and/or local agency with jurisdiction over the site. In order for the application to be considered for review under this FY 1995 funding, this information would have to be submitted to the local HUD Office no later than August 16, 1995.

(E) If an exception to the project size limits is being requested, describe why the site was selected and demonstrate the following:

(*i*) The increased number of people is necessary for the economic feasibility of the project;

(*ii*) The project is compatible with other residential development and the population density of the area in which the project is to be located;

(*iii*) The increased number of people will not prohibit their successful integration into the community;

(*iv*) The project is marketable in the community;

(*v*) The size of the project is consistent with State and/or local policies governing similar facilities for the proposed population; and

(*vi*) A statement that the Sponsor is willing to have its application processed at the project size limit should HUD not approve the exception.

(2) If the Sponsor has identified a site, but does not have it under control, it must submit the following information:

(i) A description of the location of the site, including its street address and unit number (if condominium), neighborhood/community characteristics (to include racial and ethnic data), amenities, adjacent housing and/or facilities, how the site will promote greater housing opportunities for minorities, and any other information that affects the suitability of the site for persons with disabilities;

(ii) A description of the activities undertaken to identify the site, as well as what actions must be taken to obtain control of the site, if approved for funding;

(iii) An indication as to whether the site is properly zoned. If it is not, an indication of the actions/time necessary for proper zoning;

(iv) A status of the sale of the site; and

(v) An indication as to whether the site would involve relocation.

(f) Statements of support for the proposed project from nongovernmental organizations familiar with the needs of the population it would serve, any sources of local funds to serve the project, minority support, and how long the Sponsor has been in existence (include any additional related information).

(g) For group homes to be licensed as intermediate care facilities (in which funding for the intermediate care is provided under Title XIX of the Social Security Act) that serve persons with developmental disabilities, the following must be submitted:

(1) Evidence demonstrating that the proposed project will primarily provide housing rather than medical facilities, and is or will be licensed by appropriate State agencies;

(2) Description of the medical training of the staff of the proposed facility and any nursing services that will be required by the residents on-site;

(3) Description of the services that will be funded by Medicaid for residents of the proposed project, including their nature, frequency, and where the services are to be provided;

(4) Description of any special design features proposed for the group home that are not common to other Section 811 group homes for the proposed population, and the Sponsor's rationale for including them;

(5) Written evidence from the State Medicaid Office that it recognizes the need for a tenant contribution to rent and has agreed to pay the cost of the tenant contribution in the Medicaid payment to the Owner; and

(6) Statement certifying that the Individual Program Plan for each resident will include participation in an out-of-the-home activity program for at least six hours each weekday.

5. A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other HUD Office in response to this NOFA or the NOFA for Supportive Housing for the Elderly (published elsewhere in today's **Federal Register**). Indicate, by HUD Office, the number of units requested and the proposed location by city and State for each application. Also, a list of all FY 1994 and prior year projects to which the Sponsor(s) is a party, identified by

project number and HUD Office, which have not been finally closed.

6. HUD–2880, Applicant/Recipient Disclosure/Update Report including Social Security Numbers and Employee Identification Numbers.

7. E.O. 12372. A certification that the Sponsor has submitted a copy of its application, if required, to the State agency (single point of contact) for State review in accordance with Executive Order 12372.

8. A statement that: (a) Identifies all persons (families, individuals, businesses, and nonprofit organizations) by race/minority group and status as owners or tenants occupying the property on the date of submission of the application for a capital advance; (b) Indicates the estimated cost of relocation payments and other services; and (c) Identifies the staff organization that will carry out the relocation activities. (This requirement applies to applications with site control only. Sponsors of applications with identified sites that are selected will be required to submit this information at a later date once they have obtained site control.)

Note: IF ANY OF THE RELOCATION COSTS WILL BE FUNDED FROM SOURCES OTHER THAN THE SECTION 811 CAPITAL ADVANCE, THE SPONSOR MUST PROVIDE EVIDENCE OF A FIRM COMMITMENT OF THESE FUNDS. WHEN EVALUATING APPLICATIONS, HUD WILL CONSIDER THE TOTAL COST OF PROPOSALS (*I.E.*, COST OF SITE ACQUISITION, RELOCATION, CONSTRUCTION AND OTHER PROJECT COSTS).

9. SF–424. A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

10. Disclosure of Lobbying Activities. If the amount applied for is greater than $100,000, the certification with regard to lobbying required by 24 CFR part 87 must be included. If the amount applied for is greater than $100,000 and the applicant has made or has agreed to make any payment using nonappropriated funds for lobbying activity, as described in 24 CFR part 87, the submission must also include SF–LLL, Disclosure of Lobbying Activities. The applicant determines if the submission of the SF–LLL form is applicable.

11. Sponsor Certifications.

(a) A certification of the Sponsor(s)' intent to comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3600–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; Executive Order 11246 (as amended) and the implementing regulations at 41 CFR Chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing) at 24 CFR part 107; the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) to the extent applicable; the affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108; and other applicable Federal, State, and local laws prohibiting discrimination and promoting equal opportunity.

(b) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(c) A certification that the project will comply with HUD's design and cost standards; the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40; section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8; and for covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100; and the Americans with Disabilities Act of 1990.

(d) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), implemented by regulations at 49 CFR part 24, and 24 CFR 890.260(e).

(e) A certification by the Sponsor(s) that it will form an Owner (as defined in 24 CFR 890.105) after the issuance of the capital advance, will cause the Owner to file a request for determination of eligibility and a request for capital advance under 24 CFR 890.300, and will provide sufficient resources to the Owner to insure the development and long-term operation of the project.

(f) A certification that the Sponsor will comply with the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR part 35 (except as superseded in 24 CFR 890.260(f)(2)).

(g) Certification of Consistency with the Consolidated Plan (Plan) for the jurisdiction in which the proposed project will be located must be submitted by the Sponsor (see NOTE below if the jurisdiction does not have an approved Plan). The certification must be made by the unit of general local government if it is required to have, or has, a complete Plan. Otherwise the certification may be made by the State, or if the project will be located in a unit of general local government authorized to use an abbreviated strategy, by the unit of general local government if it is willing to prepare such a Plan.

All certifications must be made by the public official responsible for submitting the Plan to HUD. The certifications must be submitted as part of the application by the application submission deadline set forth in this NOFA, except as provided in the next paragraph. The Plan regulations are published in 24 CFR part 91.

Notes: (1) IF THE JURISDICTION'S PLAN PROGRAM YEAR HAS NOT YET STARTED, THE JURISDICTION MAY CERTIFY CONSISTENCY WITH THEIR FY 1994 CHAS IN LIEU OF THE PLAN. A NOTICE PUBLISHED IN THE FEBRUARY 6, 1995 **FEDERAL REGISTER** ESTABLISHED THAT A JURISDICTION'S PREVIOUSLY APPROVED CHAS WILL REMAIN IN EFFECT UNTIL THE START DATE OF THE JURISDICTION'S NEW CONSOLIDATED PROGRAM YEAR, AT WHICH POINT THE JURISDICTION'S NEW PLAN WOULD TAKE EFFECT. THE NOTICE ALSO ALLOWS JURISDICTIONS TO USE THEIR ANNUAL PLAN FOR FY 1994 AS EXTENDED BY THE FEBRUARY 6, 1995 **FEDERAL REGISTER** NOTICE FOR THE PURPOSE OF CERTIFICATIONS OF CONSISTENCY.

(2) SPONSORS OF PROJECTS IN OKLAHOMA MAY SUBMIT THE CERTIFICATION OF CONSISTENCY WITH THE CONSOLIDATED PLAN AFTER THE APPLICATION DEADLINE BUT NO LATER THAN AUGUST 25, 1995.

IV. Additional Information

A. Sites

The National Affordable Housing Act requires Sponsors submitting applications for Section 811 fund reservations to provide either (a) evidence of site control, or (b) reasonable assurances that it will have control of a site within six months of notification of fund reservation. Accordingly, if a Sponsor has control of a site at the time it submits its application, it must include evidence of such as described in 24 CFR 890.265. If it does not have site control, it must provide the information required in § 890.265 as a reasonable assurance that site control will be obtained within six months of fund reservation notification.

Sponsors may select a site different from the one(s) submitted in their original applications if the original site is not approvable. Selection of a different site will require HUD performance of an environmental review on the new site, which could result in rejection of that site. However, if a Sponsor does not have site control for any reason 12 months after notification of fund reservation, the assistance will be recaptured and reallocated.

Sponsors submitting satisfactory evidence of an approvable site (*i.e.*, site control) will have 10 bonus points added to the rating of their applications. Sponsors submitting proper identification of a site will not be eligible for the 10 bonus points.

Applications containing evidence of site control where either the evidence or the site is not approvable will *not* be rejected provided the application indicates the Sponsor's willingness to select another site and an assurance that site control will be obtained within six months of fund reservation notification.

In the case of a scattered site application submitted with evidence of site control for all of the sites, the evidence must be satisfactory for each site, and all the sites must be approvable for the application to receive the 10 bonus points for site control. The same applies to a scattered site application in which the Sponsor has control of some of the sites but has only identified others. It would also not be eligible for the 10 bonus points for site control.

B. Supportive Services

The National Affordable Housing Act requires Sponsors submitting applications for Section 811 fund reservations to include a supportive services plan and a certification from the appropriate State or local agency that the provision of services identified in the supportive services plan is well designed to serve the special needs of persons with disabilities. Paragraph III.B.4.(c) above outlines the information that must be in the Supportive Services Plan. Sponsors must submit one copy of their Supportive Services Plans to the appropriate State or local agency well in advance of the application deadline date in order for the State or local agency to review the Supportive Services Plan and complete the Supportive Services Certification (Paragraph III.B.4(d) above, to be supplied by the Sponsor from the Application Package received from the HUD Office) and return it to the Sponsor for inclusion with the application submission to HUD.

Note: SPONSORS OF PROJECTS IN OKLAHOMA MAY SUBMIT THE SUPPORTIVE SERVICES CERTIFICATION AFTER THE APPLICATION DEADLINE DATE BUT NO LATER THAN AUGUST 25, 1995.

Since the appropriate State or local agency will review the Supportive Services Plan on behalf of HUD, the Supportive Services Certification, in addition to the indication as to whether the provision of supportive services is well designed, will indicate whether the Sponsor demonstrated that necessary supportive services will be provided on a consistent, long-term basis. If HUD receives an application in which the Supportive Services Certification is missing, is received by HUD after the deficiency period, or indicates that either the provision of services is *not* well designed to meet the special needs of persons with disabilities or that the Sponsor failed to demonstrate that the necessary services will be provided on a consistent, long-term basis, the application shall be rejected.

HUD recognizes that there will be varying degrees of need for supportive services by the potential residents of Section 811 housing, even to the degree of needing no special services at all. Sponsors must describe this in the application, in Exhibit 4. A Sponsor proposing to serve persons with disabilities who need few, if any, special services will not have its application penalized as a result. In addition, Sponsors may not require residents, as a condition of occupancy, to accept any supportive service.

C. Project Size Limits

The maximum number of persons with disabilities in an independent living facility is 24 persons for all disability types.

V. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this NOFA does not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This NOFA merely notifies the public of the availability of capital advances for supportive housing for persons with disabilities.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this NOFA does not have the potential for significant impact on family formation, maintenance, or general well-being. This NOFA may have a positive though indirect effect on families, to the extent that families will benefit from the provision of supportive housing for persons with disabilities. Since any effect on families is beneficial, this NOFA is not subject to review under the Order.

D. Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published in the **Federal Register** (57 FR 1942) additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

1. Documentation and Public Access

HUD will ensure documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance

pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

2. Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

E. Documentation and Public Access Requirements: HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

F. Section 103

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, should contact his or her HUD Office Counsel, or Headquarters counsel for the program to which the question pertains.

G. Lobbying

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by HUD and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence HUD in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions regarding the rule should be directed to the Director, Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–3815 TDD/Voice). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD Office.

H. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the Byrd Amendment) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

I. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Supportive Housing for Persons with Disabilities.

Authority: Section 811, National Affordable Housing Act, as amended (42 U.S.C. 8013), section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: April 26, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix A—HUD Offices

Note: The first line of the mailing address for all offices is U.S. Department of Housing and Urban Development. Telephone numbers listed are not toll-free.

HUD—NEW ENGLAND AREA

CONNECTICUT STATE OFFICE

First Floor, 330 Main Street, Hartford, CT 06106–1860, (203) 240–4523

MASSACHUSETTS STATE OFFICE

Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, MA 02222–1092, (617) 565–5234

NEW HAMPSHIRE STATE OFFICE

Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, (603) 666–7681

RHODE ISLAND STATE OFFICE

Sixth Floor, 10 Weybosset Street, Providence, RI 02903–2808, (401) 528–5351

HUD—NEW YORK, NEW JERSEY AREA

NEW JERSEY STATE OFFICE

Thirteenth Floor, One Newark Center, Newark, NJ 07102–5260, (201) 622–7900

NEW YORK STATE OFFICE

26 Federal Plaza, New York, NY 10278–0068, (212) 264–6500

BUFFALO AREA OFFICE

Fifth Floor, Lafayette Court, 465 Main Street, Buffalo, NY 14203–1780, (716) 846–5755

HUD—MIDATLANTIC AREA

DISTRICT OF COLUMBIA OFFICE

820 First Street, NE, Washington, D.C. 20002–4502, (202) 275–9200

MARYLAND STATE OFFICE

Fifth Floor, City Crescent Building, 10 South Howard Street, Baltimore, MD 21201–2505, (401) 962–2520

PENNSYLVANIA STATE OFFICE

Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106–3392, (215) 597–2560

VIRGINIA STATE OFFICE

The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, VA 23230 - 0331, (804) 278–4507

WEST VIRGINIA STATE OFFICE

Suite 708, 405 Capitol Street, Charleston, WV 25301–1795, (304) 347–7000

PITTSBURGH AREA OFFICE

412 Old Post Office Courthouse, 7th Avenue and Grant Street, Pittsburgh, PA 15219–1906, (412) 644–6428

HUD—SOUTHEAST/CARIBBEAN AREA

ALABAMA STATE OFFICE

Suite 300, Beacon Ridge Tower, 600 Beacon Parkway, West, Birmingham, AL 35209–3144, (205) 290–7617

CARIBBEAN OFFICE

New San Juan Office Building, 159 Carlos Chardon Avenue, San Juan, PR 00918–1804, (809) 766–6121

GEORGIA STATE OFFICE

Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, GA 30303–3388, (404) 331–5136

KENTUCKY STATE OFFICE

601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, (502) 582–5251

MISSISSIPPI STATE OFFICE

Suite 910, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, MS 39269–1016, (601) 965–5308

NORTH CAROLINA STATE OFFICE

Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, (919) 547–4001

SOUTH CAROLINA STATE OFFICE

Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, (803) 765–5592

TENNESSEE STATE OFFICE

Suite 200, 251 Cumberland Bend Drive, Nashville, TN 37228–1803, (615) 736–5213

JACKSONVILLE AREA OFFICE

Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, FL 32202–5121, (904) 232–2626

KNOXVILLE AREA OFFICE

Third Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, TN 37902–2526, (615) 545–4384

HUD—MIDWEST AREA

ILLINOIS STATE OFFICE

Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 353–5680

INDIANA STATE OFFICE

151 North Delaware Street, Indianapolis, IN 46204–2526, (317) 226–6303

MICHIGAN STATE OFFICE

Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, (313) 226–7900

MINNESOTA STATE OFFICE

220 Second Street, South, Minneapolis, MN 55401–2195, (612) 370–3000

OHIO STATE OFFICE

200 North High Street, Columbus, OH 43215–2499, (614) 469–5737

WISCONSIN STATE OFFICE

Suite 1380, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2289, (414) 297–3214

CINCINNATI AREA OFFICE

Room 9002 Federal Office Building, 550 Main Street, Cincinnati, OH 45202–3253, (513) 684–2884

CLEVELAND AREA OFFICE

Fifth Floor, Renaissance Building, 1350 Euclid Avenue, Cleveland, OH 44115–1815, (216) 522–4058

GRAND RAPIDS AREA OFFICE

2922 Fuller Avenue, NE., Grand Rapids, MI 49505–3499, (616) 456–2100

HUD—SOUTHWEST AREA

ARKANSAS STATE OFFICE

Suite 900, TCBY Tower, 425 West Capitol Avenue, Little Rock, AR 72201–3488, (501) 324–5931

LOUISIANA STATE OFFICE

Ninth Floor, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3099, (504) 589–7200

OKLAHOMA STATE OFFICE

Suite 400, 500 West Main, Oklahoma City, OK 73102, (405) 231–4345

TEXAS STATE OFFICE

1600 Throckmorton Street, P.O. Box 2905, Fort Worth, TX 76113–2905, (817) 885–5401

HOUSTON AREA OFFICE

Suite 200, Norfolk Tower, 2211 Norfolk, Houston, TX 77098–4096, (713) 834–3274

SAN ANTONIO AREA OFFICE

Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, (210) 229–6800

HUD—GREAT PLAINS

IOWA STATE OFFICE

Room 239, Federal Building, 210 Walnut Street, Des Moines, IA 50309–2155, (515) 284–4512

KANSAS/MISSOURI STATE OFFICE

Room 200, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, (913) 551–5462

NEBRASKA STATE OFFICE

Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, (402) 492–3100

SAINT LOUIS AREA FIELD OFFICE

Third Floor, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103–2836, (314) 539–6583

HUD—ROCKY MOUNTAINS AREA

COLORADO STATE OFFICE

633 17th Street, Denver, CO 80202–3607, (303) 672–5440

HUD—PACIFIC/HAWAII AREA

ARIZONA STATE OFFICE

Suite 1600, Two Arizona Center, 400 North 5th Street, Phoenix, AZ 85004–2361, (602) 379–4434

CALIFORNIA STATE OFFICE

Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, (415) 556–4752

HAWAII STATE OFFICE

Suite 500, 7 Waterfront Plaza, 500 Ala Moana Boulevard, Honolulu, HI 96813–4918, (808) 522–8175

LOS ANGELES AREA OFFICE

1615 West Olympic Boulevard, Los Angeles, CA 90015–3801, (213) 251–7122

SACRAMENTO AREA OFFICE

Suite 200, 777 12th Avenue, Sacramento, CA 95814–1997, (916) 551–1351

HUD—NORTHWEST/ALASKA AREA

ALASKA STATE OFFICE

Suite 401, University Plaza Building, 949 East 36th Avenue, Anchorage, AK 99508–4399, (907) 271–4170

OREGON STATE OFFICE

520 S.W. 6th Avenue, Portland, OR 97204–1596, (503) 326–2561

WASHINGTON STATE OFFICE

Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, WA 98104–1000, (206) 220–5101

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federal register

Wednesday
May 24, 1995

Part III

Department of Housing and Urban Development

Supportive Housing for the Elderly; Fund Availability; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–95–3909; FR–3904–N–01]

Notice of Fund Availability (NOFA) for Supportive Housing for the Elderly

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for Fiscal Year (FY) 1995.

SUMMARY: This NOFA announces HUD's funding for supportive housing for the elderly. This document describes the following: (a) The purpose of the NOFA, and information regarding eligibility, submission requirements, available amounts, and selection criteria; and (b) application processing, including how to apply and how selections will be made.

APPLICATION PACKAGE: The Application Package can be obtained from the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850, telephone 1–800–685–8470; and from the appropriate HUD Office identified in appendix A to this NOFA. The Application Package includes a checklist of steps and exhibits involved in the application process.

DATES: The deadline for receipt of applications in response to this NOFA is 4 p.m. local time on July 24, 1995. The application deadline is firm as to *date* and *hour*. In the interest of fairness to all applicants, HUD will not consider any application that is received after the deadline. Sponsors should take this into account and submit applications as early as possible to avoid the risk of unanticipated delays or delivery-related problems. In particular, Sponsors intending to mail applications must provide sufficient time to permit delivery on or before the deadline date. Acceptance by a Post Office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

ADDRESSES: Applications must be delivered to the Director of the Multifamily Housing Division in the HUD Office for your jurisdiction. A listing of HUD Offices, their addresses, and telephone numbers are attached as appendix A to this NOFA. HUD will date and time stamp incoming applications to evidence timely receipt, and upon request will provide the applicant with an acknowledgement of receipt.

FOR FURTHER INFORMATION CONTACT: The HUD Office for your jurisdiction, as listed in appendix A to this NOFA.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB Control Number 2502–0267.

I. Purpose and Substantive Description

A. Authority

Section 801 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101–625, approved November 28, 1990), amended section 202 of the Housing Act of 1959 (12 U.S.C. 1701q). Section 202 was also amended by the Housing and Community Development Act of 1992 (HCD Act of 1992) (Pub. L. 102–550, approved October 28, 1992). The Secretary is authorized to provide assistance to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. HUD provides the assistance as capital advances and contracts for project rental assistance in accordance with 24 CFR part 889. This assistance may be used to finance the construction or rehabilitation of a structure, or acquisition of a structure from the Resolution Trust Corporation (RTC), to be used as supportive housing for the elderly in accordance with part 889.

For supportive housing for the elderly, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994) (Fiscal Year 1995 Appropriations Act) provides $1,279,000,000 for capital advances, including amendments to capital advance contracts (not procurement contracts), for housing for the elderly as authorized by section 202 of the Housing Act of 1959, (as amended by the NAHA and HCD Act of 1992), and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for the elderly under section 202(c)(2) of the Housing Act of 1959, as amended. The Fiscal Year 1995 Appropriations Act further provides that $22,000,000 of the above total shall be for service coordinators pursuant to section 202(q) of the Housing Act of 1959, as amended, and subtitle E of title VI of the Housing and Community Development Act of 1992, other than section 676 of such Act and section 8(d)(2)(F)(i) of the Act. Any unreserved balances provided in prior years for such purposes are to be merged with amounts provided in the Fiscal Year 1995 Appropriations Act.

In accordance with an agreement between HUD and the Administration for Rural Housing and Economic Development Services (ARHEDS) (formerly the Farmers Home Administration (FmHA), which facilitates the coordination between the two agencies in administering their respective rental assistance programs, HUD is required to notify ARHEDS of applications for housing assistance it receives. This notification gives ARHEDS the opportunity to comment if it has concerns about the demand for additional assisted housing and possible harm to existing projects in the same housing market area. HUD will consider the ARHEDS comments in its review and project selection process.

B. Allocation Amounts

In accordance with 24 CFR part 791, the Assistant Secretary will allocate the amounts available for capital advances for supportive housing for the elderly. HUD reserves project rental assistance funds sufficient for 20-year project rental assistance contracts in support of the units selected for capital advances, consistent with current operating cost standards.

The allocation formula for Section 202 funds consists of a measure of the number of one- and two-person elderly renter households with incomes at or below the very low income limit (50 percent of area median family income, as determined by HUD, with an adjustment for household size) that have housing deficiencies.

Since the allocations to some HUD Offices are not sufficient to develop feasible projects in both metropolitan and nonmetropolitan areas, the funds may be allocated to only one of the geographical areas. HUD Offices that have an allocation for only one area may accept applications for the other area. However, these applications can only be funded by that HUD Office after all other approvable applications submitted in response to the advertised allocation area have been funded by that HUD Office.

Applicants for capital advances in the area served by the Wisconsin State HUD Office are hereby put on notice that the capital advance amount available to the Wisconsin Office, as stated in this NOFA, may be reduced or eliminated due to ongoing legal proceedings between HUD and the City of

Milwaukee, and that the determination of whether to reduce or eliminate those funds is entirely within the discretion of HUD. If HUD takes such action or actions, it will publish a notice to that effect in the **Federal Register**.

Based on the allocation formula, HUD has allocated the available capital advance funds as shown on the following chart:

FISCAL YEAR 1995 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR THE ELDERLY

[Fiscal Year 1995 Section 202 Allocations]

Offices	Metropolitan		Nonmetropolitan		Totals	
	Capital advance		Capital advance		Capital advance	
	Authority	Units	Authority	Units	Authority	Units
New England:						
Massachusetts	$20,509,305	253	556,267	7	21,065,572	260
Connecticut	8,865,457	109	428,190	5	9,293,647	114
New Hampshire	2,567,368	41	3,121,220	50	5,688,588	91
Rhode Island	3,923,878	49	404,625	5	4,328,503	54
Total	35,866,008	452	4,510,302	67	40,376,310	519
New York/New Jersey:						
New York	61,370,898	756	558,167	7	61,929,065	763
Buffalo	13,310,685	187	2,691,349	38	16,002,034	225
New Jersey	23,917,973	295	0	0	23,917,973	295
Total	98,599,556	1,238	3,249,516	45	101,849,072	1,283
Mid-Atlantic:						
Maryland	5,792,022	87	598,261	9	6,390,283	96
West Virginia	1,229,113	20	1,255,886	21	2,484,999	41
Pennsylvania	17,573,194	243	2,039,026	28	19,612,220	271
Pittsburgh	6,821,610	107	1,443,745	23	8,265,355	130
Virginia	4,494,342	81	1,829,105	33	6,323,447	114
D.C.	6,121,140	89	0	0	6,121,140	89
Total	42,031,421	627	7,166,023	114	49,197,444	741
Southeast/Caribbean:						
Georgia	5,385,231	101	2,895,944	54	8,281,175	155
Alabama	3,575,258	65	1,945,569	36	5,520,827	101
Caribbean	2,376,504	35	1,182,362	17	3,558,866	52
South Carolina	2,656,623	46	1,321,226	23	3,977,849	69
North Carolina	6,829,911	99	4,014,080	58	10,843,991	157
Mississippi	1,069,259	20	2,304,179	44	3,373,438	64
Jacksonville	20,849,046	352	1,049,769	18	21,898,815	370
Kentucky	2,956,679	51	2,354,387	40	5,311,066	91
Knoxville	1,584,997	30	608,036	12	2,193,033	42
Tennessee	3,013,681	57	1,341,985	25	4,355,666	82
Total	50,297,189	856	19,017,537	327	69,314,726	1183
Midwest:						
Illinois	24,738,434	327	3,811,924	50	28,550,358	377
Cincinnati	4,495,981	75	301,817	5	4,797,798	80
Cleveland	9,695,262	145	1,136,745	17	10,832,007	162
Ohio	2,868,471	48	1,323,740	22	4,192,211	70
Michigan	10,371,824	155	440,888	7	10,812,712	162
Grand Rapids	2,434,564	42	1,377,252	24	3,811,816	66
Indiana	6,138,991	101	1,976,141	33	8,115,132	134
Wisconsin	7,274,458	109	3,079,631	46	10,354,089	155
Minnesota	6,421,380	92	2,877,359	41	9,298,739	133
Total	74,439,365	1094	16,325,497	245	90,764,862	1,339
Southwest:						
Texas/New Mexico	7,573,809	138	2,581,427	47	10,155,236	185
Houston	4,205,306	75	697,947	12	4,903,253	87
Arkansas	1,388,791	28	1,919,891	39	3,308,682	67
Louisiana	4,161,193	78	1,071,620	20	5,232,813	98
Oklahoma	2,174,576	41	1,549,978	30	3,724,554	71
San Antonio	3,199,914	61	703,077	13	3,902,991	74
Total	22,703,589	421	8,523,940	161	31,227,529	582
Great Plains:						
Iowa	1,652,893	30	2,273,979	41	3,926,872	71
Kansas/Missouri	4,133,393	72	2,258,250	40	6,391,643	112
Nebraska	1,107,618	20	989,364	18	2,096,982	38
St. Louis	4,389,497	67	1,794,411	27	6,183,908	94

FISCAL YEAR 1995 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR THE ELDERLY—Continued

[Fiscal Year 1995 Section 202 Allocations]

Offices	Metropolitan		Nonmetropolitan		Totals	
	Capital advance		Capital advance		Capital advance	
	Authority	Units	Authority	Units	Authority	Units
Total	11,283,401	189	7,316,004	126	18,599,405	315
Rocky Mountains:						
Colorado	6,163,362	101	3,484,774	61	9,648,136	162
Total	6,163,362	101	3,484,774	61	9,648,136	162
Pacific/Hawaii						
Hawaii (Guam)	2,495,738	20	630,889	5	3,126,627	25
Los Angeles	43,776,505	549	403,541	5	44,180,046	554
Arizona	3,791,028	70	467,419	9	4,258,447	79
Sacramento	5,126,114	66	760,865	10	5,886,979	76
California	23,207,260	293	975,372	13	24,182,632	306
Total	78,396,645	998	3,238,086	42	81,634,731	1040
Northwest/Alaska:						
Alaska	2,438,199	20	610,537	5	3,048,736	25
Oregon	4,330,567	68	1,998,275	32	6,328,842	100
Washington	7,062,367	99	1,466,227	21	8,528,594	120
Total	13,831,133	187	4,075,039	58	17,906,172	245
National Total	433,611,669	6163	76,906,718	1,246	510,518,387	7,409

C. Eligibility

Private, nonprofit organizations and nonprofit consumer cooperatives are the only eligible applicants under this program. Neither a public body nor an instrumentality of a public body is eligible to participate in the program. No organization shall participate as Sponsor or Co-sponsor in the filing of application(s) for a capital advance in a single geographical region in this fiscal year in excess of that necessary to finance the construction, rehabilitation, or acquisition (acquisition permitted only with RTC properties) of 300 units of housing and related facilities for the elderly. This limit shall apply to organizations that participate as Co-sponsors regardless of whether the Co-sponsors are affiliated or nonaffiliated entities. In addition, the national limit for any one applicant is 10 percent of the total units allocated in all HUD Offices. Affiliated entities that submit separate applications shall be deemed to be a single entity for the purposes of these limits. No single application may propose more than the number of units allocated to a HUD Office or 125 units, whichever is less. Reservations for projects will not be approved for less than 5 units.

D. Initial Screening, Technical Processing, and Selection Criteria

1. Initial Screening

HUD will review applications for Section 202 capital advances that are received by HUD at the appropriate address by 4 p.m. local time on July 24, 1995, to determine if all parts of the application are included. HUD will not review the content of the application as part of initial screening. HUD will send deficiency letters, by certified mail, informing Sponsors of any missing parts of the application. Sponsors must correct such deficiencies within 14 calendar days from the date of the deficiency letter. Any document requested as a result of the initial screening may be executed or prepared within the deficiency period, except for Forms HUD–92015–CAs, Articles of Incorporation, IRS exemption rulings, Forms SF–424, Board Resolution committing the minimum capital investment, and site control documents (all of these excepted items must be dated no later than the application deadline date).

Note: SPONSORS OF PROJECTS IN OKLAHOMA MAY SUBMIT THE CERTIFICATION OF CONSISTENCY WITH THE CONSOLIDATED PLAN AFTER THE APPLICATION DEADLINE DATE BUT NO LATER THAN AUGUST 25, 1995. If this is the only deficiency discovered during initial screening, affected Sponsors will not receive a deficiency letter.

2. Technical Processing

All applications will be placed in technical processing upon receipt of the response to the deficiency letter or at the end of the 14-day period. These applications will undergo a complete analysis. If a reviewer finds that clarification is needed to complete the review, or an exhibit is missing that was not requested after initial screening, the reviewer shall immediately advise the Multifamily Housing Representative, who will: (a) Request, by telephone, that the Sponsor submit the information within five (5) working days; and (b) follow up by certified letter. Communications must be attached to the technical review and findings memorandum. As part of this analysis, HUD will conduct its environmental review in accordance with 24 CFR part 50.

Examples of reasons for technical processing rejection include an ineligible Sponsor, ineligible population to be served, lack of legal capacity, lack of site control, and unacceptable site based upon a site visit. The Secretary will not reject an application based on technical processing without giving notice of that rejection with all rejection reasons, and affording the applicant an opportunity to appeal. HUD will afford an applicant 14 calendar days from the date of HUD's written notice to appeal a technical rejection to the HUD Office. The HUD Office must respond within five working days to the Sponsor. The HUD Office shall make a determination on an appeal prior to making its selection recommendations. All applications will be either rated or technically rejected at the end of technical processing.

Technical processing will also assure that the Sponsor has complied with the

requirements in the civil rights certification (24 CFR 890.265(b)(9)(i)). There must not have been an adjudication of a civil rights violation in a civil action brought against the Sponsor by a private individual, unless the Sponsor is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance. There must be no pending civil rights suits against the Sponsor instituted by the Department of Justice, and no pending administrative actions for civil rights violations instituted by HUD (including a charge of discrimination under the Fair Housing Act). There must be no outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, nor any charges issued by the Secretary against the Sponsor under the Fair Housing Act, unless the Sponsor is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance. Moreover, there must not be a deferral of the processing of applications from the Sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, HUD's implementing regulations (24 CFR 1.8), procedures (HUD Handbook 8040.1), and the Attorney General's Guidelines (28 CFR 50.3); or under section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations (24 CFR 8.57), and the Americans with Disabilities Act.

Upon completion of technical processing, all acceptable applications will be rated according to the selection criteria in § 889.300(d) (also below in section I.D.3. of this NOFA). Applications, submitted in response to the advertised allocation (metropolitan and/or nonmetropolitan), which have a total score of 50 points or more will be eligible for selection and will be placed in rank order. These applications will be selected based on rank order, to and including the last application that can be funded out of the local HUD Office's allocation. Local HUD Offices will no longer skip over any applications in order to select one based on the funds remaining. HUD Offices that have an allocation for only one area (metropolitan or nonmetropolitan, due to limited allocations) may fund applications in rank order from other areas in that Office that did not receive an allocation. These selections would be made only after funding all applications eligible in the advertised allocation area, and only for any remaining funds. Funds remaining after these two processes are completed will be returned to Headquarters for selecting applications on a national rank order.

3. Selection Criteria

Applications for Section 202 capital advances that successfully complete technical processing will be rated using the following selection criteria:

(a) The Sponsor's ability to develop and operate the proposed housing on a long-term basis, considering the following (60 points maximum—55 base points plus 5 bonus points):

(1) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to those proposed to be served by the project, and the scope of the proposed project (*i.e.*, number of units, services, relocation costs, development, and operation) in relationship to the Sponsor's demonstrated development and management capacity. (30 points);

(2) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to minority persons or families (8 points);

(3) The scope, extent, and quality of the Sponsor's experience in providing opportunities for minority- and women-owned business enterprises participation (5 points); and

(4) The extent of local community support for the project and for the Sponsor's activities, including previous experience in serving the area where the project is to be located, and Sponsor's demonstrated ability to enlist volunteers and raise local funds (12 points);

(5) The Sponsor's involvement of elderly persons, including minority elderly persons, in the development of the application and its intent to involve elderly persons, including minority elderly persons, in the development of the project (5 bonus points);

(b) The need for supportive housing for the elderly in the area to be served and the suitability of the site, considering (25 points maximum):

(1) The extent of the need for the project in the area based on a determination by the HUD Office. HUD will make this determination by considering the Sponsor's evidence of need in the area based on the guidelines in § 889.270(b)(17), as well as other economic, demographic, and housing market data available to the HUD Office. The data could include the availability of existing Federally assisted housing (HUD and ARHEDS) (*e.g.*, considering availability and vacancy rates of public housing) for the elderly and current occupancy in such facilities, Federally assisted housing for the elderly under construction or for which fund reservations have been issued, and in accordance with an agreement between HUD and the ARHEDS, comments from the ARHEDS on the demand for additional assisted housing and the possible harm to existing projects in the same housing market area (8 points).

(2) The proximity or accessibility of the site to shopping, medical facilities, transportation, places of worship, recreational facilities, places of employment, and other necessary services to the intended occupants; adequacy of utilities and streets; freedom of the site from adverse environmental conditions; compliance with site and neighborhood standards (10 points); and

(3) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority elderly persons/families (7 points).

(c) Adequacy of the provision of supportive services and of the proposed facility, considering (20 points maximum):

(1) The extent to which the proposed design will meet the special physical needs of elderly persons (3 points);

(2) The extent to which the proposed size and unit mix of the housing will enable the Sponsor to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion (4 points);

(3) The extent to which the proposed design of the housing will accommodate the provision of supportive services that are expected to be needed, initially and over the useful life of the housing, by the category or categories of elderly persons the housing is intended to serve (3 points);

(4) The extent to which the proposed supportive services meet the identified needs of the residents (5 points); and

(5) The extent to which the Sponsor demonstrated that the identified supportive services will be provided on a consistent, long-term basis (5 points); and

(d) The project will be located within the boundaries of a Federally-designated Empowerment Zone, Urban Supplemental Empowerment Zone, Enterprise Community, or Urban Enhanced Enterprise Community (5 bonus points). The maximum number of points an application can earn without bonus points is 100. An application can earn an additional bonus points for a maximum total of 125 points.

II. Application Process

All applications for Section 202 capital advances submitted by eligible Sponsors must be filed with the appropriate HUD Office receiving an allocation and must meet the

requirements of this NOFA. No application will be accepted after 4 p.m. local time on July 24, 1995, unless that date and time is extended by a Notice published in the **Federal Register**. Applications received after that date and time will not be accepted, even if postmarked by the deadline date. Applications submitted by facsimile are not acceptable.

Immediately upon publication of this NOFA, if names have not already been provided to the Multifamily Housing Clearinghouse, HUD Offices shall notify elderly and minority media, all persons and organizations on their mailing lists, minority and other organizations within their jurisdiction involved in housing and community development, and groups with special interest in housing for elderly households.

Organizations interested in applying for a section 202 capital advance should contact the Multifamily Housing Clearinghouse at 1–800–685–8470 for a copy of the application package, and advise the HUD Office whether they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. HUD Offices will advise all organizations on their mailing list of the date, time, and place of workshops at which HUD will explain the Section 202 program.

HUD strongly recommends that prospective applicants attend the local HUD Office workshop. Interested persons with disabilities should contact the HUD Office to assure that any necessary arrangements can be made to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, they can obtain Application Packages from the Multifamily Housing Clearinghouse (see address and telephone number in the ''Application Package'' section of this NOFA, above). Contact the appropriate HUD Office with any questions regarding the submission of applications.

At the workshops, HUD will explain application procedures and requirements. HUD will also address concerns such as local market conditions, building codes, historic preservation, floodplain management, displacement and relocation, zoning, and housing costs.

III. Application Submission Requirements

A. Application

Each application shall include all of the information, materials, forms, and exhibits listed in section III.B., below (with the exception of applications submitted by Sponsors selected for a Section 202 fund reservation within the last three funding cycles), and must be indexed and tabbed. Previously selected Section 202 Sponsors are not required to submit the information described in B.2.(a), (b), and (c), below (Exhibits 2.a., b., and c. of the application), which are the articles of incorporation, (or other organizational documents), by-laws, and the IRS tax exemption, respectively. If there has been a change in any of the eligibility documents since its previous HUD approval, the Sponsor must submit the updated information in its application. The local HUD Office will base its determination of the eligibility of a new Sponsor for a reservation of Section 202 capital advance funds on the information provided in the application. HUD Offices will verify a Sponsor's indication of previous HUD approval by checking the project number and approval status with the appropriate HUD Office.

In addition to this relief of paperwork burden in preparing applications, applicants will be able to use information and exhibits previously prepared for prior applications under Section 202, Section 811, or other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include, among others, those on previous participation in the Section 202 or Section 811 programs, applicant experience in provision of housing and services, supportive services plan, community ties, and experience serving minorities.

B. General Application Requirements

1. Form HUD–92015–CA, Application for Section 202 Supportive Housing Capital Advance.

2. Evidence of *each* Sponsor's legal status as a private, nonprofit organization or nonprofit consumer cooperative, including the following:

(a) Articles of Incorporation, constitution, or other organizational documents;

(b) By-laws;

(c) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches). A consumer cooperative that is tax exempt under State law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if it is not eligible for tax exemption. Under previous funding rounds, the above provision was also true for nonprofit organizations organized in Puerto Rico and Guam. HUD has now learned that nonprofits in Puerto Rico and Guam may apply and be granted IRS section 501(c)(3) tax exemption rulings. Therefore, to the extent permitted within the application period for this NOFA, Sponsors should pursue a tax exemption ruling under 501(c)(3). If a Sponsor is unable, after using its best efforts, to secure such a ruling, it may use the regulatory exemption described in this paragraph (c), above.

Note: SPONSORS WHO HAVE RECEIVED A SECTION 202 FUND RESERVATION WITHIN THE LAST THREE FUNDING CYCLES ARE NOT REQUIRED TO SUBMIT THE DOCUMENTS DESCRIBED IN (a), (b), and (c), ABOVE. INSTEAD, SPONSORS MUST SUBMIT THE PROJECT NUMBER OF THE LATEST APPLICATION AND THE HUD OFFICE TO WHICH IT WAS SUBMITTED. IF THERE HAVE BEEN ANY MODIFICATIONS OR ADDITIONS TO THE SUBJECT DOCUMENTS, INDICATE SUCH, AND SUBMIT THE NEW MATERIAL.

(d) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation that has or will have a contract with the Owner and that includes a current listing of all duly qualified and sitting officers and directors by title, and the beginning and ending date of each person's term.

3. Sponsor's purpose, community ties, and experience, including the following:

(a) A description of Sponsor's purposes and activities, ties to the community, and minority support, and how long the Sponsor has been in existence (include any additional related information);

(b) A description of Sponsor's housing and/or supportive services experience. The description should include any rental housing projects and/or medical facilities, sponsored, owned, and operated by the Sponsor, the Sponsor's past or current involvement in any programs other than housing that demonstrates the Sponsor's management capabilities and experience, and the Sponsor's experience in serving the elderly and/or families and minorities;

(c) A description of Sponsor's experience in contracting with minority- and women-owned businesses including a summary of the total amount awarded in each of the two categories for the preceding three years, and the percentage that amount represents of all contracts awarded by the Sponsor in the relevant time period;

(d) A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to

assist the Owner to develop, own, manage, and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership. Also, evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the estimated start-up expenses, the Minimum Capital Investment (one-half of one percent of the HUD-approved capital advance, not to exceed $10,000, if nonaffiliated with a National Sponsor; one-half of one percent of the HUD-approved capital advance, not to exceed $25,000, for all other Sponsors; see § 889.250), and the estimated cost of any amenities or features (and operating costs related thereto) that would not be covered by the approved capital advance.

(e) Description, if applicable, of the Sponsor's efforts to involve elderly persons, including minority elderly persons, in the development of the application, as well as its intent to involve elderly persons in the development of the project.

4. Project information, including the following:

(a) Evidence of need for supportive housing. Such evidence would include a description of the category or categories of elderly persons the housing is intended to serve and evidence demonstrating sustained effective demand for supportive housing for that population in the market area to be served, taking into consideration the occupancy and vacancy conditions in existing Federally assisted housing for the elderly (HUD and ARHEDS; *e.g.*, public housing); State or local data on the limitations in activities of daily living among the elderly in the area; aging in place in existing assisted rentals; trends in demographic changes in elderly population and households; the numbers of income eligible elderly households by size, tenure, and housing condition, the types of supportive services arrangements currently available in the area and the use of such services as evidenced by data from local social service agencies or agencies on aging.

(b) Description of the project, including the following:

(1) Narrative description of the building design, including a description of any special design features and community space, and how this design will facilitate the delivery of services in an economical fashion and accommodate the changing needs of the residents over the next 10–20 years.

(2) Describe whether and how the project will promote energy efficiency, and, if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(c) Evidence of site control and permissive zoning.

(1) Evidence that the Sponsor has entered into a legally binding option agreement to buy or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold, a request with all supporting documentation, submitted either prior to or with the Application for Capital Advance, for a partial release of a site covered by a mortgage under a HUD program, or other evidence of legal ownership of the site (including properties to be acquired from the Resolution Trust Corporation). The option agreement period must extend through the end of the current fiscal year and contain a renewal provision so that the option can be renewed for at least an additional six months. The Sponsor must also identify any restrictive covenants, including reverter clauses. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of Section 202 capital advance and identification of any restrictive covenants, including reverter clauses. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) that are necessary to convey publicly-owned sites, a letter in the application from the mayor or director of the appropriate local agency indicating approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the HUD Office if it has satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and identification of any restrictive covenants, including reverter clauses. For properties to be acquired from the RTC, include a copy of the RTC prepared Transaction Screen Checklist or Phase I Environmental Site Assessment, and applicable documentation, per the RTC Environmental Guidelines.

Note: A PROPOSED PROJECT SITE MAY NOT BE ACQUIRED OR OPTIONED FROM A GENERAL CONTRACTOR (OR ITS AFFILIATE) THAT WILL CONSTRUCT THE SECTION 202 PROJECT OR FROM ANY OTHER DEVELOPMENT TEAM MEMBER.

(2) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for belief that the proposed action will be completed successfully before the submission of the commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*).

(3) Narrative description of site and area surrounding the site, characteristics of neighborhood, how the site will promote greater housing opportunities for minorities, and any other information that affects the suitability of the site for the elderly.

(4) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated.

(5) A Transaction Screen Process, in accordance with the American Society for Testing and Material (ASTM) Standards E 1528–93 and E 1527–93, as amended. If the completion of the Transaction Screen Questionnaire results in either a ''yes'' or ''unknown'' response, further study is required, and the Sponsor must complete a Phase I Environmental Site Assessment in accordance with the ASTM and submit it with the application. If the Phase I study indicates the possible presence of contamination and/or hazards, further study must be undertaken. At this point, the Sponsor must decide whether to continue with this site or choose another site. Should the Sponsor choose another site, the same environmental site assessment procedure identified above must be followed for that site. Since all Transaction Screen processes and Phase I studies must be completed and submitted with the application, it is important that the Sponsor start the site assessment process as soon after the publication of this NOFA as possible.

If the Sponsor chooses to continue with the original site, then it must undertake a detailed Phase II Environmental Site Assessment by an appropriate professional.

Note: THIS COULD BE AN EXPENSIVE UNDERTAKING. THE COST OF THE STUDY WILL BE BORNE BY THE SPONSOR IF THE APPLICATION IS NOT SELECTED.

If the Phase II Assessment reveals site contamination the extent of the contamination, and a plan for clean-up of the site must be submitted to the local HUD Office. The plan for clean-up must

include a contract for remediation of the problem(s) and an approval letter from the applicable Federal, State, and/or local agency with jurisdiction over the site. In order for the application to be considered for review under this FY 1995 funding, this information would have to be submitted to the local HUD Office no later than August 16, 1995.

(d) Provision of supportive services and proposed facility.

(1) A detailed description of the supportive services proposed to be provided to the anticipated occupancy.

(2) Form HUD 92013E, Supplemental Application Processing Form—Housing for the Elderly. Identify all supportive services, if any, to be provided to the persons occupying such housing.

(3) A description of public or private sources of assistance that reasonably could be expected to fund the proposed services.

(4) The manner in which such services will be provided to such persons (*i.e.*, on or off-site), including whether a service coordinator will facilitate the adequate provision of such services, and how the services will meet the identified needs of the residents.

5. A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other HUD Office in response to this NOFA or the NOFA for Supportive Housing for Persons with Disabilities (published elsewhere in today's **Federal Register**). Indicate by HUD Office, the proposed location by city and State, and the number of units requested for each application. Include a list of all FY 1994 and prior year projects to which the Sponsor(s) is a party, identified by project number and HUD Office, which have not been finally closed.

6. HUD–2880, Applicant/Recipient Disclosure/Update Report, including Social Security Numbers and Employee Identification Numbers.

7. E.O. 12372. A certification that the Sponsor has submitted a copy of its applications, if required, to the State agency (single point of contact) for State review in accordance with Executive Order 12372.

8. A statement that (a) identifies all persons (families, individuals, businesses, and nonprofit organizations), identified by race/minority group, and status as owners or tenants, occupying the property on the date of submission of the application for a capital advance; (b) indicates the estimated cost of relocation payments and other services; and (c) identifies the staff organization that will carry out the relocation activities.

Note: IF ANY OF THE RELOCATION COSTS WILL BE FUNDED FROM SOURCES OTHER THAN THE SECTION 202 CAPITAL ADVANCE, THE SPONSOR MUST PROVIDE EVIDENCE OF A FIRM COMMITMENT OF THESE FUNDS. WHEN EVALUATING APPLICATIONS, HUD WILL CONSIDER THE TOTAL COST OF PROPOSALS (*I.E.*, COST OF SITE ACQUISITION, RELOCATION, CONSTRUCTION AND OTHER PROJECT COSTS).

9. SF–424. A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

10. Disclosure of Lobbying Activities. If the amount applied for is greater than $100,000, the certification with regard to lobbying required by 24 CFR part 87 must be included. If the amount applied for is greater than $100,000, and the applicant has made or has agreed to make any payment using nonappropriated funds for lobbying activity, as described in 24 CFR part 87, the submission must also include SF–LLL, Disclosure of Lobbying Activities. The applicant determines if the submission of the SF–LLL form is applicable.

11. Sponsor Certifications.

(a) A certification of the Sponsor(s)' intent to comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR Part 8; the Fair Housing Act (42 U.S.C. 3600–3619) and the implementing regulations at 24 CFR Parts 100, 108, 109, and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR Part 1; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR Part 135; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR Part 146; Executive Order 11246 (as amended) and the implementing regulations at 41 CFR Chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing) at 24 CFR Part 107; the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) to the extent applicable; the affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108; and other applicable Federal, State, and local laws prohibiting discrimination and promoting equal opportunity.

(b) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(c) A certification that the project will comply with HUD's design and cost standards; the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40; Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8; and for covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100; and the Americans with Disabilities Act of 1990.

(d) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), implemented by regulations at 49 CFR part 24, and 24 CFR 889.265(e).

(e) A certification by the Sponsor(s) that it will form an Owner (as defined in 24 CFR 889.105) after the issuance of the capital advance, will cause the Owner to file a request for determination of eligibility and a request for capital advance under § 889.300, and will provide sufficient resources to the Owner to insure the development and long-term operation of the project, including capitalizing the Owner at conditional commitment processing in an amount sufficient to meet its obligations in connection with the project.

(f) Certification of Consistency with the Consolidated Plan (Plan) for the jurisdiction in which the proposed project will be located must be submitted by the Sponsor (see NOTE below if the jurisdiction does not have an approved Plan). The certification must be made by the unit of general local government if it is required to have, or has, a complete Plan. Otherwise the certification may be made by the State, or if the project will be located in a unit of general local government authorized to use an abbreviated strategy, by the unit of general local government if it is willing to prepare such a Plan.

All certifications must be made by the public official responsible for submitting the Plan to HUD. The certifications must be submitted as part of the application by the application submission deadline set forth in this NOFA, except as provided in the next paragraph. The Plan regulations are published in 24 CFR part 91.

Notes: (1) If the jurisdiction's plan program year has not yet started, the jurisdiction may certify consistency with their FY 1994 CHAS in lieu of the plan. A notice published in the February 6, 1995 **Federal Register** (60 FR 6967) established that a jurisdiction's previously approved CHAS will remain in effect until the start date of the jurisdiction's new consolidated program year, at which

point the jurisdiction's new plan would take effect. The notice also allows jurisdictions to use their annual plan for FY 1994 as extended by the February 6, 1995 **Federal Register** notice for the purpose of certifications of consistency.

(2) Sponsors of projects in Oklahoma may submit the certification of consistency with the consolidated plan after the application deadline date but no later than August 25, 1995.

IV. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that this NOFA does not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This NOFA merely notifies the public of the availability of capital advances and project rental assistance for supportive housing for the elderly.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, *the Family,* has determined that this NOFA does not have the potential for significant impact on family formation, maintenance, or general well-being. This NOFA may have a positive though indirect effect on families, to the extent that families will benefit from the provision of supportive housing for elderly persons. Since any effect on families is beneficial, this NOFA is not subject to review under the Order.

D. Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published in the **Federal Register** (57 FR 1942) additional information that gave the public (including applicants for and recipients of HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

1. Documentation and Public Access

HUD will ensure documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

2. Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

E. Documentation and Public Access Requirements: HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

F. Section 103

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, should contact his or her HUD Office Counsel, or Headquarters counsel for the program to which the question pertains.

G. Lobbying

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who

are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by HUD and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence HUD in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions regarding the rule should be directed to the Director, Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD Office.

H. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the Byrd Amendment) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

I. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Housing for the Elderly or Handicapped.

Authority: Section 202, Housing Act of 1959, as amended (12 U.S.C. 1701q), Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: April 26, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

Appendix A—HUD Offices

Note: The first line of the mailing address for all offices is U.S. Department of Housing and Urban Development. Telephone numbers listed are not toll-free.

HUD—NEW ENGLAND AREA

CONNECTICUT STATE OFFICE

First Floor, 330 Main Street, Hartford, CT 06106–1860, (203) 240–4523

MASSACHUSETTS STATE OFFICE

Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, MA 02222–1092, (617) 565–5234

NEW HAMPSHIRE STATE OFFICE

Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, (603) 666–7681

RHODE ISLAND STATE OFFICE

Sixth Floor, 10 Weybosset Street, Providence, RI 02903–2808, (401) 528–5351

HUD—NEW YORK, NEW JERSEY AREA

NEW JERSEY STATE OFFICE

Thirteenth Floor, One Newark Center, Newark, NJ 07102–5260, (201) 622–7900

NEW YORK STATE OFFICE

26 Federal Plaza, New York, NY 10278–0068, (212) 264–6500

BUFFALO AREA OFFICE

Fifth Floor, Lafayette Court, 465 Main Street, Buffalo, NY 14203–1780, (716) 846–5755

HUD—MIDATLANTIC AREA

DISTRICT OF COLUMBIA OFFICE

820 First Street, NE., Washington, D.C. 20002–4502, (202) 275–9200

MARYLAND STATE OFFICE

Fifth Floor, City Crescent Building, 10 South Howard Street, Baltimore, MD 21201–2505, (401) 962–2520

PENNSYLVANIA STATE OFFICE

Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106–3392, (215) 597–2560

VIRGINIA STATE OFFICE

The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, VA 23230–0331, (804) 278–4507

WEST VIRGINIA STATE OFFICE

Suite 708, 405 Capitol Street, Charleston, WV 25301–1795, (304) 347–7000

PITTSBURGH AREA OFFICE

412 Old Post Office Courthouse, 7th Avenue and Grant Street, Pittsburgh, PA 15219–1906, (412) 644–6428

HUD—SOUTHEAST/CARIBBEAN AREA

ALABAMA STATE OFFICE

Suite 300, Beacon Ridge Tower, 600 Beacon Parkway, West, Birmingham, AL 35209–3144, (205) 290–7617

CARIBBEAN OFFICE

New San Juan Office Building, 159 Carlos Chardon Avenue, San Juan, PR 00918–1804, (809) 766–6121

GEORGIA STATE OFFICE

Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA 30303–3388, (404) 331–5136

KENTUCKY STATE OFFICE

601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, (502) 582–5251

MISSISSIPPI STATE OFFICE

Suite 910, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, MS 39269–1016, (601) 965–5308

NORTH CAROLINA STATE OFFICE

Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, (919) 547–4001

SOUTH CAROLINA STATE OFFICE

Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, (803) 765–5592

TENNESSEE STATE OFFICE

Suite 200, 251 Cumberland Bend Drive, Nashville, TN 37228–1803, (615) 736–5213

JACKSONVILLE AREA OFFICE

Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, FL 32202–5121, (904) 232–2626

KNOXVILLE AREA OFFICE

Third Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, TN 37902–2526, (615) 545–4384

HUD—MIDWEST AREA

ILLINOIS STATE OFFICE

Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 353–5680

INDIANA STATE OFFICE

151 North Delaware Street, Indianapolis, IN 46204–2526, (317) 226–6303

MICHIGAN STATE OFFICE

Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, (313) 226–7900

MINNESOTA STATE OFFICE

220 Second Street, South, Minneapolis, MN 55401–2195, (612) 370–3000

OHIO STATE OFFICE

200 North High Street, Columbus, OH 43215–2499, (614) 469–5737

WISCONSIN STATE OFFICE

Suite 1380, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2289, (414) 297–3214

CINCINNATI AREA OFFICE

Room 9002, Federal Office Building, 550 Main Street, Cincinnati, OH 45202–3253, (513) 684–2884

CLEVELAND AREA OFFICE

Fifth Floor, Renaissance Building, 1350 Euclid Avenue, Cleveland, OH 44115–1815, (216) 522–4058

GRAND RAPIDS AREA OFFICE

2922 Fuller Avenue, NE., Grand Rapids, MI 49505–3499, (616) 456–2100

HUD—SOUTHWEST AREA

ARKANSAS STATE OFFICE

Suite 900, TCBY Tower, 425 West Capitol Avenue, Little Rock, AR 72201–3488, (501) 324–5931

LOUISIANA STATE OFFICE

Ninth Floor, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3099, (504) 589–7200

OKLAHOMA STATE OFFICE

Suite 400, 500 West Main, Oklahoma City, OK 73102, (405) 231–4345

TEXAS STATE OFFICE

1600 Throckmorton Street, P.O. Box 2905, Fort Worth, TX 76113–2905, (817) 885–5401

HOUSTON AREA OFFICE

Suite 200, Norfolk Tower, 2211 Norfolk, Houston, TX 77098–4096, (713) 834–3274

SAN ANTONIO AREA OFFICE

Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, (210) 229–6800

HUD—GREAT PLAINS

IOWA STATE OFFICE

Room 239, Federal Building, 210 Walnut Street, Des Moines, IA 50309–2155, (515) 284–4512

KANSAS/MISSOURI STATE OFFICE

Room 200, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, (913) 551–5462

NEBRASKA STATE OFFICE

Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, (402) 492–3100

SAINT LOUIS AREA FIELD OFFICE

Third Floor, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103–2836, (314) 539–6583

HUD—ROCKY MOUNTAINS AREA

COLORADO STATE OFFICE

633 17th Street, Denver, CO 80202–3607, (303) 672–5440

HUD—PACIFIC/HAWAII AREA

ARIZONA STATE OFFICE

Suite 1600, Two Arizona Center, 400 North 5th Street, Phoenix, AZ 85004–2361, (602) 379–4434

CALIFORNIA STATE OFFICE

Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, (415) 556–4752

HAWAII STATE OFFICE

Suite 500, 7 Waterfront Plaza, 500 Ala Moana Boulevard, Honolulu, HI 96813–4918, (808) 522–8175

LOS ANGELES AREA OFFICE

1615 West Olympic Boulevard, Los Angeles, CA 90015–3801, (213) 251–7122

SACRAMENTO AREA OFFICE

Suite 200, 777 12th Avenue, Sacramento, CA 95814–1997, (916) 551–1351

HUD—NORTHWEST/ALASKA AREA

ALASKA STATE OFFICE

Suite 401, University Plaza Building, 949 East 36th Avenue, Anchorage, AK 99508–4399, (907) 271–4170

OREGON STATE OFFICE

520 SW. 6th Avenue, Portland, OR 97204–1596, (503) 326–2561

WASHINGTON STATE OFFICE

Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, WA 98104–1000, (206) 220–5101

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federal register

Wednesday
May 24, 1995

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 956

Sweet Onions Grown in Washington and Oregon; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket No. 94AMA–FV–956–1; FV93–956–1FR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Order Regulating Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes a Federal marketing agreement and order which regulates the handling of Walla Walla Sweet Onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. The order was favored by the required two-thirds majority of producers voting in a referendum and the marketing agreement was executed by the required number of handlers, that is, handlers who collectively handled more than 50 percent of all onions handled during the representative period. The marketing agreement and order authorize production and marketing research and marketing development and promotion projects, including paid advertising, and authorize container markings. The objective of the order is to improve producer returns by strengthening consumer demand through various promotional activities and by reducing production and marketing costs through production and marketing research. Agreement and order activities will be financed by assessments levied on Walla Walla Sweet Onion handlers. The order was considered at a public hearing in November 1993. The referendum was conducted by the Department of Agriculture by mail ballot April 7–14, 1995.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724, FAX: (503) 326–7440; or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; telephone: (202) 690–0464, FAX: (202) 720–5698.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing—Issued October 26, 1993; published October 29, 1993 (58 FR 58105);

Notice of Recommended Decision—Issued November 3, 1994; published November 10, 1994 (59 FR 56254);

Secretary's Decision—Issued March 30, 1995; published April 5, 1995 (60 FR 17274).

Preliminary Statement

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and is therefore excluded from the requirements of Executive Order 12866.

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

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

The marketing agreement and order were formulated on the record of a public hearing held at Walla Walla, Washington, November 15, 1993. Notice of the hearing was published in the October 26, 1993, issue of the **Federal Register** (58 FR 58105). The notice set forth a proposed order submitted by the Walla Walla Sweet Onion Grower's Association on behalf of Walla Walla Sweet Onion producers in the production area.

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Approximately 25 witnesses, including Walla Walla Sweet Onion producers, handlers, and a Washington State University researcher, testified in support of the order. Proponents emphasized that Walla Walla Sweet Onion producers need a Federal marketing order to effectively compete with other sweet onion producing areas. No one present at the hearing testified in opposition to the proposed order. At the close of the hearing, January 15, 1994, was established as the date by which briefs, statements, and proposed corrections to the transcript were due. No briefs were received.

The proponents testified that Walla Walla Sweet Onion producers, in order to remain competitive with other sweet onion producing areas, must conduct research and promotion programs to reduce production and marketing costs and increase sales. Such programs should include production and marketing research projects and promotion projects, including paid advertising.

Testimony indicated that voluntary research and development efforts by the Walla Walla Sweet Onion industry have not been successful because of the lack of a coherent research and development plan with broad-based industry support. Also, a relatively small percentage of the U.S. onion crop is produced in the production area in Walla Walla County, Washington, and Umatilla County, Oregon, and individual producers and handlers cannot implement an effective research, marketing development, and promotion program. By contrast, most other onion growing areas in the United States are large enough to convince private entities, such as seed companies, to conduct production research and developmental efforts with the result being new varieties specifically suited to those areas. Proponents believe that an industry-wide program is therefore necessary to enable the pooling of resources to address common problems. A single producer or even two or three producers cannot marshal the resources necessary to conduct effective research, marketing, and promotion programs including paid advertising.

Upon the basis of evidence introduced at the hearing and the record thereof, the Acting Assistant Secretary, Marketing and Regulatory Programs, on March 30, 1995, filed with the Hearing Clerk, U.S. Department of Agriculture, a Final Decision and Referendum Order, directing that a referendum be conducted during the period April 7–14, 1995, among producers of Walla Walla Sweet Onions to determine whether they favored issuance of the proposed marketing order. In the referendum, the

marketing order was favored by more than two-thirds of the producers voting in the referendum and also by producers of more than two-thirds of the production represented in the referendum. The marketing agreement was signed by handlers who, during the representative period, handled more than 50 percent of the volume of Walla Walla Sweet Onions handled during the representative period. The referendum results and handler sign-up met the statutory requirements on producer and handler approval necessary to issue the marketing order and agreement.

Small Business Consideration: In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service considered the economic impact of this action on small entities. The record indicates that there are approximately nine handlers of Walla Walla Sweet Onions in the production area and 50 producers. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of the handlers and producers may be classified as small entities.

During the 1992 season, commercial shipments of Walla Walla Sweet Onions totaled about 390,000 hundredweight at an average f.o.b. price of $16.60 per hundredweight for a total value of $6,474,000. An indeterminate volume, probably about 10 percent, was sold at roadside stands. While there is a great variance in the size of individual handlers' operations, the record indicates that nearly all of the handlers that will be regulated under this order qualify as small firms under the SBA's definition. Witnesses testified that because most of the producers and handlers of Walla Walla Sweet Onions are small, they are unable to individually finance the types of research and promotion efforts needed by the industry. A marketing order program will provide a means for these small entities to pool their resources and work together to solve their common problems. Witnesses testified that such action is necessary for this relatively small industry to remain profitable in the face of intense competition from larger production areas.

Acreage and supplies of Walla Walla Sweet Onions have declined in recent years, and proponents believe that the order will provide a much needed means of halting a drop in grower returns experienced in past seasons. This will be achieved by strengthening demand, developing new markets for existing supplies and encouraging increased production.

Also, costs could be reduced through production research. Thus, the order is expected to have a positive impact on producer returns.

The order authorizes the collection of assessments from handlers of Walla Walla Sweet Onions grown in designated parts of Walla Walla County, Washington, and Umatilla County, Oregon. Assessment funds will be used to finance production research projects that could reduce costs by reducing the occurrence of onion diseases, controlling plant pests, and developing varieties with more desirable flavor, quality, and size. Assessment funds could also be used to strengthen demand and expand markets for Walla Walla Sweet Onions through marketing research and development and product promotion programs, including paid advertising. Projects to develop better methods of handling, shipping or storing onions, to explore additional or alternative uses of onions, to check nutritive values, and similar research are some examples of marketing research. Examples of marketing development projects include exploring marketing possibilities, contacting buyers, distributing educational material relating to the handling and marketing of onions, and the dissemination of the results of current or past marketing research projects.

The order will be administered by a committee composed of Walla Walla Sweet Onion producers, handlers, and a public member nominated by growers and handlers and selected by the Secretary of Agriculture (Secretary). Daily administration of the order will be carried out by a staff hired by the committee. The order will not regulate the production of Walla Walla Sweet Onions and places no restriction on the quality or quantities of Walla Walla Sweet Onions that could be handled.

The principal requirements of the order that affect handlers are the requirements that they pay assessments on fresh market shipments of Walla Walla Sweet Onions to fund research and promotion programs and that container markings could be regulated. The amount of the assessment rate is not specified in the order, but witnesses at the hearing indicated that an appropriate rate might be five cents per 50-pound bag for administrative costs; research and promotion costs could require an additional five to seven cents per bag or more. Any assessment rate to cover committee expenses that may be established will be recommended by the committee to the Secretary for approval.

The order also imposes some reporting and recordkeeping requirements on handlers. Handler testimony indicated that the expected burden imposed with respect to these requirements will be negligible. Most of the information that will be reported to the committee is already compiled by handlers for other uses and is readily available. In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of that Act, the information collection and recordkeeping requirements that may be imposed by this order have been approved by OMB and assigned OMB Number 0581–0172. Any requirements imposed will be evaluated against the potential benefits to be derived and it is expected that any added burden resulting from increased recordkeeping will not be significant when compared to those anticipated benefits.

Reporting and recordkeeping requirements issued under comparable marketing order programs impose an average annual burden on each regulated handler of about one hour and a two year record retention requirement. It is reasonable to expect that a comparable burden may be imposed under this order on the estimated nine handlers of Walla Walla Sweet Onions.

In determining that the order will not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The order provisions have been carefully reviewed and every effort has been made to eliminate any unnecessary costs or requirements. Although the order may impose some additional costs and requirements on handlers, it is anticipated that the order will help to strengthen demand for Walla Walla Sweet Onions. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefitting handlers and producers alike.

Accordingly, it is determined that the order will not have a significant economic impact on a substantial number of small handlers or producers.

Findings and Determinations

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR

Part 900), a public hearing was held upon a proposed marketing agreement and a proposed order, regulating the handling of Sweet Onions grown in the Walla Walla Valley of Southeastern Washington and Northeastern Oregon.

Upon the basis of the evidence introduced at the hearing and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order regulates the handling of sweet onions grown in the production area in the same manner as, and is applicable only, to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area will not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of sweet onions grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of sweet onions grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make this order effective not later than May 19, 1995.

A later effective date would unnecessarily delay the implementation of the agreement and order and the collection of handler assessments necessary to fund day-to-day program expenses and authorized research and promotion activities. The harvesting and marketing of the 1995 Walla Walla Sweet Onion crop is expected to begin in mid-June. Hence, Department and industry implementation activities must begin promptly. These activities include, but are not limited to, industry meetings to nominate the members and alternate members of the administrative committee to locally administer the marketing order, the selection of that Committee by the Secretary of Agriculture, and following that holding Committee meetings to select a management team, draft Committee operating guidelines, consider a budget and assessment rate for the 1995 fiscal period, and make other recommendations consistent with order authority. Some of the Committee recommendations will require rulemaking by the Department to be implemented.

In view of the foregoing, it is hereby found and determined that good cause exists for making this order effective May 19, 1995, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The ''Marketing Agreement Regulating the Handling of Sweet Onions Grown in the Walla Walla Valley of Southeastern Washington and Northeastern Oregon.'' upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping sweet onions covered by the order) who during the period January 1 through December 31, 1994, handled not less than 50 percent of the volume of such sweet onions covered by this order, and

(2) The issuance of this order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the period January 1 through December 31, 1994 (which has been deemed to be a representative period), have been engaged within the Walla Walla Sweet Onion production area in the production of Walla Walla Sweet Onions for market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Order Relative to Handling of Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon

It is therefore ordered, that on and after the effective date hereof, all handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon, shall be in conformity to, and in compliance with, the terms and conditions of the said order, as follows:

The provisions of the marketing order include §§ 956.1 through 956.96. The marketing agreement includes the provisions of the order and three additional provisions, § 956.97 Counterparts, § 956.98 Additional parties, and § 956.99 Order with marketing agreement. These provisions are not published herein as part of the order.

The provisions of the marketing order are set forth in full herein.

Title 7, Chapter IX is amended by adding part 956 to read as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674.

Definitions

§ 956.1 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department of Agriculture who has been delegated, or to whom authority may hereafter be delegated, the authority to act for the Secretary.

§ 956.2 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 956.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 956.4 Production area.

Production area means a tract of land in Umatilla County, Oregon, and Walla Walla County, Washington, based on surveyors' maps, enclosed by the following boundaries: Commencing at the Southeast corner of Section 13, Township (Twp.) 5 North, Range (Rge.) 36 East, W.M.; thence Westerly along the South line of Sections 13, 14, 15, 16, 17, and 18 in Twp. 5 North, Rge. 36 East, Sections 13, 14, 15, 16, 17, and 18 in Twp. 5 North, Rge. 35 East, Sections 13, 14, 15, 16, 17, and 18 in Twp. 5 North, Rge. 34 East, Sections 13, 14, and 15 in Twp. 5 North, Rge. 33 East, W.M. to the East right of way line of the Northern Pacific Railway, as it runs Northwesterly through Vansyckle Canyon; thence Northwesterly along said Easterly right of way line to a point in the Northwest ¼ of Section 20, Twp. 7 North, Rge. 32 East, W.M. where said line intersects the South right of way of the Union Pacific Railway, said intersection being commonly known as Zangar Junction; thence Easterly along said South right of way line of the Union Pacific Railway to a point in the Southwest ¼ of Section 23, Twp. 7 North, Rge. 32 East where said line intersects the South right of way line of Washington State Highway No. 12; thence Easterly along said South right of way line to the intersection with the West line of Section 34, Twp. 7 North, Rge. 33 East, W.M.; thence North, along the West line of Sections 34, 27, 22, 15, 10, and 3 in Twp. 7 North, Rge. 33 East, W.M., and the West line of Sections 34, 27, and 22 in Twp. 8 North, Rge. 33 East, W.M. to the Northwest corner of said Section 22; thence East along the North line of said Section 22 to the Northeast corner thereof; thence North along the West line of Sections 14, 11, and 2 in Twp. 8 North, Rge. 33 East, W.M. to the Northwest corner of said Section 2; thence East along North lines of Sections 2 and 1 in Twp. 8 North, Rge. 33 East, W.M. and the North line of Section 6, Twp. 8 North, Rge. 34 East, W.M. to the centerline of the Touchet River; thence northerly and Easterly along said centerline of the Touchet River as it runs through Twp. 9 North, Rge. 34 East, Twp. 9 North, Rge. 35 East, Twp. 10 North, Rge. 35 East, Twp. 10 North, Rge. 36 East, Twp. 9 North, Rge. 36 East, and Twp. 9 North, Rge. 37 East to a point on the East line of Section 11 in Twp. 9 North, Rge. 37 East, W.M., thence South along the East line of Sections 11, 14, 23, 26, and 35 in Twp. 9 North, Rge. 37 East, W.M., the East lines of Sections 2, 11, 14, 23, 26, and 35 in Twp. 8 North, Rge. 37 East, W.M., the East lines of Sections 2, 11, 14, 23, 26, and 35 in Twp. 7 North, Rge. 37 East, W.M., and the East lines of Sections 2, 11, and fractional Section 14 in Twp. 6 North, Rge. 37 East, W.M., to a point on the Washington-Oregon State line; thence West along said State Line to the closing corner on the West side of Section 18 in Twp. 6 North, Rge. 37 East, W.M.; thence South along the West line of Sections 18, 19, 30, and 31 in Twp. 6 North, Rge. 37 East, W.M. and the West line of Sections 6, 7, and 18 in Twp. 5 North, Rge. 37 East to the corner common to Sections 18 and 19 in Twp. 5 North, Rge. 37 East, W.M. and 13 and 24 in Twp. 5 North, Rge. 36 East, W.M., Being the True Point of Beginning of this Legal Description.

§ 956.5 Walla Walla Sweet Onions.

Walla Walla Sweet Onions means all varieties of *Allium cepa* grown within the production area, except Spanish hybrid varieties. The committee may, with the approval of the Secretary, exempt individual varieties from any or all regulations issued under this part.

§ 956.6 Handler.

Handler is synonymous with ''shipper'' and means any person (except a common or contract carrier of Walla Walla Sweet Onions owned by another person) who handles Walla Walla Sweet Onions or causes Walla Walla Sweet Onions to be handled.

§ 956.7 Registered handler.

Registered handler means any person with adequate facilities for preparing Walla Walla Sweet Onions for commercial market, who has requested such registration and is so recorded by the committee, or any person who has access to such facilities and has recorded with the committee the ability and willingness to assume customary obligations of preparing Walla Walla Sweet Onions for commercial market. The committee may recommend, for approval of the Secretary, procedures with respect to handler registration.

§ 956.8 Handle.

Handle is synonymous with ''ship'' and means to package, load, sell, transport, or in any way place Walla Walla Sweet Onions or cause Walla Walla Sweet Onions to be placed in the current of commerce within the production area or between the production area and any point outside thereof. Such term shall not include the transportation, sale, or delivery of harvested Walla Walla Sweet Onions to a handler within the production area for the purpose of having such Walla Walla Sweet Onions prepared for market.

§ 956.9 Container.

Container means a box, bag, crate, hamper, basket, package, or any other receptacle used in the packaging, transporting, sale, shipment, or other handling of Walla Walla Sweet Onions.

§ 956.10 Producer.

Producer is synonymous with ''grower'' and means any person engaged in a proprietary capacity in the production of Walla Walla Sweet Onions for market.

§ 956.11 Varieties.

Varieties means and includes all classifications, subdivisions, or types of Walla Walla Sweet Onions according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture or recommended by the committee and approved by the Secretary.

§ 956.12 Committee.

Committee means the Walla Walla Sweet Onion Committee established pursuant to § 956.20.

§ 956.13 Fiscal period.

Fiscal period means the period beginning on June 1 and ending on May 31 of each year, or other such period as may be recommended by the committee and approved by the Secretary.

Administrative Committee

§ 956.20 Establishment and membership.

(a) The Walla Walla Sweet Onion Committee, consisting of ten members, is hereby established. The committee shall consist of six producer members, three handler members, and one public member. Each member shall have an alternate who shall have the same qualifications as the member.

(b) A producer shall have three years of experience in producing onions in order to qualify for committee membership. At the time of selection, no more than two producer members may be affiliated with the same handler.

§ 956.21 Term of office.

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of committee members and their respective alternates shall be for three fiscal periods beginning on June 1 or such other date as recommended by the committee and approved by the Secretary. The terms shall be determined so that one-third of the grower membership and one-third of the handler membership shall terminate each year. Members and alternates shall serve during the term of office for which they are selected and have been qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, or until their successors are selected and have qualified.

(b) The term of office of the initial members and alternates shall begin as soon as possible after the effective date of this subpart. One-third of the initial industry members and alternates shall serve for a one-year term, one-third shall serve for a two-year term, and one-third shall serve for a three-year term. The initial, as well as all successive terms of office of the public member and alternate member shall be for three years.

(c) The consecutive terms of office for all members shall be limited to two three-year terms. There shall be no such limitation for alternate members.

§ 956.22 Nominations.

Nominations from which the Secretary may select the members of the committee and their respective alternates may be made in the following manner:

(a) The committee shall hold or cause to be held, within the production area and prior to April 1 of each year or by such other date as may be specified by the Secretary, one or more meetings of producers and handlers for the purpose of designating one nominee for each of the member and alternate member positions which are vacant or will be vacant at the end of the fiscal period;

(b) In arranging for such meetings the committee may, if it deems such desirable, cooperate with existing organizations and agencies;

(c) Nominations for committee members and alternate members shall be provided to the Secretary, in such manner and form as the Secretary may prescribe, not later than 30 days prior to the end of the fiscal period within which the current term of office expires;

(d) Only producers may participate in designating nominees for producer committee members and their alternates and only handlers may participate in designating nominees for handler committee members and their alternates;

(e) Each person who is both a handler and a producer may vote either as a handler or as a producer, but not both;

(f) Each person is entitled to cast only one vote on behalf of him or herself, his or her partners, agents, subsidiaries, affiliates and representatives, in designating nominees for committee members and alternates. An eligible producer's or handler's privilege of casting only one vote, as aforesaid, shall be construed to permit such voter to cast one vote for each producer member and alternate member position to be filled or each handler member and alternate member position to be filled, but not both.

(g) Every three years, at the first meeting following selection, the committee shall nominate the public member and alternate for a three-year term of office.

(h) The committee shall prescribe such additional qualifications, administrative rules and procedures for selection and voting for each candidate as it deems necessary and as the Secretary approves.

§ 956.23 Selection.

The Secretary shall select members and alternate members of the committee from the nominations made pursuant to § 956.22 or from other qualified persons.

§ 956.24 Qualification and acceptance.

Any person nominated to serve as a member or alternate member of the committee shall, prior to selection by the Secretary, qualify by filing a written background and acceptance statement indicating such person's willingness to serve in the position for which nominated.

§ 956.25 Alternates.

An alternate member of the committee shall act in the place and stead of the member for whom such person is an alternate, during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, that member's alternate shall serve until a successor to such member has qualified and is selected.

§ 956.26 Vacancies.

To fill any vacancy occasioned by the failure of any person nominated as a member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of a member or alternate, a successor for the unexpired term may be selected by the Secretary from nominations made pursuant to § 956.22 from previously unselected nominees on the current nominee list, or from other eligible persons.

§ 956.27 Failure to nominate.

If nominations are not made within the time and manner prescribed in § 956.22 the Secretary may, without regard to nominations, select the members and alternates on the basis of the representation provided for in § 956.20.

§ 956.28 Procedure.

(a) Six members of the committee shall constitute a quorum, and six concurring votes shall be required to pass any motion or approve any committee action, except that recommendations made pursuant to § 956.61 shall require seven concurring votes.

(b) The committee may provide for meetings by telephone, telegraph, facsimile, or other means of communication, and any vote cast orally at such meetings shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

§ 956.29 Expenses.

Members and alternates shall serve without compensation but shall be reimbursed for such expenses authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under this part.

§ 956.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 956.31 Duties.

It shall be among the duties of the committee:

(a) At the beginning of each fiscal period, or as soon thereafter as practicable, to meet and organize, to select a chairperson and such other officers as may be necessary, to select subcommittees, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as the Secretary may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to Walla Walla Sweet Onions and to engage in such research and service activities which relate to the production, handling, or marketing of Walla Walla Sweet Onions as may be approved by the Secretary;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee. Such minutes, books, and records shall be subject to examination at any time by the Secretary or the Secretary's authorized agent or representative;

(g) To make available to producers and handlers the committee voting record on recommended regulations and on other matters of policy;

(h) Prior to each fiscal period, to submit to the Secretary a budget of its proposed expenses for such fiscal period, together with a report thereon, and a recommendation as to the rate of assessment for such period;

(i) To cause its books to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may require; the report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report shall be furnished to the Secretary, and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers: *Provided*, that confidential information shall be removed from all copies made available to the public; and

(j) To consult, cooperate, and exchange information with other onion marketing committees and other individuals or agencies in connection with all proper committee activities and objectives under this subpart.

Expenses and Assessments

§ 956.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by the committee for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in §§ 956.42 and 956.45.

§ 956.41 Budget.

Prior to each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee shall recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 956.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each person who first handles Walla Walla Sweet Onions shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers, at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations or other available information.

(c) At any time during, or subsequent to, a given fiscal period, the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the assessment rate. Such increase in the assessment rate shall be applicable to all Walla Walla Sweet Onions which were handled by each handler thereof during such fiscal period.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions of this part are suspended or become inoperative.

(e) To provide funds for the administration of the provisions of this part during the initial fiscal period or the first part of a fiscal period when neither sufficient operating reserve funds nor sufficient revenue from assessments on the current season's shipments are available, the committee may accept payment of assessments in advance or may borrow money for such purposes.

(f) The committee may impose a late payment charge or an interest charge, or both, on any handler who fails to pay any assessment in a timely manner. Such time and the rates shall be recommended by the committee and approved by the Secretary.

§ 956.43 Accounting.

(a) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternate members, employees, agents, and all other such persons associated with the committee to account for all receipts, disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member, alternate member, employee, or agent of the committee, such person shall account for all receipts, disbursements, funds, property, and records pertaining to the committee's activities for which such person was responsible, deliver all property and funds in such person's possession to the committee, and execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such person pursuant to this part.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this part, or during any period or periods when regulations are not in effect and, upon determining such action is appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for the committee.

§ 956.44 Excess funds.

If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(a) The committee, with approval of the Secretary, may establish an operating reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established, except funds in the reserve shall not exceed the equivalent of approximately two fiscal period's budgeted expenses. Such reserve funds may be used:

(1) To defray any expenses authorized under this part;

(2) To defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses;

(3) To cover deficits incurred during any fiscal period when assessment income is less than expenses;

(4) To defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and

(5) To cover necessary expenses of liquidation in the event of termination of this part.

(b) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate except that to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

(c) If such excess is not retained in a reserve as provided in paragraph (a) of this section, each handler entitled to a proportionate refund of the excess assessments collected shall be credited at the end of a fiscal period with such refund against the operations of the following fiscal period unless such handler demands payment thereof, in which event such proportionate refund shall be paid as soon as practicable.

§ 956.45 Contributions.

The committee may accept voluntary contributions but these shall be used only to pay expenses incurred pursuant to § 956.50. Such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use.

Research and Development

§ 956.50 Research and development.

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development, and marketing promotion projects, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of Walla Walla Sweet Onions. Any such project for the promotion and advertising of Walla Walla Sweet Onions may utilize an identifying mark, including but not limited to registered trademarks and logos, which shall be made available for use by all handlers in accordance with such terms and conditions as the committee, with the approval of the Secretary, may prescribe. The committee may register such logos with the Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office. The expense of such projects shall be paid from funds collected pursuant to §§ 956.42 and 956.45.

(b) In recommending projects pursuant to this section, the committee shall give consideration to the following:

(1) The expected supply of Walla Walla Sweet Onions in relation to market requirements;

(2) The supply situation among competing onion areas and communities;

(3) The anticipated benefits from such projects in relation to their costs;

(4) The need for marketing research with respect to any market development activity; and

(5) Other relevant factors.

(c) If the committee concludes that a program of research and development should be undertaken, or continued, in any fiscal period, it shall submit the following for the approval of the Secretary:

(1) Its recommendations as to the funds to be obtained pursuant to §§ 956.42 and 956.45;

(2) Its recommendations as to any research projects; and

(3) Its recommendations as to promotion activity and paid advertising.

(d) Upon conclusion of each activity, but at least annually, the committee shall summarize and report the results of such activity to the Secretary.

(e) All marketing promotion activity engaged in by the committee, including paid advertising, shall be subject to the following terms and conditions:

(1) No marketing promotion, including paid advertising, shall refer to any private brand, private trademark, or private trade name;

(2) No promotion or advertising shall disparage the quality, use, value, or sale of like or any other agricultural commodity or product, and no false or unwarranted claims shall be made in connection with the product; and

(3) No promotion or advertising shall be undertaken without reason to believe that returns to producers will be improved by such activity.

Regulation

§ 956.61 Recommendation for regulations.

The committee shall recommend regulations to the Secretary whenever it deems it advisable, as provided in § 956.62. The committee also may recommend modification, suspension, or termination of any regulation, or amendments thereto, in order to facilitate the handling of Walla Walla Sweet Onions for the purposes authorized in § 956.63. The committee may also recommend amendment, modification, termination, or suspension of any regulation issued under this part.

§ 956.62 Container markings.

The committee may, with the approval of the Secretary, provide a method, through rules and regulations issued pursuant to this part, for fixing the marking of containers which may be used in the packaging or handling of Walla Walla Sweet Onions, including appropriate logo or other container markings to identify the contents thereof. Further, the committee may, with the approval of the Secretary, establish through rules and regulations such safeguards as may be necessary to ensure that such container marking requirements are in compliance with the rules and regulations.

§ 956.63 Handling for specified purposes.

Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary may issue special regulations, or modify, suspend, or terminate requirements in effect pursuant to §§ 956.42 and 956.62 or any combination thereof, in order to facilitate the handling of onions for the following purposes:

(a) Shipments of Walla Walla Sweet Onions for relief or to charitable institutions;

(b) Shipments of Walla Walla Sweet Onions for livestock feed;

(c) Shipments of Walla Walla Sweet Onions for planting and for plants;

(d) Shipments of Walla Walla Sweet Onions as salad onions;

(e) Shipments of Walla Walla Sweet Onions for all processing uses including, pickling, peeling, dehydration, juicing, or other processing;

(f) Shipments of Walla Walla Sweet Onions for disposal;

(g) Shipments of Walla Walla Sweet Onions for seed;

(h) Shipments of Walla Walla Sweet Onions for packing or storing within the production area or outside the production area, but within specified

locations in the States of Oregon and Washington; and

(i) Shipments of Walla Walla Sweet Onions for other purposes which may be specified.

§ 956.64 Minimum quantities.

The committee, with the approval of the Secretary, may establish minimum quantities below which Walla Walla Sweet Onion shipments will be free from the requirements in, or pursuant to, §§ 956.42, 956.62, and 956.63, or any combination thereof.

§ 956.65 Notification of regulations.

The Secretary shall notify the committee of each regulation issued and of each amendment, modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

§ 956.66 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent Walla Walla Sweet Onions shipped, pursuant to §§ 956.63 and 956.64, from entering channels of trade for other than the purpose authorized therefor.

(b) The committee, with the approval of the Secretary, may also prescribe rules and regulations governing the issuance, and the contents, of Certificates of Privilege, if such certificates are prescribed as safeguards by the committee. Such safeguards may include requirements that:

(1) Handlers shall first file applications with the committee to ship such Walla Walla Sweet Onions.

(2) Handlers shall pay the pro rata share of expenses provided by § 956.42 in connection with such Walla Walla Sweet Onions.

(3) Handlers shall obtain Certificates of Privilege from the committee prior to effecting the particular onion shipment.

(c) The committee may rescind any Certificate of Privilege, or refuse to issue any Certificate of Privilege, to any handler if proof is obtained that Walla Walla Sweet Onions shipped by the handler for the purposes stated in the Certificate of Privilege were handled contrary to the provisions of this part.

(d) The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

(e) The committee shall make reports to the Secretary as requested, showing the number of applications for such certificates, the quantity of Walla Walla Sweet Onions covered by such applications, the number of such applications denied and certificates granted, the quantity of Walla Walla Sweet Onions handled under duly issued certificates, and such other information as may be requested.

Reports

§ 956.80 Reports and recordkeeping.

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following:

(1) The acreage of Walla Walla Sweet Onions grown;

(2) The quantities of Walla Walla Sweet Onions received by such handler;

(3) The quantities of Walla Walla Sweet Onions disposed of by such handler;

(4) The disposition date of such Walla Walla Sweet Onions;

(5) The manner of disposition of such Walla Walla Sweet Onions; and

(6) The identification of the carrier transporting such Walla Walla Sweet Onions.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that any information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of individual handler's identity or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the Walla Walla Sweet Onions received and disposed of by such handler as may be necessary to verify reports submitted to the committee pursuant to this section.

Miscellaneous Provisions

§ 956.85 Termination or suspension.

(a) The Secretary may at any time terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operations of any or all of the provisions of this subpart whenever it is found that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever it is found that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of Walla Walla Sweet Onions: Provided, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such Walla Walla Sweet Onions produced for market, but such termination shall be announced at least 90 days before the end of the current fiscal period.

(d) Within six years of the effective date of this subpart the Secretary shall conduct a continuance referendum to ascertain whether continuance of this subpart is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by a majority of producers who, during a representative period determined by the Secretary, have been engaged in the production for market of Walla Walla Sweet Onions in the production area. Such termination shall be announced on or before the end of the fiscal period.

(e) The provisions of this subpart shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 956.87 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as joint trustees, for the purpose of liquidating the affairs of the committee, of all funds and property then in the possession, or under control, of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of said committee and of the trustees, to such person as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in

said committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 956.88 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart;

(b) Release or extinguish any violation of this subpart or of any regulations issued under this subpart; and

(c) Affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 956.89 Compliance.

No handler shall handle Walla Walla Sweet Onions except in conformity to the provisions of this part.

§ 956.90 Right of the Secretary.

The members of the committee, including successors and alternates, and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 956.91 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 956.92 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 956.93 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 956.94 Personal liability.

No member or alternate of the committee or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 956.95 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 956.96 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Dated: May 19, 1995.

David R. Shipman,

Acting Deputy, Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–12746 Filed 5–23–95; 8:45 am]

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Part V

Department of Education

Grants and Cooperative Agreements; Availability, etc.; Rehabilitation Research and Training Centers Program; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of Final Funding Priorities for Fiscal Years 1995–1996 for Rehabilitation Research and Training Centers.

SUMMARY: The Secretary announces final funding priorities for certain Rehabilitation Research and Training Centers (RRTCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1995–1996. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities take effect on June 23, 1995.

FOR FURTHER INFORMATION CONTACT: David Esquith, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, room 3424, Washington, D.C. 20202–2601. Telephone (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: This notice contains four final priorities under the RRTC program: Independent living and disability policy; Management and services of Centers for Independent Living (CILs); Improved services for low-functioning deaf individuals; and Rehabilitation in long-term mental illness. These priorities support the National Education Goals that call for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). The Secretary may make awards through grants or cooperative agreements. Under the regulations for this program (see 34 CFR 352.32), the Secretary may establish research priorities by reserving funds to support particular research activities.

On November 15, 1994, the Secretary published a notice of proposed priorities in the **Federal Register** at 59 FR 59030. The Department of Education received a number of letters commenting on each of the priorities, as well as a large number of letters recommending additional priority areas. Modifications were made to the priorities as a result of those comments. The comments, and the Secretary's responses to them, are discussed in an appendix to this notice.

Note: This notice of final priorities does NOT solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the **Federal Register**.

Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes; however, the regulatory selection criteria for the program (34 CFR 352.31) state that the Secretary reviews the extent to which applicants justify their choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The Secretary also reviews the extent to which applicants present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

General

The Secretary announces that the following requirements will apply to all of the RRTCs pursuant to the priorities:

Each RRTC must conduct an integrated program of research to develop solutions to problems confronted by individuals with disabilities.

Each RRTC must conduct a coordinated and advanced program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research.

Each Center must disseminate and encourage the use of new rehabilitation knowledge. They must make available all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions.

Each RRTC must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers, in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary will fund under this competition only applications that meet one of these absolute priorities:

Priorities 1 and 2: Independent Living

Background

Independent Living (IL) programs operate from a philosophy of consumer control, self-help, advocacy, development of peer relationships and peer role models, and equal access of individuals with significant disabilities to society, programs, and activities. The IL philosophy stresses the concept of empowerment of individuals with disabilities to control their own lives through participation in service planning, management of their own personal assistants, informed decisionmaking, and self advocacy. In its 25-year history, ''Independent Living'' has been a philosophy, a social movement, and a service program. These priorities address all of these aspects of independent living, and propose investigations into new applications of independent living concepts, as well as studies and training related to the operations of the publicly-supported IL programs.

The 1992 Amendments to the Rehabilitation Act: established Statewide Independent Living Councils (SILCs) to jointly develop and sign the State plan for independent living; created a new definition of a CIL as a consumer-controlled, community-based, cross-disability, nonresidential, private non-profit agency that is designed and operated within a local community by individuals with disabilities and provides an array of independent living services; modified the State and Federal responsibilities for making grants to CILs; and specifically authorized advocacy services.

NIDRR has funded RRTCs in independent living since 1980. Current RRTCs focus on disability policy, IL management, and IL for underserved populations. The current Centers on policy and management will receive their final funding in fiscal year 1994. In order to determine the continued need for RRTCs in IL, and some possible research needs, NIDRR convened a two-

day focus group of experts in IL research and administration in Washington in January, 1994. The following priorities are based largely on the work of this focus group as well as reports from the current research centers and input from other Federal agencies. Focus group participants raised issues for further investigation in the following areas of program operations: implementation of program standards; outcome measures and accountability; improved program services; reaching diverse populations; training, recruitment, and retention of staff; and effective operations of governing boards and SILCs.

The focus group also discussed a number of issues concerning new roles for CILs in societal developments such as violence, homelessness, and information technology, and in the formulation and implementation of policy in areas with particular implications for individuals with disabilities, such as the Americans with Disabilities Act (ADA) and the reform of the health care delivery system.

The RRTC on CIL management and services will be funded jointly by NIDRR and RSA and will be required to work closely with the RSA grantee providing training, technical assistance, and transition assistance to CILs under Part C of Title VII of the amended Rehabilitation Act.

Priority 1: Independent Living and Disability Policy

Under this priority, the Secretary supports an RRTC on independent living and disability policy that—(1) conducts research on policy barriers to achieving independent living in such areas as transportation, housing, and health care; (2) examines the role and effectiveness of CILs in increasing community options for independent living and the capacity of communities to meet the independent living needs of individuals with significant disabilities; and (3) identifies and provides training and information on effective strategies that CILS use to effect change.

In addition to activities proposed by the applicant to carry out these purposes, the center must conduct the following activities:

- Analyze CIL policies regarding activities to promote implementation of the ADA, and develop strategies that CILs might adopt, including an analysis of the implications and consequences of various options;
- Review CIL and vocational rehabilitation agency policies related to collaborations, and design strategies for innovative partnerships to promote employment outcomes for individuals with disabilities;
- Identify strategies for CILs to promote accessible generic community services for individuals with significant disabilities, including vulnerable individuals such as persons with disabilities who are homeless, who are at risk for societal abuse and violence, and those who are from minority backgrounds.
- Provide training and information to CILs, policymakers, administrators, and advocates on research findings and identified strategies.

Priority 2: Independent Living Center Management and Services

An RRTC on CIL management and services will conduct research and training activities and develop model approaches that will enhance the capacity of CILs to—(1) plan, manage, and evaluate program services, including the measurement of program outcomes and compliance with national standards; (2) provide appropriate services to cultural and linguistic minorities; (3) recruit, train, and retain appropriate staff; (4) develop effective governing boards, including appropriate staff relations; and (5) collaborate effectively with State Vocational Rehabilitation agencies to promote employment outcomes among individuals with disabilities. The RRTC will also conduct research and training activities to promote the effective operation of SILCs.

In addition to activities proposed by the applicant to carry out these purposes, the Center must conduct the following activities:

- Identify best practices and develop and test optimal programs for CILs in expanding services to youth with disabilities and in interfacing with education and transition programs to prepare youth for independent living;
- Review CIL funding patterns and analyze the impact on CILs of diverse funding sources, and design and test several options for generating funding from alternate sources, including those independent of public financing;
- Document the initial development, composition, and operation of the SILCs; identify effective operational practices, develop and provide training to a selected sample of SILCs, and evaluate the impact of this effort; and
- Coordinate activities with and provide instruments, curricula, and methodologies, as well as research findings, to the RSA technical assistance grantee under Part C of Title VII of the Rehabilitation Act.

Peer Support in the Rehabilitation of Long-Term Mental Illness

Background

Findings of the National Institute of Mental Health Epidemiological Catchment Area program are that more than 20 percent of all Americans have a diagnosable mental disorder in any given year. (Office of Technology Assessment, *Psychiatric Disabilities, Employment, and the Americans with Disabilities Act*, 1994). Of the population with mental disorders, 4 to 5 million adults are considered ''seriously mentally ill'' (Rutman, 1993). This priority focuses on that part of the population that has serious and persistent mental disorders that interfere with normal activities of daily life; the term ''persons with long-term mental illness'' (LTMI) is also commonly used to refer to this population.

A number of community-based programs, many of them operated by consumers, have developed in recent years offering vocational counseling, educational and training programs, job placement services, and ongoing peer support. These programs often are a low-cost augmentation of scarce community services. (Parrish, J., Center for Mental Health Services, 1994). The programs are, however, very difficult to evaluate (Goldklang, D., American Journal of Community Psychiatry, October, 1991). Nevertheless, in order to identify those elements of community-based programs that are most effective in meeting the needs of individuals with LTMI, there is a need to evaluate the effectiveness of various models of peer support services in community-based programs (including those that are consumer-run) in: serving the most significantly disabled individuals; providing appropriate services for individuals from minority cultures; obtaining diverse funding sources; maintaining accountability; training peer service providers; providing an appropriate range and quality of services; providing crisis response services; and achieving optimal outcomes.

In addition, peer-support programs may have a significant role in crisis response and in minimizing the need for involuntary institutionalization or treatment. However, the leadership and the staff of organizations that rely on peer support require appropriate training and preparation if they are to be effective in crisis intervention.

The mental health field has become increasingly aware of the special concerns and unmet needs of women with LTMI. A recent study indicated

that 40 percent of the children in foster care in New York City have mothers with mental illness (New York State Office of Mental Health). Peer support is a potential resource to assist these women to develop the capacity to parent children and to obtain and maintain housing, employment, and social supports in the community (Salasin, S., Center for Mental Health Services, 1994).

There are strong indications that community-based peer support programs have not been as prevalent or as effective in minority cultures. Approaches to this problem include providing more training in cultural awareness and sensitivity (Cook, J. A., 1992) to existing community-based programs, and developing programs operated by or representing minority individuals and cultures.

The National Task Force for Rehabilitation and Employment of Persons with Psychiatric Disabilities called, in 1993, for improved dissemination of useful research findings and best practices to all appropriate target audiences. The Task Force also recommended that the findings be translated in ways that are useful for policymakers, administrators, consumers, and families of diverse cultural backgrounds. The mental health field currently does not make full use of computerized information systems to access knowledge about long-term mental illness, or to link researchers, service providers, trainers, educators, and consumers for on-line discussion and information sharing. (Nance, R., Illinois Dept. of Mental Health and Developmental Disabilities, 1993, letter to CMHS). With effective training and technical assistance, community-based programs and consumer organizations could use technology to access resources, establish electronic bulletin boards, and conduct conferences and training.

The National Institute on Disability and Rehabilitation Research proposes to support an RRTC on LTMI in collaboration with the Center for Mental Health Services of the Substance Abuse and Mental Health Services Administration. This RRTC on LTMI will focus on the role of community-based peer support in improving independence, employment, and community integration. Any Center to be funded under this priority must involve individuals with long-term mental illness and consumer-run and other community-based programs that use peer support in the planning, management, and operations of the Center and must consider the perspectives of individuals with LTMI in all aspects of its research and related programs.

Priority

An RRTC on peer support approaches to the rehabilitation of individuals with LTMI will study the most effective uses of peer support in: (1) Crisis management and prevention of hospitalization; (2) facilitating employment and return to work; (3) meeting the specific needs of women with LTMI; and (4) addressing the needs of individuals with LTMI from diverse cultural backgrounds.

In addition to activities proposed by the applicant to carry out these purposes, the center must conduct the following activities:

- Develop an evaluation protocol for community-based peer support programs, including those that are consumer-run, with outcome measures based on empirical data on factors such as recovery, independence, empowerment, employment, community integration, and cultural competency;
- Develop, test, and implement model training programs for preservice and inservice training of peers as service providers; and
- Develop and disseminate strategies to increase the effectiveness of information-sharing among and between consumer and provider organizations, researchers, and peer organizations.

Priority 4: Improved Outcomes for Low-Functioning Deaf Individuals

Background

Approximately one of every 1,000 infants is born with a hearing impairment that is severe enough to prevent the spontaneous development of spoken language, according to the *National Strategic Research Plan for Deafness and Hearing Impairment,* National Institute on Deafness and Other Communication Disorders (NIDCD), 1992. While many of these prelingually deaf and severely hearing-impaired individuals complete education and attain employment and independence, the report of the Commission on the Education of the Deaf (COED) indicates that the majority of deaf students do not go into any postsecondary education, and that many need further education or training to obtain appropriate employment (COED, Toward Equality: Education of the Deaf, 1988). Moreover, an estimated 100,000 deaf people are unemployed or seriously underemployed due to such problems as deficiencies in language performance and related psychological, vocational, and social underdevelopment. (COED, 1988, p. 69.)

These ''low-functioning'' deaf (LFD) individuals often do not have comprehensive rehabilitation training and related services accessible and available to them. This segment of the deaf population—sometimes called ''low functioning'', ''low achieving'', ''multiply disabled deaf'', or ''traditionally underserved deaf''—requires long term and intensive habilitative and rehabilitative services and is the focus of this priority.

The deaf individuals to be addressed by this Center frequently exhibit deficits in vocational skills, independent living skills, manual and oral communication skills, social skills, and academic skills, and many have significant secondary disabilities. Many are from socioeconomically and culturally disadvantaged backgrounds, and many are from ethnic or linguistic minorities. Services to this population are scarce and fragmented. In addition to understanding the social, vocational, and educational implications of the disability, service providers must also be able to communicate with the individuals, often through less than optimal means, such as rudimentary sign language.

In 1990, NIDRR funded an RRTC on Traditionally Underserved Persons Who Are Deaf, located at the University of Northern Illinois, to study the parameters and service needs of this population. Funding for this Center ends in fiscal year 1994. Activities of this Center included a needs assessment, development of a model service program, outcome studies, qualitative and quantitative analyses and surveys, development of curriculum and training materials, conduct of training seminars, and provision of technical assistance. The new Center will have the benefit of the work of the previous Center on Traditionally Underserved Deaf Populations. The new Center will be required to coordinate its activities with related projects for this population funded by RSA and by the Office of Special Education Programs (OSEP), including activities supported by these agencies that target the needs of children, youth, and adults who are deaf-blind.

In January 1994, NIDRR convened a focus group of consumers and providers of services, researchers, and advocates to consider the issue of the need for ongoing research in the area of low-functioning deaf individuals and to identify specific questions. The input from the panel and other experts from the field has contributed to the decision to fund additional research to understand more fully the population of low-functioning deaf individuals,

especially those with secondary disabilities, and to develop improved interventions and service systems for those individuals.

Priority

An RRTC on the special needs of low-functioning deaf individuals shall—(1) develop appropriate assessment techniques for this population; (2) evaluate the applicability of a variety of strategies to enhance the development of language and literacy skills in this population; and (3) identify the range of services and service resources necessary to meet the rehabilitation and independent living needs of this population and develop mechanisms for coordination among service agencies and across service systems to foster a comprehensive system of services to enhance their integration into the community. In addition to activities proposed by the applicant to carry out these purposes, the center must conduct the following activities.

- Identify and develop appropriate personnel training that will lead to the required competencies and train service providers to deliver enhanced services to this population; and
- Develop effective materials and media to enhance the dissemination of new knowledge on LFD to appropriate audiences, including LFD individuals and their families, independent living centers, educators, and health care practitioners.
- Coordinate its activities with related projects for this population funded by RSA and by the Office of Special Education Programs (OSEP), including activities supported by these agencies that target the needs of children, youth, and adults who are deaf-blind.

Applicable Program Regulations

34 CFR Parts 350 and 352.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers)

Dated: May 18, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Analysis of Comments and Changes

The Secretary received 17 letters of comment about the proposed priorities and 138 letters urging the establishment of various additional priorities. These comments are discussed in the order of the priorities to which they refer.

Independent Living—General

Comment: One commenter stated that all priorities should contain language stating that the SILCs must include equal representation of persons with cognitive and physical disabilities.

Discussion: The SILCs are appointed by the Governors according to statute and regulation that are not subject to governance by the NIDRR priorities.

Changes: None.

Comment: The same commenter recommended including language that would make clear that both the RRTC and ''its Independent Living programs'' must include both people with physical disabilities as well as people with cognitive disabilities.

Discussion: The CILs are chartered, governed, and staffed according to State and Federal statutes and regulations that are not subject to governance by NIDRR priorities. The Rehabilitation Act, as amended, requires that independent living centers supported by funds under the Act be ''cross-disability'' (Sec. 702).

Changes: None.

Comment: The same commenter suggested that one of the RRTC's activities should be analyzing issues related to independent and supported living for persons with mental retardation and developmental disabilities.

Discussion: NIDRR agrees that it is important to make independent living services available and relevant to individuals with cognitive, emotional, sensory, and physical disabilities. In fact, in 1993, NIDRR established a separate RRTC specifically to address the research and training aspects of expanding IL programs and concepts to those populations not traditionally served in CILs. That RRTC is located at the University of Kansas. ''Supported living'' is not a required subject of these Independent Living priorities. However, any applicant is free to address these issues within the general scope of either of these priorities.

Changes: None.

Comment: One commenter stated that the priorities related to independent living should emphasize improving collaboration between CILs and State vocational rehabilitation agencies to enhance employment outcomes and other common goals.

Discussion: The Secretary agrees that improving collaboration between CILs and State VC agencies is an important strategy in enhancing independent living for individuals with significant disabilities.

Changes: The Secretary has added an activity to each of the RRTCs on IL focusing on strategies for collaboration and innovative partnerships between CILs and State vocational rehabilitation agencies to promote employment outcomes.

Independent Living and Disability Policy

Comment: One commenter suggested that the name of the Center be changed to Independent Living and Public Policy because there are generic public policies affecting individuals with disabilities.

Discussion: The Secretary regards disability policy as any public policy that affects the ''inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities of all ages.'' (Quotation from the Rehabilitation Act, as amended, Sec. 200, stating the purpose of NIDRR's research.) This definition includes ''generic'' public policy when the specific relevance to the outcomes of integration-independence-employment for persons for disabilities is demonstrated. As described in the response to the succeeding comment, the genesis of this RRTC was as a center to conduct research and training that would enhance independent living programs. The Secretary believes there is strong support for maintaining this as an RRTC on independent living.

Changes: None.

Comment: The same commenter recommended that other organizations serving people with disabilities should be included as appropriate research subjects and training audiences in this Center, since many of these single disability organizations have a superior record of serving individuals traditionally underserved by CILs.

Discussion: Again, the Secretary points to the genesis and justification of this as an RRTC on independent living. While the priority does not preclude gathering data from or providing training to, other disability organizations that may be able to contribute to strengthening CILs and independent living programs, the focus of this Center is on defining and disseminating the concept of independent living programs and on strengthening those programs, particularly the CILs, in their ability to promote and apply independent living concepts and to measure their effects. The priority does not preclude the Center from disseminating its products broadly as long as the focus on independent living programs is maintained.

Changes: None.

Comment: The same commenter also requested that the Department modify the third activity in the proposed priority, which requires the Center to analyze CIL policies regarding implementation of the Americans with Disabilities Act (ADA) and develop potential strategies for CILs, to add ''other strategies to promote full community inclusion'' after ADA. The commenter goes on to say that this entire activity could be a subset of the second activity under the priority.

Discussion: NIDRR has a particular interest, based on Congressional directives, in facilitating and analyzing the successful implementation of the ADA, and in assisting CILs to participate effectively in that process. The ADA reflects a statutory civil rights and antidiscrimination approach to achieving equal opportunity for individuals with disabilities. As such, it has been hailed as a landmark piece of legislation in disability, and is certainly different in many important respects from other approaches to inclusion. An applicant may propose to examine other inclusion strategies consistent with the stated purposes of the priority. However, NIDRR is continuing to require that the RRTC analyze CIL policies with respect to the ADA.

Changes: None.

Comment: The same commenter also suggested that the priority be modified to authorize the Center to ''conduct research and provide training on a range of policy issues not limited to the content outlined above''. The commenter suggests that

subjects such as health care reform, ADA, housing, or employment, (along with presumably as yet unidentified policy issues that could emerge) could take center stage and become important issues for the Center to examine.

Discussion: The Secretary reiterates that the focus of this priority is on policy barriers to achieving independent living and the role of CILs in increasing the capacity of communities to meet the IL needs of individuals with disabilities. The priority requires that the applicant address the areas that were given priority importance by the focus group, namely homelessness, abuse, violence, ADA, and diverse populations. However, other than that, the applicant may propose to conduct research on those policy barriers which the applicant believes are most critical.

Changes: None.

Comment: One commenter suggested that the Secretary define health care reform to include both medical and non-medical services that are funded through the public health care system, because of the dependence of persons with developmental disabilities on the health care system for non-medical services and supports.

Discussion: The final priority has been revised to clarify the focus of this RRTC. The RRTC must conduct research on policy barriers to independent living. While issues of the availability of health care may constitute policy barriers, the priority no longer specifically requires the RRTC to analyze issues related to health care reform.

Changes: Analysis of health care reform is no longer a requirement.

Independent Living Center Management and Services

Comment: One commenter recommended that the activity related to CIL services to linguistic, cultural, and ethnic minorities should be centered on CIL management activities related to diverse populations. The commenter urged that NIDRR maintain its current RRTC on IL programs for underserved populations.

Discussion: The inclusion of this activity in this RRTC does not imply a change in NIDRR's commitment to an RRTC on underserved populations. NIDRR would like to point out that a major emphasis in the NIDRR priority that established the Center for underserved populations was on those disability groups that are not traditionally served by CILs and independent living programs—such as persons with cognitive, emotional, and sensory disabilities, persons with HIV/AIDS, homeless individuals, youth, and elderly persons—as well as ethnic and linguistic minorities. Therefore, the Secretary believes it is appropriate to increase attention to improving the ability of IL programs to serve ethnic and linguistic minorities. The priority as proposed suggested that the RRTC do this through identification of best practices, and the development and testing of models for the delivery of IL services to ethnically diverse populations. Applicants for the RRTC may propose to focus on ''management'' aspects of enhancing the capacity of CILs to provide appropriate services, such as staffing, recruitment, staff training, evaluation, consumer participation, or training of ethnic minority groups in IL management. The suitability of the approach would be assessed by the peer reviewers for these applications.

Changes: None.

Improved Outcomes for Individuals With Long-Term Mental Illness

Comment: Several commenters were concerned that consumer-run organizations should not be excluded from participating in any resultant Center, or that, in fact, their participation should be encouraged.

Discussion: The Secretary agrees that consumer-run organizations should be involved as applicants, consortium-members, subcontractors, advisory board members, trainees, dissemination vehicles, or in other appropriate capacities, in any Center resulting from this priority.

Changes: The background statement to the priority has been amended to include a provision that any Center to be funded under this priority must involve consumers and consumer-run organizations in the planning, management, and operations of the Center and must consider the perspectives of individuals with LTMI in all aspects of its research and related programs.

Comment: Two commenters commented on the terminology used in the priority. The comments focused on the appropriateness of the terms ''long-term mental illness'', ''LTMI'', and ''consumer''.

Discussion: Among the few commenters who commented on this question of terminology, there were several competing and apparently inconsistent nomenclatures. Other commenters did not mention nomenclature. This inhibits any conclusion that there is a generally accepted terminology. Furthermore, the Rehabilitation Act, under which NIDRR is authorized, uses the term ''individuals with mental illness''. The Secretary does not believe there is sufficient cause to change the terms throughout the priority.

Changes: None.

Comment: One commenter suggested that the requirement for model training programs for culturally sensitive training for peer service providers could be extended to include models that include pre-service, inservice, and ongoing technical support.

Discussion: The Secretary believes that culturally sensitive training models are needed for all levels of peer support workers. However, the priority as written would permit applicants to focus on training for all parts of the continuum, or to focus on specific segments that they identify as needing more attention. The Secretary is reluctant to impose more requirements on the applicants, and prefers to allow the applicants to present their proposals for evaluation by the peer reviewers.

Changes: None.

Comment: Two commenters suggested that emphasis on parenting skills should be for men as well as women.

Discussion: The reference to parenting skills in the priority was provided as an example of an area for consideration in addressing the specific needs of women with LTMI. The topic of parenting skills is not itself a focus of the priority.

Changes: None.

Comment: One commenter suggested that the activity on special adaptations for minority populations should include focus on the role of family support, values, and expectations.

Discussion: The Secretary believes that applicants should have the opportunity to propose how they will study the most effective approaches to meeting the needs of individuals with LTMI from diverse cultural backgrounds.

Changes: None.

Comment: One commenter suggested that the activity on outcome evaluations should contain specific reference to operationally defining the emerging concepts of ''recovery'' and ''community integration''. Two commenters recommended that any outcomes to be measured should be defined through the perspectives of individuals with psychiatric disabilities, and that the RRTC should be encouraged to use the expertise of researchers with long-term mental illness in the development of outcome measures.

Discussion: The Secretary believes that these comments are important ones in the discussion of these issues. Operational definitions of outcome variables are likely to be essential to any evaluation strategy. However, the Secretary does not believe it is necessary to direct applicants on how to develop an evaluation methodology. The Secretary believes that it is important to include the perspectives of individuals with psychiatric disabilities in all activities, models, strategies, training programs, research methods, and dissemination strategies of the Center.

Changes: A sentence has been added to the Background statement emphasizing the importance of including the perspectives of individuals with long-term mental illness in all areas of the RRTC's work.

Comment: One commenter suggested that there needs to be a clear definition of ''consumer-operated'' programs.

Discussion: The Secretary is aware that there may be more than one definition or model for ''consumer-operated'' or ''consumer-run'' programs and acknowledges that the multiple terms used in the proposed priority may have caused some confusion. The nomenclature used in the final priority has been revised for consistency. However, the Secretary prefers to encourage each applicant to present the definition, or definitions, of consumer-run program and community-based program which it proposes to use, and the peer reviewers to evaluate the appropriateness of the definitions to the purposes of the priority.

Changes: The nomenclature in the background section and the final priority have been revised for consistency.

Comment: Several commenters made references to the desirability of involving consumer-run organizations as grantees, either by mandating that only such organizations could receive the grant or by specifying roles for consumer-run organizations in the grantee's organizational structure.

Discussion: Program regulations, which are discussed in the preamble to these priorities, and delineated in part in the notice soliciting

applications for these Centers, describe the entities that are eligible to apply for RRTC grants. The Secretary does not intend to amend those regulations by further restricting eligibility for this Center grant. However, the Secretary believes that additional language inserted into the Background and the activities of the priority indicate the expectation that consumers and consumer organizations will have important roles in the RRTC.

Changes: The final paragraph of the Background statement has been amended to add ''Any Center to be funded under this priority must involve consumers and consumer-run organizations in the planning, management, and operations of the Center and must consider the perspectives of individuals with LTMI in all aspects of its research and related programs.''

Comment: Several commenters suggested modifications to the information dissemination components of the priority. Some questioned the appropriateness of the dissemination activity centered around the use of electronic information networks, since they believe that consumers, consumer organizations, and many other community-based service providers do not have access to the necessary electronic technology. One commenter recommended that the priority include an activity for developing a consumer information exchange.

Discussion: The Secretary believes that applicants should have the flexibility to propose how they will develop and disseminate strategies to increase the sharing of information.

Changes: The final activity in the priority has been amended to read ''develop and disseminate strategies to increase the effectiveness of information-sharing among and between consumer and provider organizations, researchers, and peer organizations.

Improved Outcomes for Low-Functioning Deaf Individuals

Comment: One commenter stated that the RRTC should be required to address the needs of deaf-blind individuals who meet the profile of low-functioning.

Discussion: The Secretary points out that the priority requires the new Center to coordinate activities with related projects funded by RSA and OSEP, which do serve individuals who are deaf-blind. Applicants for a grant under this priority may address needs of deaf-blind individuals as the priority now exists. However, the Secretary does not require that they do so.

Changes: None.

Recommendations for Additional Priorities

Comment: Several commenters recommended that NIDRR establish RRTCs addressing the needs of individuals with End-Stage Renal Disease (ESRD); one recommended a center on assistive technology for inclusion, and a substantial number urged the establishment of an RRTC on community integration for individuals with mental retardation.

Discussion: The Secretary is considering these suggestions for future priorities. In part as a response to these comments, the Secretary published a Notice of Proposed Priority for a dissemination and technical assistance center on Facilitating Community Integration for Individuals with Mental Retardation in the **Federal Register** of March 31, 1995 (60 FR 16760). The Secretary also reminds all commenters that NIDRR sponsors a Field-Initiated Research program under which potential applicants may submit applications for research related to any area of disability and rehabilitation.

Changes: None.

[FR Doc. 95–12767 Filed 5–23–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133B]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for Certain New Awards Under the Rehabilitation Research and Training Centers (RRTC) for Fiscal Year (FY) 1995

NOTE TO APPLICANTS: This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under this competitions. The final priorities for the Rehabilitation Research and Training Centers (RRTC) program are published in this issue of the **Federal Register**. This consolidated application package includes the closing date, estimated funding, and application forms necessary to apply for an award under this program's competition. Potential applicants should consult the statement of the final priority published in this issue to ascertain the substantive requirements for their applications.

The estimated funding level in this notice does not bind the Department of Education to make awards or to any specific number of awards or funding levels.

This notice of final priorities supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities and citizenship.

APPLICATION NOTICE FOR FISCAL YEAR 1995, REHABILITATION RESEARCH AND TRAINING CENTERS CFDA NO. 84.133B

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Independent living and disability policy	July 21, 1995	1	$400,000	60
Independent living center management and services	July 21, 1995	1	650,000	60
Peer support in rehabilitation of long-term mental illness	July 21, 1995	1	545,000	60
Improved outcomes for low-functioning deaf individuals	July 21, 1995	1	400,000	60

Applications available: May 25, 1995.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR Parts 350 (amended April 5, 1995, (60 FR 17426)) and 352 (amended April 5, 1995, (60 FR 17429)); and (c) the notice of final priorities published elsewhere in this issue of the **Federal Register**.

PURPOSE OF PROGRAM: Rehabilitation Research and Training Centers conduct coordinated and advanced programs of rehabilitation research, provide training—including undergraduate, graduate, and in-service training—to research and other rehabilitation personnel, and assist individuals to more effectively provide rehabilitation services.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Relevance and importance of the research program* (20 points). The Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to

new and useful knowledge in the priority area, and is likely to become a nationally recognized source of scientific knowledge; and

(3) The applicant demonstrates that all component activities of the Center are related to the overall objective of the Center, and will build upon and complement each other to enhance the likelihood of solving significant rehabilitation problems.

(b) *Quality of the research design* (35 points). The Secretary reviews each application to determine to what degree—

(1) The applicant proposes a comprehensive research program for the entire project period, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with current research in the field;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(vi) The applicant assures that human subjects, animals, and the environment are adequately protected; and

(3) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses and could be used for planning future research, including generation of new hypotheses where applicable.

(c) *Quality of the training and dissemination program (25 points).* The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for training and dissemination provides evidence that research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed training materials and methods are appropriate; the proposed activities are relevant to the regional and national needs of the rehabilitation field; and the training materials and dissemination packages will be developed in alternate media that are usable by people with various types of disabilities.

(2) The proposed plan for training and dissemination provides for—

(i) Advanced training in rehabilitation research;

(ii) Training rehabilitation service personnel and other appropriate individuals to improve practitioner skills based on new knowledge derived from research;

(iii) Training packages that make research results available to service providers, researchers, educators, individuals with disabilities, parents, and others;

(iv) Technical assistance or consultation that is responsive to the concerns of service providers and consumers; and

(v) Dissemination of research findings through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications.

(vi) Dissemination of research findings and other materials in appropriate formats and accessible media for use by individuals with various disabilities.

(d) *Quality of the organization and management* (20 points). The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the project director, research director, training director, principal investigators, and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of staff time is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions;

(2) The budgets for the Center and for each component project are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are appropriately accessible to persons with disabilities;

(4) The plan of operations is adequate to accomplish the Center's objectives and to ensure proper and efficient management of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions; and

(8) The plan for evaluation of the Center provides for an annual assessment of the outcomes of the research, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

ELIGIBLE APPLICANTS: Institutions of higher education and public or private agencies and organizations collaborating with institutions of higher education, including Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, D.C. time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the

Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

PART III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters and Drug-Free Work Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form ED–80–0014) and instructions. (NOTE: ED Form ED–80–0014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: In order to obtain an application package, contact William H. Whalen, U.S. Department of Education, 600 Independence Avenue S.W., Switzer Building, Room 3411, Washington, D.C. 20202. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 760–762.

Dated: May 18, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Frequent Questions

1. Can I get an extension of the due date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What should be included in the application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What format should be used for the application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I submit applications to more than one NIDRR program competition or more than one application to a program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the allowable indirect cost rate?

The limits on indirect costs vary according to the program and the type of application.

Applicants in the FIR, AND Innovation grants programs should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate.

6. Can profitmaking businesses apply for grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can individuals apply for grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs.

8. Can NIDRR staff advise me whether my project is of interest to NIDRR or likely to be funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How do I assure that my application will be referred to the most appropriate panel for review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including the title of the priority to which they are responding.

10. How soon after submitting my application can I find out if it will be funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I call NIDRR to find out if my application is being funded?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If my application is successful, can I assume I will get the requested budget amount in subsequent years?

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted for each year of the project and there will be negotiations on the budget each year.

13. Will all approved applications be funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	*Preapplication*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, state, and zip code)*:

Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION
BUDGET INFORMATION
NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/95

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

Rehabilitation Research and Training Centers (CFDA No. 84.133B)

34 CFR Parts 350 and 352.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*
Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*

b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues 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. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

[FR Doc. 95–12768 Filed 5–23–95; 8:45 am]
BILLING CODE 4000–01–C

Reader Aids

Federal Register

Vol. 60, No. 100

Wednesday, May 24, 1995

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	**202–523–5227**
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Corrections to published documents	**523–5237**
Document drafting information	**523–3187**
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