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

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

[DEA No. 113F]

Registration of Manufacturers and Importers of Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This final is issued by the Drug Enforcement Administration to eliminate the requirement of an administrative hearing on objections, raised by third-party manufacturers, to the registration of certain bulk manufacturers of controlled substances. This action amends the current regulation and removes the third-party manufacturer hearing provision when requested by another applicant or registrant. Other applicants and registrants may still submit written comments and objections for consideration by DEA and may participate in hearings on bulk manufacturer applications requested by the applicant. This final rule amends the regulation concerning withdrawal of applications to be consistent with this action.

EFFECTIVE DATE: July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Julie C. Gallagher, Associate Chief Counsel, Diversion/Regulatory Section, Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–8010.

SUPPLEMENTARY INFORMATION: On October 7, 1993, DEA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (58 FR 52246) to amend its regulations to eliminate the third-party manufacturer hearing requirement for objections to the registration of certain bulk manufacturers and importers of controlled substances. The DEA proposed to amend two sections of its regulations, specifically 21 CFR 1301.43(a) and 1311.42(a), wherein DEA is required to hold an administrative hearing on an application for registration to manufacture or import a bulk Schedule I or II controlled substance when requested to do so by any current bulk manufacturer of the substance(s) or by any other applicant for a similar registration. The NPRM proposed to modify section 1301.43(a) and provide for a hearing only when DEA ''determines that a hearing is necessary to receive factual evidence and/or expert testimony with respect to issues raised by the application or objections thereto.''

On June 14, 1994, DEA published a Supplemental Notice of Proposed Rulemaking (SNPRM) in the **Federal Register** (59 FR 3055) proposing to eliminate altogether the third-party manufacturer hearing regulation, section 1301.43(a). DEA would continue to hold hearings when requested by the applicant pursuant to an order to show cause, section 1301.44. DEA would continue to solicit written comments or objections from current registrants and applicants concerning an application for registration. Current registrants and applicants would also be granted an opportunity to participate in any hearings conducted pursuant to section 1301.44.

The SNPRM provided notice that DEA would not change the hearing provision relating to registration of importers, section 1311.42(a), because of the statutory requirements under 21 U.S.C. 958(i). Section 958(i) states that DEA shall provide current bulk manufacturers of controlled substances an opportunity for a hearing prior to issuing an importer registration to another bulk manufacturer. With an existing statute in effect, DEA is not empowered to adopt regulations that contravene the express language of that statute.

Five comments were received in response to the NPRM. Three comments were received concerning the SNPRM, although one commentor had previously commented on the NPRM. To the extent that comments received in response to the NPRM are relevant, they have been considered. Of the seven independent commentors, two supported removing the mandatory third party hearing provision while five commentors opposed the proposed rulemaking.

One commentor that supported the proposed rule provided an example of its own experience as an applicant for a bulk manufacturer registration to demonstrate how ''currently registered manufacturers use the regulatory hearing requirement to deter others from applying or to delay entry of their competitors in the marketplace.'' The five opposing commentors advanced numerous arguments and proposed alternatives to the proposed rule, their primary concerns are summarized below.

Three commentors believed that elimination of the third-party manufacturer hearing regulation would be contrary to Congress' intent that DEA should limit the number of bulk manufacturers in the United States where supply and competition are adequate. One of these commentors noted that the United States had been a party to several international agreements recognizing the need to limit licensing of drug manufacturers. This commentor then argued that the Narcotic Manufacturing Act (NMA) of 1960, which specified limitations on the licensing of bulk manufacturers of controlled substances, provided historical precedent for similar limitations within the Controlled Substances Act (CSA). Similarly, two commentors argued that the proposed rule would run contrary to the intent of Congress to limit the number of bulk manufacturers of controlled substances to the most qualified applicants, and thus, limit the possible diversion of these controlled substances. One commentor interpreted the mandate of ''limiting'' registration under 21 U.S.C. 823(a) of the CSA as prohibiting DEA from approving additional registrations if there already exists uninterrupted supply and adequate competition.

The final rule is not contrary to either the direct or implied intent of Congress in passing the CSA. The final rule does not alter the DEA's responsibility to apply the factors set forth in 21 U.S.C. 823(a) to applications for bulk manufacturer registrations. While the commentors provide persuasive arguments regarding possible Congressional intent in the enactment of 21 U.S.C. 823(a), such arguments are irrelevant to the issue of whether the

regulations should provide for a third-party manufacturer hearing. The express language of the statute does not provide a hearing right to bulk manufacturer registrants or applicants regarding the registration of a bulk manufacturer, nor can such a right be inferred. *See Comprehensive Drug Abuse Prevention and Control Act of 1970, Committee on Interstate and Foreign Commerce,* H.R. Rep. No. 91–1444 (Part 1), 91st Cong., 2d Sess. (1970) (CSA). Moreover, even assuming that Congress intended to limit the number of bulk manufacturer registrants, the final rule does not purport to increase the number of such registrants. It is also worth noting that the regulations, 21 CFR 1301.43(b), provide that DEA is not required to limit the number of manufacturers even if the current registrants can provide an adequate supply, as long as DEA can maintain effective controls against diversion.

Another commentor suggested that Congress intended that DEA ''implement such procedural safeguards when it enacted the CSA.'' This comment ignores the fact that neither 21 U.S.C. 823(a) nor 21 U.S.C. 824 provides for a third-party manufacturer hearing. Moreover, as one commentor noted, the procedural requirements of the APA are not affected by the removal of the third-party manufacturer hearing provision. Significantly, at the time of promulgation of the CSA, Congress afforded a third-party manufacturer hearing opportunity to current bulk manufacturers on the importer applications of other bulk manufacturers for Schedule I and II controlled substances. *See* 21 U.S.C. 958(i). Thus, a plain reading of the statute demonstrates that Congress did not intend to require a third-party manufacturer hearing for applications to bulk manufacture Schedule I and II controlled substances.

It is also not inconsistent to allow hearings on import registration applications but deny them for bulk manufacturers, as one commentor suggested. First, registrations to import Schedule I and II controlled substances are arguably granted under more limited conditions than manufacturer registrations. *See* 21 U.S.C. 952. Also, it is worth noting that the statute provides for the opportunity for a hearing where a current bulk manufacturer has applied for an importer registration. Thus, it can be inferred that Congress was concerned with the potential impact on domestic competition by existing bulk manufacturers who wanted to import controlled substances as well.

One commentor suggested that more companies will attempt to obtain a DEA registration because they could avoid the scrutiny of other bulk manufacturers and that DEA would have to increase personnel to conduct additional investigations and meet the greater demand for registrations. This commentor argued that it would be highly inadvisable to ''ease the entry'' of additional bulk manufacturers and promote creation of a class of ''opportunistic'' bulk manufacturers who would seek to produce products which are temporarily profitable, and felt no obligation to supply for the requirements of the U.S. market. These comments presume that removal of the third-party manufacturer hearing process would ''ease the entry'' of additional bulk manufacturers or that the applicant would be subject to less ''scrutiny.'' Such is not the case. DEA will continue to apply the same factors required by 21 U.S.C. 823(a) to evaluate applications for registrations of bulk manufacturers. Where DEA discovers information which warrants proceedings to deny a registration, either through its own investigation or as provided through comments of other manufacturers, it will issue an order to show cause seeking to deny the application for registration.

Two commentors found that DEA's conclusion regarding abuse of the regulatory hearing requirement is not supported by the record which reveals that in the last 20 years, DEA has held as few as five evidentiary hearings on importer or bulk manufacturer applications at the request of a current registrant. However, one of these commentors acknowledged that it believed that objections raised in a prior hearing involving one of its subsidiaries ''lacked substantive merit.'' More importantly, one commentor, who supported removing the third-party manufacturer hearing regulation, provided two examples in which it believed other manufacturers had used the hearing process for anti-competitive purposes and to delay entry into the marketplace. Notwithstanding the limited number of evidentiary hearings during the past twenty years, the final rule seeks to discourage potential future abuse of the hearing process.

Four commentors argued that the submission of written comments would be insufficient because either the comment period would be too short or because of the inability to produce witnesses and conduct cross-examination. One of these commentors suggested that this proposal would make it ''impossible for any currently registered bulk manufacturer to provide meaningful information to the Administrator'' on these applications. Two of these commentors stated that 30 or even 60 days would be insufficient to prepare meaningful comments on an application.

First, regarding all subsequent manufacturer applications, DEA will not consider a comment period less than 60 days. Second, DEA maintains that 60 days is sufficient time for interested parties to submit adequate comments and documentation to notify DEA concerning potential issues that warrant DEA issuing an order to show cause. There is no evidence that DEA would fail to consider such evidence prior to making a final determination. Moreover, these individuals could still participate in any hearing, requested after the issuance of an order to show cause, thereby providing an additional opportunity to present evidence.

DEA does not suggest that written comments are a replacement for direct testimony or cross-examination. However, DEA does argue that applicants should not be subjected to the rigors and delay accompanying an administrative hearing absent some prior good faith belief and evidence that such procedure is warranted. Further, this final rule will foreclose current registrants and applicants from using the third-party manufacturer hearing process as a forum for discovery of non-relevant information from its competitors, such as marketing and pricing data.

Two commentors suggested that DEA consider adopting procedures to prevent abuse of the third-party manufacturer hearing provision such as utilizing motions for summary judgement or requiring written submissions prior to the hearing. The final rule, in effect, resolves both issues because (1) DEA will only issue an order to show cause where it has a good faith basis that the applicant's registration should not be granted and (2) other bulk manufacturers will be required to submit substantive written comments within a reasonable time, after an application has been submitted.

Three commentors stated that the current hearing process enables third-parties to present relevant and useful information to DEA that might not otherwise be available because of limited agency resources or otherwise. DEA acknowledges the critical role that third-parties provide in identifying issues related to the registration of bulk manufacturers. DEA does not intend to discourage such participation. However, the final rule provides DEA with the authority necessary to protect the interests of applicants and current registrants alike.

Finally, four commentors requested a hearing on the issue of the third-party manufacturer hearing provision pursuant to 21 U.S.C. 875. Unlike other rulemaking conducted pursuant to the CSA, the present rulemaking presents no requirement that the rule be made on the record after opportunity for a hearing. For example, 21 U.S.C. 811(a) requires the opportunity for a hearing whenever there is a proposed rescheduling of controlled substances. In addition, 21 U.S.C. 875 identifies general powers available to DEA when exercising its authority under the CSA. Thus, 21 U.S.C. 875 complements existing hearing provisions under the CSA rather than conferring independent hearing authority. In any event, DEA believes that the notice and comment conducted pursuant to this rulemaking enabled interested parties to provide meaningful comment on the final rule.

The final rule removes the mandatory third-party manufacturer hearing requirement while retaining the hearing provision pursuant to an order to show cause. The proposed change as provided herein does not violate statutory intent but instead comports with sound principles of substantive and procedural due process. Eliminating the hearing requirement except when requested by the applicant after issuance of an order to show cause, supports the statutory and regulatory mandate that an applicant for registration as a bulk manufacturer shall have the burden of proof at ''any hearing'' that the requirements of registration are met. *See* 21 CFR 1301.55. The Administrative Procedures Act (APA) which controls these matters further provides that ''[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof.'' *See* 5 U.S.C. 556(d).

The final rule eliminates the problem of multiple hearings which not only promotes judicial economy but also avoids the anomalous result of DEA conducting administrative hearings which are not dispositive of the ultimate issue of whether an applicant should be registered. For example, because DEA must issue an order to show cause whenever it takes action to deny an application, 21 U.S.C. 824(c), under the current regulation a second hearing would likely be required when DEA decided to deny an application after a hearing held pursuant to a ''third-party'' request. Further, this second hearing would involve many of the same issues raised in the prior proceeding. The primary objective of the final rule is to limit abuse of the regulatory hearing process.

For the above-stated reasons and in the absence of express statutory language governing the right to an evidentiary hearing by bulk manufacturers concerning the application for registration of bulk manufacturers of controlled substances, as well as the absence of language in the legislative history of the CSA that would imply Congressional intent in this regard, 21 CFR 1301.43 shall be amended.

The Deputy Assistant Administrator hereby certifies that the final rule will have no significant impact upon those entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The registrants and applicants who use, or are affected by, the hearing covered by these regulations are typically not small entities.

The final rule is not a significant regulatory action pursuant to Executive Order (E.O.) 12866 and therefore, has not been reviewed by the Office of Management and Budget. This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1301

Administrative practice and procedure, Drug traffic control and security measures.

For the reasons set forth above and pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b), as delegated to the Administrator of the Drug Enforcement Administration, and redelegated to the Deputy Assistant Administrator, Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control hereby amends part 1301 of Title 21, Code of Federal Regulations to read as follows:

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.37, paragraph (a) is revised to read as follows:

§ 1301.37 Amendments to and withdrawal of applications.

(a) An application may be amended or withdrawn without permission of the Administrator at any time before the date on which the applicant receives an order to show cause pursuant to § 1301.48. An application may be amended or withdrawn with permission of the Administrator at any time where good cause is shown by the applicant or where the amendment or withdrawal is in the public interest.

* * * * *

3. Section 1301.43, paragraph (a) is revised to read as follows:

§ 1301.43 Application for bulk manufacture of Schedule I and II substances.

(a) In the case of an application for registration or reregistration to manufacture in bulk a basic class of controlled substance listed in Schedule I or II, the Administrator shall, upon the filing of such application, publish in the **Federal Register** a notice naming the applicant and stating that such applicant has applied to be registered as a bulk manufacturer of a basic class of narcotic or nonnarcotic controlled substance, which class shall be identified. A copy of said notice shall be mailed simultaneously to each person registered as a bulk manufacturer of that basic class and to any other applicant therefor. Any such person may, within 60 days from the date of publication of the notice in the **Federal Register**, file with the Administrator written comments on or objections to the issuance of the proposed registration.

* * * * *

4. Section 1301.44 is amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 1301.44 Certificate of registration; denial of registration.

* * * * *

(b) If a hearing is requested by an applicant for registration or reregistration to manufacture in bulk a basic class of controlled substance listed in Schedule I or II, notice that a hearing has been requested shall be published in the **Federal Register** and shall be mailed simultaneously to the applicant and to all persons to whom notice of the application was mailed. Any person entitled to file comments or objections to the issuance of the proposed registration pursuant to § 1301.43(a) may participate in the hearing by filing a notice of appearance in accordance with § 1301.54. Such persons shall have 30 days to file a notice of appearance after the date of publication of the notice of a request for a hearing in the **Federal Register**.

5. Section 1301.54, paragraph (a), (b), (c) and (d) are revised to read as follows:

§ 1301.54 Request for hearing or appearance; waiver.

(a) Any person entitled to a hearing pursuant to §§ 1301.42, 1301.44, or 1301.45 and desiring a hearing shall, within 30 days after the date of receipt of the order to shown cause, file with the Administrator a written request for a hearing in the form prescribed in § 1316.47 of this chapter.

(b) Any person entitled to participate in a hearing pursuant to § 1301.44(b) and desiring to do so shall, within 30 days of the date of publication of notice of the request for a hearing in the **Federal Register,** file with the Administrator a written notice of intent to participate in such hearing in the form prescribed in § 1316.48 of this chapter. Any person filing a request for a hearing need not also file a notice of appearance.

(c) Any person entitled to a hearing or to participate in a hearing pursuant to §§ 1301.42, 1301.44, or 1301.45 may, within the period permitted for filing a request for a hearing or a notice of appearance, file with the Administrator a waiver of an opportunity for a hearing or to participate in a hearing, together with a written statement regarding such person's position on the matters of fact and law involved in such hearing. Such statement, if admissible, shall be made a part of the record and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.

(d) If any person entitled to a hearing or to participate in a hearing pursuant to §§ 1301.42, 1301.44, or 1301.45 fails to file a request for a hearing or a notice of appearance, or if such person so files and fails to appear at the hearing, such person shall be deemed to have waived the opportunity for a hearing or to participate in the hearing, unless such person shows good cause for such failure.

* * * * *

6. Section 1301.55, paragraph (a) is revised to read as follows:

§ 1301.55 Burden of proof.

(a) At any hearing on an application to manufacture any controlled substance listed in Schedule I or II, the applicant shall have the burden of proving that the requirements for such registration pursuant to section 303(a) of the Act (21 U.S.C. 823(a)) are satisfied. Any other person participating in the hearing pursuant to § 1301.44(b) shall have the burden of proving any propositions of fact or law asserted by such person in the hearing.

* * * * *

Dated: June 14, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–15058 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 84

[Docket No. R–95–1736; FR–3639–F–02]

RIN 2501–AB97

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations—OMB Circular A–110 (Revised)

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: Office of Management and Budget (OMB) Circular A–110 provides standards for obtaining consistency and uniformity among Federal agencies in the administration of grants and agreements with institutions of higher education, hospitals, and other non-profit organizations. On September 13, 1994, the Department published a final rule which adopted the revised circular as it pertains to HUD. However, the September 13, 1994 rule contained, in subpart E, special provisions relating to the use of lump sum grants. Therefore, subpart E was treated as an interim rule, and the public was invited to submit comments on subpart E. This final rule addresses the public comments received on subpart E and makes final the provisions of subpart E.

EFFECTIVE DATE: July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Aliceann B. Muller, Policy and Evaluation Division, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 5262, Washington, DC 20410. Telephone: (202) 708–0294; TDD: (202) 708–1112. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Office of Management and Budget (OMB) Circular A–110 provides standards for obtaining consistency and uniformity among Federal agencies in the administration of grants and agreements with institutions of higher education, hospitals, and other non-profit organizations.

OMB Circular A–110 was issued under the authority of 31 U.S.C. 503 (the Chief Financial Officers Act), 31 U.S.C. 1111, 41 U.S.C. 405 (the Office of Federal Procurement Policy Act), Reorganization Plan No. 2 of 1970, and E.O. 11541 (''Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President'').

OMB issued Circular A–110 in 1976 and made a minor revision in February 1987. To update the circular, OMB established an interagency task force to review the circular. The task force solicited suggestions for changes to the circular from university groups, non-profit organizations and other interested parties and compared, for consistency, the provisions of similar provisions applied to State and local governments. On August 27, 1992, OMB published a notice in the **Federal Register**, at 57 FR 39018, requesting comments on proposed revisions to OMB Circular A–110. Interested parties were invited to submit comments. OMB received over 200 comments from Federal agencies, non-profit organizations, professional organizations and others. All comments were considered in developing the final revision. On November 29, 1993, at 58 FR 62992, OMB issued a revised circular which reflects the results of these efforts.

On September 13, 1994, the Department published a final rule which adopted the revised circular as it pertains to HUD. However, the September 13, 1994 rule contained, in subpart E, special provisions relating to the use of lump sum grants. Therefore, subpart E was treated as an interim rule, and the public was invited to submit comments on subpart E. This final rule addresses the public comments received on subpart E and makes final the provisions of subpart E.

Public Comments

The final rule published on September 13, 1994, at 59 FR 47010, invited public comments on Subpart E regarding lump sum grants. One (1) commenter, a national association, responded with a series of technical questions. Below is a listing of the questions presented and the Department's response to each question. The Department's responses set forth additional clarifications needed to aid in the commenter's understanding of the rule. No changes to the rule are necessary, and none are made by this final rule.

Question: Do these lump sum awards go through the same audit process as regular awards?

Response: OMB Circular A–133 ''Audits of Institutions of Higher Education and Other Nonprofit Organizations'' applies to lump-sum awards. However, in responding to a comment on the proposed A–133 regarding applicability of A–133 to fixed price formula (performance-based) type grants, OMB said ''Performance-funded programs are subject to the requirements of OMB Circular A–133. However, the auditor should tailor the auditing procedures to that type of program. For performance-funded programs, the auditor's examination should be directed to such matters as determining beneficiary eligibility, verifying units of service rendered, and controlling program income.'' Therefore, the Department's view is that the recipient of a lump sum award would be subject to all of the requirements of A–133 except that the lump-sum grant would not be audited for incurred ''costs;'' the auditor would tailor the review to fit the grant's terms. Internal controls, program compliance, auditing of financial statements, and all other aspects of an audit under A–133 would still apply.

Question: Does HUD anticipate that particular program branches of the agency will avail themselves of these types of awards? If so, which are they?

Response: The Department does not expect an expansion in the use of the lump-sum provisions in the future. Historically, many of HUD's grant programs have been managed on other than a cost-reimbursement basis, so it is not a matter of programs ''availing'' themselves of this option, but rather of making the Department's rule flexible enough to allow the continuance of historical practice. For example, the Neighborhood Development Demonstration Program (NDDP) uses a matching formula of from one Federal dollar up to six Federal dollars being given for each dollar the grantee raises from within the targeted neighborhood. The ratio of the match is determined by the level of neighborhood distress. The NDDP grantee is paid the match when the local dollar is raised—not when costs are incurred or work is done. The housing counseling grant program works on a unit price basis; the grantee is paid for performing a ''counseling unit,'' which is defined in the grant. In many cases, the funding arrangement is part of the basic program design and the enabling legislation. However, it is highly likely that these programs will change, as HUD is currently undergoing a major reinvention and consolidation of its grant programs. The combined programs or new programs may take any form allowed by the new or revised legislation and by the administrative procedures set forth in 24 CFR part 84 (for non-profits) and part 85 (for state and local governments).

Question: Is the underlying motivation to introduce these lump sum awards cost saving or streamlining of procedures in a larger context of the National Performance Review?

Response: Yes, in a way, but see also the second question above. HUD has been using the lump-sum arrangement for many years and is very aware of its advantages in terms of the streamlining and flexibility it offers, including reduced grantee and Federal burden.

Question: Does a lump sum grant resemble a fixed price contract?

Response: In some cases, yes. In cases where a predetermined payment amount is tied to a predetermined performance milestone, it does resemble a fixed price contract. The housing counseling program discussed above falls in this category. However, not all lump sum grants operate in this manner. Sometimes payment is tied to an external index or to an external event, such as economic distress, or a dollar raised in the NDDP program. See the second question above.

Question: If a lump sum grant is fixed in price and permission is needed for changes as specified in § 84.82(d), will HUD pay increased costs that might be incurred from denial of permission, especially if grant performance were made impossible as a result of such denial?

Response: Under a lump sum award, HUD is not paying for ''costs'' based on the grantee's actual cost experience in performing the work. Therefore, an increase in the grantee's costs would not in and of itself lead to an increase in the lump sum amount paid by HUD. Rather, the lump sum award represents an agreement between HUD and the grantee that a certain amount will be paid for a certain event, based on a performance milestone, external benchmark, or other pre-defined ''event.'' (See §§ 84.80 and 84.81 for further guidance.) However, awarding a lump sum grant does not necessarily mean that the lump sum could never be increased. The idea is that the Federal contribution be sufficient to achieve the agreed-upon goal and that the grantee neither realize a financial windfall nor find it impossible to perform. In some instances, the HUD contribution might only be a small part of the overall program costs, and HUD's clearly stated intention (set forth in the grant itself and agreed to before award) is to contribute no more than the stated HUD share. For example, a grant might be for acquiring and rehabilitating a home for use by low income persons. During the performance of the work, unknown conditions may come to light at the construction site which cause increased costs. HUD might decline to increase its lump sum amount and insist that the grantee recover these costs from other sources, or it might agree to make an additional contribution. Much of the answer depends on the program design and program rules; some programs have statutory caps on individual award amounts, while others allow for more flexibility. The key factor is that the quid pro quo be clearly set forth in the grant document and agreed to by both parties. In cases where there are statutory caps on grant amounts or other constraints which limit or preclude any adjustments in the amount, these should be made clearly known in advance of the award. For issues which could not be foreseen, and in the absence of a rule limiting the Grant Officer's authority, such matters as adjustments in the lump sum amount would be determined by the Grant Officer.

Also, please note that the conditions for getting approval under § 84.82(d) are extremely limited, consisting only of getting approval for (1) changes in scope or objective, (2) additional Federal funding, and (3) the subcontracting out or transfer of work not previously contemplated. The first of these is necessary to make sure that the grantee is still undertaking activities eligible under the program rule and chargeable to the appropriation, and that the activities are consistent with those for which the grantee was selected (usually competitively). The second is obvious—if the grantee needs additional funding, it cannot continue the grant without it, and the Federal agency must make the funds available or explore other avenues for resolution, BEFORE the grantee has overcommitted funds on the assumption there will be additional Federal dollars. The third is to ensure that the grantee who was evaluated as capable actually accomplishes the work and does not shift performance to some unknown party. These three situations are major and are the only ones for which permission must be sought, compared to the many situations requiring permission under cost-reimbursement grants.

Other Matters

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant

Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. It pertains only to the administration of grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not have ''federalism implications'' because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being. It pertains only to the administration of grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations.

Semi-Annual Agenda of Regulations

This rule was listed as item number 1384 in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23379) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 84

Accounting, Colleges and universities, Grant programs, Loan programs, Nonprofit organizations, Reporting and recordkeeping requirements.

Accordingly, subpart E of part 84 of title 24 of the Code of Federal Regulations is adopted as final, without change, as it was published on September 13, 1994, at 59 FR 47010.

Dated: June 13, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–14962 Filed 6–19–95; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 93

[OJP No. 1014]

RIN 1121–AA26

Drug Courts

AGENCY: U.S. Department of Justice, Office of Justice Programs.

ACTION: Final rule.

SUMMARY: This notice announces the Final Rule on the Drug Court Program as authorized by Title V of the Violent Crime Control and Law Enforcement Act of 1994. The Rule gives general guidance regarding the Program and specifically delineates the prohibition on participation by violent offenders. Detailed Program Guidelines and application materials for the Fiscal Year 1995 Drug Courts Program were issued by the Drug Courts Program Office on March 23, 1995. The Final Rule does not differ from the Proposed Rule published on January 26, 1995 (60 FR 5152).

DATES: The Final Rule is effective June 20, 1995.

ADDRESSES: All inquiries, correspondence, and requests for information should be addressed to Tim Murray, Acting Director, Drug Courts Program Office, Office of Justice Programs, 633 Indiana Avenue NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Response Center at 1–800–421–6770 or (202) 307–1480 or Tim Murray, Acting Director, Drug Courts Program Office, Office of Justice Programs at (202) 616–5001.

SUPPLEMENTARY INFORMATION:

Overview of Title V—Drug Courts

Federal discretionary grants are made available under the Violent Crime Control and Law Enforcement Act of 1994, Title V, Pub. L. 103–322, 108 Stat. 1796 (September 13, 1994), 42 U.S.C. 3796ii–3796ii–8 [hereinafter the ''Act''] to States, units of local government, Indian tribal governments, and State and local courts for assistance with Drug Court Programs. The Act gives the Attorney General and through statutory authority contained in the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. 3711 *et seq.*, an authorized designee (in this case the Assistant Attorney General for the Office of Justice Programs), the authority to make grants to the above mentioned entities for Drug Court Programs that involve continuing judicial supervision over non-violent offenders with substance abuse problems and the integrated administration of sanctions and services including: (1) Mandatory periodic testing for the use of controlled substances or other addictive substances during any period of supervised release or probation for each participant; (2) substance abuse treatment for each participant; (3) diversion, probation, or other supervised release involving the possibility of prosecution, confinement, or incarceration based on noncompliance with program requirements or failure to show satisfactory progress; and (4) programmatic, offender management, and aftercare services such as relapse prevention, health care, education, vocational training, job placement, housing placement, and child care or other family support services for each participant requiring such services.

The Fiscal Year 1995 Department of Justice Appropriations Act, Pub. L. 103–317, allocated $29 million for the Drug Court grant programs. Eligibility of applicants to receive grants will be based on requirements of the statute and these regulations, as well as assurances and certifications specified in the detailed program guidelines and application materials published by the Drug Courts Program Office of the Office of Justice Programs on March 23, 1995 and available from that Office.

The Department issued a Proposed Rule on January 26, 1995 (60 FR 5152). The Final Rule being published herein is unchanged from the Proposed Rule and closely mirrors the authorizing statute. Application guidelines addressing the logistics of the Program and its implementation were issued on March 23, 1995. Copies of the Drug Court Program Guidelines are available directly from the DOJ Response Center or the Drug Courts Program Office.

Discussion of Comments

The Office of Justice Programs received sixteen letters commenting on the proposed regulations, primarily from State and local government (including district attorneys and criminal justice planning agencies). Comments are on file in the Drug Courts Program Office and are available for review. All comments were considered by the Drug Courts Program Office in the issuance of its Application Guidelines and in the review of this

Final Rule. The Office of Justice Programs thanks all those who commented on this program.

Commentators unanimously voiced their support for the Department's efforts to implement the Program and offered positive suggestions for the essential element of the regulation, the exclusion of violent offenders definition. Commentators also noted concerns in other areas, including the design and type of services provided in programs for Drug Court participants, judicial supervision, participation with local agencies, defendants' rights, and available funding.

The majority of comments focused on the definition of the term ''violent offender.'' While all agreed that such individuals should be excluded and that the definition worked toward achieving that result, some were concerned with its potential breadth. The Department gave much consideration to this particular definitional issue in drafting the Proposed Rule and the subsequent guidelines. Indeed, a careful survey of the comments made in preparation for publication of the Final Rule provided an opportunity for the Department to revisit many of these concerns. Our reexamination, however, suggested that our original approach is appropriate in that it tracks the language of the Act.

We appreciate those comments received regarding program design, treatment availability, and services provided. We emphasized in the preamble of the Proposed Rule, as we do now, that the Department will accept a variety of approaches. Indeed, rather than prescribing one model, the Program Guidelines appropriately encourage flexibility in developing local Drug Court programs. Localities are encouraged to tailor intervention approaches best suited to address local circumstances. Within the boundaries set by the statute, the Department is committed to maintaining flexibility to avoid any restrictions on localities that would tend to limit development to one particular design. The design flexibility provided for local Drug Court programs, similarly, allows grantees to develop an array of services appropriate to the local constituent population served, thereby avoiding the need to specify a list of particular services as a prerequisite for participation.

We received comments concerning the potential impact of Drug Court programming on the rights of individual defendants. Guidelines require participation by the entire criminal justice system including courts, prosecutors and public defenders, to ensure effective programming and that the rights of individual defendants are protected.

The issue of judicial supervision raised by some commentators is a central feature of the program. According to the terms of the statute, judicial supervision must be ongoing. Therefore, it has been retained as a seminal program requirement for all Drug Court programming.

Some commentators focused on the issue of the overall effectiveness of the Program nationally and the role of evaluations in that effort. Assessments and evaluations of Drug Court programs will be carried out by individual grantees in consultation with the National Institute of Justice (NIJ) and other appropriate agencies. It is the Department's intention to review data provided by individual program grantees nationwide to help evaluate the overall effectiveness of the Drug Court Program. NIJ-sponsored impact and process evaluations will focus in more depth on selected Drug Courts funded under this Program.

Administrative Requirements

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. This rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has not been reviewed by the Office of Management and Budget.

The Assistant Attorney General for the Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 93

Grant programs, Judicial administration.

For the reasons set out in the preamble, Title 28, Chapter 1, of the Code of Federal Regulations is amended by adding a new Part 93, consisting of Subpart A as set forth below.

PART 93—PROVISIONS IMPLEMENTING THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

Subpart A—Drug Courts

Sec.
93.1 Purpose
93.2 Statutory Authority
93.3 Definitions
93.4 Grant Authority
93.5 Exclusion of Violent Offenders

Subpart B—[Reserved]

Authority: 42 U.S.C. 3796ii–3796ii–8.

Subpart A—Drug Courts

§ 93.1 Purpose.

This part sets forth requirements and procedures to ensure that grants to States, State courts, local courts, units of local government, and Indian tribal governments, acting directly or through agreements with other public or private entities, exclude violent offenders from participation in programs authorized and funded under this part.

§ 93.2 Statutory authority.

This program is authorized under the Violent Crime Control and Law Enforcement Act of 1994, Title V, Public Law 103–322, 108 Stat. 1796, (September 13, 1994), 42 U.S.C. 3796ii–3796ii–8.

§ 93.3 Definitions.

(a) *State* has the same meaning as set forth in section 901(a)(2) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

(b) *Unit of Local Government* has the same meaning as set forth in section 901(a)(3) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

(c) *Assistant Attorney General* means the Assistant Attorney General for the Office of Justice Programs.

(d) *Violent offender* means a person who either—

(1) Is currently charged with or convicted of an offense during the course of which:

(i) The person carried, possessed, or used a firearm or other dangerous weapon; or

(ii) There occurred the use of force against the person of another; or

(iii) There occurred the death of, or serious bodily injury to, any person; without regard to whether proof of any of the elements described herein is required to convict; or

(2) Has previously been convicted of a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm.

§ 93.4 Grant authority.

(a) The Assistant Attorney General may make grants to States, State courts, local courts, units of local government, and Indian tribal governments, acting directly or through agreements with other public or private entities, for programs that involve:

(1) Continuing judicial supervision over offenders with substance abuse problems who are not violent offenders, and

(2) The integrated administration of other sanctions and services, which shall include—

(i) Mandatory periodic testing for the use of controlled substances or other addictive substances during any period of supervised release or probation for each participant;

(ii) Substance abuse treatment for each participant;

(iii) Diversion, probation, or other supervised release involving the possibility of prosecution, confinement, or incarceration based on noncompliance with program requirements or failure to show satisfactory progress; and

(iv) Programmatic, offender management, and aftercare services such as relapse prevention, health care, education, vocational training, job placement, housing placement, and child care or other family support services for each participant who requires such services.

(b) Applications for grants under this program shall be made at such times and in such form as may be specified in guidelines or notices published by the Assistant Attorney General. Applications will be evaluated according to the statutory requirements of the Act and the programmatic goals specified in the applicable guidelines. Grantees must comply with all statutory and program requirements applicable to grants under this program.

§ 93.5 Exclusion of violent offenders.

(a) The Assistant Attorney General will ensure that grants to States, State courts, local courts, units of local government, and Indian tribal governments, acting directly or through agreements with other public or private entities, exclude violent offenders from programs authorized and funded under this part.

(b) No recipient of a grant made under the authority of this part shall permit a violent offender to participate in any program receiving funding pursuant to this part.

(c) Applicants must certify as part of the application process that violent offenders will not participate in programs authorized and funded under this part. The required certification shall be in such form and contain such assurances as the Assistant Attorney General may require to carry out the requirements of this part.

(d) If the Assistant Attorney General determines that one or more violent offenders are participating in a program receiving funding under this part, such funding shall be promptly suspended, pending the termination of participation by those persons deemed ineligible to participate under the regulations in this part.

(e) The Assistant Attorney General may carry out or make arrangements for evaluations and request information from programs that receive support under this part to ensure that violent offenders are excluded from participating in programs hereunder.

Subpart B—[Reserved]

Laurie Robinson,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 95–14985 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–18–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5222–2]

Notice of Administrator's Intent To Permit Filing of Reformulated Gasoline and Anti-Dumping Reports via Electronic Data Interchange (EDI); Deadline for First Quarter Batch Reports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reporting procedures and extension of reporting deadline.

SUMMARY: The reformulated gasoline (RFG) and anti-dumping regulation requires that specified parties submit compliance reports. These reports are to be submitted via forms and procedures specified by the Administrator. Today, EPA is announcing its intent to permit properly filed electronic reports. EPA is also announcing that it is extending by one month the deadline for the first submission of quarterly batch reporting from May 31, 1995 to June 30, 1995. Thus, first quarter reports for 1995 only must be submitted by midnight June 30, 1995. This extension applies to all parties whether submitting paper forms or submitting electronically.

EFFECTIVE DATE: This action is effective on June 20, 1995.

FOR FURTHER INFORMATION CONTACT: For general questions about RFG reporting, contact Mike Marmen, U.S. Environmental Protection Agency, ATTN: REFGAS, 401 M Street SW. (6406–J), Washington, D.C. 20460, (202) 233–9028. For technical assistance with electronic reports, contact Andy Lowe by calling either (202) 233–9027 or by calling 800–395–6222 and instructing the operator to send a brief text message to PIN 259–0639. For questions regarding the Terms and Conditions Memorandum, contact Anne-Marie Cooney Pastorkovich at (202) 233–9013.

SUPPLEMENTARY INFORMATION: Parties who need assistance may also contact the EPA staff through REFGAS@EPAMAIL.EPA.GOV. A copy of this notice and copies of the ''Terms and Conditions'' memorandum described below may be obtained from Anne-Marie Cooney Pastorkovich or from Angela Young, (202) 233–9010, or by accessing the bulletin board system described elsewhere in this **SUPPLEMENTARY INFORMATION** section.

A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, 9600 or 14,400 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(M) OMS
(K) Rulemaking and Reporting
(3) Fuels
(9) Reformulated gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action will be in the form of a ZIP file and can be identified by the following titles: EDINOTE.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D filename.zip

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

I. Introduction

RFG and Anti-Dumping Program Reporting Requirements, Generally

The primary purpose of the Federal reformulated gasoline (RFG) and anti-

dumping program is to improve air quality in ozone non-attainment areas by reducing motor vehicle emissions of toxic and tropospheric, ozone-forming compounds, as required by § 211(k) of the Clean Air Act (''the Act''). Final regulations for RFG and anti-dumping were signed by the Administrator on December 15, 1993 and were published in the **Federal Register** on February 16, 1994.[1] In order to ensure that the requirements of the RFG and anti-dumping program are complied with (and as a tool for monitoring such compliance), the regulations include, at §§ 80.75 and 80.105, reporting requirements for refiners, importers, and oxygenate blenders. In addition to these parties, independent labs must report the result of analyses of RFG and reformulated gasoline blendstock for downstream oxygen blending (RBOB) to EPA. Interested persons who require further information about the specific reports to be filed should refer to §§ 80.75 and 80.105.

Reporting parties are required, under §§ 80.75 and 80.105, to submit all RFG and anti-dumping compliance reports via forms and procedures specified by the Administrator.[2] EPA has developed and provided scannable paper forms and copies of these forms are available from the person(s) listed in **FOR FURTHER INFORMATION CONTACT**, above.

Purpose of Electronic Filing

EPA desires to decrease, to the extent possible, the amount of paper forms required to be submitted under the RFG and anti-dumping program and to permit the submission of reports electronically. Electronic Data Interchange (EDI), is the transmission, in a standard syntax, of unambiguous information between computers of independent organizations and has been widely used by the private/commercial sector. EPA believes that the electronic transmission and receipt of RFG and anti-dumping compliance reports will simplify the flow of reports from the reporting entity to EPA and will lessen the need for the reporting party and EPA to ''re key'' data in order to fit the EPA paper form. By eliminating extra steps in the reporting process, reporting via EDI will reduce the chance of human error and will help ensure the accuracy of reports filed with EPA.

How the EDI Reporting Program for RFG and Anti-Dumping Will Work

The Administrator will accept RFG and anti-dumping reports filed via EDI in substitution for paper reports, provided the reporting party signs and abides by the provisions of the ''Terms and Conditions Memorandum for Submission of Reformulated Gasoline (RFG) and Anti-Dumping Reports via Electronic Data Interchange (EDI).'' (This memorandum, the entire text of which appears in Section III below, explains the responsibilities of the reporting party.) EPA will also provide reporting parties with copies of the technical guidance document titled ''Reformulated Gasoline and Anti-Dumping Program Electronic Data Interchange Technical Guideline,'' which includes detailed information about hardware/software requirements, the required usage of data standards, the value added network (VAN) service EPA will use to receive data, and system description. [Copies of this guidance will be sent to reporting parties and other interested parties and may be obtained from the TTNBBS or by contacting the person(s) listed in **FOR FURTHER INFORMATION CONTACT**.]

EPA, and the reporting party who has signed the Terms and Conditions Memorandum, may electronically transmit to or receive from each other any of the transaction sets for the RFG and Anti-dumping program. EPA will identify in the guidance document, a Value-Added Network (VAN), which provides a mailbox from which EPA may send or receive EDI transmissions. As explained in the Terms and Conditions Memorandum, reporting parties may use, at their own expense, this ''EPA VAN'' or may select another VAN interconnected with the EPA VAN.

EPA and the reporting party must protect electronic data and Personal Identification Numbers (PINs) from unauthorized access, alteration, loss, destruction and/or disclosure to ensure, at a minimum, the same level of protection required for paper documents. This protection must extend beyond the transactions themselves to any files or data bases that contain information conveyed via EDI.

EPA will use a ''dual PIN'' system. A responsible corporate officer of the reporting party will identify authorized representatives (i.e., corporate employees who are authorized to submit RFG and anti-dumping reports) and the facilities for which such authorized representatives are authorized to submit reports. A responsible corporate officer (see footnote 3 to the Terms and Conditions Memorandum), is the only person who will be sent a company PIN by EPA. The company PIN will be mailed directly to the responsible corporate officer via U.S. Postal Service by EPA. The individual PIN (i.e. the PIN assigned to each authorized representative) will be mailed directly to such authorized representative(s) via U.S. Postal Service by EPA. Both the individual PIN and the company PIN must appear on all proper EDI submissions. Each PIN will be a four (4) character alpha-numeric code. EPA does not intend to routinely change PINs, but will do so at the written request, on company letterhead, of a responsible corporate officer of the reporting party. The reporting party is responsible for notifying EPA if it has reason to believe the security of any PIN(s) has been compromised and must request a change. The reporting party is also responsible for notifying EPA in writing and on company letterhead of termination of employment of any authorized representative. EPA will cancel such authorized representative's individual PIN within fourteen (14) business days of receiving such notice. The reporting party is responsible for notifying EPA (in writing on company letterhead and signed by a responsible corporate officer) of any new employee(s) who will act as authorized representative(s). EPA will promptly issue such authorized representative(s) individual PIN(s) via U.S. Postal Service. If EPA has reason to believe that PIN security has been compromised, it may initiate PIN changes.

EPA will consider an electronically filed report received when it is accessible to the receiver (i.e. EPA) at its receipt computer. No document shall satisfy any reporting requirement until it is received. Upon receipt of any

[1] EPA published a direct final rulemaking making technical corrections to the February 16 rule in the July 20, 1994 **Federal Register**. A rulemaking related to renewable oxygenates was published in the August 2, 1994 **Federal Register**. Shortly after promulgation of the renewable oxygenates rule, the American Petroleum Institute (API) and National Petroleum Refiners Association (NPRA) brought suit in the United States Court of Appeals seeking review of the Agency's action. On February 16, 1995, oral arguments were held. On April 28, 1995, the Court granted API and NPRA's petition for review and concluded that EPA lacked the authority to promulgate the renewable oxygenate rule. Interested parties may contact the person(s) listed in **FOR FURTHER INFORMATION CONTACT** for information about the status of technical corrections and the renewable oxygenate rule.

[2] On November 4, 1994, authority to require reporting of information and delivery of records required to be maintained under specified sections, including §§ 80.75 and 80.105, was delegated by the Administrator to the Assistant Administrator for Air and Radiation and the Assistant Administrator for Enforcement and Compliance Assurance. On November 28, 1994, certain authorities, including those related to reporting under §§ 80.75 and 80.105, were further delegated by the Assistant Administrator for Air and Radiation to the Director of the Office of Mobile Sources.

On December 2, 1994, authority was further delegated to the Director of the Field Operations and Support Division of the Office of Mobile Sources, which is the office responsible for day-to-day operations of the RFG and Anti-Dumping reporting program.

report, EPA will promptly (i.e. within five [5] business days) and properly submit a functional acknowledgement in return. The functional acknowledgement will constitute conclusive evidence that a report has been properly received by EPA. If a functional acknowledgement is not received in return for a document, then the reporting party initially transmitting the document shall be responsible for re-sending the document.

EPA and the reporting party are responsible for keeping archives of documents sent and received, including a complete record of the data interchanged, representing the messages between the parties and their dates and times (i.e., the data or transaction log). Such data or transaction log shall be maintained for a period of not less than five (5) years. The reporting party agrees to retransmit any document within five (5) days of receiving a re-transmission request by EPA. Likewise, EPA will re-send any transmission originated by EPA at the reporting party's request.

EPA considers that electronic reports which are filed consistent with the procedures outlined in this notice, the Terms and Conditions Memorandum, and the technical guidance document fulfill the requirements of §§ 80.75(n) and 80.105, pertaining to form and signature requirements for reports. Specifically, § 80.75(n)(1), pertaining to RFG reporting, and § 80.105(d)(1), pertaining to anti-dumping reporting, require that reports be submitted on forms and following procedures specified by EPA. Reports must be signed and certified as correct by the owner or a responsible corporate officer of the reporting party. *See* § 80.75(n)(2) [pertaining to RFG reporting] and § 80.105(d)(3) [pertaining to anti-dumping reporting]. EPA will consider a properly filed RFG or anti-dumping report (i.e., a report filed in a manner consistent with the requirement of this notice, the Terms and Conditions Memorandum, and the technical guidance document) to meet the requirements of §§ 80.75(n) and 80.105(d). A report will be considered to be signed and certified as correct by the owner or responsible corporate officer of the reporting party if and only if both the corporate and individual PINs are included in the report itself. Both PINs must be included in each and every report and use of the PINs constitutes certification of correctness within the meaning of §§ 80.75(n)(2) and 80.105(d)(3) for that report. Based on current technology, EPA believes that a dual-PIN certification system is the best available electronic means to meet the reporting requirements of §§ 80.75(n) and (2) and 80.105 (d) (1) and (3). It is the responsibility of the reporting party to institute and maintain security measures to protect PINs from unauthorized use and to notify EPA in the event issuance of a new PIN becomes necessary. As discussed above, EPA may also initiate a change in PINs.

Circumstances, both foreseeable and unforeseeable, may prevent a reporting party from conducting EDI. Nevertheless, no reporting party will be excused from the requirement to file RFG and Anti-Dumping reports with the Agency by the appropriate regulatory deadline. If a party is unable to electronically file a required report by such deadline, it must submit a paper report on forms provided by EPA.

II. Text of Terms and Conditions Memorandum

Terms and Conditions Memorandum for Submission of Reformulated Gasoline (RFG) and Anti-Dumping Reports via Electronic Data Interchange (EDI)

I. *Introduction*

A. *EDI, Defined*

Electronic Data Interchange (EDI) is the transmission, in a standard syntax, of unambiguous information between computers of independent organizations.

B. *Acceptance of Electronically Submitted Reports in Lieu of Paper Documents, Generally*

Under the reporting provisions for the reformulated gasoline (RFG) and anti-dumping program at 40 CFR 80.75(n) and 80.105(d), reports shall be ''submitted on forms and following procedures specified by the Administrator'' by a specified date and shall be signed and certified as correct by either the owner or a responsible corporate officer [1] of the reporting entity.

EPA has announced its intent to permit RFG and anti-dumping reporting via EDI (as substitution for paper reports) in the **Federal Register** notice and will accept such electronically filed reports provided the reporting party signs and abides by the provisions of the ''Terms and Conditions Memorandum for Submission of Reformulated Gasoline (RFG) and Anti-Dumping Reports via Electronic Data Interchange (EDI)'' (hereafter referred to as the ''Terms and Conditions Memorandum'' or simply as ''this memorandum''). The **Federal Register** notice is part and parcel to this Memorandum and is incorporated herein by reference.

The technical requirements are contained in ''Reformulated Gasoline and Anti-Dumping Program Electronic Data Interchange Technical Guideline,'' (hereafter referred to as the ''technical guidance document'') which is part and parcel to this memorandum and is incorporated herein by reference. (This memorandum, the **Federal Register** notice, and the technical guidance are sometimes collectively referred to as ''the agreement.'')

From time to time and due to technological change or technical necessity, EPA may update the technical guidance document. EPA will provide reasonable notice of any such changes to the reporting party.

C. *Standards for Documents*

The reporting party who has signed the Terms and Conditions Memorandum may electronically transmit to EPA any of the transaction sets for RFG and the anti-dumping program. These transaction sets are identified in the technical guidance document. The reporting party must use only those transaction sets approved for general use by the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X.12.

D. *System Requirements*

Reporting parties who wish to submit reports via EDI are responsible for maintaining the equipment, software, services, and testing necessary to effectively and reliably transmit and receive documents. The reporting party may use the EPA VAN or a VAN interconnected with the EPA VAN. The current EPA VAN is identified in the technical guidance.

E. *Security Procedures*

EPA and the reporting party must protect electronic data and Personal Identification Numbers (PINs) from unauthorized access, alteration, loss, destruction and/or disclosure to ensure, at a minimum, the same level of protection required for paper documents. This protection must extend beyond the transactions themselves to any files or data bases that contain information conveyed via EDI.

In order to reasonably protect electronically submitted reports, EPA will maintain security procedures to protect data and messages against the risk of unauthorized access, alteration, loss or destruction. All information claimed by the reporting party as ''confidential business information'' party will be subject to additional safeguards and procedures consistent with 40 CFR Part 2 and with established Agency procedures for protection of such information. It is the responsibility of a responsible corporate officer of the reporting party to provide, in writing and on company letterhead, a list of those authorized representatives to receive individual PINs and to identify a responsible corporate officer to receive the company PIN. EPA will only issue PINs to the responsible corporate officer and such properly designated authorized representatives. It is the responsibility of a responsible corporate officer of the reporting party to notify EPA in writing and on company letterhead of any changes which necessitate changes, deletions, or issuance of [a] new individual or company PIN[s]. The reporting party agrees to use all reasonable efforts to maintain the confidentiality of PINs.

[1] The term ''responsible corporate officer'' as used here, means an officer of the corporation as defined by the incorporation laws of the state in which the corporation is incorporated or a representative of the corporation who has been delegated the authority in writing to certify RFG and Anti-dumping reports by such a responsible corporate officer.

F. *Failure to Conduct EDI*

Circumstances may arise which render the reporting party unable to submit RFG and anti-dumping reports via EDI. Such circumstances may include, but are not limited to, so-called ''acts of God.''

Nothing herein is intended to relieve the reporting party of the obligation to file a timely report. If a report cannot be filed in a timely manner via EDI, then the reporting party must submit a paper document as required by 40 CFR 80.75 and 80.105.

II. *Subject*

Responsible corporate officer:

_____

Reporting party:
(Company name as registered with EPA)

_____

EPA RFG Company Registration number:

_____

Corporate Address:
(as registered with EPA)

_____

_____

_____

(List of facilities who will report via EDI to be included in Part V, below.)

III. *Terms and Conditions*

The reporting party who has signed this Terms and Conditions Memorandum to submit reports via EDI, agrees to use only those transaction sets approved for general use by the American National Standards Institute (''ANSI'') Accredited Standards Committee (''ASC'') X.12 and in accordance with the requirements of the technical guidance and the **Federal Register** notice. The reporting party further agrees:

(a) That both company and individual PINs shall be included on each and every report submitted and that such inclusion of the PINs constitutes the signature and certification that the report is correct within the meaning of 40 CFR 80.75(n)(2) and 80.105(d)(3) for that report and constitutes a ''signed document'' within the meaning of this Memorandum.

(b) That electronically submitted RFG reports (i.e., RFG reports submitted via EDI) are equivalent to, and in substitution for, paper documents and that any document properly transmitted pursuant to this Memorandum, the technical guidance, and the **Federal Register** notice, shall be considered to be a ''writing'' or ''in writing,'' and any such document when containing, or to which there is affixed, a signature (''signed documents'') shall be deemed for all purposes to have been ''signed'' and to constitute an ''original'' when printed from electronic files or records established and maintained in the normal course of business.

(c) Not to contest the validity or enforceability of signed documents under the provisions of any applicable law relating to whether certain agreements are to be in writing or signed by the party to be bound thereby. Signed documents, if introduced into evidence on paper in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of signed documents under either the business records exception to the hearsay rule or the best evidence rule on the basis that the signed documents were not originated or maintained in documentary form.

(d) To provide and maintain the equipment, software, services, and testing necessary to effectively and reliably transmit and receive documents and to accept responsibility for interfacing the EDI application to the EDI system and be responsible for all problems at the application level, including, but not limited to, wrong or missing fields or wrong data in fields.

(e) To safeguard electronic data from tampering and unauthorized disclosure to ensure, at a minimum, the same level of protection required for paper documents.

(f) To safeguard Personal Identification Numbers (PINs) and to notify EPA of any loss of or compromising of a PIN[2] and to treat all individual PINs as non-transferrable. EPA will issue no PINs without the written request of a responsible corporate officer on letterhead, consistent with the requirements of Paragraph V, below.

(g) That no document will be considered to have been received by EPA until it is accessible to EPA at its receipt computer. No document shall be of any legal effect until it is received. Upon receipt of any report, EPA will promptly (i.e., within five [5] business days) and properly submit a functional acknowledgement in return. The functional acknowledgement will constitute conclusive evidence that a report has been properly received by EPA. If a functional acknowledgement is not received in return for a document transmitted to EPA, then the reporting party who transmitted the document shall be responsible for re-sending the document.

(h) To retransmit any document for which a functional acknowledgement was not received. Such re-transmission is to occur within five (5) days of request by EPA.

(i) To maintain records and archives of documents sent and received for not less than five (5) years.[3] Such archives must include a complete record of the data interchanged representing the messages between the parties (i.e., the transaction or data log).

(j) To promptly notify EPA of any inability to properly conduct EDI[4] and to file paper reports on forms provided by EPA or under circumstances where an electronic report cannot be filed by the applicable regulatory deadline.

(k) To notify EPA, in writing, of any information for which the party claims business confidentiality.[5]

IV. *Acceptance and Duration of Agreement*

This Memorandum and the **Federal Register** notice and the technical guidance constitute the complete agreement of the parties relating to the matters specified in this agreement and supersede all prior representations or agreements, whether oral or written, with respect to such matters. No oral modification or waiver of any of the provisions of this agreement shall be binding on either party. As the parties develop additional capabilities respecting EDI, additional addenda may be added to this agreement. Each addendum shall be signed and dated by both the reporting party and EPA. The date of the last signature shall be the effective data, and each addendum shall be appended to this agreement. This agreement is for the benefit of, and shall be binding upon, the reporting party and its respective successors and assigns.

Acceptance by the reporting party of this Terms and Conditions Memorandum is upon return of the original agreement, signed by a responsible corporate officer, to the Director, Field Operations and Support Division (6406J), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

This Terms and Conditions memorandum is effective upon the date indicated in Section VII, below. The agreement shall remain in effect until terminated by either the reporting party or EPA. Termination shall require 30 days written notice, specifying the effective date of the termination. If the reporting party wishes to terminate this agreement, written notice shall be sent to the Director, Field Operations and Support Division, at the above listed address. Such written notice shall be on company letterhead and signed by a responsible corporate officer.

Any termination shall not affect the respective obligations or rights of the parties arising under this Memorandum or the **Federal Register** notice and technical guidance document, which are part and parcel to this Memorandum. Termination of this agreement shall not affect any action required to complete or implement Messages which are sent prior to such termination. Emergency temporary termination of computer connections may be made to protect data from illegal access or other incidental damage.

V. *List of Reporting Facilities and Authorized Representatives to Receive Individual PINs*

The responsible corporate officer agrees to submit in writing, on company letterhead, a list of ''Authorized Representatives'' to submit reformulated gasoline and anti-dumping reports and the facilities for which these representatives are authorized to reports. Such list shall include appropriate company and facility identification number(s) (issued by EPA), as well as the address, phone number, and title of each

[2] EPA will promptly issue within fourteen (14) business days a new PIN upon request of the regulated party.

[3] Examples of documents sent and received include all outgoing transmissions and incoming functional acknowledgements.

[4] Notification does not relieve the party of any reporting requirements under the RFG regulation.

[5] EPA recognizes that information required to be submitted under ''Table 2'' or ''the detail area'' of the transaction sets may be claimed as business confidential by the reporting party. For reports due for calendar year 1995, the party may claim confidentiality for the information contained in ''Table 2'' or ''the detail area'' by initialing the clause in Section VI. Beginning with the report due May 31, 1996, the party must claim confidentiality with respect to each EDI submission.

authorized representative. All requests for changes or deletions of company or individual PINs or changes in authorized representatives must be submitted in writing, on company letterhead, and signed by a responsible corporate officer.

VI. *Confidential Business Information*

Some information required to be submitted under ''Table 2'' or ''the detail area'' of the transaction sets, as identified in the technical guidance may be claimed as business confidential by the reporting party. The responsible corporate officer representing the reporting party may claim confidentiality as to ''Table 2'' or ''detail area'' information for those reports required to be filed for calendar year 1995 by initialing this clause. A reporting party may also notify EPA of a claim of confidentiality in a separate writing addressed to the Director, Field Operations and Support Division, 401 M Street, SW. (6406–J), Washington, DC 20460. Beginning with the report due on May 31, 1996, parties will be able to claim business confidentiality through the electronic reporting format. The reporting party will receive timely notice of such procedures, which will be included in an update to the technical guidance document.

_____

Initials of Responsible Corporate Officer

VII. *Acceptance*

The terms and conditions set forth above are hereby accepted and agreed to by the Reporting Party. Upon receipt of this properly signed Terms and Conditions Memorandum and the list of reporting facilities and authorized representatives, EPA will issue PINs and accept electronic reports from the Reporting Party.

_____

Signature of Responsible Corporate Officer

_____

Printed/Typed Name of Responsible Corporate Officer

_____

Company Name

_____

Date

The statutory authority for today's notice is granted to EPA by §§ 211(c) and (k) and § 301(a) of the Clean Air Act as amended, 42 U.S.C. 7545(c) and (k) and 7601(a).

Dated: June 8, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–14799 Filed 6–19–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 272

[FRL–5188–7]

Hazardous Waste Management Program: Incorporation by Reference of Approved State Hazardous Waste Program for Arkansas

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses part 272 of Title 40 Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs, and to incorporate by reference those provisions of the State statutes and regulations that EPA will enforce under RCRA Section 3008. Thus, EPA intends to codify the Arkansas authorized State program in 40 CFR Part 272. The purpose of this action is to incorporate by reference EPA's approval of recent revisions to Arkansas' program.

DATES: This document will be effective on August 21, 1995 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on this action must be received by the close of business on July 20, 1995. The incorporation by reference of certain Arkansas statutes and regulations was approved by the Director of the Federal Register as of August 21, 1995 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments should be sent to Alima Patterson, Region 6 AR–NM Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, Phone #: 214–665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 AR–NM Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, Phone #: 214–665–8533.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6926 *et seq.*, allows the U.S. Environmental Protection Agency (EPA) to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. The purpose of today's **Federal Register** document is to incorporate by reference EPA's approval of recent revisions to Arkansas' program.

Effective December 13, 1993 (see 58 FR 52674), EPA incorporated by reference Arkansas' then authorized hazardous waste program. Effective December 21, 1994 (see 59 FR 51115), EPA granted authorization to Arkansas for additional program revisions. In this document, EPA is incorporating the currently authorized State hazardous waste program in Arkansas.

EPA provides both notice of its approval of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that EPA will enforce under section 3008 of RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Arkansas. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Public Law 98–616. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized Arkansas program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in Arkansas, the status of Federally approved requirements of the Arkansas program will be readily discernible.

The Agency will only enforce those provisions of the Arkansas hazardous waste management program for which authorization approval has been granted by EPA. This document incorporates by reference provisions of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analogues.

Arkansas Authorized Hazardous Waste Program

EPA is incorporating by reference the Arkansas authorized hazardous waste program in subpart E of 40 CFR part 272. The State statutes and regulations are incorporated by reference at § 272.201(b)(1) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at § 272.201 (b)(5), (b)(6) and (b)(7), respectively.

The Agency retains the authority under Sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized Arkansas enforcement authorities. Section 272.201(b)(2) of 40 CFR lists those authorized Arkansas authorities that are part of the authorized program but are not incorporated by reference.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA Subtitle C program because they are ''broader in scope'' than RCRA Subtitle C (see 40 CFR 271.1(i)); and

(2) Federal rules for which Arkansas is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference.

State provisions which are ''broader in scope'' than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 272. Section 272.201(b)(3) of 40 CFR lists for reference and clarity the Arkansas statutory and regulatory provisions which are ''broader in scope'' than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. ''Broader in scope'' provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

Arkansas has adopted but is not authorized for the September 1, 1988 (53 FR 33938) and the July 1, 1991 (see 56 FR 30200) amendments to Parts 264 and 265 addressing liability requirements. Thus, the portions of the Arkansas Hazardous Waste Management code, chapter 2, sections 3a(5) and 3a(6) incorporating the September 1, 1988 and the July 1, 1991 amendments are not part of the State's authorized program and are not part of the incorporation by reference addressed by today's **Federal Register** document.

Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State's method of adopting Federal law by reference has the effect of including unauthorized requirements, EPA will provide this clarification by: (1) Incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in 272.201(b)(4) any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not Federally enforceable. Thus, notwithstanding the language in the Arkansas hazardous waste regulations incorporated by reference at 272.201(b)(1), EPA would only enforce the State provisions that are actually authorized by EPA. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

HSWA Provisions

As noted above, the Agency is not amending part 272 to include HSWA requirements and prohibitions that are immediately effective in Arkansas and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supercedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (see 50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to part 271. EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the part 272 every time a new HSWA provision takes effect under the authority of RCRA 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's part 272 incorporation by reference. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to incorporate by reference the decisions already made to authorize Arkansas' program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties,

Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 30, 1995.

Myron O. Knudson,

Acting Regional Administrator.

For the reasons set forth in the preamble, subpart E of 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. 40 CFR part 272, subpart E is amended by revising § 272.201 to read as follows:

§ 272.201 Arkansas State-Administered Program: Final Authorization.

(a) Pursuant to Section 3006(b) of RCRA, 42 U.S.C. 6926(b), Arkansas has final authorization for the following elements as submitted to EPA in Arkansas' base program application for final authorization which was approved by EPA effective on January 25, 1985. Subsequent program revision applications were approved effective on August 23, 1985, May 29, 1990, November 18, 1991, December 4, 1992 and December 21, 1994.

(b) *State Statutes and Regulations.* (1) The Arkansas statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et. seq.

(i) EPA Approved Arkansas Statutory Requirements Applicable to the Hazardous Waste Management Program, dated March, 1995.

(ii) EPA Approved Arkansas Regulatory Requirements Applicable to the Hazardous Waste Management Program, dated March, 1995.

(2) The following statutes and regulations concerning State enforcement, although not incorporated by reference, are part of the authorized State program:

(i) Arkansas Hazardous Waste Management Act of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1993 Replacement, Sections 8–7–204 (except 8–7–204(e)(3)(B)), 8–7–205 through 8–7–214, 8–7–217, 8–7–218, 8–7–220, 8–7–222, 8–7–224 and 8–7–225(b) through 8–7–225(d).

(ii) Arkansas Resource Reclamation Act of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1993 Replacement, Sections 8–7–302(3), 8–7–303, 8–7–308(1), and 8–7–308(4).

(iii) Arkansas Department of Pollution Control and Ecology (ADPC&E) Regulation No. 23, Hazardous Waste Management, as amended August 27, 1993, effective September 21, 1993, chapter two, sections 3a(11), 3b, 3c, 4, 6a, 6d through 6m, 7, 8, 12b(7), 12c (except 12(c)(10) and 12(c)(11)), 12d, 12e, 14a, 17; chapter three, sections 19 and 20; chapter five, section 26.

(iv) Arkansas Department of Pollution Control and Ecology, Regulation No. 7, Civil Penalties, May 25, 1984.

(v) Arkansas Department of Pollution Control and Ecology, Regulation No. 8, Administrative Procedures, July 6, 1984.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Arkansas Hazardous Waste Management Act, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1993 Replacement, Section 8–7–226.

(ii) Arkansas Department of Pollution Control and Ecology Regulation No. 23, Hazardous Waste Management, as amended as amended August 27, 1993, effective September 21, 1993, chapter two, sections 2a(5) (only the second sentence), 2b(11), 3a(10), 11, 16a, and portions of sections 16c and 16d that refer to PCBs; and chapter four, section 23.

(4) *Unauthorized State Provisions:* Arkansas has adopted but is not authorized for the September 1, 1988 (53 FR 33938) and the July 1, 1991 (56 FR 30200) amendments to Parts 264 and 265 addressing liability requirements. Thus, the portions of the Arkansas Hazardous Waste Management code, chapter 2, sections 3a(5) and 3a(6) adopting the September 1, 1988 and the July 1, 1991 amendments are not part of the State's authorized program and are not Federally enforceable.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 6 and the State of Arkansas signed by the EPA Regional Administrator on November 3, 1994 is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* ''Attorney General's Statement for Final Authorization'', signed by the Attorney General of Arkansas on July 9, 1984 and revisions, supplements and addenda to that Statement dated September 24, 1987, February 24, 1989, December 11, 1990, May 7, 1992, and by the Independent Legal Counsel on May 10, 1994 are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272, State Requirements, is amended by revising the listing for ''Arkansas'' to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Arkansas

The statutory provisions include:

Arkansas Hazardous Waste Management Act, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1993 Replacement, Sections 8–7–202, 8–7–203, 8–7–215, 8–7–216, 8–7–219, 8–7–221, 8–7–223 and 8–7–225(a), as published by The Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, Virginia 22906–7587.

The regulatory provisions include:

Arkansas Department of Pollution Control and Ecology Regulation No. 23, Hazardous Waste Management, as amended August 27, 1993, effective September 21, 1993, chapter one; chapter two, sections 2a (except the second sentence of 2a(5)), 2b (except 2b(11)), 2c, 3a (except 3a(10), 3a(11) and 3a(13)), 5, 6 introductory paragraph, 6b, 6c, 9, 10, 12 introductory paragraph, 12a, 12b (except 12b(7) and 12b(8)), 12c(10), 12c(11), 13a introductory paragraph, 13a(1) through 13a(7), 13a(11), 14 introductory paragraph, 14b, 15, 16 introductory paragraph, 16b, 16c introductory paragraph, 16c(1) (except the phrase 'or the letters ''PCB'' for PCB shipments' in 16c(1)(e)), 16c(2) through 16c(6), 16c(7) (except the second and third sentences), 16c(8) through 16c(12), 16d(1) (except the phrase ''(including PCBs and PCB contaminated wastes)'' in the first sentence), 16d(1)(a) through 16d(1)(d), 16d(1)(e) (except the phrase 'or ''PCBs'' ' in the first sentence), and 16d(1)(f) through 16e. Copies of the Arkansas regulations can be obtained from the Arkansas Register, Secretary of State, State Capitol Building, Little Rock, Arkansas 72201.

* * * * *

[FR Doc. 95–15016 Filed 6–19–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 272

[FRL–5188–8]

Hazardous Waste Management Program: Incorporation by Reference of Approved State Hazardous Waste Program for New Mexico

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses part 272 of Title 40 Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs, and to incorporate by reference those provisions of the State statutes and regulations that EPA will enforce under RCRA Section 3008. Thus, EPA intends to codify the New Mexico authorized State program in 40 CFR Part 272. The purpose of this action is to incorporate by reference EPA's approval of recent revisions to New Mexico's program.

DATES: This document will be effective on August 21, 1995 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on this action must be received by the close of business on July 20, 1995. The incorporation by reference of certain New Mexico statutes and regulations was approved by the Director of the Federal Register as of August 21, 1995 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments should be sent to Alima Patterson, Region 6 AR–NM Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, Phone #: 214–665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 AR–NM Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, Phone #: 214–665–8533.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6926 *et seq.*, allows the U.S. Environmental Protection Agency (EPA) to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. The purpose of today's **Federal Register** document is to incorporate by reference EPA's approval of recent revisions to New Mexico's program.

Effective December 13, 1993 (see 58 FR 52677), EPA incorporated by reference New Mexico's then authorized hazardous waste program. Effective December 21, 1994 (see 59 FR 51122), EPA granted authorization to New Mexico for additional program revisions. In this document, EPA is incorporating the currently authorized State hazardous waste program in New Mexico.

EPA provides both notice of its approval of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that EPA will enforce under section 3008 of RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in New Mexico. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Public Law 98–616. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized New Mexico program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in New Mexico, the status of Federally approved requirements of the New Mexico program will be readily discernible.

The Agency will only enforce those provisions of the New Mexico hazardous waste management program for which authorization approval has been granted by EPA. This document incorporates by reference provisions of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analogues.

New Mexico Authorized Hazardous Waste Program

EPA is incorporating by reference the New Mexico authorized hazardous waste program in subpart GG of 40 CFR part 272. The State statutes and regulations are incorporated by reference at § 272.1601(b)(1) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at § 272.1601(b)(5), (b)(6) and (b)(7), respectively.

The Agency retains the authority under Sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized New Mexico enforcement authorities. Section 272.1601(b)(2) of 40 CFR lists those authorized New Mexico authorities that are part of the authorized program but are not incorporated by reference.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA Subtitle C program because they are ''broader in scope'' than RCRA Subtitle C (see 40 CFR 271.1(i)); and

(2) Federal rules for which New Mexico is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference.

State provisions which are ''broader in scope'' than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 272. Section 272.1601(b)(3) of 40 CFR lists for reference and clarity the New Mexico statutory and regulatory provisions which are ''broader in scope'' than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. ''Broader in scope'' provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

New Mexico has adopted but is not authorized for the Federal rules

published in the **Federal Register** from January 28, 1983 through March 20, 1984 (48 FR 3977, 48 FR 39611, 48 FR 52718, 49 FR 5308, and 49 FR 10490); the Federal rules regarding corrective action published on July 15, 1985 (50 FR 28702) and December 1, 1987 (52 FR 45788); the September 1, 1988 (53 FR 33938) and the July 1, 1991 (56 FR 30200) amendments to parts 264 and 265 addressing liability requirements; amendments to the Toxicity Characteristic rule as published on October 5, 1990 (55 FR 40834), February 1, 1991 (56 FR 3978), February 13, 1991 (56 FR 5910) and April 2, 1991 (56 FR 13406); and amendments to the F037 and F038 listings as published on May 13, 1991 (56 FR 21955). Therefore, these Federal amendments included in New Mexico's adoption by reference of Federal code at Parts I, II, III, V, VI, and IX are not Federally enforceable.

Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State's method of adopting Federal law by reference has the effect of including unauthorized requirements, EPA will provide this clarification by: (1) Incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in 272.1601(b)(4) any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not Federally enforceable. Thus, notwithstanding the language in the New Mexico hazardous waste regulations incorporated by reference at 272.1601(b)(1), EPA would only enforce the State provisions that are actually authorized by EPA. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

HSWA Provisions

As noted above, the Agency is not amending part 272 to include HSWA requirements and prohibitions that are immediately effective in New Mexico and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supercedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (see 50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR § 271.21, and then to seek authorization for those revisions pursuant to part 271. EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the part 272 every time a new HSWA provision takes effect under the authority of RCRA 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's part 272 incorporation by reference. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to incorporate by reference the decisions already made to authorize New Mexico's program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 30, 1995.

Allyn M. Davis,

Acting Regional Administrator.

For the reasons set forth in the preamble, subpart GG of 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. 40 CFR part 272, subpart GG is amended by revising § 272.1601 to read as follows:

§ 272.1601 New Mexico State-Administered Program: Final Authorization.

(a) Pursuant to Section 3006(b) of RCRA, 42 U.S.C. 6926(b), New Mexico has final authorization for the following elements as submitted to EPA in New Mexico's base program application for final authorization which was approved by EPA effective on January 25, 1985. Subsequent program revision applications were approved effective on April 10, 1990, July 25, 1990, December 4, 1992, August 23, 1994 and December 21, 1994.

(b) *State Statutes and Regulations.* (1) The New Mexico statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et. seq.

(i) EPA Approved New Mexico Statutory Requirements Applicable to the Hazardous Waste Management Program, dated March, 1995.

(ii) EPA Approved New Mexico Regulatory Requirements Applicable to the Hazardous Waste Management Program, dated March, 1995.

(2) The following statutes and regulations concerning State enforcement, although not incorporated by reference, are part of the authorized State program:

(i) New Mexico Statutes 1978 Annotated, Inspection of Public Records Act, Chapter 14, Article 2, (1994 Cumulative Supplement), Sections 14–2–1 *et seq.*

(ii) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1993 Replacement Pamphlet), Sections 74–4–4 (except 74–4–4C), 74–4–4.1, 74–4–4.2C through 74–4–4.2F, 74–4–4.2G(1), 74–4–4.2H, 74–4–4.2I, 74–4–4.3 (except 74–4–4.3A(2) and 74–4–4.3F), 74–4–4.7B, 74–4–4.7C, 74–4–5, 74–4–7, 74–4–10, 74–4–10.1 (except 74–4–10.1C), 74–4–11 through 74–4–14.

(iii) New Mexico Hazardous Waste Management Regulations, Environmental Improvement Board (EIB), HWMR–7, as amended, October 21, 1992, Part IX, Sections 902 (except 902.B.1 through 902.B.6); and Part X, Sections 1001, 1004 and 1005.

(3)(i) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(ii) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1993 Replacement Pamphlet), Sections 74–4–3.3 and 74–4–4.2J.

(4) *Unauthorized State Provisions:* The State's adoption of the Federal rules listed below is not approved by EPA and are, therefore, not enforceable:

Federal requirement	Federal Register reference	Publication date
Biennial Report	48 FR 3977	01/28/83
Permit Rules; Settlement Agreement	48 FR 39611	09/01/83
Interim Status Standards; Applicability	48 FR 52718	11/22/83
Chlorinated Aliphatic Hydrocarbon Listing (F024)	49 FR 5308	02/10/84
National Uniform Manifest	49 FR 10490	03/20/84
Liability Requirements	53 FR 33938	09/01/88
Liability Requirements; Technical Amendment	56 FR 30200	07/01/91

Additionally, New Mexico has adopted but is not authorized to implement the HSWA rules that are listed below in lieu of EPA. EPA will continue to enforce the Federal HSWA standards for which New Mexico is not authorized until the State receives specific authorization from EPA.

Federal requirement	Federal Register reference	Publication date
Corrective Action	50 FR 28702: Amendments to 264.90(a), 264.101(a)&(b), 270.60(b)(3) and 270.60(c)(3)(vii).	07/15/85
Permit Application Requirements Regarding Corrective Action	52 FR 45788: Amendments to 270.14(c), 270.14(d), 270.14(d)(1)(i)–(v), 270.14(d)(2) and 270.14(d)(3).	12/01/87
Corrective Action Beyond Facility Boundary	52 FR 45788: Amendments to 264.100(e), 264.100(e)(1), 264.100(e)(2) and 264.101(c).	12/01/87
Corrective Action for Injection Wells	52 FR 45788: Amendments to 265.1(c)(2) and 270.60(b)(3)(i)&(ii)).	12/01/87
Toxicity Characteristic; Hydrocarbon Recovery Operations	55 FR 40834	10/05/90
	56 FR 3978	02/01/91
	56 FR 13406	04/02/91
Toxicity Characteristic; Chlorofluorocarbon Refrigerants	56 FR 5910	02/13/91
Revisions to the Petroleum Refining Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038).	56 FR 21955	05/13/91

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of New Mexico signed by the EPA Regional Administrator on May 19, 1994, is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* ''Attorney General's Statement for Final Authorization'', signed by the Attorney General of New Mexico in January, 1985, and revisions, supplements and addenda to that Statement dated April 13, 1988, September 14, 1988, July 19, 1989, July 23, 1992, February 14, 1994, July 18, 1994, July 20, 1994 and August 11, 1994 are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272, State Requirements, is amended by revising the listing for ''New Mexico'' to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

New Mexico

The statutory provisions include:

New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1993 Replacement Pamphlet), Sections 74–4–2, 74–4–3 (except 74–4–3L, 74–4–3O and 74–4–3R), 74–4–3.1, 74–4–4.2A, 74–4–4.2B, 74–4–4.2G introductory paragraph, 74–4–4.2G(2), 74–4–4.3F, 74–4–4.7 (except 74–4–4.7B and 74–4–4.7C), 74–4–9 and 74–4–10.1C, as published by the Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, Virginia 22906–7587.

The regulatory provisions include:

New Mexico Hazardous Waste Management Regulations, Environmental

Improvement Board (EIB), HWMR–7, as amended, October 21, 1992, Part I through Part VIII; Part IX, Sections 901, 902.B.1 through 902.B.6; and Part X, Section 1003. Copies of the New Mexico regulations can be obtained from the New Mexico Register, New Mexico Information Systems, P. O. Box 6703, Santa Fe, NM 87502.

* * * * *

[FR Doc. 95–15015 Filed 6–19–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[ET Docket No. 93–266; FCC 95–218]

Pioneer's Preference Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this Third Report and Order, the Commission modifies certain rules regarding its pioneer's preference program. This action is intended to address directives of the General Agreement on Tariffs and Trade (GATT) legislation and make the pioneer's preference rules better comport with the Commission's experience administering them.

EFFECTIVE DATE: August 21, 1995.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 776–1622.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order, adopted June 6, 1995, and released June 8, 1995. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transportation Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Third Report and Order

1. The Third Report and Order (Third R&O) addresses proposals set forth in the Further Notice of Proposed Rule Making (Further Notice) in this proceeding, 60 FR 13396 (March 13, 1995), and modifies certain rules regarding the Commission's pioneer's preference program pursuant to recent legislation. The pioneer's preference program provides preferential treatment in the Commission's licensing processes for parties that make significant contributions to the development of a new service or to the development of a new technology that substantially enhances an existing service.

2. The Further Notice proposed rules in response to the pioneer's preference directives contained in the legislation implementing domestically the GATT, as well as on the Commission's own motion. The GATT legislation requires parties to whom any licenses are awarded pursuant to the pioneer's preference program in services in which competitive bidding is used to pay 85 percent of the average price paid for comparable licenses. This payment may be made in a lump sum or in installment payments over a period of not more than five years. The GATT legislation, including the payment requirement, applies to any license issued on or after August 1, 1994 pursuant to a pioneer's preference award.

3. The legislation also directs the Commission to prescribe regulations specifying the procedures and criteria to ''evaluate applications for preferential treatment in its licensing processes (by precluding the filing of mutually exclusive applications) for persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service.'' The legislation requires the pioneer's preference regulations to include: (1) Procedures and criteria by which the significance of a pioneering contribution will be determined, after an opportunity for review and verification by experts not employed by the Commission; and (2) such other procedures as may be necessary to prevent unjust enrichment by ensuring that the value of a pioneering contribution justifies any reduction in the amounts paid for comparable licenses. The regulations issued pursuant to this legislation must be prescribed not later than 6 months after enactment of the GATT legislation (i.e., by June 8, 1995), shall apply to pioneer's preference applications accepted for filing after September 1, 1994, and must cease to be effective on September 30, 1998, when the pioneer's preference program sunsets.

4. In the Further Notice, the Commission tentatively concluded that, with the exceptions of the two areas specifically addressed by the GATT legislation, the existing pioneer's preference rules, as modified by the Second Report and Order, 60 FR 13636 (March 14, 1995), comply with the GATT legislation's requirement to specify procedures and criteria by which to evaluate pioneer's preference applications. However, the Commission solicited comment regarding any alternatives to any aspects of these rules that might better achieve the objectives of the GATT legislation.

5. With respect to the two areas specifically set forth in the GATT legislation, the Commission noted that the GATT legislation's directive that the Commission establish a procedure for review and verification by outside experts was contemplated as an optional measure by the current pioneer's preference policies, but that such ''peer review'' was not mandatory. It therefore proposed to formalize this policy pursuant to the GATT legislation to provide an opportunity for review of potentially pioneering proposals by experts in the radio sciences who are not Commission employees. It sought comment on whether such review by outside experts should be required in all cases or whether pioneer's preference applicants (or other interested parties) should be given only an opportunity for such review, which may be either accepted or declined by the applicants. It tentatively concluded that it would establish a peer review process on a permanent basis. The Commission therefore proposed to delegate to the Chief of the Office of Engineering and Technology (''Chief, OET'') the authority to select a panel of experts consisting of persons who are knowledgeable about the specific technology set forth in a pioneer's preference request. In addition, while the Commission sought comment on two possible interpretations of section 309(j)(13(D)(i) of the GATT legislation, which concerns possible conflicts of interest of such experts, it proposed appointing experts who are neither employed by the Commission nor by any applicant seeking a pioneer's preference in the same or similar communications service. Based on its experience with the pioneer's preference program, the Commission tentatively concluded that the outside expertise required to evaluate the claims made in pioneer's preference requests will vary greatly. Accordingly, it proposed that its staff evaluate on a case-by-case basis how much outside assistance is required and that the Chief, OET select experts from all available sources after reviewing the proposed new technology or service.

6. The Commission further proposed that the experts generally be granted a period of up to 180 days to present their findings to the Commission. It sought comment on whether it should generally seek the experts' individual opinions or their consensus (as a Federal Advisory Committee under the Federal Advisory Committee Act). The Commission

tentatively concluded that it should not be bound to follow the recommendations of the panel, but that it should evaluate the recommendations in light of all the submissions and comments in the record. However, it solicited comment on whether the views of the panel (especially where consensus is reached) should be entitled to greater, or perhaps controlling, deference. The Commission also sought comment on what restrictions, if any, the panel members should have vis-a-vis contact with the applicants; e.g., whether they should have authority to seek further information pertaining to the preference request or to perform field evaluations. Finally, the Commission sought comment on any additional conflict of interest requirements (e.g., related to financial interests) it should impose upon outside experts.

7. With respect to the second area addressed by the GATT legislation, the Commission stated in the Further Notice that its concerns about unjust enrichment are lessened by the statutorily-mandated payment requirement for prioneer's preference grantees in auctionable services and the formula for calculating per capita bid amounts. Nonetheless, it stated that it remained concerned about the effect of competitive bidding on the pioneer's preference program. It sought comment on a more stringent showing by a preference applicant in a service in which licenses are awarded by competitive bidding. Specifically, the Commission sought comment on whether the applicant should have to demonstrate that our public rulemaking process inhibits it from capturing the economic rewards of its innovation unless it is granted a pioneer's preference license. It also sought comment on whether in its pioneer's preference request each applicant should make a demonstration regarding possible loss of intellectual property protection to ensure that it will retain its eligibility for a preference.

8. With regard to determining which licenses are most reasonably comparable under section 309(j)(13)(B)(i) of the GATT legislation, in the Further Notice the Commission sought comment on any standards for comparing licenses and for excluding anomalous licenses that it might codify into its rules along with the statutory formulas for determining the average per capita bid amount and the payment amount. It also sought comment on the implementation of the installment payment provision in section 309(j)(13)(C). It tentatively concluded that it would not adopt any installment payment scheme that includes royalty payments. The Commission further sought comment on whether eligibility for installment payments should be limited to small businesses or other entities as it has done in its general auction rules. The Commission proposed that, if an entity receiving a pioneer's preference award and license in a particular service would be eligible for installment payments in the auction for that service, that entity would be able to pay for its pioneer's preference license in installments under similar terms and conditions. Finally, the Commission proposed to require a pioneer's preference license that is not eligible for installment payments to pay in one lump sum within a reasonable time (*e.g.*, 30 days) after the auction for comparable licenses has concluded or after the license grant becomes final, whichever is later.

9. In accord with the GATT legislation, the Commission proposed to sunset the pioneer's preference program on September 30, 1998. It requested comment on the utility of the program, particularly in light of its competitive bidding authority. Additionally, it proposed on its own motion to modify the pioneer's preference rules by limiting the award of preferences to services in which a new allocation of spectrum is required.

10. Finally, the Commission proposed to apply the rules adopted in response to the Further Notice to any pioneer's preference requests granted after adoption of those rules, regardless of when the requests were accepted for filing, except in proceedings in which tentative pioneer's preference decisions have been made.

11. Only two parties filed comments on the Further Notice, and no party filed reply comments. Satellite CD Radio, Inc. (CD Radio) states that the Commission should grant pioneer's preferences for regulatory as well as technical innovation, and also grant preferences in services in which no mutually exclusive applications exist. Omnipoint Communications, Inc. (Omnipoint) addresses payment measures for small business pioneers in services in which licenses are awarded by competitive bidding. It argues that the Commission should provide: (1) Payment terms that are more attractive than the terms offered to designated entities or entrepreneur-band applicants, so that small business pioneers have an incentive to take on the risks of innovation; and (2) the use of an installment plan with principal and accrued-interest obligations deferred until the end of a five-year period.

12. With respect to CD Radio's statements regarding regulatory innovation, the Commission finds that its pioneer's preference rules already incorporate non-technical or regulatory aspects. Accordingly, it finds no need to amend its pioneer's preference rules in this regard.

13. With respect to CD Radio's proposals regarding awarding preferences in services where mutually exclusive situations do not exist and where competitive bidding is not authorized, the Commission finds that a preference, beyond a guaranteed license and a 15 percent discount in auctioned services, would be unnecessary and contrary to the stated purpose of the pioneer's preference program. In adopting the pioneer's preference procedures, the Commission sought to foster the development of new services and to improve existing services by reducing the delays and risks for innovators associated with the Commission's licensing processes as they existed at that time. Applicants facing no mutually exclusive applications run no risk of not receiving licenses, assuming they are qualified, so the Commission did not contemplate that any preferences would be needed to serve the public interest purposes of the pioneer's preference program. Accordingly, the Commission rejects CD Radio's proposal to award preferences in services in which mutually exclusive license applications do not exist.

14. With respect to Omnipoint's proposal for lower payments for small business pioneers than designated entities in services in which licenses are awarded by competitive bidding, the Commission noted that the pioneer's preference and designated entity programs are designed to meet different goals. The pioneer's preference program is designed to reward a particular entity for its innovative contributions to a new or existing service, whereas the designated entity program is designed to promote economic opportunity and competition by dissemininating licenses among a wide variety of applicants and to increase participation in spectrum-based telecommunications services by entities that lack access to substantial amounts of capital and that face economic disadvantages in obtaining licenses in a competitive bidding environment, such as small businesses. Accordingly, the Commission rejects Omnipoint's proposal to guarantee small business pioneers lower payments than other designated entities.

15. With respect to Omnipoint's proposal for a deferred payment plan for small business pioneers in services in which licenses are awarded by

competitive bidding, consistent with the above discussion, the Commission finds no need to give such pioneers an advantage over similarly situated small businesses. The Commission notes that in the *Further Notice* it proposed that if an entity receiving a pioneer's preference would be eligible for installment payments in the auction for that service, the entity could pay for its pioneer's preference license in installments under comparable terms and conditions to similarly situated licenses over a period not to exceed five years. The Commission finds this proposal adequate to address Omnipoint's concerns and adopts it, while rejecting Omnipoint's deferred payment proposal.

16. No comments were filed with respect to the other proposals in the Further Notice. Because they are in the public interest and promote the goals of the pioneer's preference program and the GATT legislation, the Commission adopts them. Specifically, with respect to peer review, it provides an opportunity for review and verification of pioneer's preference requests by experts who are not Commission employees. It delegates to the Chief, OET the authority to select, in appropriate cases on his/her own initiative or upon request by a preference applicant or other interested person, a panel of experts consisting of persons who are knowledgeable about the specific technology set forth in a pioneer's preference request and who are neither employed by the Commission nor by any applicant seeking a pioneer's preference in the same or similar communications service. It concludes that the best interpretation of Section 309(j)(13)(D)(i)'s conflict-of-interest language provides that there must be an opportunity for review and verification by experts who are neither employees of the Commission nor employees of any applicant seeking a pioneer's preference. These panels will generally be granted a period of up to 90 days, but no more than 180 days, to present their findings to the Commission.

17. With respect to implementing the unjust enrichment provisions in section 309(j)(13)(D)(ii), the Commission is requiring that to qualify for a pioneer's preference in services in which licenses are awarded by competitive bidding, an applicant—in addition to meeting the other pioneer's preference requirements—must demonstrate that the Commission's public rulemaking process inhibits it from capturing the economic rewards of its innovation unless it is granted a pioneer's preference license. The applicant must show that it may lose its intellectual property protection because of the Commission's public process; that the damage to its intellectual property is likely to be more significant than in other contexts, such as the patent process; and that the guarantee of a license is a significant factor in its ability to capture the rewards from its innovation. Such a showing must accompany the pioneer's preference request even if the Commission has not yet determined that the particular service for which a preference is sought will be subject to competitive bidding.

18. As proposed in the Further Notice, pioneer's preference awards will be limited to services that require a spectrum allocation. However, the Commission notes that an entity that develops a new technology that may be used in an existing service may be able to reap significant financial benefits by patenting that technology or by selling equipment that uses that technology.

19. Pursuant to authority in section 4(i), in conjunction with sections 1, 303(r), 307, and 309 of the Communications Act, the Commission finds that it is in the public interest and in furtherance of its pioneer's preference policy in an auction environment to apply the rules adopted herein to pending pioneer's prference proceedings that have not reached the tentative decision stage. Parties with pending pioneer's preference applications on file with the Commission will have 30 days from the effective date of the rules adopted herein to amend their applications to bring them into conformance with these rules and the rules adopted in the Second Report and Order in this proceeding. Failure to timely amend a pending pioneer's preference request will result in the dismissal of the request.

20. In the Second Report and Order, the Commission stated that while the payment mechanism in the GATT legislation does not apply to pioneer's preference requests accepted for filing on or before September 1, 1994, nevertheless—pursuant to section 4(i) and other provisions of the Communications Act—license charges would be imposed on any pioneer's preference license granted in proceedings in which no tentative decision had yet been made, even if the requests in such proceedings were accepted for filing on or before that date. In addition, prior to enactment of the GATT legislation, the Commission amended the rules (also pursuant to Section 4(i)) to impose charges on any pioneer's preference licenses granted as a result of the three pioneer's preference proceedings in which only tentative decisions had been made prior to the initiation of this pioneer's preference review rulemaking.

21. The Commission now concludes, on further analysis, that the payment requirements in subsections 309(j)(13)(B), (C) and (E) of the Communications Act, which were enacted by the GATT legislation, apply to pioneer's preference requests relatless to any licenses issued on or after August 1, 1994, regardless of when the pioneer's preference requests were accepted for filing. The September 1, 1994 date applies only to the regulations required by subsection 309(j)(13)(D). Accordingly, the Commission determines that, while the new regulations prescribed here (regarding criteria, peer review and unjust enrichment), pursuant to subsection 309(j)(13)(D), will not apply in the proceedings in which tentative decisions have been made, the payment provisions of the GATT legislation will apply to any and all licenses ultimately issued in the future resulting from a pioneer's preference, including any license based on a preference granted in CC Docket No. 92–297 (28 GHz Local Multipoint Distribution Service proceeding).

22. Finally, pursuant to the GATT legislation, the Commission will terminate the pioneer's preference program on September 30, 1998.

23. Accordingly, it is ordered that Parts 0 and 1 of the Commission's Rules are amended as specified below, effective 60 days after publication in the **Federal Register**. This action is taken pursuant to Sections 4(i), 7(a), 303(c), 303(f), 303(g), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), and 309(j).

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Amendatory Text

Parts 0 and 1 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.241 is amended by adding new paragraph (f) to read as follows:

§ 0.241 Authority delegated.

* * * * *

(f) The Chief, Office of Engineering and Technology (OET) is authorized to select, in appropriate cases on his/her own initiative or upon request by a pioneer's preference applicant or other interested person, a panel of experts consisting of persons who are knowledgeable about the specific technology set forth in a pioneer's preference request and who are neither employed by the Commission nor by any applicant seeking a pioneer's preference in the same or similar communications service. In consultation with the General Counsel, the Chief, OET, shall also impose other conflict-of-interest requirements that are necessary in the interest of attaining impartial, expert advice regarding the particular pioneer's preference request or requests.

PART 1—PRACTICE AND PROCEDURE

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.

2. Section 1.402 is amended by revising the first sentence of paragraph (a); removing paragraph (b); redesignating paragraphs (c), (e), (f), and (h) as new paragraphs (b), (d), (e), and (j) respectively; redesignating paragraphs (d) and (g) as new paragraphs (c) and (f), respectively, and revising them; and adding new paragraphs (g), (h), (i), and (k) to read as follows:

§ 1.402 Pioneer's preference.

(a) When filing a petition for rule making pursuant to § 1.401 that seeks an allocation of spectrum for a new service or that, by use of innovative technology in a new spectrum allocation, will substantially enhance an existing service, the petitioner may also submit a separate request that it be awarded a pioneer's preference in the licensing process for the service. * * *

* * * * *

(c) Pioneer's preference requests complying with the requirements and procedures in paragraphs (a) and (b) of this section will be accepted for filing and listed by file number in a notice of proposed rule making addressing the new service or technology proposed in the request, if such a notice of proposed rulemaking is adopted. A final determination on a request for pioneer's preference and its scope will normally be made in a report and order adopting new rules for the service or technology proposed in the request, if such rules are adopted. If awarded, the pioneer's preference will provide that the preference applicant's application for a construction permit or license will not be subject to mutually exclusive applications. If granted, the construction permit or license will be subject to the conditions in paragraphs (e) and (f) of this section.

* * * * *

(f) In services in which licenses are assigned by competitive bidding, any parties receiving pioneer's preferences will be required to pay for their licenses in accord with the payment formula specified in the General Agreement on Tariffs and Trade legislation, Pub. L. 103–465. This formula requires that pioneers pay in a lump sum or in installment payments over a period of not more than five years 85 percent of the average price paid for comparable licenses. Comparable licenses will be determined by the Commission on a case-by-case basis. For licenses issued on or after August 1, 1994, the Commission shall recover for the public a portion of the value of the public spectrum resource made available to a pioneer's preference recipient by requiring such person, as a condition for receipt of the license, to agree to pay a sum determined by—

(1) Identifying the winning bids for the licenses that the Commission determines are most reasonably comparable in terms of bandwidth, scope of service area, usage restrictions, and other technical characteristics to the license awarded to such person, and excluding licenses that the Commission determines are subject to bidding anomalies due to the award of preferential treatment;

(2) Dividing each such winning bid by the population of its service area (hereinafter referred to as the per capita bid amount);

(3) Computing the average of the per capita bid amounts for the licenses identified under paragraph (f)(1) of this section;

(4) Reducing such average amount by 15 percent; and

(5) Multiplying the amount determined under paragraph (f)(4) of this section by the population of the service area of the license obtained by such person.

(g) In services in which licenses are awarded by competitive bidding, a pioneer that qualifies as a designated entity will be eligible for installment payments under the same terms and conditions as other designated entities in that service, except that in all services the pioneer's payments must be completed within a five year period that will begin 30 days after the auction for comparable licenses has concluded or 30 days after the pioneer's license grant becomes final, whichever is later. A pioneer, like other applicants, will be required in its license application to certify and make the requisite demonstration that it is eligible for installments. Pioneers that are not eligible for installment payments must make the 85 percent payment specified in § 1.402(f) within 30 days after the auction for comparable licenses has concluded or within 30 days after the license grant become final, whichever is later.

(h) An opportunity for review and verification of pioneer's preference requests by experts who are not Commission employees will be provided by the Commission. The Chief, Office of Engineering and Technology (OET) may select a panel of experts consisting of persons who are knowledgeable about these specific technology set forth in a pioneer's preference request and who are neither employed by the Commission nor by any applicant seeking a pioneer's preference in the same or similar communications service. The panel of experts will generally be granted a period of up to 90 days, but no more than 180 days, to present their findings to the Commission. The Commission will generally establish, conduct, and seek the consensus of the panel pursuant to the Federal Advisory Committee Act, and will evaluate its recommendations in light of all the submissions and comments in the record. Panelists will have the authority to seek further information pertaining to preference requests and to perform field evaluations, as deemed appropriate by the Chief, OET.

(i) In order to qualify for a pioneer's preference in services in which licenses are awarded by competitive bidding, an applicant must demonstrate that the Commission's public rulemaking process inhibits it from capturing the economic rewards of its innovation unless it is granted a pioneer's preference license. The applicant must

show that it may lose its intellectual property protection because of the Commission's public process; that the damage to its intellectual property is likely to be more significant than in other contexts, such as the patent process; and that the guarantee of a license is a significant factor in its ability to capture the rewards from its innovation. This demonstration will be required even if the Commission has not determined at the time a pioneer's preference request is filed whether assignments in the proposed service will be made by competitive bidding.

* * * * *

(k) This section, along with the other pioneer's preference rules specified in § § 0.241(f) and 5.207 of this chapter, will cease to be effective on September 30, 1998.

[FR Doc. 95–14945 Filed 6–19–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–59; RM–7923, RM–8042]

Radio Broadcasting Services; Bradenton and High Point, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission denies a Petition for Reconsideration filed by ECI License Company, L.P. of the action taken by the Chief, Allocations Branch, in MM Docket No. 92–59 substituting Channel 278C for Channel 278C1 at Bradenton, Florida. *See* 58 FR 21259 (April 20, 1993). Petitioner argues that there is no location within the fully-spaced site zone for Channel 278C that will accommodate a tower sufficiently high to meet the minimum spacing and coverage requirements for a Class C station. The Chief, Policy and Rules Division, Mass Media Bureau, denies the petition based on the fact that ECI raises no new issues or arguments that were not addressed previously in this proceeding.

EFFECTIVE DATE: June 20, 1995.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley Halprin, Mass Media Bureau, (202) 776–1653.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MM Docket No. 92–59, adopted June 7, 1995, and released June 14, 1995. The full text of this decision is available for public inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15050 Filed 6–19–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 93–136; RM–8161, RM–8309, RM–8310]

Radio Broadcasting Services; Clewiston, Fort Myers Villas, Indiantown, Jupiter, Key Colony Beach, Key Largo, Marathon, and Naples, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: The Commission grants a Petition for Reconsideration filed by Key Chain, Inc. of the action taken by the Acting Chief of the Allocations Branch in MM Docket No. 93–136 denying any reimbursement to Key Chain for reasonable costs incurred in changing channels within its class to accommodate an amendment of the Commission's FM Table of Allotments sought by another party. *See* 59 FR 43064 (August 22, 1994). The Commission hereby allows partial reimbursement to Key Chain. The Commission also denies a Petition for Reconsideration filed by Amaturo Group, Ltd., WUSV, Inc., and Jupiter Broadcasting Corporation, and finds that the particular amendment of the Table of Allotments ordered by the Commission was necessary and warranted by credible evidence.

EFFECTIVE DATE: June 20, 1995.

FOR FURTHER INFORMATION CONTACT: Robert B. Somers, Mass Media Bureau, (202) 776–1653.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MM Docket No. 93–136, adopted June 5, 1995, and released June 14, 1995. The full text of this Commission decision is available for public inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15048 Filed 6–19–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 90–550; RM–7345]

Radio Broadcasting Services; Lafayette, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission dismisses a Petition for Reconsideration filed by C.R. Crisler. Crisler sought reconsideration of the action taken by the Chief, Allocations Branch in MM Docket No. 90–550, in which Lafayette FM Joint Venture (''LFMJV''), the permittee of Station KRRQ(FM) in Lafayette, Louisiana, was granted an upgrade of its station from Channel 238A to 238C2. 57 FR 45002 (Sept. 30, 1992). The Commission denied Crisler's petition in that it failed to raise arguments that warranted denying an upgrade of LFMJV's station.

EFFECTIVE DATE: June 20, 1995.

FOR FURTHER INFORMATION CONTACT: Charles W. Logan, Mass Media Bureau, (202) 776–1653.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MM Docket No. 90–550, adopted June 5, 1995, and released June 14, 1995. The full text of this Commission decision is available for public inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15049 Filed 6–19–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 93–164; RM–8248]

Radio Broadcasting Services; Williamstown, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of James Phillips, allots Channel 245A at Williamstown, West Virginia, as its first local aural transmission service. *See* 58 FR 34026, June 23, 1993. Channel 245A can be allotted to Williamstown in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.9 kilometers (4.3 miles) southwest to avoid a short-spacing to Station WRRK(FM), Channel 245A, Braddock, Pennsylvania. The coordinates for Channel 245A at Williamstown are North Latitude 39–22–18 and West Longitude 81–31–04. Since Williamstown is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence has been obtained. With this action, this proceeding is terminated.

DATES: Effective July 31, 1995. The window period for filing applications for Channel 245A at Williamstown, West Virginia, will open on July 31, 1995, and close on August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 93–164, adopted June 6, 1995, and released June 14, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Williamstown, Channel 245A.

Federal Communications Commission.

John A Karousos,

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

[FR Doc. 95–15045 Filed 6–19–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–138; RM–8542]

Radio Broadcasting Services; Ketchikan, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 260A to Ketchikan, Alaska, as that community's third local FM service, in response to a petition for rule making filed on behalf of TLP Communications, Inc. *See* 59 FR 62390, December 5, 1994. Coordinates used for Channel 260A at Ketchikan are 55–20–30 and 131–38–48. With this action, the proceeding is terminated.

DATES: Effective July 31, 1995. The window period for filing applications on Channel 260A at Ketchikan, Alaska, will open on July 31, 1995, and close on August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 260A at Ketchikan, Alaska, should be addressed to the Audio Services Division, FM Branch, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 94–138, adopted June 7, 1995, and released June 14, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alaska, is amended by adding Channel 260A at Ketchikan.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–15051 Filed 6–19–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 950427119–5152–04; I.D. 061295B]

RIN 0648–AH98

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

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

ACTION: Temporary additional restrictions on fishing by shrimp trawlers in the nearshore waters off Georgia to protect sea turtles; request for comments.

SUMMARY: NMFS is imposing, for a 30-day period, additional restrictions on shrimp trawlers fishing in the Atlantic Area in offshore waters out to 10 nautical miles (nm)(18.5 km) from the COLREGS line, between 30°45′ N. lat. and 32°03′ N. lat. This area includes nearshore waters in NMFS fishery statistical Zone 31, a small part of the southern portion of statistical Zone 32,

and approximately 18 miles (29.0 km) of the northern portion of statistical Zone 30. The restrictions include prohibitions on the use by shrimp trawlers of: soft turtle excluder devices (TEDs); bottom-opening TEDs; webbing flaps that completely cover the escape opening of TEDs; and try nets with a headrope length greater than 12 ft (3.6 m) and footrope length greater than 15 ft (4.5 m), unless the try nets are equipped with approved TEDs other than soft or bottom-opening TEDs. This action is necessary to prevent the continuation of high levels of mortality and strandings of threatened and endangered sea turtles.

DATES: This action is effective at 12:01 a.m. (local time) June 21, 1995 through 11:59 p.m. (local time) July 20, 1995. Comments on this action must be submitted by July 21, 1995.

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

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

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take and mortality of sea turtles, as a result of shrimp trawling activities have been documented in the Gulf of Mexico and along the Atlantic Seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions set forth at 50 CFR 227.72. The incidental taking of turtles during shrimp trawling in the Gulf and Atlantic Areas (as defined in 50 CFR 217.12) is excepted from the taking prohibition, if the sea turtle conservation measures specified in the sea turtle conservation regulations (50 CFR part 227, subpart D) are employed. The regulations require most shrimp trawlers operating in the Gulf of Mexico and Southeast U.S. Atlantic to have a NMFS-approved TED installed in each net rigged for fishing, year round.

The conservation regulations provide a mechanism to implement further restrictions of fishing activities, if necessary to avoid unauthorized takings of sea turtles that may be likely to jeopardize the continued existence of listed species or that would violate the terms and conditions of an incidental take statement or biological opinion. Upon a determination that incidental takings of sea turtles during fishing activities are not authorized, additional restrictions may be imposed to conserve listed species and will be imposed if necessary to avoid unauthorized takings that may be likely to jeopardize the continued existence of a listed species. Restrictions may be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each (50 CFR 227.72(e)(6)).

Biological Opinion

On November 14, 1994, NMFS issued a Biological BO, that concluded that the continued long-term operation of the shrimp fishery in the nearshore waters of the southeastern U.S. was likely to jeopardize the continued existence of the highly endangered Kemp's ridley. In addition, while the long-term operation of the shrimp fishery would not likely jeopardize the continued existence of loggerheads, it could prevent the recovery of this species. This BO resulted from an ESA section 7 consultation that was reinitiated in response to the unprecedented number of dead sea turtles that stranded along the coasts of Texas, Louisiana, Georgia, and Florida in the spring and summer of 1994, coinciding with heavy nearshore shrimp trawling activity. Pursuant to section 7(b)(3) of the ESA, NMFS provided a reasonable and prudent alternative to the existing management measures that would allow the shrimp fishery to continue without jeopardizing the continued existence of the Kemp's ridley sea turtle. In addition, the BO was accompanied by an Incidental Take Statement (ITS), pursuant to section 7(b)(4)(i) of the ESA, that specifies the impact of such incidental taking on the species. The ITS provides two levels to identify the expected incidental take of sea turtles by shrimp fishing. The incidental take levels are based upon either documented takes or indicated takes measured by stranding data. Stranding data are considered an indicator of lethal take in the shrimp fishery during periods in which intensive shrimping effort occurs and there are no significant or intervening natural or human sources of mortality, other than shrimping, conclusively identified as the cause of the strandings.

NMFS has established an indicated take level (ITL) by identifying the weekly average number of sea turtle strandings documented in each NMFS statistical zone for the last 3 years (taking into consideration anomalous years). In Texas and Georgia, where strandings were anomalously high in 1994, the years 1991–93 were used to determine historical levels. The weekly average was computed as a 5-week running average (2 weeks before and after the week in question) to reflect seasonally fluctuating events such as fishery openings and closures and turtle migrations. The ITL for each zone was set at 2 times the weekly 3-year stranding average. For weeks and zones where the historical average was less than one, the ITL was set at two strandings.

As discussed below, consultation was again reinitiated as a result of high levels of strandings in the Gulf this year, and concluded with the issuance of a biological opinion on April 26, 1995. This BO reaffirmed the reasonable and prudent alternative and incidental take statement provided on November 14, 1994.

The Emergency Response Plan

The reasonable and prudent alternative of the November 14, 1994, BO and the accompanying ITS required NMFS to develop and implement an Emergency Response Plan (ERP) to respond to future stranding events and to ensure compliance with sea turtle conservation measures. The Assistant Administrator for Fisheries, NOAA (AA) approved the ERP on March 14, 1995, and published a notice of availability on April 21, 1995 (60 FR 19885). Comments on the ERP are being accepted. The ERP provides for elevated enforcement of TED regulations in two areas in which strandings of Kemp's ridley sea turtles historically have been high. The first, the Atlantic Interim Special Management Area, includes shrimp fishery statistical Zones 30 and 31 (northeast Florida and Georgia). The second, the Northern Gulf Interim Special Management Area, includes statistical Zones 13 through 20 (Louisiana and Texas from the Mississippi River to North Padre Island). The ERP also establishes procedures for notifying NMFS of sea turtle stranding events, and provides guidelines for implementation of temporary restrictions to prevent take levels in the BO from being exceeded.

As described in the ERP, restrictions in addition to those already imposed by 50 CFR 227.72(e) will be placed on shrimping in the Interim Special Management Areas if 75 percent or more of the ITL is reached for 2 consecutive weeks. The restrictions originally identified in the ERP (60 FR 19885, April 21, 1995) and imposed in certain statistical areas in the Gulf of Mexico (60 FR 21741, May 3, 1995) were modified subsequently (60 FR 26691, May 18, 1995). A detailed discussion of those restrictions, the modification, and reasons therefor, is provided in those notices and is not repeated here.

As described in the ERP, when strandings remain elevated for 1 month in zones outside the Interim Special Management Areas, NMFS, upon the determination of the Director, Southeast Region, NMFS (Regional Director), may implement management actions, similar to those specified for the Interim Special Management Areas.

Recent Stranding Events

Sea turtle strandings on offshore beaches in a number of NMFS fishery statistical zones in the southeastern U.S. have exceeded the established ITLs specified in the November 14, 1994, BO, during 1995. Temporary restrictions on shrimp fishing were imposed in some zones of Texas and western Louisiana on April 27, 1995 (60 FR 21741, May 3, 1995), in response to elevated strandings within those zones. Recent strandings in Georgia and South Carolina appear to be closely correlated with the opening of state waters to shrimp fishing, as delineated below.

South Carolina

South Carolina waters, which fall within NMFS statistical Zones 32 and 33, were opened to shrimping on May 16, 1995. Reported strandings on offshore beaches of South Carolina increased beginning on May 17, and exceeded the ITL in Zone 32 by the end of the week of May 28. Strandings again reached the ITL during the week beginning May 28. The ITL was exceeded in Zone 33, beginning May 21, and approached the ITL for the week beginning May 28. Many of the strandings reported in Zone 33 earlier in the spring occurred in North Carolina in the northern portion of the Zone. Four weekly averages (May 7 through June 3) for Zones 32 and 33, have approached 75 percent of, or exceeded, the ITL; however, the strandings have not remained elevated throughout the entire period. Enforcement efforts have been increased in response to strandings, and as described in the ERP, restrictions will be initiated in the waters off South Carolina if stranding levels remain elevated. Shrimping effort was elevated during the week following the May 16 opening of South Carolina waters, with 280 trawlers observed, including 200 in the vicinity of Charleston on May 17, 1995. During an aerial survey conducted on May 23, 1995, 95 vessels were observed. Georgia waters opened to shrimp fishing on June 1, 1995, which may have resulted in reduced effort off South Carolina as vessels moved south. Additionally, tropical storm Allison, which prevented an aerial survey in early June, may also have reduced effort. An aerial survey conducted on June 7, 1995, documented 120 shrimp vessels operating within 1 mile (1.9 km) of the South Carolina offshore beaches.

Georgia

The Georgia coastline encompasses the northern 18 miles (29.0 km) of NMFS shrimp statistical Zone 30, all of Zone 31, and a few miles of the southern portion of Zone 32. Zones 30 and 31 are both within the Atlantic Interim Special Management Area. Georgia waters were opened to shrimping on Thursday, June 1, 1995. During the week beginning May 28, 21 strandings were reported on Georgia offshore beaches, including 1 Kemp's ridley. Fifteen of these strandings, including the ridley, occurred in Zone 31, compared to an ITL of 8. While a number of these turtles stranded before the June 1, 1995, opening, reports of vessels fishing within state waters prior to the opening have been received and are being investigated by enforcement personnel. During an aerial survey conducted over nearshore Georgia waters on June 1, 1995, 351 shrimp vessels were observed. Between June 4 and June 8, 1995, 24 strandings were reported on Georgia offshore beaches, including 6 Kemp's ridleys. The combined ITL for Zones 30 and 31 (which includes a small, northern portion of the Florida coastline) is 16.

Enforcement observations suggest that compliance with the TED requirements of the sea turtle conservation regulations is high in Georgia and South Carolina. Soft TEDs were observed in almost 50 percent of the nets inspected by enforcement agents in Georgia and South Carolina waters this year, and all hard-grid TEDs observed had bottom escape openings. State enforcement personnel and resource managers confirm these observations. As discussed herein, although soft TEDs and bottom-opening hard TEDs have been generally approved for use under the sea turtle conservation regulations, based on the best available information, NMFS concludes that they are not as effective in releasing turtles, under some conditions, as top-opening hard TEDs. Additionally, anecdotal accounts suggest that shrimpers off Georgia are taking high numbers of sea turtles in try nets. Law enforcement personnel stated that a fisherman reported that another individual caught 25 sea turtles in try nets with a headrope length of 20 ft (6.1 m) in 2 days of fishing.

Analysis of Other Factors

NMFS and state personnel have investigated factors other than shrimping that may contribute to sea turtle mortality in Georgia and South Carolina, including other fisheries and environmental factors. Gillnet effort in North Carolina waters is being investigated in association with strandings in North Carolina as well as in northern South Carolina. Shrimp fishermen have suggested that crabbers in Georgia waters may be intentionally killing sea turtles based on their belief that sea turtles cause damage to crab pots. Two loggerheads stranded on Wassaw Island, GA, had apparent gun shot wounds. Georgia law enforcement personnel are investigating these reports but currently have no information identifying participants of any particular fishery in these intentional mortalities.

An algae bloom with red tide organisms has been transported along the Gulf Stream into nearshore North Carolina waters where the coastline projects out near the Gulf Stream. However, there is no information to suggest that red tide or other environmental conditions have contributed to sea turtle strandings in Georgia and South Carolina thus far in 1995. Additionally, accounts of the successful rehabilitation of loggerhead turtles in pools containing red tide organisms suggest that sea turtles are not adversely affected solely by the occurrence of red tide organisms in the environment. Crustaceans, which are the primary forage species of loggerhead and ridley sea turtles in the Atlantic, are not considered bioaccumulators of red tide toxins.

In summary, no new activity or environmental condition has been identified in the nearshore southeast U.S. Atlantic waters to account for high stranding levels except for increased shrimping effort associated with the opening of South Carolina and Georgia waters to shrimping.

Restrictions on Fishing by Shrimp Trawlers

The November 14, 1994, BO provides a reasonable and prudent alternative requiring conservation measures be

implemented as mortality levels approach those established in the ITS to ensure that shrimping is not likely to jeopardize the continued existence of the Kemp's ridley. The BO specifically requires that such measures be implemented immediately when sea turtle takings, indicated or documented, reach 75 percent of the established levels. These measures are intended to allow shrimp fishing to continue, while reducing the likelihood of further sea turtle strandings. The ERP provides further guidance on the nature and geographic scope of such measures. As noted in the foregoing discussion, strandings have reached or exceeded the ITL in Zone 31 for 2 weeks; therefore, conservation measures are being implemented in Zone 31 and adjacent waters along the Georgia coast.

Pursuant to 50 CFR 227.72(e)(6), the exemption for incidental taking of sea turtles in 50 CFR 227.72(e)(1) does not authorize incidental takings during fishing activities if the takings would violate the restrictions, terms or conditions of an incidental take statement or biological opinion, or may be likely to jeopardize the continued existence of a species listed under the ESA. The AA has determined that continued takings of sea turtles by shrimp fishing off Georgia are unauthorized and, therefore takes this action.

The measures that NMFS is implementing include:

1. Prohibition of the use of soft TEDs;
2. Prohibition of the use of bottom-opening TEDs;
3. Prohibition of the use of try nets, with a headrope length greater than 12 ft (3.6 m) or a footrope length greater than 15 ft (4.5 m), unless the try nets are equipped with approved TEDs other than soft or bottom-opening TEDs; and
4. Prohibition of the use of webbing flaps completely covering the escape opening of TEDs, as described in the Requirements section herein.

These restrictions are being applied in Atlantic offshore waters seaward to 10 nm (18.5 km) along the Georgia coast, between 30°45′ N. lat. and 32°03′ N. lat. Under 50 CFR 217.12, offshore is defined as marine and tidal waters seaward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the NOAA (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80.

This area includes the nearshore waters in NMFS fishery statistical Zone 31, a small southern, portion of statistical Zone 32, and approximately 18 miles (29.0 km) of the northern portion of Zone 30. As described in the ERP, NMFS may extend conservation measures in any statistical zone to portions of contiguous zones as determined necessary. NMFS has extended these measures to include the entire Georgia coastline due to the familiarity of state boundaries to shrimpers, and state and Federal enforcement personnel, the occurrence of physical landmarks delineating Georgia borders, and the high incidences of strandings along the entire Georgia coastline. These restrictions will allow fishing by shrimp trawlers to continue in these areas despite elevated rates of turtle strandings.

Although soft TEDs and bottom-opening hard TEDs have been generally approved for use under the sea turtle conservation regulations, based on the best available information, NMFS has concluded that they are not as effective, under some conditions, in releasing turtles as top-opening hard TEDs. Therefore, the use of soft TEDs and bottom-opening hard TEDs is temporarily prohibited in the specified areas. NMFS gear specialists conducted evaluations of soft TEDs installed in various trawl designs purchased from a number of suppliers during September, 1994. All the devices met the regulatory requirements for soft TEDs. Trawl evaluations of the TEDs were conducted in the Canaveral ship channel. Seven TED/net configurations were tested. Five turtles were observed upon net retrieval in 21 tows with 1 configuration; 1 turtle was observed in 20 tows with another configuration. Three of the configurations also were evaluated for small turtle exclusion through the release of eight captive-reared loggerhead turtles into the nets. Entanglement in the TED panels occurred in two of the three configurations tested. These tests suggest that proper soft TED installation is critical to turtle release. Additional in-water testing of hard-grid TEDs in May, 1995, indicated that small turtles require almost twice as long to escape from a bottom-opening TED versus a top-opening TED (an average of 125.6 seconds vs. an average of 68.8 seconds) under ideal conditions. NMFS has previously implemented regulations to discuss and address problems with bottom-opening hard TEDs (59 FR 33447, June 29, 1994; 60 FR 15512, March 24, 1995). Notwithstanding the required use of floats, turtles may be more susceptible to capture in bottom-opening TEDs.

Pursuant to 50 CFR 227.72(e)(2)(ii)(B)(*1*), try nets have been exempted from the TED requirements, because they are only intended for use in brief sampling tows not likely to result in turtle mortality. Turtles are, however, caught in try nets, and either through repeated captures or long tows, try nets can contribute to the mortality of sea turtles. Takes of sea turtles in try nets, including one mortality, have been documented by NMFS, and anecdotal accounts suggest multiple sea turtle captures in try nets are occurring in Georgia waters. Twenty-foot try nets are reportedly preferred to smaller try nets by the Atlantic shrimp fleet. During the Canaveral ship channel evaluations, conducted in September 1994 and discussed above, 1 loggerhead was captured in a 13–ft (4.0–m) headrope length try net in 59 tows, while 9 loggerheads were captured in a 20–ft (6.1–m) headrope length try net in 57 tows. Therefore, NMFS has determined that top-opening hard-grid TEDs temporarily should be required in try nets larger than 12–ft (6.1–m) headrope length or a footrope length greater than 15 ft (4.6 m) in the specified areas. Finally, webbing flaps completely covering TED escape openings have been allowed in order to help reduce shrimp loss with TEDs. However, full length flaps may hinder turtle releases. In a top-opening TED, high pressure is generated above the trawl net which forces the webbing flap closed; while in a bottom-opening TED, the weight of the TED grid can pin the webbing flap shut over the escape opening. Additionally, the webbing flap can be sewn shut to disable the TED deliberately. Accordingly, NMFS has determined that use of full length flaps should be temporarily prohibited in the specified areas.

Under these temporary restrictions, only NMFS-approved hard or special hard TEDs with top escape openings may be used in shrimp trawls in the specified areas. Flaps may not completely cover the escape opening. Figure 1 illustrates a top-opening hard TED with a shortened webbing flap meeting the dimension requirements of this emergency action.

Requirements

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

NMFS hereby notifies owners and operators of shrimp trawlers (as defined in 50 CFR 217.12) that for a 30-day period, starting at 12:01 a.m. (local time)

June 21, 1995 and ending 11:59 p.m. (local time) July 20, 1995, fishing by shrimp trawlers in offshore waters, seaward to 10 nm (18.5 km) from the COLREGS line, along the Georgia coast, bounded between 30°45′ N. lat. and 32°03′ N. lat., is prohibited unless the shrimp trawler is in compliance with all applicable provisions in 50 CFR 227.72(e) and the following prohibitions:

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

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

3. The use of try nets with a headrope length greater than 12 ft (3.6 m) or a footrope length greater than 15 ft (4.6 m) is prohibited unless a NMFS-approved top-opening, hard TED or special hard TED is installed when the try nets are rigged for fishing. Try nets with a headrope length 12 ft (3.6 m) or less and a footrope length 15 ft (4.6 m) or less remain exempt from the requirement to have a TED installed in accordance with 50 CFR 227.72(e)(2)(ii)(B)(*1*).

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

All provisions in 50 CFR 227.72(e), including, but not limited to 50 CFR 227.72(e)(2)(ii)(B)(*1*) (use of try nets), 50 CFR 227.72(e)(4)(iii) (Soft TEDs), 50 CFR 227.72(e)(4)(i)(F) (Position of escape opening), and 50 CFR 227.72(e)(4)(iv)(C) (Allowable modification to TEDs), that are inconsistent with these prohibitions are hereby suspended for the duration of this action.

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

Additional Conservation Measures

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

NMFS will continue to monitor sea turtle strandings to gauge the effectiveness of these conservation measures. If, after these restrictions are instituted, strandings in Georgia persist at or above 75 percent of the ITL for 2 weeks, NMFS will follow the guidance in the ERP to determine whether to prohibit fishing by some or all shrimp trawlers, as required, in the offshore waters of all or parts of NMFS statistical Zones 30, 31 and/or 32 seaward to 10 nm (18.5 km) from the COLREGS line, for a period of 30 days. Contiguous statistical zones or portions of those zones may be included in the closure as necessary. Area closures will be implemented through emergency rulemaking notices pursuant to the procedures set forth at 50 CFR 227.72(e)(6).

Classification

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

Because neither section 553 of the Administrative Procedure Act (APA), nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

Pursuant to section 553(b)(B) of the APA, the AA finds there is good cause to waive prior notice and opportunity to comment on this rule. It is impracticable and contrary to the public interest to provide prior notice and opportunity for comment because unusually high levels of turtle strandings have been reported in Georgia and continue to occur as shrimping continues. Any delay in this action will likely result in additional fatal takings of listed sea turtles.

Pursuant to section 553(d) of the APA, the AA finds there is good cause to waive the 30-day delay in effective date. In addition to the immediate need to protect listed sea turtles, these restrictions are expected to impose only a minor burden on shrimp fishermen. The predominant TED designs in use in the affected area are bottom-opening hard grid TEDs and soft TEDs. Bottom-opening hard grid TEDs can be modified to comply with these restrictions in 1 to 2 hours. Any webbing flap over the escape opening can be shortened in less than 10 minutes. Trawlers equipped with soft TEDs may be required to move out of the affected area, or to equip their nets with hard TEDs. Hard grid TEDs are available for $75.00 to $350.00 and take several hours to install. Finally, some fishermen may not elect to equip their larger try nets with hard grid TEDs, and thus, would be unable to monitor their catch rate during long tows. However, these fishermen may elect to monitor their catch rate with smaller try nets not required to have an NMFS-approved top-opening hard TED installed.

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

Dated: June 15, 1995.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

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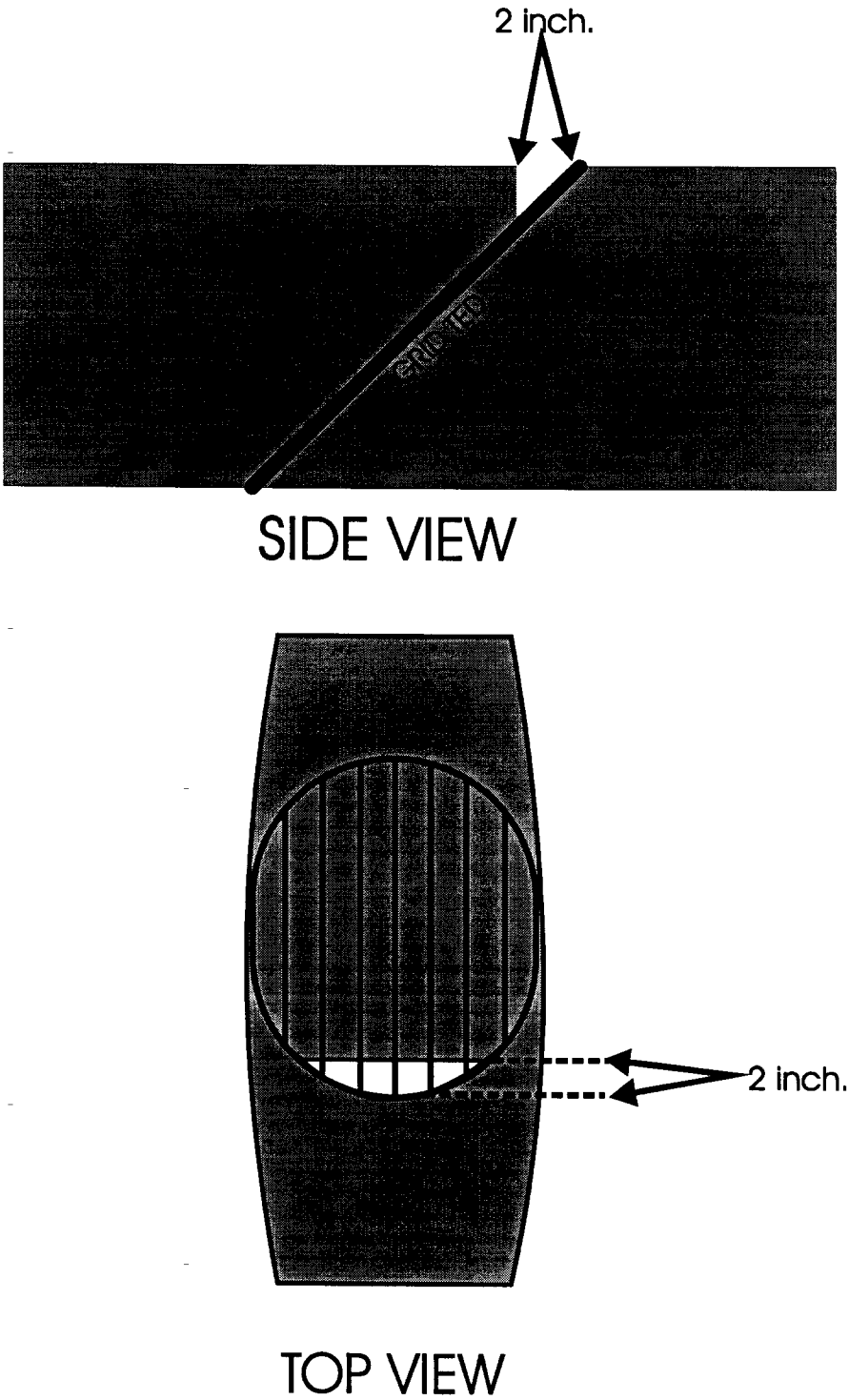

FIGURE 1--SHORTENED WEBBING OVER THE ESCAPE OPENING COMPLYING WITH REQUIREMENT NUMBER 4 OF THIS ACTION.

[FR Doc. 95–15047 Filed 6–15–95; 12:56 pm]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 60, No. 118
Tuesday, June 20, 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

Food Safety and Inspection Service

9 CFR Chapter III

[Docket No. 95–026N]

Redesigning FSIS for the Future: Roles, Resources, and Structure

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: As part of its overall initiative to improve the safety of meat and poultry products and better protect consumers, the Food Safety and Inspection Service (FSIS) is conducting a ''top-to-bottom'' review of the Agency's regulatory roles, resource allocation, and organizational structure. The review is intended to ensure that the Agency is making the best possible use of its resources to achieve its food safety and consumer protection goals, consistent with its new food safety strategy and budget realities.

ADDRESSES: For comments, send an original and two copies to the FSIS Docket Clerk, Room 4352, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Comments are welcome on a continuing basis.

FOR FURTHER INFORMATION CONTACT: Jeanne Axtell or John McCutcheon, Top-to-Bottom Review Coordinators, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 350–E, Administration Building, Independence Ave., Washington, DC 20250, (202) 720–3521 or (202) 720–2709, respectively.

SUPPLEMENTARY INFORMATION:

Background

FSIS's Food Safety Strategy

FSIS is pursuing a broad, long term science-based strategy to improve the safety of meat and poultry products and better protect public health. The strategy includes proposed requirements for all federally inspected meat and poultry establishments to reduce pathogenic microorganisms that can cause foodborne illness. The proposal, ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems'' (60 FR 6774–6889, published February 3, 1995), would require implementation of mandatory HACCP programs in meat and poultry establishments, would set interim targets for pathogen reduction in slaughter establishments and require microbial testing to meet those targets, and would require establishments to implement three near-term food safety interventions.

The goal of the proposal is to reduce the risk of foodborne illness associated with meat and poultry products to the maximum extent possible. The industry would be required to adopt procedures that systematically prevent food safety hazards and to meet food safety performance standards. The changes would improve FSIS's capacity to hold industry accountable for following preventive procedures and for meeting appropriate food safety standards.

The FSIS food safety strategy will require change in meat and poultry establishments, but it will also require change within FSIS. The Agency is conducting a total review of its food safety regulations to bring them into accord with the HACCP principles reflected in the regulatory proposal. The goal of this review is to eliminate unnecessary ''command and control'' regulations that spell out in minute detail how establishments must operate. FSIS believes it is preferable to set performance standards based on current science and, within the context of HACCP and the philosophy of prevention, allow the industry to decide how it can best meet the standards. This shift will encourage industry innovation to improve food safety and eliminate unnecessary requirements and regulations.

The Agency is also reviewing all of its systems for prior approval, such as those for facilities, equipment, and processing changes, to consider eliminating, streamlining or modifying them. This activity is necessary to ensure that legitimate oversight obligations are met without delaying the introduction of beneficial new technologies or requiring unproductive expenditure of efforts by FSIS or the industry.

Top-to-Bottom Review of Roles, Resources, and Structure

To achieve its food safety and consumer protection goals, FSIS must also ensure it is making the best use of its resources to carry out its responsibilities under a HACCP-based strategy that recognizes food safety must be addressed from farm to table. Less emphasis will be placed on the policing of detailed command and control requirements. More emphasis will be placed on verifying that industry has implemented HACCP and is achieving food safety performance standards. In addition, FSIS regulatory roles outside the currently inspected meat and poultry establishments will expand. The fundamental paradigm shift embodied in this food safety strategy, coupled with the reality of very tight government budgets, compels FSIS to critically review and, where necessary, change its regulatory roles, resource allocation, and organizational structure.

The purpose of the top-to-bottom review is to define for the future the Agency's regulatory roles, resource allocation, and organizational structure in a manner consistent with the goals and strategies of the Pathogen Reduction/HACCP regulation.

For the purposes of the review, FSIS will assume no major change in resources and no major changes in the current statutory mandates under which the Agency operates. FSIS recognizes that these variables are always subject to Congressional review and change, but the Agency also recognizes its urgent obligation, within its current resources and statutory structure, to improve food safety. Improving food safety requires a hard look at how FSIS does its job, and it requires answering three broad questions.

—What should be the Agency's regulatory roles and what are the skills needed to carry out these roles?
—How should the Agency's resources be allocated to best meet its food safety objectives and other responsibilities that fall under FSIS's legislative mandate?
—How should the headquarters and field structures be organized, in light of FSIS's new food safety strategy, to carry out the Agency's mission most effectively and efficiently?

To answer these broad questions and make practical recommendations for change, the review has been organized

around three areas—regulatory roles, resource allocation, and organizational structure—and teams have been formed within each area to achieve the following objectives.

Regulatory Roles

The overall objective is to determine the regulatory roles that should be used in a HACCP environment to hold industry accountable for meeting its food safety and other consumer protection responsibilities.

—Determine the best regulatory approaches, tools, and techniques that could be used to ensure food safety in establishments operating HACCP systems.
—Determine the best regulatory approaches, tools, and techniques that could be used to ensure that products are properly labeled, not misbranded, and not economically adulterated both in establishments and between the establishments and the marketplace.
—Determine strategies to ensure that food safety programs are functioning at points in the farm-to-table continuum other than at the in-plant level.
—Determine what knowledge, skills, abilities, and training are necessary to carry out FSIS roles at the different points along the farm-to-table continuum.
—Determine strategies and techniques to better define the distinct roles and responsibilities of FSIS and industry in ensuring food safety.

Resource Allocation

In light of the Agency's goal to reduce foodborne illness, the overall objective is to determine the optimal allocation of Agency resources.

—Determine the optimal allocation of resources between health and safety activities and economic adulteration, labeling, and misbranding activities.
—Determine how to build flexibility into the resource allocation system.
—Determine what support activities are best performed in the field or at headquarters.
—Determine what level of laboratory activities is necessary for regulatory oversight of industry operations and what testing responsibilities should be best undertaken by the industry and by FSIS.

Organizational Structure

The overall objective is to determine the optimal structure needed for headquarters and the field to carry out the goals and strategies of the pathogen reduction/HACCP regulation and to administer the program of the future.

—Examine options for administrative streamlining in line with the goals set by the Administration and the reinvention objectives outlined in the National Performance Review.
—Determine from what location (field, headquarters, or other central location) various FSIS program and administrative support activities are most likely to be effectively and efficiently carried out.
—Determine how policy and regulation development activities can be better managed within the Agency.
—Determine the nature of supervisory and managerial responsibilities and examine better methods for delivering technical information.

The Top-to-Bottom Review Project

The top-to-bottom review project is designed to determine what changes must be completed within 2 to 4 years to implement the proposed regulation for pathogen reduction and HACCP systems.

Communication will be an integral part of the review process. Information will be provided regularly to employees and constituent groups to let them know what activities are ongoing, why these activities are being carried out, how employees and the various groups will be affected, and how they can become involved in the process. The Agency will ensure that the broadest possible input is received from employees and constituent organizations.

A review group composed of several teams has been assigned to each question above. The teams expect to identify the major issues and potential options related to changes in roles, resources, and structure by late summer. At that time, FSIS plans to solicit feedback from its internal and external constituencies on those issues. The Agency will consider these comments as it decides what changes to make to align itself with its public health, food safety, and consumer protection goals. FSIS expects to make decisions on many of these changes by the end of the calendar year, when the Agency expects to finalize the proposed rule ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems.''

FSIS welcomes any comments on the initiatives announced in this notice (See **FOR FURTHER INFORMATION CONTACT**).

Done at Washington, DC on: June 14, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–14984 Filed 6–19–95; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1270

[Docket No. 93N–0453]

Screening and Testing of Donors of Human Tissue Intended for Transplantation; Draft Document; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Screening and Testing of Donors of Human Tissue Intended for Transplantation.'' This draft document is intended to provide additional opportunity for individuals to submit comments on screening and testing of donors of human tissue for transplantation. The availability of the draft document is to coincide with the workshop on Human Tissue for Transplantation and Human Reproductive Tissue: Scientific and Regulatory Issues and Perspectives to be held June 20 and 21, 1995, in Bethesda, MD. The workshop was announced in the **Federal Register** of May 24, 1995.

DATES: Written comments on the draft document should be submitted by July 20, 1995.

ADDRESSES: Single copies of the draft document will be made available to those attending the workshop. Persons not attending the workshop who would like to receive a copy of the draft document should submit a written request for single copies to the Congressional and Consumer Affairs Branch (HFM–12), Food and Drug Administration, 1401 Rockville Pike, suite 200 North, Rockville, MD 20852–1448. Send two self-addressed adhesive labels to assist that office in processing your requests.

Persons with access to the INTERNET may request the draft document be sent by return E-mail by sending a message to ''TISSUE1@A1.CBER.FDA.GOV''. The draft document may also be obtained through INTERNET via File Transfer Protocol (FTP). Requestors should connect to the Center for Drug Evaluation and Research (CDER) using the FTP. The Center for Biologics Evaluation and Research (CBER) documents are maintained in a subdirectory called CBER on the server, ''CDV2.CBER.FDA.GOV''. The ''READ.ME'' file in that subdirectory describes the available documents,

which may be available as an ASCII text file (*.TXT), or a WordPerfect 5.1 document (*.w51), or both. A sample dialogue for obtaining the READ.ME file with a test based FTP program would be:

FTP CDV2.CBER.FDA.GOV
LOGIN ANONYMOUS
<ANY PASSWORD>
BINARY
CD CBER
GET READ.ME
EXIT

The draft document may also be obtained by calling the CBER FAX Information System (FAX–ON–DEMAND) at 301–594–1939 from a FAX machine with a touch tone phone attached or built-in.

Submit written comments on the draft document to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The draft document and received comments are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Martha 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 May 24, 1995 (60 FR 27406), FDA published a notice announcing a public workshop on Human Tissue for Transplantation and Human Reproductive Tissue: Scientific and Regulatory Issues and Perspectives to be held on June 20 and 21, 1995, from 8:30 a.m. to 5:30 p.m., at the National Institutes of Health, Bldg. 45, Natcher Auditorium, 9000 Rockville Pike, Bethesda, MD. The purpose of the workshop is to provide an opportunity for continued discussion of FDA's interim rule on human tissue for transplantation published in the **Federal Register** of December 14, 1993 (58 FR 65514). The workshop will include discussions of other related issues, including possible regulation of reproductive tissue. The notice stated that one of the objectives of the public workshop is to provide an opportunity for discussion of current screening and testing practices for donors of human tissue for transplantation and human reproductive tissue.

The draft document, developed by a task force composed of FDA staff from CBER, is designed to focus discussion towards specific points on testing and screening donors of human tissue intended for transplantation. The document includes the following topics: Required donor testing, donor suitability and screening test performance, plasma dilution, testing algorithm, sources of information for donor screening, behavioral risk information, clinical evidence of human immunodeficiency virus and hepatitis, and suitable autopsy.

Copies of the draft document will be available at the workshop. A copy of the draft document will be placed on file with the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this notice. To accommodate interested persons who do not attend the workshop, as well as those who will be attending the workshop, FDA is making the draft document available for public comment and will consider such comments in any future rulemaking and in the development of regulatory policies. Comments should be submitted to the Dockets Management Branch (address above) by July 20, 1995.

FDA does not intend this draft document to be all-inclusive. This document does not bind FDA and does not create or confer any rights, privileges, or benefits on or for any private person, but is intended merely for discussion.

Dated: June 14, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–15084 Filed 6–15–95; 4:43 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Semiannual Regulatory Agenda; Correction

AGENCY: Minerals Management Service, Interior.

ACTION: Correction to semiannual regulatory agenda.

SUMMARY: The Minerals Management Service's (MMS) semiannual regulatory agenda (also known as Unified Agenda) was published on May 8, 1995 (60 FR 23462). This document corrects some information appearing in the May 8 agenda.

FOR FURTHER INFORMATION CONTACT: Bettine Montgomery, Policy and Management Improvement, at (202) 308–3976, FAX (202) 208–4891.

SUPPLEMENTARY INFORMATION: The corrections to the agenda are as follows:

Proposed Rule Stage

1766. Payor Responsibilities, RIN: 1010–AB45

On page 23462, in the second column, the CFR citation listed for this rule was incorrect. The correct CFR citation is 30 CFR part 211. The information in the timetable section of the agenda for the proposed rule is also incorrect. The correct information is the proposed rule published on June 9, 1995 (60 FR 30492).

Completed/Longterm Actions

1781. Valuation of Oil and Gas From Indian Leases, RIN: 1010–AB57

On page 23466, in the first column, the agenda incorrectly listed this rule as withdrawn. The rule has neither been completed nor withdrawn. The correct information is that an Advance Notice of Proposed Rulemaking was published on August 4, 1994 (59 FR 39712). The comment period closed October 3, 1994. On February 7, 1995, the Secretary of the Interior established an Indian Gas Valuation Negotiated Rulemaking Committee to reach consensus on certain issues. A proposed rule will be drafted based on the agreement reached by the committee. The publication date for the proposed rule is currently undetermined.

1783. Limitations on Credit Adjustment Submitted by Lessees and Other Royalty Payors Under Federal and Indian Mineral Leases, RIN: 1010–AB73

On page 23466, in the second column, the agenda incorrectly listed this rule as withdrawn. This rule has neither been competed nor withdrawn. The rule will be combined with RIN 1010–AB74 and published as one rule under RIN 1010–AB73. The Notice of Proposed Rulemaking was published August 17, 1993 (58 FR 43588). The comment period closed November 1, 1993. The next action will be to publish the final combined rule; this is scheduled to be published in March 1996 or earlier.

1784. Collection of Royalties, Interest, and Other Amounts Due Under Federal and Indian Mineral Leases by Administrative Offset, RIN: 1010–AB74

On page 23466, in the third column, the Agenda incorrectly listed this rule as withdrawn. This rule has neither has been completed nor withdrawn. Instead,

this rule is to be combined with RIN 1010–AB73 into one final rule under RIN 1010–AB73. The Notice of Proposed Rulemaking was published August 17, 1993 (58 FR 43583). The comment period closed November 1, 1993. The next action will be to publish the combined final rule; this is scheduled to be published in March 1996 or earlier.

1787. Training of Lessee and Contractor Employees Engaged in Oil and Gas Sulphur Operations in the Outer Continental Shelf, RIN 1010–AB99

On page 23466, in the third column, the Agenda incorrectly listed this rule as withdrawn. The rule has neither been completed nor withdrawn. An Advance Notice of Proposed Rulemaking was published August 5, 1994 (59 FR 39991). The comment period closed October 19, 1994. The next action will be to publish a proposed rule, and the publication date is undetermined.

Dated: June 14, 1995.

Lucy R. Querques,

Associate Director for Policy and Management Improvement.

[FR Doc. 95–14980 Filed 6–19–95; 8:45 am]

BILLING CODE 4310–MR–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–81, RM–8649]

Radio Broadcasting Services; Temecula, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of BEXT, Inc. requesting the allotment of Channel 277A to Temecula, California, as that community's second local FM service. Coordinates used for Channel 277A at Temecula are 33–29–37 and 117–08–51. Temecula is located within 320 kilometers (199 miles) of the United States-Mexico border, and therefore, the Commission must obtain concurrence of the Mexican government in this proposal.

DATES: Comments must be filed on or before August 7, 1995, and reply comments on or before August 22, 1995.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Bruce A. Eisen, Esq., Kaye, Scholer, Fierman, Hays & Handler, 901 - 15th Street, NW., Suite 1100, Washington, D.C. 20005–2327.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–81, adopted June 5, 1995, and released June 14, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–15052 Filed 6–19–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 950605148–5148–01; I.D. 060195C]

RIN 0648–AH58

Atlantic Coast Weakfish Fishery; Moratorium in Exclusive Economic Zone

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS requests public comment on proposed regulations that would prohibit fishing for and possession of Atlantic coast weakfish (weakfish) in the exclusive economic zone (EEZ) offshore from Maine through Florida. The intent of the proposed regulations is to provide protection to the overfished stock of weakfish, ensure the effectiveness of state regulations, and to aid in the rebuilding of the stock.

DATES: Written comments must be received on or before August 4, 1995.

ADDRESSES: Comments on the proposed rule should be sent to, and copies of supporting documents, including a Draft Environmental Impact Statement (DEIS) and Regulatory Impact Review (RIR), are available from Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282. NMFS will hold public hearings to receive comments from fishery participants and other members of the public regarding these proposed regulations. The dates and locations of public hearings will be announced by notice in the **Federal Register** at least 2 weeks prior to the public hearing dates.

FOR FURTHER INFORMATION CONTACT: William T. Hogarth, 301–713–2339.

SUPPLEMENTARY INFORMATION:

Background

Section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), 16 U.S.C 5101 *et seq.*, states that, in the absence of an approved and implemented Fishery Management Plan (FMP) under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act), and after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce (Secretary) may implement regulations to govern fishing in the EEZ, i.e., from 3–200 nautical miles (5.6–370.6 km). These regulations must be (1) necessary to support the effective implementation of an Interstate Fishery Management Plan (ISFMP) developed by the Atlantic States Marine Fisheries Commission (Commission); and (2) consistent with the national standards set forth in section 301 of the Magnuson Act (16 U.S.C. 1851).

The Commission adopted a weakfish ISFMP in 1985, amended the plan in 1994, and is currently developing a new amendment to rebuild declining stocks

of weakfish. Federal regulations are needed in the EEZ to support the Commission's effort to protect weakfish.

The Mid-Atlantic Fishery Management Council (MAFMC) is the lead Council for developing weakfish regulations in the EEZ. The MAFMC has listed weakfish as a species in need of management, but has, to date, not developed an FMP for the species. NMFS consulted with the MAFMC to determine if the development of an FMP for weakfish was possible in the immediate future. The MAFMC stated that because of its heavy workload on other species, it would not be possible this year. Therefore, Federal actions authorized by the ACFCMA remain the most effective means to institute management measures in the EEZ that will support the Commission's Plan for weakfish.

Purpose

Weakfish (*Cynoscion regalis*), a member of the family Scianidae, is considered a single stock along the Atlantic coast, ranging from Maine to Florida. The species is most abundant in shallow coastal and estuarine waters from North Carolina to New York. The center of weakfish abundance in the winter ranges from North Carolina southward and in the summer from Delaware northward. Weakfish are taken both in directed fisheries and as a bycatch in other fisheries.

Weakfish populations are overfished and are in a continuing serious decline. Total landings have declined from 35,667 mt (80.0 million lb) in 1980 to 3,628 mt (8.0 million lb) in 1993. The fishing mortality rate (F) for weakfish averaged 1.26 for the period 1991–1993, (i.e., 64 percent of the population was harvested each year), and only 4 percent of the population achieved spawning age. The F of 1.26 is about three times the rate that should be applied to protect and rebuild the stock. Since 1987, F has remained extremely high and has ranged from 1.087 to 1.948.

Concurrent with high fishing mortality, in recent years the weakfish stock has exhibited a reduction in spawning stock biomass, and a severe reduction in older fish (age 4 or older) taken. Ninety-nine percent of the 1993 commercial catch consisted of age 3 or younger fish. Recruitment to the stock has declined by 43 percent since 1990; in 1993 recruitment values are indicative of recruitment failure. Also, studies conducted at different areas along the coast show juvenile recruitment at its lowest levels since these studies were begun.

The proposed rule would prohibit the harvest (catch and retention) of weakfish from the Atlantic coast EEZ. The proposal provides the strongest possible conservation measure, is easy to understand and enforce, and is in the best long-term economic interests of both commercial and recreational fishermen. It eliminates any claim that weakfish were caught in the EEZ, when fishermen might otherwise have caught fish illegally in state waters. Enforcement of the prohibition is straightforward, because possession of weakfish on board a vessel in the EEZ would be a violation of the regulation. The prohibition also includes possession of weakfish taken as incidental catch (bycatch) while fishing for other species, since such bycatch must be released to the water as soon as possible. It allows for the development of a stock rebuilding program and, therefore, resumption of the fishery in the future.

Classification

This proposed rule is published under the authority of the ACFCMA. Paragraphs (A) and (B) of section 804(b)(1) authorizes the Secretary to implement regulations in the EEZ in the absence of a Magnuson Act FMP. Such regulations must be necessary to support a Commission's ISFMP, and consistent with the national standards set forth in section 301 of the Magnuson Act. The Assistant Administrator for Fisheries has preliminarily determined that these actions are consistent with the national standards. The Secretary, before making the final determinations, will take into account the data, views, and comments received during the comment period.

NMFS prepared a DEIS/RIR for this rule, which is available (see **ADDRESSES**). Five different alternatives to regulate the harvest of weakfish in the EEZ were examined. The alternative to prohibit the harvest and possession of weakfish in the EEZ provided the greatest biological gains with only short-term economic loss. This alternative also provided the best approach to reduce law enforcement loopholes. The condition of the stock necessitates that regulations be placed on the weakfish harvest in the EEZ to supplement the states regulations and begin the rebuilding of this overfished stock. Applying state regulations in the EEZ was considered, as well as establishing separate specific regulations for the EEZ, or doing nothing at all.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The closure of the EEZ will have minimal impact on recreational fishing, since recreational catch accounted for only 3 percent of the total catch in the EEZ in 1993. The North Carolina commercial fishery was used to analyze the impact of this proposal on the commercial fishery, since North Carolina accounted for 68 percent of the weakfish caught commercially in the EEZ in 1993. In North Carolina, the fly net trawl fishery, which consists of 11–15 boats, harvests the majority of the fish. This proposed rule will result in these boats either moving shoreward to state waters or directing their fishing effort on other species such as dog fish sharks, flounder, croaker, squid, or striped bass. This switch to fishing in state waters or to targeting other species in the EEZ will mitigate, to a great extent, any economic effects of this rule. Therefore, the proposed rule should not have a significant economic impact on small entities. As a result, a regulatory flexibility analysis was not prepared. Further information is available in the DEIS/RIR (See **ADDRESSES**).

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

List of Subjects in 50 CFR Part 697

Fisheries, Fishing.

Dated: June 13, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Chapter VI is proposed to be amended by adding part 697 to read as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

Subpart A—Atlantic Coast Weakfish Fishery

Sec.
697.1 Purpose and scope.
697.2 Definitions.
697.3 Prohibitions.
697.4 Relation to the Magnuson Act.
697.5 Civil procedures.
697.6 Specifically authorized activities

Subpart B—[Reserved]

Authority: 16 U.S.C. 5101 *et seq.*, unless otherwise noted.

§ 697.1 Purpose and scope.

The regulations in this part implement section 804(b) of the Atlantic Coastal Fisheries Cooperative

Management Act, 16 U.S.C. 5101 *et seq.*, and govern fishing for and possession of Atlantic Coast weakfish in the EEZ.

§ 697.2 Definitions.

The terms used in this part have the following meanings:

Act means the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5101 *et seq.*

Area of Custody means any vessel, building, vehicle, live car, pound, pier, or dock facility where Atlantic coast weakfish might be found.

Atlantic Coast weakfish means members of stocks or populations of the species *Cynoscion regalis*, found in the waters of the Atlantic Ocean north of Key West, FL.

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any special agent or enforcement officer of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or state agency that has entered into an agreement with the Secretary to enforce the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Catch, take, or harvest means, but is not limited to, any activity that results in killing any fish or bringing any live fish on board a vessel.

EEZ means the Exclusive Economic Zone of the United States, from 3 to 200 nautical miles (5.6-370.6 km) offshore of the United States, beginning at the seaward boundary of the territorial sea of the coastal states.

Fish means finfish (including highly migratory species), mollusks, crustaceans, and all other forms of marine animal and plant life.

Fishing or *to fish* means:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish; or

(3) Any operation at sea in support of, or in preparation for, any activity described in paragraphs (1) or (2) of this definition.

Land means to begin offloading fish, to offload fish, or to enter port with fish.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, local, or foreign government or any entity of any such government.

Retain means to fail to return Atlantic Coast weakfish to the sea immediately after the hook has been removed or the fish has otherwise been released from the capture gear.

Secretary means the Secretary of Commerce or a designee.

Vessel means any boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for:

(1) Fishing; or

(2) Aiding and assisting one or more vessels at sea in the performance of any activity related to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

§ 697.3 Prohibitions.

No person shall:

(a) Catch, take, or harvest and retain any Atlantic Coast weakfish within the EEZ;

(b) Fail to return to the water immediately, with the least possible injury, any Atlantic Coast weakfish taken within the EEZ incidental to the commercial or recreational fishing for species of fish other than Atlantic Coast weakfish;

(c) Possess any Atlantic Coast weakfish on board a vessel while such vessel is in the EEZ;

(d) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import or export, or transfer any Atlantic Coast weakfish taken and retained in violation of the Act or the regulations in this part;

(e) Interfere with, obstruct, delay, or prevent by any means a lawful investigation, search or seizure conducted in the process of enforcing the Act;

(f) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, shipping, transporting, selling, offering for sale, purchasing, importing or exporting, or transferring of any Atlantic Coast weakfish;

(g) Refuse to allow an authorized officer to board any vessel or to enter any area of custody for the purpose of conducting any search, inspection, or seizure in connection with the enforcement of the Act or the regulations in this part;

(h) Dispose of any Atlantic Coast weakfish, or parts thereof, or other matter, in any manner, after any communication or signal from an authorized officer, or after the approach by an authorized officer or an enforcement vessel;

(i) Forcibly assault, resist, oppose, impede, intimidate, threaten or interfere with any authorized officer in the conduct of any search, inspection, or seizure in connection with enforcement of the Act or the regulations in this part;

(j) Resist a lawful arrest for any act prohibited by the Act or these regulations; or

(k) Interfere with, delay, or prevent by any means the apprehension of another person, knowing that such person has committed any act prohibited by the Act or the regulations in this part.

§ 697.4 Relation to the Magnuson Act.

The provisions of sections 307 through 311 of the Magnuson Act, as amended, regarding prohibited acts, civil penalties, criminal forfeitures, and enforcement apply with respect to the regulations in this part, as if the regulations in this part were issued under the Magnuson Act.

§ 697.5 Civil procedures.

The civil procedure regulations at 15 CFR part 904 apply to civil penalties, seizures, and forfeitures under the Act and the regulations in this part.

§ 697.6 Specifically authorized activities.

NMFS may authorize for the acquisition of information and data, activities that are otherwise prohibited by these regulations.

Subpart B—[Reserved]

[FR Doc. 95–15023 Filed 6–19–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 118
Tuesday, June 20, 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

Cooperative State Research, Education, and Extension Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463, 86 Stat. 770–776), as amended, the Cooperative State Research, Education and Extension Service announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board (hereafter referred to as the UAB).

Date: August 23–25, 1995.

Time: August 23—1:00 p.m.—5:00 p.m.; August 24—8:00 a.m.—5:00 p.m.; August 25—8:00 a.m.—12 noon.

Place: Holiday Inn, Ft. Washington, PA, and tours of research facilities at Philadelphia and surrounding areas.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person named below.

Purpose: To review Federal, State, and privately funded agricultural research, education, and extension programs in water quality, sustainable agriculture, animal and plant production, nutrition, food safety, integrated pest management, post-harvest production and non-food uses.

Contact Person for Agenda and More Information: Ms. Marshall Tarkington, Executive Director, Research, Education, and Economics Advisory Committees, Room 316A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2255; Telephone (202) 720–3684.

Done in Washington, D.C., this 9th day of June 1995.

William D. Carlson,

Acting Administrator.

[FR Doc. 95–15071 Filed 6–19–95; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Inland Native Fish Strategy

AGENCY: Notice of public hearings on the Inland Native Fish Strategy environmental assessment.

SUMMARY: In the March 14, 1995, **Federal Register** (Vol. 60, No. 49, pp. 13697–13698), notice was given that the Forest Service, in cooperation with the Bureau of Land Management and U.S. Fish and Wildlife Service, is gathering information in order to prepare an Environmental Assessment (EA) for a proposal to protect habitat and populations of native inland fish.

This EA addresses National Forest System lands on the Bitterroot, Boise, Caribou, Challis, Clearwater, Colville, Deerlodge, Deschutes, Flathead, Fremont, Helena, Humboldt, Idaho Panhandle, Kootenai, Lolo, Malheur, Ochoco, Okanogan, Payette, Sawtooth, Wallowa-Whitman, and Winema National Forests in the Northern, Intermountain, and Pacific Northwest Regions.

The Environmental Assessment has been completed and sent to the public for a 30-day review and comment period. These comments will be considered in reaching a decision.

Public hearings will be conducted to allow the public ample opportunity to comment on the proposal. Hearings are scheduled at the following locations:

June 26, 1995, Bend, Oregon, River House Inn (North/Middle Sister Rooms), 3075 North Highway 97

June 27, 1995, Twin Falls, Idaho, AmeriTel Inn (Blue Lakes Room), 1377 Blue Lakes Blvd. N.

June 28, 1995, Helena, Montana, Park Plaza (Rimini Room), 22 N. Last Chance Gulch

June 29, 1995, Spokane, Washington, Holiday Inn (Hawthorne Room), W. 4212 Sunset Blvd.

Each of the hearings will begin at 4:00 p.m. local time. Speakers are required to sign up, and will be given a maximum of 5 minutes.

FOR FURTHER INFORMATION CONTACT: Questions about the public hearings should be directed to Laird Robinson, Public Affairs Officer for the Inland Native Fish Strategy, USDA Forest Service, P.O. Box 7669, Missoula, Montana, 59807. Phone: (406) 329–3434.

The responsible officials for this Environmental Assessment are the Regional Foresters for the Intermountain, Northern, and Pacific Northwest Regions. They will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the Environmental Assessment, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Decision Notice. The Decision Notice is expected to be available in late July, 1995.

Dated: June 9, 1995.

David J. Wright,

Inland Native Fish Team Leader, USDA Forest Service.

[FR Doc. 95–14953 Filed 6–19–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–814]

Polyethylene Terephthalate Film, Sheet, and Strip from Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 2, 1994, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from Japan. The review covers three manufacturers/exporters of this merchandise to the United States, Toray Industries, Inc. (Toray), Teijin, Ltd. (Teijin), and Diafoil Co. Ltd. (Diafoil), and the period November 30, 1990 through May 31, 1992. Based on our analysis of comments received, we have changed the final results from those presented in our preliminary results of review.

EFFECTIVE DATE: July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Thomas F. Futtner,

Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC. 20230, telephone: (202) 482–6312/3814.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 1994, the Department published in the **Federal Register** (59 FR 9960) the preliminary results of its administrative review of the antidumping duty order on PET film (56 FR 25660, June 5, 1991). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act) and 19 CFR 353.22.

One firm, Diafoil, did not respond to the Department's questionnaire. Therefore, we are using best information otherwise available (BIA) for cash deposit and appraisement purposes. As BIA for Diafoil, we determined the dumping margin to be 14.00 percent, the highest margin calculated in any administrative review or the original investigation.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from petitioners, all three respondents and one interested party. All parties participated in the hearing held on April 14, 1994.

Scope of the Review

Imports covered by the review are shipments of all gauges of raw, pretreated, or primed PET film, sheet, and strip, whether extruded or coextruded. The films excluded from the scope of this order are metallized films and other finished films that have had a least one of their surfaces modified by the application of performance-enhancing resin or inorganic layer more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film from Japan is currently classifiable under Harmonized Tariff Schedule (HTS) item number 3920.62.0000. The HTS item numbers are provided for convenience and for Customs purposes only. The written descriptions remain dispositive.

Analysis of Comments Received

Comment 1: Toray Plastics America (TPA), an interested party, argues that the Department should use BIA for Diafoil, because Diafoil refused to answer the Department's questionnaire.

Diafoil responds that it is not uncooperative, only unresponsive. Diafoil objects to TPA's attempt to characterize Diafoil as an ''uncooperative party'' just because Diafoil declined to respond to the Department's questionnaire. Diafoil argues that, as a small exporter, it did not respond because of the excessive burden and cost involved.

Department's Position: In accordance with section 776(c) of the Tariff Act, the Department uses BIA in cases where a party refuses to respond to the questionnaire, is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes the proceedings. The Department uses a two-tiered approach in its choice of BIA. For uncooperative respondents or respondents who substantially impede the proceedings (first tier), the Department uses the higher of (1) the highest rate for any company from the original investigation or any prior administrative review or (2) the highest rate found in the current review for any company. For respondents which attempt to cooperate (second tier), the Department uses the higher of (1) the highest rate ever applicable to that firm for the subject merchandise or (2) the highest calculated rate in the current review for any firm (*see Antifriction Bearings (Other than Tapered Roller Bearings) and Parts thereof from France, et al.*, 58 FR 39729, July 26, 1993).

Accordingly, whether Diafoil is characterized as uncooperative or unresponsive, in accordance with the current statute, we must apply BIA. In accordance with our two-tier BIA policy, Diafoil's rate will be 14 percent, the highest rate for any company from the original investigation (*see Polyethylene Terephthalate Film, Sheet, and Strip from Japan*, 56 FR 25660, June 5, 1991).

Comment 2: TPA states that since Diafoil refused to answer the Department's questionnaire and in light of the substantial difference between Diafoil's current deposit rate and its new BIA rate, the Department should publish immediately a determination establishing a new BIA deposit rate for future entries of PET film produced or exported by Diafoil.

TPA claims that nothing in the antidumping law, or in the Department's regulations, requires that the Department wait until the conclusion of its review before establishing a new deposit rate for a foreign producer or exporter that has utterly refused to participate in the proceeding.

Department's Position: Deposit rates can only be changed after conducting an administrative review, in accordance with Section 751 of the Tariff Act. Our regulations require that we issue preliminary results of review and allow parties to ask for disclosure of the calculation methodology, submit written argument and rebuttal comments and the opportunity to ask for hearings (19 CFR 353.22 and 353.38).

Comment 3: Toray argues that for these final results the Department should calculate two margins for this review: one for the period preceding issuance of the antidumping duty order (*i.e.*, November 30, 1990, through May 31, 1991) and a second for Toray's sales in the first 12 months following issuance of the order (*i.e.*, June 1, 1991, through May 31, 1992). Toray maintains that the Department should instruct Customs to use the margin from the latter period as the basis for Toray's cash deposits on future entries.

Toray states that because antidumping duties are intended to be remedial, rather than punitive, in nature, they should reflect a respondent's current pricing practices. Accordingly, the Department's final results in this review should demonstrate that Toray has eliminated or substantially reduced its dumping margin in the period following publication of the antidumping duty order. Toray argues that the Department's regulations implicitly require the calculation of a separate, weighted-average margin for a respondent's first full year of sales under an order. If the Department fails to do this, Toray contends, it frustrates the intent of its own regulations by effectively extending the qualifying period for company-specific revocations to four years, thereby making necessary additional administrative reviews that otherwise might have been made unnecessary by respondents' good faith efforts to amend their pricing practices immediately after a less-than-fair-value (LTFV) investigation. Toray further contends that the courts have held that a respondent's weighted-average dumping margin should reflect a respondent's current pricing practices.

The petitioners, E. I. Du Pont de Nemours & Company, Inc., Hoeschst Celanese Corporation, and ICI Americas Inc., argue that the Department's consistent practice during the first administrative review is to use the period between the date provisional measures were first applied and the month before the first anniversary date of the antidumping duty order. This is a reasonable exercise of the Department's administrative discretion in implementing section 751 of the

Tariff Act, which does not offer any guidance to the Department regarding the period covered by the first administrative review.

The petitioners note that the Department has consistently utilized this approach in determining the appropriate period for the first administrative review. Furthermore, the Department has consistently calculated assessment and deposit rates based on sales over the entire period. Petitioners further argue that in such situations the courts have consistently supported an agency's implementation of a statute, citing *Timken Co.* v. *United States,* 14 CIT 753 (1990); *Mart Corp.* v. *United States,* 486 U.S. 281 (1988); and *Zenith Radio Corp.* v. *United States,* 437 U.S. 443, 450 (1978). Petitioners observe that none of the cases cited by Toray in its brief relates at all to the Department's first administrative review procedures or in any way attributes any punitive or retaliatory characteristics to them. Further, petitioners note that Toray cites no judicial precedent that supports its position that the Department's current first administrative review period is not ''current'' or is ''unfair.''

Therefore, petitioners conclude, the Department has properly determined that one-year review periods are appropriate only after the first administrative review, which normally covers a period closer to 18 months. By honoring Toray's request, petitioners argue that the Department would in fact be ignoring dumping which occurs earlier in the review period, an action which would be inconsistent with the Tariff Act and would be ''punitive'' to the domestic industry.

Department's Position: There is no statutory guidance regarding the period to be covered by the first administrative review or the period on which to base cash deposit rates. However, the Department's regulations identify the period to be covered by a first administrative review as ''the period from the suspension of liquidation * * * to the end of the month immediately preceding the first anniversary month'' (*see* 19 CFR 353.22(b)(2)). As a matter of administrative practice, the Department has consistently calculated assessment and deposit rates based on the entire period of review. To do otherwise would invite manipulation by parties who, depending on their point of view, could argue that one division or another of the POR would be more favorable to their interests. The Department considers the first review period to be ''current'' even if it exceeds twelve months.

Finally, we are not persuaded by Toray's argument that the Department, by not dividing the first POR into pre- and post-order periods, undermines its own company-specific revocation procedures, which are based on three consecutive years of no dumping. Respondents can begin practicing pricing discipline as soon as the Department initiates an investigation. Certainly at the time of the preliminary determination, when suspension of liquidation occurs, respondents are made aware of the Department's methodology and can begin to change their prices accordingly.

Comment 4: TPA claims that, in accordance with the Department's methodology, recently upheld in *Outokumpu Copper Rolled Products AB* v. *United States,* 829 F.Supp. 1371, 1379–80 (CIT, 1993) (Outokumpu), many of Teijin's U.S. sales should be treated as exporter's sales price (ESP) transactions.

TPA asserts that, in *Outokumpu,* the Court held that the Department could apply a ''purchase price'' analysis to ''closed consignment'' sales (where the exporter's U.S. subsidiary held merchandise for ''just-in-time'' delivery) if, first, the U.S. subsidiary performs strictly ministerial functions, and, second, any warehousing operation undertaken by the U.S. subsidiary reflects the parties' ''customary commercial channels.'' TPA contends that Teijin does not meet either of these criteria. First, according to TPA, Teijin has three separate U.S. companies that account for a significant portion of U.S. sales under review. Further, TPA claims that Teijin's questionnaire response makes clear that the company's U.S. subsidiaries are engaged in a wide range of sales and post-sale activities, including marketing and acting as a selling agent. Similarly, TPA notes that Teijin has reported technical service expenses, as well as indirect expenses, by all three U.S. subsidiaries for the maintenance of sales staff. Finally, TPA claims that Teijin's sales do not follow the ''customary commercial channels'' utilized by Teijin and its U.S. subsidiaries.

Teijin responds that its U.S. sales are properly analyzed as purchase price transactions and disputes TPA's argument that, based on criteria upheld by *Outokumpu,* Teijin's sales should be treated as ESP sales. First, during the LTFV investigation, the Department verified that the merchandise did not enter the physical inventory of the subsidiary. Second, Teijin's subsidiaries continue to perform only ministerial functions, processing sales-related documentation and serving as a communication link, in connection with U.S. sales of PET film. Finally, Teijin argues that TPA's attempt to portray Teijin's U.S. operations as more substantial or ''substantially restructured'' are misinformed.

Department's Position: During the LTFV investigation, the Department verified that Teijin's U.S. sales were final before importation and did not enter inventory in the United States. Accordingly, Teijin's sales qualified as purchase price sales. In this review, Teijin again asserts that its U.S. subsidiaries perform only ministerial functions and that its U.S. sales during the POR do not enter inventory in the United States. In this review, TPA offers no specific support for its position except to question certain selling expenses. Further, nothing appears in the record of this review to show that there is anything different from the investigation that would distinguish any of the sales as ESP sales. We disagree with TPA's comment that Teijin's questionnaire response makes it clear that it and its U.S. subsidiaries are engaged in activities that would force the Department to conclude that Teijin's sales should be analyzed as ESP sales. Also, we considered these sales to be in the customary commercial channels in the investigation, and TPA has provided no evidence to the contrary. Finally, in our verification of Teijin's response during the LTFV investigation, we found no additional expenses such as technical services, advertising, or warranties on U.S. sales. Accordingly we have accepted Teijin's claim for purchase price analysis for the final results of administrative review.

Comment 5: TPA argues that the Department should reject Teijin's suggested model match because the methodology is distortive and deficient. TPA argues that the correct methodology is to first match PET film products by their end-use and subsequently by their polymers and gauges because this is the most accurate and administrable model match methodology. TPA maintains that each of PET film's five primary end-use categories requires common physical and performance characteristics that determine the commercial utility and value of the product and that are unique to that class.

Teijin responds that, notwithstanding its strong belief that physical characteristics represent the most appropriate matching methodology, in compliance with the Department's requests, it has provided the Department with alternative product concordances with and without end-use as a matching criteria. Therefore, in spite of Teijin's

position that physical characteristics represent the most appropriate matching methodology, Teijin maintains that the Department has a complete record upon which to base its final results.

Department's Position: In developing product-specific model match methodologies, the statutory preference is for the matching of identical merchandise (see section 771(16)(A) of the Tariff Act). Where this identical matching is not possible, the most similar matches are preferred (see section 771(16)(B)).

During the review, we solicited comments from all parties on matching criteria for comparing similar merchandise in the absence of sales of identical merchandise in the U.S. and home markets. Based on submissions from petitioners and respondents, no single physical characteristic appears to be a defining criterion for all types of PET film.

In the case of PET film, we have determined that it is appropriate to use groups of physical characteristics based on end-use as an organizational tool to establish similar categories of merchandise. This methodology was adopted because of the unique circumstances of this case, such as the complexity of the subject merchandise, the difficulty in determining the most similar models in a consistent manner, and the fact that it is evident that end use plays a role in the determination of the merchandise's physical dimensions.

Therefore, we have matched by physical characteristics within these categories to find matches of the most similar merchandise. We also have determined that it would be inappropriate to match across categories because this could result in more dissimilar matches rather than in comparisons of the most similar merchandise. In these final results we used Teijin's alternative model-matching concordance with broad end-use categories.

Comment 6: The petitioners comment that the Department's preliminary treatment of consumption tax for both Teijin and Toray was not in full conformity with current Department practice. Namely, they argue that, in calculating the consumption tax adjustments, the Department failed to include all of the expenses incurred after the point at which the Japanese government applies the home market consumption tax.

Both Teijin and Toray support the Department's use of a methodology that provides for tax neutrality in the dumping calculation. Toray, however, takes no position with respect to petitioners' claims regarding the imputation of the Japanese consumption tax for the preliminary results.

Department's Position:

We agree with petitioners that the tax adjustment must be made at the same point in the chain of commerce in each market and we have adjusted for taxes in accordance with our practice as outlined in *Silicomanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value,* 59 FR 31204, June 17, 1994.

Comment 7: TPA asks the Department to ensure that Teijin has properly reported all U.S. and home market sales, or reject Teijin's questionnaire response in its entirety. In particular, TPA argues that there is no legal basis for Teijin's original request that the Department exclude from its review sales of certain unique grades of PET film, including sandblasted film, embossed film, further-processed film, ''experimental'' film, film sold on a yen-per-square meter basis, and film sold on a yen-per-piece basis. Similarly, TPA asks the Department to ensure that Teijin has reported all of its provisions of sample merchandise in the United States.

Teijin responds that: (1) It has fully reported all U.S. and home market sales; (2) it has fully reported all grades of PET film, and its questionnaire responses clearly indicate that these sales have been included in its computer files; and (3) its supplemental questionnaire response states explicitly that certain sample sales, which had originally been omitted in error, were included in the computer listing.

Department's Position: We have reviewed Teijin's responses and have determined that they are complete and that all grades of PET film and all sample sales have been reported. Although Teijin originally excluded the types of film noted by TPA, the company included these film types in its supplemental response. Accordingly, we will continue to rely on Teijin's submissions for the final results of administrative review.

Comment 8: TPA argues that Teijin has refused to comply with the Department's questionnaire in numerous critical respects, in addition to the specific issues discussed in other comments:

- Teijin has not provided affiliation and distribution agreements that TPA claims are essential to a proper understanding of its U.S. operations, particularly with respect to Teijin's joint venture with Du Pont;
- Teijin has failed to identify the proper dates of sale;
- Teijin's submissions do not adequately describe the basis for qualification or payment of rebates; and
- Teijin has failed to report, or incorrectly reported, numerous U.S. and home market expenses, such as technical services, warranty claims, advertising, sales promotion, and packing costs.

Accordingly, in the absence of complete and accurate data, TPA maintains that the Department should apply BIA in its final margin calculations.

Teijin responds that it has provided complete and accurate data to the Department.

Department's Position: We have reviewed Teijin's submissions and are satisfied that Teijin's response is complete and responsive to our questionnaire. Specifically:

- Teijin has provided to the Department sufficient information regarding its U.S. affiliations and distribution system for us to determine that Teijin reported its sales to the first unrelated customer.
- Teijin's dates of sale, including such instances as informal orders, blanket purchase agreements, and shipments during ongoing price negotiations, were properly reported. Namely, Teijin reported the date of sale as the date upon which the substantive terms of the contract (especially price and quantity) are set. Consistent with this reporting requirement, the date of sale reported by Teijin in most cases was the purchase order confirmation date. Where this was not the case, Teijin reported the date upon which price and quantity were firmly established as the date of sale. In no case was the reported date of sale later than the date of shipment.
- Teijin's submissions adequately describe the basis for qualification and payment of rebates as related to customer loyalty, purchase volume and market conditions, and identifies each of its home market and U.S. rebates on a customer- and sale-specific basis, precisely the standard articulated by TPA in its brief.
- There is nothing in the record to substantiate TPA's assertions that Teijin's U.S. and home market expenses have been reported incorrectly. Teijin asserts that it incurred no warranty expenses in the United States during the period of review and that it did not incur any technical service, advertising, sales promotion or other expenses directly related to its U.S. sales of PET film.

Therefore, we have relied on Teijin's response for these final results.

Comment 9: TPA argues that the Department cannot rely upon Teijin's questionnaire response without verifying the data. TPA notes that where

the Department has ''good cause'' to verify a respondent's submission, it has a concomitant legal obligation to do so, citing *Smith Corona Corp.* v. *United States,* 771 F.Supp. 389 (CIT, 1991). TPA notes that it timely requested that the Department verify Teijin's questionnaire response in this review and that the circumstances establish ''good cause'' for verification.

TPA argues that this review raises significant factors and issues never before considered by the Department: cost data regarding adjustments for differences in merchandise where similar merchandise is used for comparison to U.S. sales; Teijin's radical restructuring of its U.S. operations; Teijin's failure to fully respond and its internally inconsistent responses; and the fact that the Department's prior verification revealed significant unreported expenses and other discrepancies in the data submitted by Teijin.

Teijin responds that the Department correctly declined to verify Teijin's response. Teijin argues that TPA has failed to show that the requisite ''good cause'' for verification exists in this review. Further, Teijin contends that the Department found that TPA did not demonstrate ''good cause'' for verification in large measure because the respondent had passed verification in the LTFV investigation and had furnished a ''substantial amount of detail and documentation'' in the administrative review questionnaire response (*see Small Business Telephone Systems,* 57 FR 8299). Similarly, Teijin argues that the ''new'' facts cited by TPA in support of the claim for verification are insufficient to establish the necessary good cause. In this regard, Teijin argues, this review is identical to that in *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et al.* (58 FR 28360, June 24, 1992), in which the Department rejected the petitioner's basis for requesting that the Department conduct a more thorough verification of respondents' cost accounting system, on the basis of several factors, including the respondent's past verification history and the Department's evaluation of the credibility of the data submitted.

Department's Position: In accordance with 19 CFR 353.36(a)(1)(b), because we verified Teijin during the LTFV investigation, we were not required to verify in this administrative review unless good cause was shown. We agree with Teijin that no good cause was shown during this review to compel the Department to verify Teijin's response. The decision not to verify fully accords with past Department practice in this regard (*see Certain Small Business Telephone Systems and Subassemblies Thereof from Korea,* 57 FR 8298, March 9, 1992). Further, because we verified the overwhelming amount of the information submitted in the original investigation and because we have determined Teijin's response in this review to be complete and credible, we have also accepted the new cost data as submitted during the review.

Comment 10: The following clerical errors were noted by various parties:

(1) The petitioners comment that the Department's test for use of annual versus monthly weighted-average prices was mathematically incorrect due to misplaced parentheses. Toray comments that the error in the annual average test had no impact on the calculations. Teijin agrees that the Department should correct the clerical error in Teijin's POR-averaging program.

(2) The petitioners comment that the Department failed to convert yen-denominated sales and adjustments into dollar-denominated values in certain of Toray's U.S. sales. Toray agrees with the petitioners that the Department should ensure that all of its conversions of both currencies and units of measure are correct. Further, Toray suggests that the Department should ensure that it properly converts Toray's reported cost of production into dollars and that it properly converts all quantities to kilograms.

(3) The petitioners argue that certain U.S. sales by Toray were incorrectly excluded from the Department's analysis because these sales could not be matched with any such or similar home market sales, and the Department lacked the requisite cost data to construct values for those sales. Petitioners note that the Department is obligated to analyze all U.S. sales unless it can be shown that their inclusion distorts the Department's dumping calculation. Therefore, petitioners maintain that the Department should include these transactions in its analysis of Toray's U.S. sales using the highest margin for any reviewed U.S. sale by Toray as BIA.

Toray agrees with petitioners that the Department should include various U.S. sales that were excluded in the preliminary results as having no foreign market value (FMV), but argues that BIA need not be used because Toray's responses contain the information necessary for the Department to make the appropriate price comparisons.

(4) Teijin notes that the Department inadvertently included home market sales outside the POR in its preliminary margin calculation. Since this is contrary to the Department's stated intention to use only sales made during the POR, Teijin suggests that this clerical error should be corrected for the final results by eliminating the sales prior to November 30, 1990 and after May 31, 1992, from the home market sales database.

(5) TPA argues that Teijin's pre-sale foreign inland freight expense was subtracted twice from FMV. TPA contends that Teijin reported this expense twice, both separately and as part of its overall inland freight expense. TPA notes that the Department is double-counting an expense that should not be deducted at all, citing *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States,* 13 F.3d 398, 402 (Fed. Cir. 1994) (*Ad Hoc Committee*).

Teijin states that the Department should continue to deduct Teijin's freight costs from FMV for the final results, but should, however, correct its inadvertent subtraction of the pre-sale inland freight figure in calculating FMV.

(6) TPA argues that if the Department relies on a purchase price analysis for its final results of review, Teijin's U.S. and home market indirect expenses should not be deducted, as they were in the preliminary results of review.

(7) Teijin notes that the Department incorrectly read Teijin's U.S. credit insurance expense field, improperly increasing the U.S. credit expense by 1000 times the actual cost by inadvertently omitting the decimal point.

(8) Teijin argues that in the absence of an identical match in the home market data base, the Department should use the most similar match in calculating FMV, instead of second most similar as was inadvertently done for the preliminary results.

Department's Position: We agree with all eight comments and have recalculated our results accordingly. Specifically:

(1) We corrected the clerical error noted.

(2) We corrected the clerical error noted.

(3) We have included the Toray sales inadvertently omitted from the preliminary results of review. We were able to make appropriate matches and, therefore, did not need to resort to BIA.

(4) All Teijin's sales inadvertently excluded in the preliminary results of review have been included and matched with FMVs for these final results, with the exception of sales outside the POR.

(5) We agree with TPA that Teijin's pre-sale foreign freight was reported separately and also was included in an overall freight total and, therefore, was incorrectly deducted twice. Further, we

agree with TPA that, because this is a purchase price situation and because Teijin has not made an adequate claim for an adjustment under the circumstance-of-sale (COS) provision of 19 CFR 353.56, in accordance with the Federal Circuit's decision in *Ad Hoc Committee,* it is not appropriate to deduct pre-sale inland freight at all and have adjusted our calculations accordingly.

(6) Teijin's U.S. and home market indirect expenses have not been deducted for the final results of review.

(7) We corrected the clerical error noted.

(8) We have used identical or first most similar matching for our final results of review.

Final Results of the Review

As a result of our review, we have determined that the following margins exist for the period November 30, 1990, through May 31, 1992:

Manufacturer/producer/exporter	Margin (percent)
Toray	2.24
Teijin	2.03
Diafoil	14.00

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. Upon completion of the review the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of PET film entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Tariff Act, and will remain in effect until publication of the final results of the next administrative review: (1) The cash deposit rates for the reviewed companies will be those outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be their previously established company-specific rate; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 6.32 percent, which is the all other rate established in the LTFV investigation, in accordance with the Court of International Trade's (CIT's) decisions in *Floral Trade Council* v. *United States,* 822 F. Supp. 766 (CIT 1993), and *Federal Mogul Corporation and the Torrington Company* v. *the United States* 822 F Supp. 782 (CIT 1993).

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 14, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–15072 Filed 6–19–95; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

Announcement of Meeting of National Conference on Weights and Measures

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the 80th Annual Meeting of the National Conference on Weights and Measures will be held July 16 through 20, 1995, at the Holiday Inn By The Bay, Portland, Maine. The meeting is open to the public.

The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States, and private sector representatives. The interim meeting of the conference, held in January, 1995, as well as the annual meeting, bring together enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations to discuss subjects that relate to the field of weights and measures technology and administration.

Pursuant to section 2(5) of its Organic Act (15 U.S.C. 272(5)), the National Institute of Standards and Technology acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the States in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighing and measuring.

DATES: The meeting will be held July 16–20, 1995.

LOCATION OF MEETING: Holiday Inn By The Bay, Portland, Maine.

FOR FURTHER INFORMATION CONTACT: Gilbert M. Ugiansky, Acting Executive Secretary, National Conference on Weights and Measures, P.O. Box 4025, Gaithersburg, Maryland 20885. Telephone (301) 975–4005.

Dated: June 12, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–14941 Filed 6–19–95; 8:45 am]

BILLING CODE 3510–13–M

National Fire Codes: Request for Proposals for Revision of Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop standards.

The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1

Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Proposals should be submitted on forms available from the NFPA Standards Administration Office.

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5:00 PM local time on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

At a later date, each NFPA Technical Committee will issue a report which will include a copy of written proposals that have been received and an account of their disposition by the NFPA Committee as the Report on Proposals. Each person who has submitted a written proposal will receive a copy of the report.

Authority: 15 U.S.C. 272.

Dated: June 12, 1995.

Samuel Kramer,

Associate Director.

NFPA No.	Title	Proposal closing date
NFPA 36–1993	Solvent Extraction Plants	8/1/95
NFPA 68–1994	Venting of Deflagrations	7/21/95
NFPA 69–1992	Explosion Prevention Systems	7/21/95
NFPA 96–1994	Ventilation Control and Fire Protection of Commercial Cooking Operations	7/21/95
NFPA 221–1994	Fire Walls and Fire Barrier Walls	1/19/96
NFPA 270–P*	Determination of Specific Optical Density of Smoke	1/19/96
NFPA 328–1992	Flammable and Combustible Liquids and Gases in Manholes, Sewers, and Similar Underground Structures	1/15/96
NFPA 329–1992	Underground Releases of Flammable Combustible Liquids	1/15/96
NFPA 471–1992	Responding to Hazardous Materials Incidents	7/21/95
NFPA 472–1992	Professional Competence of Responders to Hazardous Materials Incidents	7/21/95
NFPA 473–1992	EMS Personnel Responding to Hazardous Materials Incidents	7/21/95
NFPA 497A–1992	Classification of Class I Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas.	1/19/96
NFPA 497B–1991	Classification of Class II Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas.	1/19/96
NFPA 497M–1991	Classification of Gases, Vapors, and Dusts for Electrical Equipment in Hazardous (Classified) Locations	1/19/96
NFPA 654–1994	Chemical, Dye, Pharmaceutical, and Plastics Industries	7/21/95
NFPA 910–1991	Protection of Libraries and Library Collections	1/19/96
NFPA 1402–1992	Building Fire Service Training Centers	7/21/95
NFPA 1403–1992	Live Fire Training Evolutions in Structures	7/21/95
NFPA 1451–P*	Fire Service Vehicle Risk Management Program	7/21/95
NFPA 1500–1992	Fire Department Occupational Safety and Health program	1/19/96
NFPA 1521–1992	Fire Department Safety Officer	1/19/96
NFPA 1911–1991	Service Tests of Pumps on Fire Department Apparatus	10/1/95
NFPA 1914–1991	Testing Fire Department Aerial Devices	10/1/95
NFPA 1961–1992	Fire Hose	7/21/95
NFPA 1981–1992	Open-Circuit Self-Contained Breathing Apparatus for Fire Fighters	7/31/95
NFPA 1999–1992	Protective Clothing for Emergency Medical Operations	7/31/95
NFPA 8501–1992	Single Burner Boiler Operation	1/17/96
NFPA 8503–1992	Pulverized Fuel Systems	1/17/96
NFPA 8505–1992	Stoker Operation	1/17/96

*Proposed NEW drafts are available from the NFPA Standards Administration Department, 1 Batterymarch Park, Quincy, MA 02269.

[FR Doc. 95–14942 Filed 6–19–95; 8:45 am]

BILLING CODE 3510–13–M

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees. The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1996 Annual Meeting.

The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Forty-nine reports are published in the 1996 Annual Meeting Report on Proposals and will be available on August 4, 1995. Comments received on or before October 13, 1995 will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESSES: The 1996 Annual Meeting Report on Proposals is available from NFPA, Publications Department, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Comments on the reports should be submitted to Arthur E. Cote, P.E.,

Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal Agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May each year. The NFPA invites public comment on its Report on Proposals.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Commenters may use the forms provided for comments in the Report on Proposals. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before October 13, 1995 will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the 1996 Annual Meeting Report on Comments by March 29, 1996, prior to the Annual Meeting.

A copy of the Report on Comments will be sent automatically to each commenter. Action on the reports of the Technical Committees (adoption or rejection) will be taken at the Annual Meeting, May 20–23, 1996 in Boston, Massachusetts, by NFPA members.

Authority: 15 USC 272.

Dated: June 12, 1995.

Samuel Kramer,

Associate Director.

1996 ANNUAL MEETING—REPORT ON PROPOSALS

Doc No.	Title	Action
13	Installation of Sprinkler Systems	P
13D	Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes	P
13R	Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height	P
15	Water Spray Fixed Systems for Fire Protection	C
20	Installation of Centrifugal Fire Pumps	P
30	Flammable and Combustible Liquids Code	P
30A	Automotive and Marine Service Station Code	P
32	Drycleaning Plants	R
45	Fire Protection for Laboratories Using Chemicals	P
54	National Fuel Gas Code	P
72	National Fire Alarm Code	P
73	Residential Electrical Maintenance Code for One- and Two-Family Dwellings	P
80A	Protection of Buildings from Exterior Fire Exposures	P
90A	Air Conditioning and Ventilating Systems	P
90B	Warm Air Heating and Air Conditioning Systems	P
92A	Smoke-Control Systems	P
97	Chimneys, Vents, and Heat-Producing Appliances	P
170	Fire Safety Symbols	P
211	Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances	P
214	Water-Cooling Towers	P
241	Safeguarding Construction, Alteration, and Demolition Operations	P
321	Classification of Flammable and Combustible Liquids	W
395	Flammable and Combustible Liquids at Farms and Isolated Sites	W
402	Aircraft Rescue and Fire Fighting Operations (Formerly NFPA 402M)	P
419	Master Planning Airport Water Supply Sytems for Fire Protection	P
424	Airport/Community Emergency Planning (Formerly NFPA 424M)	P
482	Zirconium	C
495	Explosive Materials Code	P
498	Explosives Motor Vehicle Terminals	C
502	Limited Access Highways, Tunnels, Bridges, Elevated Roadways, and Air Right Structures	C
505	Powered Industrial Trucks Including Type Designations, Areas of Use, Maintenance, and Operation	P
555	Methods for Decreasing the Probability of Flashover	N
704	Identification of the Fire Hazards of Materials	P
750	Water Mist Fire Suppression Systems	N
903	Fire Reporting Property Survey Guide	C
904	Incident Follow-up Report Guide	C
1041	Fire Service Instructor Professional Qualifications	P
1061	Professional Qualifications for Public Safety Telecommunicator	N
1126	Use of Pyrotechnics before a Proximate Audience	C
1141	Fire Protection in Planned Building Groups	C
1901	Automotive Fire Apparatus (Combining and Redesignating NFPA 1901, 1902, 1903, 1904)	C
1971	Protective Clothing for Structural Fire Fighting (Combining and Redesignating NFPA 1971, 1972, 1973, 1974)	C
8504	Atmospheric Fluidized-Bed Boiler Operation	P

(P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete Revision).

[FR Doc. 95–14943 Filed 6–19–95; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 061295D]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held on July 17–20, 1995.

ADDRESSES: These meetings will be held at the Pier House, One Duval Street, Key West, FL; telephone: (305) 296–4600.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION:

Council

July 19

8:30 a.m.—Convene to receive public testimony.

8:45 a.m. - 12:00 p.m.—Receive final public testimony on Draft Shrimp Amendment 8 and the Regulatory Amendment for Red Grouper Size Limit Changes (NOTE: Testimony cards must be turned in to staff before the start of public testimony).

The Council will hear public testimony and proposes to take final action on Amendment 8 to the Fishery Management Plan for Shrimp in the Gulf of Mexico. The amendment would allow a 2-year increase in the total allowable catch of royal red shrimp by up to 30 percent (up to 509,000 pounds) to provide catch and effort data. The acquisition of better data on how the resource responds to an increase in fishing effort would allow scientists to obtain a better estimate of maximum sustainable yield and thus allow appropriate levels of catch. Copies of the draft amendment are available from the Council office (see **ADDRESSES**).

1:30 p.m. - 5:30 p.m.—Receive reports of the Shrimp Management Committee and Reef Fish Management Committee.

July 20

8:30 a.m. - 9:30 a.m.—Reconvene to continue receipt of the Reef Fish Management Committee report.

9:30 a.m. - 10:00 a.m.—Receive a report of the South Florida Ecosystem Restoration Effort.

10:00 a.m. - 10:15 a.m.—Receive reports of the Personnel Committee.

10:15 a.m. - 10:30 a.m.—Receive report of the Habitat Protection Committee.

10:30 a.m. - 10:45 a.m.—Receive reports of the Data Collection Committee.

10:45 a.m. - 11:00 a.m.—Receive reports of the Administrative Policy Committee.

11:00 a.m. to 12:30 p.m.—Receive Enforcement Reports, the South Atlantic Fishery Management Council Liaison Report, a review of the Shark Operations Team meeting, review Stock Assessment Protocol, a review of the Council Chairmen's meeting, and Director's Reports.

12:30 p.m. - 12:45 p.m.—Other Business during which consideration of a course of action to revise an error in the current rule that precludes shrimp vessels with trawling gear on board from commercially harvesting king mackerel, and a short session will be closed to the public for appointment of members to an advisory panel that will serve as an appeals board under Reef Fish Amendment 8.

Committees

July 17

1:00 p.m.—Convene the Reef Fish Management Committee.

July 18

8:00 a.m. - 5:30 p.m.—Convene the Personnel Committee, Administrative Policy Committee, Data Collection Committee, Shrimp Management Committee and Habitat Protection Committee.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the Council (see **ADDRESSES**) by July 10, 1995.

Dated: June 14, 1995.

Richard W. Surdi,

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

[FR Doc. 95–15024 Filed 6–19–95; 8:45 am]

BILLING CODE 3510–22–F

Monterey Bay National Marine Sanctuary Advisory Council

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

ACTION: Correction; date of open meeting of the Monterey Bay National Marine Sanctuary Advisory Council.

SUMMARY: The original meeting date was Friday, June 23 from 9:00 until 4:30, as listed in 60 FR 27723. The meeting date has now been changed as listed below.

TIME AND PLACE: Friday, June 30, 1995, from 9:00 until 4:30. The meeting will be held at the Crossroads Community Room, Carmel California.

AGENDA: General issues related to the Monterey Bay National Marine Sanctuary are expected to be discussed, including an update from the Sanctuary Manager, reports from the working groups, an update on the Water Quality Protection Program, a status report on the California Mussel Watch Program, and an update on the Vessel Traffic Report.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Jane Delay at (408) 647–4246 or Elizabeth Moore at (301) 713–3141.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.

Dated: June 15, 1995.

David Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–15030 Filed 6–19–95; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 060795B]

Marine Mammals

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

ACTION: Issuance of scientific research permit no. 960 (P773#54).

SUMMARY: Notice is hereby given that Dr. Bradford E. Brown, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, has been issued a permit to take Atlantic bottlenose dolphins (*Tursiops truncatus*) for the purposes of scientific research.

DATES: Written comments or requests for a public hearing must be received on or before July 20, 1995.

ADDRESSES: The permit is available for review by interested persons in the following offices by appointment:

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, (508/281–9150); and

Director, Southeast Region, NMFS, 9721 Executive Center Drive, North St. Petersburg, FL 33702–2432 (813/893–3141).

FOR FURTHER INFORMATION CONTACT: Kellie Foster (301/713–1401).

SUPPLEMENTARY INFORMATION: On March 16, 1995, notice was published in the **Federal Register** (60 FR 14271) that a permit had been requested by the above-named individual. The requested permit has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The permit authorized the holder to take by harassment a maximum of 10,000 Atlantic bottlenose dolphins (*Tursiops truncatus*) for the purpose of locating a maximum of 500 dolphins suitable for take by capture for examination, sampling, marking, tagging and release. Project duration is 5 years. The objectives of this study are to develop health assessment indices of dolphin populations and individuals in the southeast, and ultimately to assess the impact of human activities on specific populations.

Dated: June 13, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–14950 Filed 6–19–95; 8:45 am]

BILLING CODE 3510–22–F

National Telecommunications and Information Administration

[Docket Number 950613151–5151–01]

RIN 0660–XX02

Public Telecommunications Facilities Program (PTFP), National Endowment for Children's Educational Television (NECET), Telecommunications and Information Infrastructure Assistance Program (TIIAP)

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Telecommunications and Information Administration (NTIA) administers a number of grant programs providing financial assistance to eligible entities. The Public Telecommunications Facilities Program (PTFP) and the Telecommunications and Information Infrastructure Assistance Program (TIIAP) each fund facilities (for public broadcasting and connection to computer networks, respectively), while the National Endowment for Children's Educations Television (NECET) funds the creation of new children's programming. To ensure compliance with the First Amendment, NTIA has had a long-standing policy of not allowing PTFP equipment acquired with grant funds to be used for any purpose the essential thrust of which is sectarian. This policy was also recently adopted for two newer assistance programs, NECET and the TIIAP. NTIA has applied this policy in a ''bright-line'' fashion: It does not permit a PTFP grantee to broadcast any sectarian program using PTFP-funded equipment, a NECET grantee to include any sectarian material in a children's program funded by NECET, or a TIIAP grantee to transmit any sectarian information by means of facilities funded by TIIAP. NTIA has received a number of inquiries regarding the continued application of its current policy. Accordingly, the purpose of this proceeding is to allow for a full range of public comment on whether NTIA's current policy, as applied to all three grant programs, should be continued or whether alternative approaches are also consistent with the First Amendment and sound public policy. NTIA will consider these comments in determining whether to change its policy, its application procedures, and/or its enforcement of each of the three grant programs prospectively.

DATES: Comments should be submitted on or before August 21, 1995.

ADDRESSES: Persons interested in commenting must send an original plus two copies of any comments to: Department of Commerce, Office of the Chief Counsel, National Telecommunications and Information Administration, 14th and Constitution Avenue, NW., Room 4713, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Jana Gagner, (202) 482–1816.

SUPPLEMENTARY INFORMATION:

Background

On May 29, 1979, the PTFP issued a final rule and policy in a Report and Order on sectarian activities.[1] The Report and Order contains a full discussion of NTIA's rationale for originally establishing its policy and related procedures, including a discussion of applicable Constitutional law. PTFP's regulation regarding sectarian activities, in effect continuously since 1979, provides that: ''During the period in which the grantee possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian.''[2] ''Sectarian'' has been defined as having ''the purpose or function of advancing or propagating a religious belief.''[3]

The Report and Order further provided that the rule regarding sectarian activities was not meant to affect ''presentation in an educational or cultural context of music or art with a religious theme, nor of programs about religion. * * * [nor] preclude distribution of instructional programming of a secular nature to church-related educational institutions.''[4] The Report and Order specifically explained how NTIA would determine the eligibility of applicants with religious affiliations.[5] NTIA made clear its intent not to become a ''super-programmer'' by inquiring into the content of particular programs on a routine basis.[6]

NTIA's two newer grant programs, the TIIAP and the NECET, currently follow the same policy with regard to Federal support of sectarian activities. The following provision, which references

[1] Public Telecommunications Facilities Program; Report and Order, 44 FR 30,898 (1979) [hereinafter Report and Order].

[2] 15 C.F.R. 2301.22(d) (1995).

[3] 15 C.F.R. 2301.1 (1995).

[4] Report and Order, supra, note 1 at 30,902 ¶ 26.

[5] *Id.* at 30,900–904.

[6] *Id.* at 30,901–902. In fact, NTIA requires PTFP grantees to certify that the grant funds are not being used for sectarian purposes.

the current PTFP rule, was included in the Notice of Availability of Funds for each program:

The Department of Commerce has a long standing policy of not funding projects for purposes the essential thrust of which is sectarian. Consistent with this policy, TIIAP [and NECET] will not fund projects the essential thrust of which is sectarian. Sectarian organizations, however, are eligible applicants and may request funds for non-sectarian purposes.[7]

NTIA's long-standing regulation in 15 CFR 2301.22(d) was recently challenged for the first time in the case of *Fordham University* v. *Brown*. There a PTFP applicant argued that NTIA's policy on sectarian broadcasting violated its right to free exercise of religion and freedom of speech under the First Amendment of the Constitution. The Fordham court rejected this challenge and held that NTIA's policy was not violative of the First Amendment. In *dicta*, however, the court noted that it was not addressing whether there were alternative interpretations of this regulation which could also be implemented by NTIA consistent with the First Amendment.[8]

Requests for Modification

NTIA has received a number of requests to consider modifying its policy. Various public broadcast stations have indicated concern because they wish to include in their schedules some individual programs that could be considered ''sectarian'' under PTFP's regulation as currently interpreted and applied. Accordingly, while our current approach has been ruled constitutionally permissible, we seek to determine whether we can and should modify our policy prospectively to permit some limited amount of sectarian programming or information via Federally-funded projects.

In considering whether the essential thrust of a project is sectarian, NTIA is considering whether to look to the overall purpose of the entire project rather than looking to individual components of the project. Under this approach, if the primary purpose of the overall project is non-sectarian, a grant applicant would no longer be considered ineligible, nor would a grant recipient be found to be in violation of the grant conditions, due to use of Federal funds for a project with only a limited amount of sectarian programming or information.

Differences among the programs warrant close examination in adopting a new policy. For example, PTFP grantees, as broadcasters, have editorial control over the content of their transmissions, and NECET grantees control the subject matter of the children's programming that is funded, TIIAP grantees may have no or little control over transmissions sent by others via computer networks.[9] On the other hand, NECET funds specific programs and/or series, and TIIAP may also fund the creation of content for transmission over interactive networks, rather than facilities only, as with PTFP. While the current ''bright-line'' approach is applied to all three programs alike, we will examine the impact of the programs' differences on proposals to modify our current approach and allow a limited amount of sectarian programming or information.

We also recognize that the proposed modification to our current approach, or any other alternative approach, must pass muster under the First Amendment of the U.S. Constitution.[10] Therefore, NTIA is providing an opportunity for interested parties to comment on the following issues: (1) Whether allowing a limited amount of sectarian programming to be broadcast using PTFP-funded equipment, a limited amount of sectarian material to be included in a children's program produced using NECET funds, or a limited amount of sectarian information to be transmitted electronically over a network using TIIAP-funded facilities would be permissible under the First Amendment, if so whether there are sound policy reasons for such an approach, and what implementation issues are raised; (2) whether any other alternatives to NTIA's current approach have a sound policy basis and could be adopted consistent with the First Amendment and current jurisprudence, including how such a policy could, as practical and constitutional matters, be implemented and enforced; (3) whether the same policy can and should be applied to all three NTIA grant programs, and if the same policy cannot be applied to all three NTIA grant programs, what policy should pertain to each grant program; and (4) whether the current definition of ''sectarian'' continues to be supportable if NTIA's current policy is modified.

This notice has been determined to be not significant for purposes of Exec. Order No. 12,866.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–15039 Filed 6–19–95; 8:45 am]

BILLING CODE 3510–60–P

[7] See 60 FR 8,156 (February 10, 1995) and 60 FR 15,636 (March 24, 1995), respectively.

[8] *Fordham University* v. *Brown*, No. 93–2120 at 25 (CCR)(D.D.C. June 29, 1994) (appeal docketed, No. 94–5229, August 22, 1994). PTFP refused a grant to Fordham University's public radio station because it broadcast a Catholic mass every Sunday. In addition, the Supreme Court has before it the case of *Rosenberger* v. *Rector and Visitors of the University of Virginia*, No. 94–329 (oral arg. held Mar. 1, 1995). The *Rosenberger* case raises the constitutionality of a state-supported university's refusal to make a student activities fund grant to a Christian journal. A decision in the *Rosenberger* case is expected by the end of this Supreme Court term.

[9] Because TIIAP funds facilities used for transmission of information via interactive networks, some transmitted information may be under the control of the grantee and some may be under the control of end users.

[10] U.S. Const. amend. I.

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board; Notice of Open Meeting

AGENCY: Armed Forces Epidemiological Board, DOD.

ACTION: Notice of open meeting.

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–462), announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board Subcommittee on Injury Prevention Working Group, DOD.

Date of Meeting: 05 July 1995.

Time: 0930–1600.

Place: Great Lakes Naval Training Center, Illinois.

Proposed Agenda: Meeting of the Injury Prevention Working Group of the Armed Forces Epidemiological Board.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041–3258.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–15097 Filed 6–19–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 12 July 1995.

Time of Meeting: 0900–1700.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board (ASB) C4I Issue Group will commence an Issue Group Study on ''A Strategy for Leveraging Commercial Technologies for Future Army Radios.'' There will be assorted briefings to the Future Army Radio Study Group. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–15054 Filed 6–19–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for Approval of Public Postsecondary Vocational Education, and State Agencies for Approval of Nurse Education

June 15, 1995.

AGENCY: Department of Education.

ACTION: Request for comments on agencies applying to the Secretary for initial recognition or renewal of recognition.

DATES: Commentors should submit their written comments by August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein, Director, Accreditation and State Liaison Division, U.S. Department of Education, 600 Independence Avenue, SW., Room 3915 ROB–3, Washington, DC 20202–5244, telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

SUBMISSION OF THIRD-PARTY COMMENTS: The Secretary of Education recognizes, as reliable authorities as to the quality of education offered by institutions or programs within their scope, accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education that meet certain criteria for recognition. The purpose of this notice is to invite interested third parties to present written comments on the agencies listed in this notice that have applied for initial or continued recognition. All comments received in response to this notice will be reviewed by Department staff as part of its evaluation of the agencies' compliance with the criteria for recognition. In order for Department staff to give full consideration to the comments received, the comments must arrive at the address listed above not later than August 4, 1995. Comments must relate to the Secretary's Criteria for the Recognition of Accrediting Agencies.

The National Advisory Committee on Institutional Quality and Integrity (the ''Advisory Committee'') advises the Secretary of Education on the recognition of accrediting agencies and State approval agencies. The Advisory Committee is scheduled to meet November 28–30, 1995 in Washington, D.C. All written comments received by the Department in response to this notice will be considered by both the Advisory Committee and the Secretary. A subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests for oral presentation before the Advisory Committee on the agencies being reviewed. That notice, however, does not constitute another call for written comment. This notice is the only call for written comment.

The following agencies will be reviewed during the November 1995 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies and Associations

Petition for Initial Recognition

1. National Association of Private, Nontraditional Schools and Colleges, Accrediting Commission for Higher Education (requested scope of recognition: the accreditation and preaccreditation of private, nontraditional colleges and universities)

Petitions for Renewal of Recognition

1. Accrediting Bureau of Health Education Schools (requested scope of recognition: the accreditation of private, postsecondary institutions and programs offering allied health education)
2. Accrediting Commission of Career Schools and Colleges of Technology (requested scope of recognition: the accreditation of private, postsecondary degree and non-degree-granting institutions that are predominantly organized to educate students, for trade, occupational, or technical careers)
3. Accrediting Council for Independent Colleges and Schools (requested scope of recognition: the accreditation of private postsecondary schools, junior colleges, and senior colleges that are predominantly organized to educate students for business careers, including master's degree programs in senior colleges of business)
4. American College of Nurse-Midwives, Division of Accreditation (requested scope of recognition: the accreditation of basic certificate and master's degree nurse-midwifery educational programs)
5. American Council on Pharmaceutical Education (requested scope of recognition: the accreditation of professional degree programs)
6. American Dental Association, Commission on Dental Accreditation (requested scope of recognition: the accreditation of programs leading to the DDS or DMD degree, advanced general dentistry and specialty programs, general practice residency programs, and programs in dental hygiene, dental assisting and dental technology)
7. American Occupational Therapy Association, Inc., Accreditation Council for Occupational Therapy Education (requested scope of recognition: the accreditation of occupational therapist education and occupational therapy assistant education)
8. Joint Review Committee on Education in Radiology Technology [formerly recognized in cooperation with the Committee on Allied Health Education and Accreditation of the American Medical Association but now requesting recognition on its own] (requested scope of recognition: the accreditation of educational programs for the radiographer and the radiation therapist)
9. Joint Review Committee on Educational Programs in Nuclear Medicine Technology (formerly recognized in cooperation with the Committee on Allied Health Education and Accreditation of the American Medical Association but now requesting recognition on its own) (requested scope of recognition: The accreditation of postsecondary educational programs in nuclear medicine technology throughout the Untied States)
10. Middle States Association of Colleges and Schools, Commission on Secondary Schools (requested scope of recognition: the accreditation and preaccreditation of public vocational and technical schools offering non-degree postsecondary education in Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virgin Islands)
11. National Accrediting Commission of Cosmetology Arts and Sciences (requested scope of recognition: the accreditation of postsecondary schools and departments of cosmetology arts and sciences)
12. National League for Nursing, Inc. (requested scope of recognition: the accreditation of programs in practical nursing and diploma, associate,

baccalaureate and higher degree nurse education programs)

13. Southern Association of Colleges and Schools, Commission on Colleges (requested scope of recognition: the accreditation of degree-granting colleges and universities located in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia)

14. Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities (requested scope of recognition: The accreditation of senior colleges and universities located in California, Hawaii, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands)

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petition for Renewal of Recognition

1. Minnesota State Board of Technical Colleges

Interim Report (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted recognition to the agency)—

1. Arkansas State Board of Vocational Education

State Agencies Recognized for the Approval of Nurse Education

Petition for Renewal of Recognition

1. Colorado State Board of Nursing

Public Inspection of Petitions and Third-party Comments

All petitions and interim reports, and those third-party comments received in advance of the meeting, will be available for public inspection at the U.S. Department of Education, ROB–3, Room 3915, 7th and D Streets, SW., Washington, DC 20202–5244, telephone (202) 708–7417 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–15021 Filed 6–19–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Cooperative Agreement to Advance Science, Inc. (ASI)

AGENCY: U.S. Department of Energy.

ACTION: Notice of non-competitive financial assistance award.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.15(a)(2), it is making a discretionary financial assistance award based on the application meeting the criteria of 10 CFR 600.7(b)(2)(i)(H) to Advance Science Inc., (ASI) under Grant Number DE-FG01–95EW55088. The proposed grant will provide funding in the estimated amount of $2,999,000 over a two year period, to develop an innovative framework for risk communication and public outreach, risk assessment, and risk management.

ASI's proposed approach is designed to communicate complex environmental information to workers and the general public in an appealing and understandable manner. This project is designed to educate and inform a broad spectrum of people in the United States about specific risks associated with environmental management activities (including technology development, decontamination and decommissioning, waste management, and environmental restoration), by providing technically accurate information in a readily understandable format.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(d) that the application submitted by the Advance Science, Inc., is meritorious based on the general evaluation of the factors. The basis for the Team's risk assessment approach is the Safety Assessment Comparison (SACO) methodology, a methodology which allows, and in fact requires, the involvement of all interested parties (workers, the public, regulators, and other stakeholders) at all stages in the risk assessment process, from problem definition to evaluation of results.

Environmental issues—particularly those related to the effects of environmental degradation and cleanup on human health—are among the most controversial issues in our society. ASI's approach should allow for an informed national debate about major environmental issues including, for example, contamination and environmental cleanup.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, Attn: Dennis Roth, HR–561.22, 1000 Independence Avenue SW., Washington, D.C. 20585.

The anticipated term of the proposed grant is 24 months from the date of award.

Award is anticipated for July 21, 1995.

John M. Albers,

Contracting Officer, Headquarters Operation Division B, Office of Associate Deputy Assistant, Secretary for Headquarters Procurement Operations.

[FR Doc. 95–15068 Filed 6–19–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Nonproliferation and National Security; Fundamental Review of Classification Policy

AGENCY: Office of Nonproliferation and National Security, Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) announces its intent to hold public meetings in conjunction with its Fundamental Review of Classification Policy. The review will examine all aspects of the Department of Energy's classification policies in light of the end of the Cold War. An information packet containing a summary of this effort, and a questionnaire soliciting public comment on the review and options regarding future meeting locations is available from the point of contact upon request.

FOR FURTHER INFORMATION CONTACT: W. Gerald Gibson, Director, Technical Guidance Division, USDOE, Office of Declassification (NN–522), 19901 Germantown Road, Germantown, MD 20874, (301) 903–3689.

SUPPLEMENTARY INFORMATION: The end of the Cold War resulted in a unique opportunity for the Department of Energy to re-evaluate the guidance with which it classifies information for the protection of the common defense and security. On March 16, 1995, the Secretary of Energy initiated a year long review of the Department's classification policies. The review is being chaired by Dr. Albert Narath, President of Sandia Corporation. It will examine all areas of classified information falling under the purview of the Department of Energy. Its purpose is to identify which information continues to require protection in support of the common defense and security in light of the end of the Cold War, and which no longer requires such protection. As part of this endeavor the public is requested to submit their written comments on any aspect of the Department's classification policies for consideration by the Fundamental Review panel. Specific comments regarding the Restricted and Formerly Restricted Data system, National Security Information under the purview of the DOE, or the

Unclassified Controlled Nuclear Information program would be most beneficial. Specific proposals for declassification are welcome and will be considered. An information packet containing a synopsis of the Fundamental Review effort, a questionnaire, and a return envelope will be provided upon request. Written public comments need to be received by the information contact no later than July 5, 1995 for adequate consideration by the review panel. A public meeting is being planned for late summer 1995 to update the public on the committee's progress to date and to receive direct verbal comments on the above mentioned issues. This meeting is tentatively planned for late August 1995, location to be determined. Additional public meetings are being considered if a need is demonstrated. The Fundamental Review is scheduled to be completed in March 1996.

Roger K. Heusser,

Deputy Director, Office of Declassification, Office of Security Affairs.

[FR Doc. 95–15069 Filed 6–19–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER95–808–000, et al.]

Resources West Energy Corporation, et al.; Electric Rate and Corporate Regulation Filings

June 13, 1995.

Take notice that the following filings have been made with the Commission:

1. Resources West Energy Corporation

[Docket No. ER95–808–000]

Take notice that on June 3, 1995, Resources West Energy Corporation (Resources West), tendered for filing two amended transmission tariffs: a network integration service tariff and a point-to-point transmission service tariff, which would supersede and replace the tariffs previously filed in this docket on March 18, 1995. Resources West states that these amended tariffs closely follow the pro forma transmission tariffs appended to the Commission's Notice of Proposed Rulemaking in Docket No. RM95–8–000. Resources West proposes that these two amended tariffs become effective upon the merger of Sierra Pacific Resources (parent company of Sierra Pacific Power Company) and The Washington Water Power Company.

Copies of this filing have been served on the parties of record in Docket No. ER95–808–000.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Eastern Edison Company

[Docket No. ER95–1160–000]

Take notice that on June 5, 1995, Eastern Edison Company filed two interconnection agreements between itself and Browning Ferris Gas Services, Inc. to construct Independent Power Production facilities. Browning Ferris and Eastern Edison are each responsible for installing a portion of the facilities. Browning Ferris has agreed to pay Eastern Edison for constructing Eastern Edison's portion of the facilities by making a contribution-in-aid of construction (CIAC) in the form of progress payments and a $10,000 retainer for each interconnection. In order to allow the agreement to become effective promptly as a rate schedule, Eastern Edison requests that this filing be allowed to become effective on June 6, 1995. The Company requests waiver of the notice requirement on the grounds that the filing is for a new service and could not have been made earlier since the agreement has just been executed. In the alternative, the Company requests that the filing be permitted to become effective 60 days from the filing date on August 5, 1995.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. PECO Energy Company

[Docket No. ER95–1155–000]

Take notice that on June 2, 1995, PECO Energy Company (PE), tendered for filing a Facilities Agreement among Public Service Electric and Gas Company (PS), Atlantic City Electric Company (AE) and PE which sets forth the terms and conditions under which PS, PE, and AE will make available the Trainer-Mickleton-Deptford 230 Kv line and related facilities for use as an interconnection, and certificates of concurrence by PS and AE.

PE requests an effective date of August 1, 1995.

PE has served copies of the filing on the Pennsylvania Public Utilities Commission. AE has served copies of the filing on the New Jersey Board of Public Utilities.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Ohio Edison Company Pennsylvania Power Company

[Docket No. ER95–1156–000]

Take notice that on June 2, 1995, Ohio Edison Company, on behalf of itself and its subsidiary Pennsylvania Power Company, tendered for filing Supplemental No. 2 to FERC Rate Schedule No. 153, the Power Supply Agreement with Potomac Electric Power Company dated March 18, 1987. Supplemental No. 2 specifies a formula for an acid rain adjustment and recovery of costs incurred pursuant to the Acid Deposition Control provisions of the Clean Air Act Amendments of 1990, all as authorized by Subsections 3.24 and Supplemental No. 1 of the Power Supply Agreement.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Company

[Docket No. ER95–1157–000]

Take notice that on June 5, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Baltimore Gas & Electric Company (BG&E) under the NU System Companies System Power Sales/ Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to BG&E.

NUSCO requests that the Service Agreement become effective on July 1, 1995.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. The Dayton Power and Light Company

[Docket No. ER95–1158–000]

Take notice that on June 5, 1995, The Dayton Power and Light Company (Dayton), tendered for filing, an executed Interchange Agreement between Dayton and Enron Power Marketing Inc. (Enron).

Pursuant to Rate Schedules A through E attached to the Interchange Agreement, Dayton will provide to Enron a variety of power supply services. Dayton and Enron are currently parties to a Power Sale Agreement dated August 26, 1994 whereby Enron makes electric energy and capacity available for sale to Dayton. Dayton and Enron request an effective date of June 5, 1995.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of Colorado

[Docket No. ER95–1159–000]

Take notice that on June 5, 1995, Public Service Company of Colorado, tendered for filing the Contract Among Public Service Company of Colorado, Tri-State Generation & Transmission Association, Inc. and United States

Department of Energy Western Area Power Administration Colorado River Storage Project for Interconnection, Entitlements, and Operation and Maintenance of Facilities, dated June 1, 1995 (Contract). Public Service states that the purpose of the Contract is to define or clarify the parties entitlements to certain transmission facilities and to set forth their operations and maintenance responsibilities with respect to those facilities. Public Service requests that the Contract be made effective on June 1, 1995.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER95–1161–000]

Take notice that on June 6, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Utility 2000–Energy Corporation (U2000) dated June 5, 1995 providing for certain transmission services to U2000.

Copies of this filing were served upon U2000 and the New York State Public Service Commission.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Power and Light Company

[Docket No. ER95–1162–000]

Take notice that on June 6, 1995, Wisconsin Power and Light Company (WP&L), tendered for filing an Agreement dated May 11, 1995, establishing Howard Energy Company, Inc. as a customer under the terms of WP&L's Transmission Tariff T–2.

WP&L requests an effective date of May 11, 1995 and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Northern States Power Company

[Docket No. ER95–1163–000]

Take notice that on June 6, 1995, Northern States Power Company (Minnesota)(NSP), tendered for filing Supplement No. 3 to the original Interconnection and Interchange Agreement between NSP and the City of New Ulm (New Ulm). This Supplement allows New Ulm to purchase supplemental energy from NSP over the period from July 20, 1995 to April 19, 2000.

NSP requests that the Commission accept for filing this Supplement No. 3 effective as of July 20, 1995, and requests waiver of Commission's notice requirements in order for the Supplement to be accepted for filing on that date. NSP requests that this filing be accepted as a supplement to Rate Schedule No. 398, the rate schedule for previously filed agreements between NSP and New Ulm.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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. 95–14976 Filed 6–19 –95; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. CP95–289–000 and CP95–292–000]

Southern Natural Gas Company; Notice of intent To Prepare an Environmental Assessment for the Proposed Settlement Facilities Projects and Request for Comments on Environmental Issues

June 14, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impacts of the construction and operation of the facilities proposed in the Settlement Facilities Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Southern Natural Gas Company (Southern) wants to construct and/or replace and operate its facilities in Georgia and Alabama. The project description follows below:

Project 1

- Replacement of 6.1 miles of its existing 14-inch-diameter Ocmulgee-Atlanta Loop Line with a 30-inch-diameter pipeline from milepost (MP) 50.5 in Henry County, Georgia to MP 56.6 in Clayton County, Georgia; and
- Replacement of 5.7 miles of its existing 12-inch-diameter Macon Branch Line with a 30-inch-diameter pipeline from MPs 15.7 to 10.0, located in Clayton County, Georgia. Southern also proposes to make the following meter station modifications: (1) Modify miscellaneous piping at the South Atlanta Regulator Station and South Atlanta #1 Meter Station; (2) rebuild the Marietta Meter Station with three 8-inch orifice meter runs; and (3) replace the existing metering facilities at the Dallas #2 Meter Station with a 6-inch turbine meter run and appurtenant facilities.

The Project 1 facilities would provide Atlanta Gas Light Company (AGL) with about 100,000 Mcfd of firm transportation service. Southern indicates that the above-described modifications do not provide additional firm capacity to the meter stations serving the Atlanta area; however they do provide additional peak hour capability and enhanced operational flexibility to better serve AGL in the Atlanta area.

Project 2

- Construction of 7.8 miles of 20-inch-diameter South Main 2nd Loop Line from MP 452.1 in Glascock County, Georgia to MP 459.9 in Jefferson County, Georgia.
- Construction of 3.1 miles of 20-inch-diameter South Main 2nd Loop Line from Mps 417.1 to 420.2 located in Baldwin County, Georgia.

The Project 2 facilities would provide an additional 28,000 Mcfd of service to South Carolina Pipeline Corporation (SCPL).

Project 3

- Construction of 7.1 miles of 30-inch-diameter South Main 3rd Loop Line from MP 265.1 in Macon County, Alabama to MP 272.2 in Lee County, Alabama.

The Project 3 facilities would provide an additional 8,000 Mcfd of service to SCPL's affiliate, SCANA Hydrocarbons Inc.

Southern also proposes to abandon by sale to AGL about 122 miles of its 12-inch-diameter Brunswick Line, including six meter stations and one regulator station, more specifically described below.

• 122 miles of 12-inch-diameter pipeline in Laurens, Wheeler, Jeff Davis, Appling, Wayne and Glynn Counties, Georgia. The Brunswick Line begins at MP 53.8 in Laurens County and extends to MP 175.3 in Glynn County;

• Six meter stations: Eastman, Alamo, Hazelhurst, Baxley, Jesup, and Brunswick, which exist in the counties listed above; and

• The Belle Vista Regulator Station.

Southern also seeks authorization to construct a meter station in order to provide a new delivery point to AGL at the existing Eastman Meter Station site near MP 53.8 in Laurens County, Georgia. All work proposed for the construction of the new meter station would be performed within the existing Eastman Meter Station site.

The general location of the project facilities and specific locations for facilities on new sites are shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require a total of 50.38 acres of land. Following construction, about 0.71 acre would be maintained as new right-of-way. The remaining 49.67 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed projects under these general headings:

• Geology and soils.

• Water resources, fisheries, and wetlands.

• Vegetation and wildlife.

• Endangered and threatened species.

• Land use.

• Cultural resources.

• Air quality and noise.

• Public safety.

We will also evaluate possible alternatives to the proposed projects or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Southern. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from , or changed based on your comments and our analysis. Issues are:

• 7 residences are within 50 feet of the construction right-of-way;

• 13 federally listed or proposed threatened and endangered species may occur along the proposed project area;

• 24 perennial waterbodies would be crossed by the proposed pipelines; and

• 4.88 acres of wetlands would be affected by the proposed pipelines.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes and locations) and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

• Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426;

• Reference Docket Nos. CP95–289–000 and CP95–292–000;

• Send a *copy* of your letter to: Ms. Kari Schank, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Room 7312, Washington, DC 20426; and

• Mail your comments so that they will be received in Washington, DC on or before July 21, 1995.

If you wish to receive a copy of the EA, you should request one from Ms. Schank at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Kari Schank, EA Project Manager, at (202) 208–0116.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14974 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[Project Nos. 2525–004, 2592–005, 2522–002, 2546–001, 2560–001, 2581–002]

Wisconsin Public Service Corp.; Notice of Intent To Prepare a Multiple-Project Environmental Impact Statement and To Conduct Site Visits and Public Scoping Meetings

June 14, 1995.

The Federal Energy Regulatory Commission (Commission) has received applications for new or subsequent license (relicense) from the Wisconsin

Public Service Corporation (WPSC) for the following six existing hydropower projects owned and operated by WPSC on the Peshtigo River in Marinette County, Wisconsin: the Caldron Falls Project, FERC No. 2525; the High Falls Project, FERC No. 2595; the Johnson Falls Project, FERC No. 2522; the Sandstone Rapids Project, FERC No. 2546; the Potato Rapids Project, FERC No. 2560; and the Peshtigo Project, FERC No. 2581.

After reviewing the applications, supplemental filings, and intervenor submittals, the Commission staff has concluded that relicensing these six projects would constitute a major federal action significantly affecting the quality of the human environment. Moreover, given the location and interaction of the six projects, staff will prepare one multiple-project Environmental Impact Statement (EIS) that describes and evaluates the probable impacts of the applicant's proposed and alternative operating procedures, environmental enhancement measures, and additional river access facilities for all six projects.

The staff's EIS will consider both site specific and cumulative environmental impacts of relicensing the six projects and will include economic and financial analyses.

A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by the FERC staff and considered in a final EIS.

One element of the EIS process is scoping and a site visit. These activities are initiated early to:

- Identify reasonable alternative operational procedures and environmental enhancement measures that should be evaluated in the EIS;
- Identify significant environmental issues related to the operation of the existing projects;
- Determine the depth of analysis for issues that will be discussed in the EIS; and
- Identify resource issues that are of lessor importance and, consequently, do not require detailed analysis in the EIS.

Site Visits

A site visit to each of the six projects will be held over a two-day period: Tuesday, July 11, 1995, and Wednesday, July 12, 1995. The purpose of these visits is for interested persons to observe existing area resources and site conditions, learn the locations of proposed new facilities, and discuss project operational procedures with representatives of WPSC and the Commission.

For details concerning the site visits, please contact Greg Egtvedt of WPSC in Greenbay, Wisconsin at (414) 433–5713.

Scoping Meetings

The FERC staff will conduct two scoping meetings: the evening meeting is designed to obtain input from the general public, while the morning meeting will focus on resource agency concerns. All interested individuals, organizations, agencies, and Indian Tribes are invited to attend either or both meetings in order to assist staff in identifying the scope of environmental issues that should be analyzed in the multiple-project EIS.

To help focus discussions, a preliminary EIS scoping document outlining subject areas to be addressed at the meeting will be distributed by mail to persons and entities on the FERC mailing lists for the six Peshtigo River projects. Copies of the preliminary scoping document also will be made available at the scoping meetings.

The evening meeting for the general public will be held from 7:00 P.M. until 10:00 P.M. on Wednesday, July 12, 1995, in the Best Western Riverfront Inn, located at 1821 Riverside Avenue in Marinette, Wisconsin.

The agency meeting will be held at the same location from 9:00 A.M. until 12:00 Noon on Thursday, July 13, 1995.

Scoping Meeting Procedures

Both meetings, which will be recorded by a stenographer, will become part of the formal record of the Commission's proceeding on the Peshtigo River projects. Individuals presenting statements at the meetings will be asked to sign in before the meetings start and identify themselves for the record.

Concerned parties are encouraged to offer us verbal guidance during the public meetings. Speaking time allowed for individuals at the evening public meetings will be determined before that meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Scoping Meeting Objectives

At the scoping meetings, the staff will:

- Summarize the environmental issues tentatively identified for analysis in the multiple-project EIS;
- Identify resource issues that are of lesser importance and, therefore, do not require detailed analysis;
- Solicit from the meeting participants all available information, especially quantifiable data, concerning significant local resources; and
- Encourage statement from experts and the public on issues that should be analyzed in the EIS.

Information Requested

Federal and state resource agencies, Indian tribes, local government officials, interested groups, area residents, and concerned individuals are requested to provide any information they believe will assist the Commission staff to evaluate the environmental impacts associated with relicensing the six projects. The types of information sought included the following:

- Data, reports, and resource plans that characterize the physical, biological or social environments in the vicinity of the projects; and
- Information and data that helps staff identify or evaluate significant environmental issues.

Scoping information and associated comments should be submitted to the Commission no later than July 31, 1995. Written comments should be provided at the scoping meetings or mailed to the Commission, as follows: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426.

All filings sent to the Secretary of the Commission should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h).

All correspondence should show the following caption on the first page:

Project No. 2525–004: Caldron Falls Project
Project No. 2595–005: High Falls Project
Project No. 2522–002 Johnson Falls Project
Project No. 2546–001: Sandstone Rapids Project
Project No. 2560–001: Potato Rapids Project
Project No. 2581–002: Peshtigo Project

Intervenors and interceders (as defined in 18 CFR 385.2010) who file documents with the Commission are reminded of the Commission's Rules or Practice and Procedure requiring them to serve a copy of all documents filed with the Commission on each person whose name is listed on the official service list for this proceeding. See 18 CFR 4.34(b)

For further information, please contact Jim Haimes in Washington, DC at (202) 219–2780.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14970 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Ready for Environmental Analysis

June 14, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2645–029.

c. *Date Filed:* November 9, 1991.

d. *Applicant:* Niagara Mohawk Power Corporation.

e. *Name of Project:* Beaver River Hydro Project.

f. *Location:* On the Beaver River, tributary to the Black River, in Herkimer and Lewis Counties, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jerry Sabattis, Hydro Licensing Coordinator, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202, (315) 474–1511.

i. *FERC Contact:* Tom Camp (202) 219–2832.

j. *Deadline Date:* The Director, Office of Hydropower Licensing, waives section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108 (May 20, 1991)), and states that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (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 submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). 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: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 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. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of Project:* The existing Beaver River Project consists of the following eight developments on the Beaver River in the towns of Webb, Watson, and Croghan. High Falls is 11 river miles above Beaver River's confluence with the Black River.

High Falls Development

The High Falls Development includes: (1) A 1,233-foot-long concrete gravity dam containing a 470-foot-long non-overflow concrete gravity section and a 650-foot-long concrete ogee spillway; (2) an impoundment which, at the normal maximum surface elevation of 915 feet (USGS), has a surface area of 145 acres, a gross storage capacity of 1,058 ac-ft, and a usable capacity of 923 ac-ft; (3) a 64-foot-wide by 29-foot-high concrete intake structure containing four 12-foot-wide by 20.5-foot-high trashracks and four steel slide gates; (4) a 49-foot-wide log sluice that has been sealed; (5) a 605-foot-long by 12-foot-diameter riveted steel penstock; (6) a 34-foot-wide by 99-foot-long concrete/masonry powerhouse containing three vertical Francis turbines connected to direct-drive synchronous generators, each with a rated capacity of 1,600 kW, a hydraulic capacity of 300 cfs, and a design head of 100 feet; (7) a spare turbine bay for future expansion; (8) a 3.7-mile-long, 23 kV transmission line; and (9) appurtenant equipment.

Belfort Development

The Belfort Development includes: (1) A 206-foot-long by 19-foot-high concrete gravity dam consisting of a 161-foot-long by 17-foot-high concrete ogee spillway equipped with 2-foot-high flashboards; (2) an impoundment which, at the normal maximum surface elevation of 966 feet (USGS), has a surface area of 50 acres, a gross storage capacity of 120 ac-ft, and a usable capacity of 47 ac-ft; (3) a 120-foot-long forebay; (4) a 62-foot-wide concrete intake structure containing one 12-foot-wide by 17-foot-high trashrack, one 12-foot-wide by 23-foot-high trashrack, and two 11-foot by 11-foot timber slide gates; (5) one 52-foot-long by 7-foot-diameter steel penstock and one 52-foot-long by 7.5-foot-diameter steel penstock; (6) a 78-foot-wide by 39-foot-lone concrete masonry powerhouse containing three horizontal Francis turbines connected to direct-drive synchronous generators, with a rated capacity of 400 kW (unit 1), 640 kW (unit 2), and 1,000 kW (unit 3), with hydraulic capacities of 200 cfs (units 1 and 2) and 310 cfs (unit 3), each with a design head of 48 feet; (7) a 400-foot-long tailrace channel; (8) an existing 3,540-foot-long, 23 kV transmission line; and (9) appurtenant equipment.

Taylorville Development

The Taylorville Development includes: (1) A 1,003-foot-long by 23-foot-high concrete gravity dam; (2) an impoundment which, at the normal maximum surface elevation of 1,076.6 feet (USGS), has a surface area of 170 acres, a gross storage capacity of 1,091 ac-ft, and a usable capacity of 685 ac-ft; (3) a 33-foot-wide concrete intake structure containing a 25-foot-wide by 20-foot-high trashrack and three 5.5-foot-wide by 13-foot-high timber slide gates; (4) a 2,725-foot-long by 9.5-foot-diameter steel penstock; (5) an 18-foot-diameter surge tank located about 40 feet upstream of the powerhouse; (6) a 93-foot-wide by 62.5-foot-long concrete/masonry powerhouse containing four horizontal Francis turbines connected to direct-drive synchronous generators, with rated capacities of 1,100 kW (units 1 and 2), 1,372 kW (unit 3), and 1,200 kW (unit 4), each with a hydraulic capacity of 180 cfs, and a design head of 96.6 feet; (7) a 400-foot-long, 23 kV transmission line; and (8) appurtenant equipment.

Elmer Development

The Elmer Development includes: (1) A 238-foot-long by 23-foot-high concrete gravity spillway; (2) a 25-foot-wide sluice gate with needle beams; (3) an impoundment which, at the normal maximum surface elevation of 1,108 feet (USGS), has a surface area of 34 acres, a gross storage capacity of 345 ac-ft, and a usable capacity of 207 ac-ft; (4) a forebay; (5) a 39-foot-wide concrete intake structure containing two 16.5-foot-wide by 21.5-foot-high trashracks and four 6-foot-wide by 11-foot-high timber slide gates; (6) a 78-foot-wide by 34-foot-long concrete/masonry powerhouse containing two vertical Francis turbine connected to direct-drive synchronous generators, each with

a rated capacity of 750 kW, a hydraulic capacity of 290 cfs, and a design head of 37 feet; (7) a 2,270-foot-long, 23 kV transmission line; and (8) appurtenant equipment

Effley Developmentt

The Effley Development includes: (1) A 1,647-foot-long by 30-foot-high concrete gravity dam containing a 430-foot-long by 30-foot-high concrete ogee spillway; (2) a gated 29-foot-long log chute; (3) an impoundment which, at the normal maximum surface elevation of 1,163 feet (USGS), has a surface area of 340 acres, a gross storage capacity of 3,140 ac-ft, and a usable capacity of 1,720 ac-ft; (4) a 100-foot-long forebay; (5) a 38.5-foot-wide intake structure containing a 22-foot-wide by 22-foot-high trashrack and three 6-foot-wide by 8-foot-high timber slide gates; (6) a concrete intake structure containing a 20-foot-wide by 27-foot-high trashrack and an 11-foot by 11-foot slide gate; (7) three 87-foot-long by 5-foot-diameter steel penstocks, one 148-foot-long by 8-foot-diameter steel penstock; (8) two concrete/masonry powerhouses, one 58-feet-wide by 53-foot-long containing three horizontal Francis turbines and the other 42.5-feet-wide by 44-feet-long containing a single vertical Francis turbine connected to a direct-drive synchronous generator rated at 1,600 kW, with a hydraulic capacity of 450 cfs and a design head of 52.6 feet; (9) a 2.3-mile-long, 23 kV transmission line; and (10) appurtenant equipment.

Soft Maple Development

The Soft Maple Development includes: (1) Five earth embankment dams; (2) a 910-foot-long by 115-foot-high earth embankment diversion dam; (3) a 720-foot-long by 100-foot-high earth embankment terminal dam; (4) an impoundment which, at the normal maximum surface elevation of 1,289.9 feet (USGS), has a surface area of 400 acres, a gross storage capacity of 2,678 ac-ft, and a usable capacity of 1,528 ac-ft; (5) a 144-foot-long concrete ogee spillway with 1.5-foot-high flashboards; (6) two 10-foot-wide aluminum sluice gates; (7) a 600-foot-long forebay; (8) an 81.5-foot-wide concrete intake structure containing three 26-foot-wide by 33.5-foot-high trashracks; (9) two 530-foot-long by 11.5-foot-diameter steel penstocks; (10) intake facilities for an additional penstock; (11) an 82-foot-wide by 50-foot-long concrete/masonry powerhouse containing two identical vertical Francis turbines connected to direct-drive synchronous generators, each with a rated capacity of 7,500 kW, a hydraulic capacity of 860 cfs, and a design head at 121.5 feet; (12) a 20-foot-long, 115 kV transmission line; and (13) appurtenant equipment.

Eagle Development

The Eagle Development includes: (1) A 365-foot-long by 21-foot-high concrete gravity dam containing a 185-foot-long ogee spillway topped with 1-foot flashboards and an 85-foot-long, non-overflow concrete abutment; (2) an impoundment which, at the normal maximum surface elevation of 1,426.2 feet (USGS), has a surface area of 138 acres, a gross storage capacity of 668 ac-ft, and a usable capacity of 545 ac-ft; (3) a 20-foot-wide gated log sluice; (4) a 50-foot-long headgate with four 9.5-foot-wide stop log slots and four 9.5-foot by 9.5-foot trashracks; (5) an 18-foot-wide by 16-foot-deep by 540-foot-long forebay canal; (6) a concrete intake structure containing three 10-foot-wide by 7-foot-high timber slide gates; (7) a 2,725-foot-long by 9-foot-diameter steel penstock; (8) a 63-foot-wide by 87-foot-long concrete masonry powerhouse containing four horizontal Francis turbines connected to direct-drive synchronous generators, with rated capacities of 1,350 kW (units 1 through 3) and 2,000 kW (unit 4), hydraulic capacities of 150 cfs (units 1 through 3) and 200 cfs (unit 4), and design heads of 135 feet (units 1 through 3) and 125 feet (unit 4); (9) a 5-foot-wide aluminum slide gate that currently supplies minimum flow to the bypass; (10) a 160-foot-long, 115 KV transmission line; and (11) appurtenant equipment.

Moshier Development

The Moshier Development includes: (1) A 920-foot-long by 93-foot-long earth embankment dam consisting of a 200-foot-long concrete spillway topped with 2-foot-high flashboards; (2) an impoundment which, at the normal maximum surface elevation of 1,641 feet (USGS), has a surface area of 340 acres, a gross storage capacity of 7,339 acre-feet (ac-ft), and a usable capacity of 2,876 ac-ft; (3) a 28-foot-wide by 51-foot-high concrete intake structure containing two 11-foot-wide by 51.5-foot-high trashracks and two 10-foot-wide by 12-foot-high steel slids gates; (4) a 3,740-foot-long by 10-foot-diameter steel penstock connected to a 5,620-foot-long by 10-foot-diameter fiberglass reinforced plastic penstock for a total penstock length of 9,360 feet; (5) an excavated tailrace channel; (6) a 30-foot-diameter steel surge tank; (7) a bifurcation downstream of the penstock into two 70-foot-long by 7-foot-diameter steel surge tank; (7) a bifurcation downstream of the penstock into two 70-foot-long by 7-foot-diameter steel penstocks; (8) a 34-foot-wide by 70-foot-long concrete/masonry powerhouse containing two vertical Francis turbines connected to direct-drive synchronous generators, each with a rated capacity of 4,000 kW, a hydraulic capacity of 330 cfs, and a design head of 196 feet; (9) an 11-mile-long, 115 kilovolt (kV) transmission line; and (10) appurtenant equipment.

On May 30, 1995, the applicant filed a settlement offer executed by parties to this proceeding.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraph: A4.

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 Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202 or by calling (315) 474–1511.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with the public notice of the initial development application. In relicensing cases, competing applicaitons shall be filed with the Commission at least 24 months before the expiration of the term of the existing license. No competing applications or notices of intent may be filed in response to this notice.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14969 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–524–000, et al.]

Williams Natural Gas Company, et al.; Natural Gas Certificate Filings

June 13, 1995.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP95–524–000]

Take notice that on May 25, 1995, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101,

filed in Docket No. CP95–524–000 a request pursuant to §§157.205, 157.208, 157.212, and 157.216, of the Commission's Regulations under the Natural Gas Act for authorization to (1) abandon about 6 miles of the Sweet Springs 3-inch pipeline and to construct about 6 miles of replacement 3-inch pipeline, (2) to relocate 11 domestic customers and the Missouri Gas Energy (MGE) Emma and Sweet Springs town borders to the new 3-inch pipeline and (3) to uprate to mainline pressure the new 3-inch pipeline and an adjacent 2-inch lateral pipeline, located in Lafayette and Saline Counties, Missouri, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG states that the construction cost is estimated to be $646,290, the reclaim cost $26,000, and the salvage value $4,050.

Comment date: July 28, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Williston Basin Interstate Pipeline Company

[Docket No. CP95–537–000]

Take notice that on June 1, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP95–537–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to continue the present operation of a previously installed tap in South Dakota under Williston Basin's blanket certificate issued in Docket No. CP83–1–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin's installed tap is located in SW¼ Section 21, Township 2N, Range 8E, Pennington County, South Dakota. Montana-Dakota Utilities Co. (Montana-Dakota), a local distribution company, has requested that it be able to commence transportation deliveries through this tap to J&J Asphalt via transportation deliveries from a third party on Williston Basin's system, making it necessary for Williston Basin to separately state this delivery point on its master delivery point list. This customer and six additional residential type customers are currently purchasing gas from Montana-Dakota via this tap.

The continued operation of this tap, according to Williston Basin, will have no significant effect on its peak day or annual requirements and will not be a detriment or disadvantage to any of its customers. No facilities are to be constructed pursuant to this application.

Comment date: July 28, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Carnegie Interstate Pipeline Company

[Docket No. CP95–554–000]

Take notice that on June 9, 1995, Carnegie Interstate Pipeline Company (CIPCO), 800 Regis Avenue, Pittsburgh, PA 15236, filed in Docket No. CP95–554–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to add a new delivery point for an interruptible transportation service that CIPCO will provide for The Peoples Natural Gas Company, an end user, under the blanket certificate issued in Docket No. CP88–248–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIPCO proposes to construct and operate a 3-inch transportation service tap to be attached to its M17 pipeline located in Washington County, Pennsylvania to provide interruptible volumes of gas to Peoples under CIPCO's Rate Schedule ITS. CIPCO indicates that the new facility would permit CIPCO to provide up to a maximum annual delivery of 150,000 Mcf.

CIPCO advises that the total volumes to be delivered to Peoples after the request would not exceed Peoples' certificated entitlements. Also, CIPCO indicates that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to its other customers.

Comment date: July 28, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14963 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP92–237–020]

Alabama-Tennessee Natural Gas Company; Notice of Filing of Revised Refund Report

June 14, 1995.

Take notice that on June 2, 1995, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) filed a revised report of refunds related to excess retainage which it made pursuant to the Settlement in Docket No. RP92–237. The report supersedes the report filed on April 4, 1995, in compliance with ordering paragraph (F) of the Commission's order issued on March 20, 1995.

Alabama-Tennessee's filing includes a letter agreement dated May 12, 1995 between it and the Tennessee Valley Municipal Gas Association which resolves Post–636 retainage refund issues in this case. As a result of that agreement, Alabama-Tennessee issued (1) a credit memo to each current customer on its system to be applied to that customer's April, 1995 invoice or (2) the refund by check for those customers which did not have an April, 1995 invoice. Alabama-Tennessee further states that interest was included through March 31, 1995.

Alabama-Tennessee states that copies of its filing were served upon the Company's jurisdictional customers and interested public bodies as well as all the parties shown on the Commission's official service list established in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before June 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make

protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14966 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2731 Vermont]

Central Vermont Public Service Corporation; Notice of Intent To File an Application for a New License

June 14, 1995.

Take notice that the Central Vermont Public Service Corporation, the existing licensee for the Weybridge Hydroelectric Project No. 2731, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2731 was issued effective January 1, 1951, and expires May 31, 2000.

The project is located on the Otter Creek in Addison County, Vermont. The principal works of the Weybridge Project include a 30-foot-high concrete gravity dam with the west section having a 150-foot-long spillway as well as a Taintor gate and flashboards and the east section a 110-foot-long spillway; a reservoir with an area of about 60 acres at 174.3 feet m.s.l.; a wasteway and a powerhouse intake structure; a concrete powerhouse containing a 3,000–Kw generator; generator leads, step-up transformer, transmission line and substation; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is available from the licensee at 77 Grove Street, Ruthland, Vermont 05701.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by May 31, 1998.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14968 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–109–000]

CNG Transmission Corporation; Technical Conference

June 14, 1995.

Take notice that on June 29, 1995, at 10:00 am, the Commission Staff will convene a technical conference in the above captioned docket to discuss *non-environmental* issues raised by the intervenors and protestors and engineering questions raised by the Commission Staff related to the proposal of CNG Transmission Corporation to construct and operate approximately 4.73 miles of pipeline loop known as the TL–470, Ext. 5 Project to be built in the Albany area of Schenectady County, New York.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 1st Street NE, Washington, DC 20426. All interested parties are invited to attend. However, attendance at the conference will not confer party status.

For further information, contact George D. Dornbusch (202) 208–0881, Office of Pipeline Regulation, Room 7102C; or Theresa H. Cooney (202) 208–0418, Office of General Counsel, Room 4300, 825 North Capitol Street NE, Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14975 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 420 Alaska]

City of Ketchikan, AK; Notice of Intent To File an Application for a New License

June 14, 1995.

Take notice that the City of Ketchikan, Alaska, dba Ketchikan Public Utilities, the existing licensee for the Ketchikan Lakes Hydroelectric Project No. 420, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 420 was issued effective June 1, 1982, and expires June 30, 2000.

The project is located on the Ketchikan Creek within Tongass National Forest on Revillagigedo Island, Alaska. The principal works of the Ketchikan Project include two rock-filled dams, one 1,163 feet long and 30 feet high and the other 385 feet long and 22 feet high, also a concrete diversion dam, 30 feet long and 12 feet high; two 290-acre storage reservoirs; various connecting tunnels, pipelines and penstocks; a powerhouse with an installed generating capacity of 4,200 Kw; generator leads, generator bus, a substation and switchyard; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is available from the licensee at 2930 Tongass Avenue, Ketchikan, Alaska 99901.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 1998.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14971 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[RP94–367–000]

National Fuel Gas Supply Corporation; Notice of Informal Settlement Conference

June 14, 1995.

Take notice that an informal settlement conference will be convened in these proceedings on June 22, 1995 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is 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, contact Marc G. Denkinger (202) 208–2215 or Arnold H. Meltz (202) 208–2161.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14965 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[RP95–31–000]

National Fuel Gas Supply Corporation; Notice of Informal Settlement Conference

June 14, 1995.

Take notice that an informal settlement conference will be convened in these proceedings on June 27, 1995 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426, for the purpose of exploring the possible

settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is 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, contact Marc G. Denkinger (202) 208–2215 or Arnold H. Meltz (202) 208–2161.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14964 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6901–026]

City of New Martinsville, WV; Notice of Extension of Comment Due Date

June 14, 1995.

On May 5, 1995, the Commission issued a Notice of Application for Amendment of License, for the New Cumberland Hydroelectric Project, FERC Project No. 6901–026, on the Ohio River. The notice was published in the Weirton Daily Times and in the Steubenville Herald Star on May 3, 1995, and provided the public with the opportunity to comment on the proposed amendment. The notice required that comments be filed with the Commission no later than June 2, 1995.

On May 23, 1995, Mr. V. James Dunlevy of Pike Island Hydro Associates requested an extension of the comment period. Upon consideration, and extension of time for filing comments is granted from June 2, 1995 to July 10, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14967 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1124–000]

Pacific Gas & Electric Co.; Filing

June 14, 1995.

Take notice that on May 31, 1995, Pacific Gas and Electric Company (PG&E) tendered for filing the Utility–2000 Energy Corp.—PG&E Power Enabling Agreement between Utility–2000 Energy Corp. (Utility–2000) and PG&E. The Enabling Agreement document terms and conditions for the purchase, sale or exchange economy energy and surplus capacity which the Parties agree to make available to one another at defined control area border interconnection points.

Copies of this filing have been served upon Utility-2000 and the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 28, 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. 95–14973 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1145–000]

Portland General Electric Company; Filing

June 12, 1995.

Take notice that on June 1, 1995, Portland General Electric Company (PGE), tendered for filing a Certificate of Concurrence to Puget Power & Light Company's filing under the above-referenced docket number, relating to the 1995-96 Operating Procedures to the Pacific Northwest Coordination Agreement dated September 15, 1964. Copies of this filing have been served upon each party to the Pacific Northwest Coordination Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 26, 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. 95–14972 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5223–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, (please refer to ICR #1367.04).

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Gasoline Volatility Enforcement (EPA ICR #1367.04; OMB #2060–0178). This ICR requests renewal of the existing clearance.

Abstract: The Environmental Protection Agency's gasoline volatility regulations provide for a one pound per square inch allowance above the otherwise applicable standard for ethanol blends. This information collection request seeks approval for the requirement that facilities handling ethanol blends label invoices with the ethanol content; the required label identifies gasoline products that contain ethanol and thereby qualify for the allowance. Changes in the regulations since the previous ICR stated that it was probably overestimating costs. Now that the rule has been in effect for several years, there is only the simple clerical act (generally automatically computer generated) of stating on CBP records that the gasoline contains 10% ethanol. The previous ICR removed over half of the respondents since ethanol is rarely

blended to gasoline at the refinery level except for local use in areas where ethanol blends are common. The labelling requirement now provides purchasers of ethanol blends with the information necessary to manage their own compliance with the volatility regulations and to defend themselves from Agency actions on violations which they did not cause.

Burden Statement: The public reporting burden for this collection of information is estimated to average .3 hours per response, (assuming that half of the respondents will have no burden because of the use of automated equipment), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and labelling the invoices.

Respondents: Entities that produce or handle ethanol blends.

Estimated Number of Respondents: 8,792

Estimated Total Annual Burden on Respondents: 1,319

Frequency of Collection: No reporting requirement. Inspections as needed.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing burden, to:

Sandy Farmer, ICR Number 1367.04, U.S. Environmental Protection Agency, Regulatory Information Division (2136), 401 M Street SW., Washington, D.C. 20460

and

Chris Wolz, OMB #2060–0178, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, D.C. 20530.

Dated: June 13, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–15014 Filed 6–19–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5224–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before July 20, 1995.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of the ICR contact Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR #1754.01.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Opinion Survey of New York State Community Leaders and Residents Related to Environmental Quality In and Around Lake Ontario (EPA ICR No. 1754.01).

Abstract: The purpose of this survey to gather opinions from New York residents and leaders to identify motivations, intentions, behaviors, and barriers to stewardship of Lake Ontario. The Federal Water Pollution Control Act of 1972, as amended in 1987, sets forth the Great Lakes Water Quality Agreement, an agreement that requires the development of ecosystem objectives and action plans to improve water quality in the Great Lakes. In 1989, a binational (Canada/US) workgroup was established with the task of developing ecosystem objectives and indicators for Lake Ontario. The workgroup determined that a survey was needed to assess the motivations, behaviors and attitudes of residents along Lake Ontario, in order to develop meaningful plans to achieve the ecosystems objectives set forth by the 1987 Agreement. The survey has already been completed on the Canadian side of the Lake Ontario Basin.

This voluntary survey consists of a mail questionnaire distributed to a random sampling of New York State residents and a selected sample of their leaders along the Lake Ontario Basin. The questionnaire will request respondents to answer questions that assess: (1) Stewardship behavior, (2) motivations with regard to ecosystem protection, (3) commitment to environmentally responsible actions, and (4) barriers to behaviors that are supportive of ecosystem objectives.

The information will be used by government and private sectors to better understand the extent of environmental stewardship in the Great Lakes Basin, and to develop plans and strategies to better accomplish the objectives of environmental stewardship.

Burden Statement: Public reporting burden for this collection of information is estimated to average (0.5) hours per response including reviewing instructions, searching existing information sources, completing and reviewing the collection of information, and submitting the information to EPA.

Respondents: Residents of New York State and New York State leaders living along the shores of Lake Ontario.

Estimated Number of Respondents: 500.

Frequency of Collection: One time.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 250 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, (please refer to EPA ICR #1754.01):

Sandy Farmer, EPA #1754.01, U.S. Environmental Protection Agency, Information Policy Branch (2316), 401 M Street SW., Washington, DC 20460.

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: June 13, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–15019 Filed 6–19–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Notice of Branch Closure.

Form Number: None.

OMB Number: 3064–0109.

Expiration Date of OMB Clearance: July 31, 1995.

Respondents: Insured state non-member banks.

Frequency of Response: On occasion.

Number of Respondents: 200.
Number of Responses Per Respondent: 1.
Total Annual Responses: 200.
Average Number of Hours Per Response: 3.5.
Total Annual Burden Hours: 700.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0109, Washington, DC 20503.
FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
Comments: Comments on this collection of information are welcome and should be submitted before August 21, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: A joint policy statement issued by the Office of the Comptroller of the Currency, the Federal Reserve System, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation, requires insured depository institutions to adopt policies for closing branches. In addition, institutions must submit notice of proposed closings to their primary Federal regulator. For insured state non-member banks, the primary federal regulator is the FDIC.

Dated: June 15, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–15044 Filed 6–19–95; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011223–010.
Title: Transpacific Stabilization Agreement.
Parties:

A.P. Moller-Maersk Line
American President Lines
Evergreen Marine Corp. (Taiwan) Ltd.
Hapag-Lloyd Aktiengesellschaft
Hyundai Merchant Marine Co., Ltd.
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Yangming Marine Transport Corp.

Synopsis: The proposed amendment adds Nedlloyd Lijnen B.V. (''Nedlloyd'') as a party to the Agreement; however, Nedlloyd's participation in the Capacity Management Program (''Program'') under the Agreement will not commence until September 3, 1995, the beginning of the next quarterly accounting period under that Program.

Agreement No.: 203–011503.
Title: Hapag-Lloyd Aktiengesellschaft, Nippon Yusen Kaisha, Neptune Orient Lines, Ltd. and P&O Containers Limited Far East/U.S. Pacific and Atlantic Coasts/North Europe Discussion Agreement.
Parties:

Hapag-Lloyd Aktiengesellschaft
Nippon Yusen Kaisha
Neptune Orient Lines, Ltd.
P&O Containers Limited.

Synopsis: The proposed Agreement authorizes the parties to meet, discuss, exchange information and reach consensus in contemplation of formulating and filing a unified rationalization and sailing arrangement in the trade between ports and points in the Far East, U.S. Pacific (including Alaska) and Atlantic Coasts and North Europe ports and points. Adherence to any agreement reached is voluntary.

Agreement No.: 224–200087–008.
Title: Port of Oakland/Maersk Pacific Ltd. Terminal Agreement.
Parties:

Port of Oakland
Maersk Pacific Ltd. (''Maersk'')

Synopsis: The proposed amendment deletes 5,254 square feet of office space previously occupied by the U.S. Customs Service on Maersk's assigned premises and restates the monthly rental taking into account the deletion of said office space.

Agreement No.: 224–200133–003.
Title:

Port Authority of New York & New Jersey/Sea-Land Service, Inc. Terminal Agreement

Parties: Port Authority of New York & New Jersey Sea-Land Service, Inc. (''Sea-Land'')

Synopsis: The proposed amendment provides for a 10.6 acre expansion of Sea-Land's Elizabeth, New Jersey Container Terminal.

Dated: June 14, 1995.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–14951 Filed 6–19–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Marine Midland Bank, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Marine Midland Bank, Inc., Buffalo, New York; HSBC Holdings BV, Amsterdam, Nethelands, and HSBC Holdings plc, London, United Kingdom; to acquire United Northern Bancorp, Inc., Watertown, New York, and its subsidiary, United Northern Federal Savings Bank (UNFSB), Watertown, New York, pursuant to § 225.25 (b)(9) of the Board's Regulation Y. Upon acquisition UNFSB will be merged into Marine Midland Bank, Buffalo, New York.

Board of Governors of the Federal Reserve System, June 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15001 Filed 6–19–95; 8:45 am]

BILLING CODE 6210–01–F

Patricia B. Morgan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 5, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Patricia B. Morgan and Bartow Morgan, Jr., Lawrenceville, Georgia, as trustee and advisor, respectively, of a trust to be formed pursuant to the terms of the will of Bartow Morgan, III; to acquire 49.60 percent of the voting shares of Brand Banking Company, Lawrenceville, Georgia.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Grover Lynn Shade & Nelda Sue Shade, Muldoon, Texas; to retain 9.78 percent, and acquire an additional .22 percent, for a total of 10.00 percent, of the voting shares of Lost Pines Bancshares, Inc., Smithville, Texas, and thereby indirectly acquire Lost Pines National Bank, Smithville, Texas.

Board of Governors of the Federal Reserve System, June 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15002 Filed 6–19–95; 8:45 am]

BILLING CODE 6210–01–F

Pointe Financial Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Pointe Financial Corporation, Boca Raton, Florida; to engage *de novo* through a 50 percent owned subsidiary, Parkside Mortgage Company, Boca Raton, Florida, in mortgage brokerage related activities, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. Notificant's interest in Company will be held directly by its wholly-owned subsidiary, Pointe Investments Services, Inc., Boca Raton, Florida. The proposed activity will be conducted throughout the State of Florida.

Board of Governors of the Federal Reserve System, June 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15003 Filed 6–19–95; 8:45 am]

BILLING CODE 6210–01–F

Suburban Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 14, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior

Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Suburban Bancshares, Inc., Greenbelt, Maryland; to acquire 24.33 percent of the voting shares of Financial Institutions Holding Corporation, College Park, Maryland, and thereby indirectly acquire The Bank of Bowie, Bowie, Maryland.

Board of Governors of the Federal Reserve System, June 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15004 Filed 6–19–95; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Phoenix Federal Building—United States Courthouse; Notice of Availability; Final Environmental Impact Statement

Action: Pursuant to the Council on Environmental Quality Regulations (40 Code of Federal Regulations 1500–1508) implementing procedural provisions of the National Environmental Policy Act (NEPA), the U.S. General Services Administration (GSA) hereby gives notice that a Final EIS for the construction of a new FB–CT within the City of Phoenix, Arizona has been prepared and filed with the United States Environmental Protection Agency (EPA). The proposed project would include the construction of a new FB–CT with appropriately 515,010 gross square feet (GSF) of building space and 360 onsite parking spaces. The preferred site encompasses approximately 4.5 acres and is located within the city's redevelopment area known as the Government Mall. The site is bound by Washington Street to the north, 4th Avenue to the east, Jefferson Street to the south and 6th Avenue to the west. Under the Proposed Action, 5th and 6th Avenues would be closed to vehicular traffic.

Alternatives: In addition to the Proposed Action, the DEIS examined three alternatives including: (1) construction of the FB–CT on the same site as the Proposed Action with 6th Avenue remaining open to vehicular traffic; (2) construction of the FB–CT on an alternate site within the DBA; and (3) no action or continued use of the existing FB–CT and lease space.

Public Involvement: The Final EIS, prepared by GSA addressing this action, is on file and may be obtained from: Mr. Alan R. Campbell, U.S. General Services Administration, Portfolio Management Division (9PT), 525 Market Street, San Francisco, CA 94105–2799, Telephone: (415) 744–5252. A limited number of copies of the Final EIS are available to fill single copy requests. Loan copies of the Final EIS are available for review at the city of Phoenix Central Library and at the GSA Field Office, 230 North 1st Avenue, Phoenix, Arizona.

GSA encourages all interested parties to comment on the document. Written comments on the Final EIS can be submitted until July 14, 1995 to the address listed above, sent via facsimile to (415) 744–8117, or mailed electronically to ''alan.campbell@gsa.gov'' (Internet).

Dated: June 9, 1995.

Aki K. Nakao,

Acting Regional Administrator (9A).

[FR Doc. 95–14955 Filed 6–19–95; 8:45 am]

BILLING CODE 6820–23–M

X.500 Registration of U.S. Government Organizational Units

AGENCY: Electronic Messaging Program Management Office, GSA.

ACTION: Notice.

SUMMARY: The governmentwide Electronic Messaging Program Management Office (E-Mail PMO) has received delegation of naming authority for X.500/Directory entries immediately subordinate to the entry ''County=US/Organization=U.S. Government'' within the global X.500/Directory hierarchy. This authority was granted by the United States Department of Commerce, National Institute of Standards and Technology effective May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Jack L. Finley, Program Manager, Electronic Messaging Program Management Office, Registration Services, General Services Administration, Room 1227, 18th and F Streets, NW., Washington, DC 20405, telephone 202–501–1337.

SUPPLEMENTARY INFORMATION: In delegating this authority, NIST confers onto the GSA the authority and responsibility to register, maintain, and publicize X.500/Directory names of organizational or other entries which are immediate subordinates of the entry ''Country=US/Organization=U.S. Government'' within the global X.500/Directory hierarchy. Furthermore, GSA will insure that each registered X.500/Directory name complies with the Directory Schema Rules and Directory Information Tree (DIT) Structure Rules in force at the time of registration.

Dated: June 6, 1995.

Jack L. Finley,

Program Manager, Electronic Messaging Program Management Office (KB–E), Office of Emerging Technology, General Services Administration.

[FR Doc. 95–14954 Filed 6–19–95; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Times and Dates: 10 a.m.–4 p.m., July 13, 1995; 9 a.m.–12 noon, July 14, 1995.

Place: The Washington Court Hotel, Sagamore Room, 525 New Jersey Avenue, N.W., Washington, D.C. 20001.

Status: Open to the public, limited only by space available.

Purpose: The Board reviews research activities to provide guidance on the quality, timeliness, and efficacy of the Institute's programs.

Matters to be Discussed: The agenda will include a report from the Director of NIOSH, NIOSH's 25th anniversary plans, an ergonomic report, NIOSH training grants, a legislative report, a report on child labor, and future activities of the Board.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Richard A. Lemen, Ph.D., Executive Secretary, BSC, NIOSH, and Deputy Director, NIOSH, CDC, 1600 Clifton Road, N.E., Mailstop D–35, Atlanta, Georgia 30333, telephone 404/639–3773.

Dated: June 13, 1995.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–15032 Filed 6–19–95; 8:45 am]

BILLING CODE 4163–19–M

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Innovations in Syphilis Prevention in the United States: Reconsidering the Epidemiology and Involving Communities—Program Announcement 523; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Disease, Disability, and Injury Prevention and Control SEP: Innovations in Syphilis Prevention in the United States: Reconsidering the Epidemiology and Involving Communities—Program Announcement 523.

Time and Dates: 8:30 a.m.–5:30 p.m., July 27–28, 1995.

Place: Corporate Square, Building 11, Conference Room A, 1413, Corporate Square Boulevard, Atlanta, Georgia 30329.

Status: Closed.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 523.

The meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Contact Person for More Information: Richard Conlon, Acting Chief, Resource Analysis Office (E07), National Center for Prevention Services, CDC, 11 Corporate Square, Corporate Square Boulevard, Atlanta, Georgia, 30329, Telephone 404/639–8023.

Dated: June 14, 1995.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–15031 Filed 6–19–95; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 95D–0115]

Compliance Policy Guides Manual; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a new bound edition of the ''FDA Compliance Policy Guides'' (CPG manual). The CPG manual is intended to provide guidance to FDA district offices by offering a convenient and organized system for statements of FDA compliance policy, including those statements which contain regulatory action guidance information.

ADDRESSES: The CPG manual may be ordered from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB95–915499 for each copy of the manual. Payment may be made by check, moneyorder, charge card (American Express, VISA, or Mastercard), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703–487–4650. The CPG manual is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Barbara A. Rodgers, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0417.

SUPPLEMENTARY INFORMATION: FDA is issuing the new bound edition of the CPG manual to provide information on FDA compliance policy and internal guidance to FDA district offices in a more organized, convenient, and economical format. With the publication of this bound edition, the CPG manual has been reorganized into a general chapter and five program area chapters. The new CPG manual contains 500 individual guides; 227 of these have been revised and/or updated, and 26 of the guides have been deleted. This new bound edition of CPG's does not contain chapters 55 through 58, which contained memoranda of understanding (MOU's), interagency agreements (IAG's), and mutual recognition agreements (MRA's).

The statements made in the CPG manual are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal FDA guidance.

Dated: June 13, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–14948 Filed 6–19–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95F–0129]

Shell Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Shell Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly(oxy-1,2-ethanediyloxycarbonyl-2,6-naphthalenediylcarbonyl) polymer and the copolymer of poly(oxy-1,2-ethanediyloxycarbonyl-2,6-naphthalenediylcarbonyl) with ethylene terephthalate as components of articles intended for food-contact use.

DATES: Written comments on the petitioner's environmental assessment by July 20, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4451) has been filed by Shell Chemical Co., 130 Johns Ave., Akron, OH 44305–4097. The petition proposes to amend the food additive regulations in part 177 (21 CFR part 177) to provide for the safe use of poly(oxy-1,2-ethanediyloxycarbonyl-2,6-napthalenediylcarbonyl) polymer and the copolymer poly(oxy-1,2-ethanediyloxycarbonyl-2,6-naphthalenediylcarbonyl) with ethylene terephthalate as components of articles intended for food-contact use.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before July 20, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments

are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 9, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–14946 Filed 6–19–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95D–0114]

Medical Devices; Premarket Notification (510(k)) Procedures/Good Manufacturing Practices; Compliance Program; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revisions to the standard compliance program for good manufacturing practices (GMP's) (Compliance Program 7382.830). These revisions are intended to refine and refocus FDA's compliance program linking GMP requirements with class I and II premarket notification (510(k)) submissions and other relevant applications. The revisions are being made as part of FDA's reinventing Government initiative and have been incorporated into ''Compliance Program 7382.830, Inspection of Medical Device Manufacturers,'' which supersedes the ''Medical Device Reference List'' procedures.

ADDRESSES: Submit written requests for single copies of the revisions to the Division of Small Manufacturers Assistance (DSMA) (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597 or 1–800–638–2041. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist the office in processing your requests. The revisions are available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. Copies of a facsimile of the revision are available from CDRH Facts on Demand by requesting the following document numbers and their respective parts: 2702 (compliance program), 3702 (attachment A), 4702 (attachment A–1), 5702 (attachment B through F), 6702 (attachment G), (1–800–899–0281). Copies of the revisions may also be obtained from the Electronic Docket administered by DSMA and available to any one with a video terminal or personal computer (1–800–252–1366).

FOR FURTHER INFORMATION CONTACT: Marje A. Hoban, Center for Devices and Radiological Health (HFZ–306), Food and Drug Administration, 2094 Gaither Rd., MD 20850, 301–594–4695.

SUPPLEMENTARY INFORMATION: In a letter dated April 7, 1995, the Director of the Center for Devices and Radiological Health advised registered medical device companies of changes that FDA was making to its compliance program linking class I and II 510(k) submissions with GMP requirements. These procedural changes became effective May 1, 1995, and have been made part of the standard compliance program for GMP's (Compliance Program 7382.830). FDA is now making the revisions available in conjunction with the April 7, 1995, letter. The general framework of the restructured program incudes: (1) Criteria for linking GMP's with marketing clearance for class I or II (510(k)) devices; (2) procedures for notifying firms that clearance of their class I or II (510(k)) submission may be deferred due to serious, related GMP violations; (3) actions FDA will take to reply promptly to a firm's response to an FDA Form 483 and/or GMP Warning Letter; and (4) timeframes for agency action. The changes noted above also apply to PMA supplements that are not subject to the PMA preapproval inspection program, and to export certificates for legally marketed devices.

These changes are being made as part of FDA's reinventing Government initiative. This compliance program supersedes the ''Medical Device Reference List'' announced in the **Federal Register** of October 26, 1993 (58 FR 57614).

Dated: June 12, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–14947 Filed 6–19–95; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 60 FR 17792–17795, dated April 7, 1995) is amended to reflect the merger of the Division of Training and Manpower Development and the Division of Standards Development and Technology Transfer, and the establishment of the Education and Information Division, National Institute for Occupational Safety and Health.

Section HC–B, Organization and Functions, is hereby amended as follows:

After the functional statement for the *Health Effects Laboratory Division (HCC3)*, insert the following:

Education and Information Division (HCC4). (1) Develops from existing scientific and technical information documents containing (a) criteria for recommended occupational safety and health standards, and (b) technical and scientific information relevant to a variety of occupational safety and health issues; (2) develops recommended health and safety standards under the Occupational Safety and Health Act of 1970 and the Federal Mine Safety and Health Act of 1977; (3) prepares and coordinates with the Office of the Director comments and testimony on regulations proposed by the Department of Labor and other departments or agencies that pertain to occupational diseases or injuries; (4) assists the Institute Director in establishing and operating a priority system for research, surveillance, document development, and recommended standards; (5) prepares and at least annually revises the legislatively mandated toxic substance list; (6) establishes and maintains a library and a clearinghouse for receiving, storing, retrieving, and disseminating technical information on occupational safety and health; (7) provides risk evaluations for NIOSH

policy recommendations; (8) develops and tests occupational safety and health training materials, technologies, strategies, and courses; (9) determines occupational safety and health workforce needs on a nationwide basis and develops strategies to meet those needs; (10) develops methods, through research, to evaluate and monitor the effectiveness of training, including program features, faculty, training methods, and outcome measures; (11) conducts the NIOSH summer intern training program for minority students; (12) serves as the NIOSH printing office; (13) provides graphic design and audio-visual standards and support for the Institute; (14) serves as the NIOSH Docket Office; (15) evaluates in coordination with other divisions the economic and societal burden of occupationally induced diseases and injuries; (16) establishes and maintains the NIOSH archives; and (17) coordinates all relevant Division activities with the Office of the Director.

Information Resources Branch (HCC42). (1) Operates the Institute's libraries for occupational safety and health information for use by occupational safety and health professionals; (2) acquires, disseminates, and coordinates scientific and technical information relating to occupational safety and health in support of Division activities and NIOSH research programs; (3) plans, implements, and coordinates dissemination activities for all NIOSH publications (printed and electronic); (4) verifies printing clearance for NIOSH publications within NIOSH/CDC procedures; (5) develops and manages the NIOSH exhibit program for professional meetings and conferees; (6) develops and maintains electronic data systems for the Institute to assess information; and (7) establishes and maintains the NIOSH archives.

Risk Analysis and Document Development Branch (HCC43). (1) From existing scientific literature develops documents containing (a) criteria for recommended occupational safety and health standards, and (b) technical and scientific information relevant to a variety of occupational safety and health issues for the U.S. Department of Labor and other Federal agencies; (2) coordinates testimony in response to the Department of Labor, Environmental Protection Agency, and other Federal and State agencies' rulemaking; (3) incorporates recommended work practices, engineering controls, and available evidence of technological feasibility into documents and testimony; (4) analyzes the economics of occupational safety and health interventions; (5) maintains the NIOSH Docket Office; (6) coordinates scientific review of NIOSH policy documents and testimony; (7) conducts risk analyses and develops risk profiles; (8) researches and develops new quantitative risk assessment methodologies; (9) assists the Director of NIOSH in establishing a priority system for surveillance, research, document development, recommended standards, and training; (10) identifies information on worker exposures, hazard severity, potential for intervention, and advances in new technology; and (11) coordinates requests for policy and/or scientific review of internationally produced documents.

Training and Educational Systems Branch (HCC44). (1) Develops, through research and evaluation, training resources in industrial hygiene, safety, occupational medicine, nursing, and allied professions; (2) collaborates on cooperative training programs with qualified outside organizations; (3) determines strategies for and advises on occupational safety and health workforce needs on a nationwide basis; (4) defines and evaluates selected workforce certification/accreditation programs; (5) establishes career development guidelines for training of employers and employees in the prevention of injuries and diseases; (6) provides graphic design and audio-visual standards and support for the Institute; (7) consults and advises NIOSH professionals on presentation techniques and selection of media; and (8) consults on workforce development.

Delete in their entirety the titles and functional statements for the *Division of Training and Manpower Development (HCC9)* and the *Division of Standards Development and Technology Transfer (HCCC).*

Dated: June 9, 1995.

David Satcher,

Director.

[FR Doc. 95–15033 Filed 6–19–95; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Extension of the Public Comment Period—Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit From Aronov Realty and Management Inc., in Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of the public comment period.

SUMMARY: The Fish and Wildlife Service (Service) gives notice that the public comment period on the environmental assessment/habitat conservation plan for the Aronov Realty and Management Incorporated (Applicant) application for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act) is being extended. The Applicant has been assigned permit number PRT–802986. The original 30-day comment period was to end on June 30, 1995 (**Federal Register** 60:28428). In the intervening period, the Applicant has proposed certain additional mitigation and minimization measures to fully address the potential impacts to the Bon Secour National Wildlife Refuge and the endangered Alabama Beach mouse (ABM).

DATES: The public comment period for this proposal, which originally closed on June 30, 1995, is now extended until July 14, 1995.

ADDRESSES: Persons wishing to review the application, Environmental Assessment, or Habitat Conservation Plan may obtain a copy *by writing* the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection, by appointment, during normal business hours at the Regional Office, or the field office. Written data or comments concerning the application, Environmental Assessment, or Habitat Conservation Plan should be submitted to the Regional Office. Please reference permit under **PRT–802986** in such comments.

Regional Permit Coordinator (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 210, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7280).

Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213 (telephone 601/965–4900, fax 601/965–4340).

FOR FURTHER INFORMATION CONTACT: Rick G. Gooch at the Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: The ABM, *Peromyscus polionotus ammobates,* is a subspecies of the common oldfield mouse *Peromyscus polionotus* and is restricted to the dune systems of the Gulf Coast of Alabama. The known current range of ABM extends from Fort Morgan eastward to the western terminus of Alabama Highway 182, including the Perdue Unit on the Bon Secour National Wildlife Refuge (BSNWR). The sand dune systems

inhabited by this species are not uniform; several habitat types are distinguishable. The species inhabits primary dunes, interdune areas, secondary dunes, and scrub dunes. The depth and area of these habitats from the beach inland varies. Population surveys indicate that this subspecies is usually more abundant in primary dunes than in secondary dunes, and usually more abundant in secondary dunes than in scrub dunes. Optimal habitat consists of dune systems with all dune types. Though fewer ABM inhabit scrub dunes, these high dunes can serve as refugia during devastating hurricanes that overwash, flood, and destroy or alter secondary and frontal dunes. ABM surveys on the Applicant's property reveal habitat occupied by ABM. The Applicant's property contains designated critical habitat for the ABM. Construction of the project may result in the death of, or injury to, ABM. Habitat alterations due to house placement and its subsequent use may reduce available habitat for food, shelter, and reproduction. Further, the Applicant's property borders the BSNWR, and is considered Priority I lands for inclusion into the Perdue Unit (of BSNWR).

The Environmental Assessment considers the environmental consequences of several alternatives. One action proposed is the issuance of the incidental take permit. This alternative provides for restrictions that include placing landward of the designated ABM critical habitat, establishment of a walkover structure across that scrub dune, a prohibition against housing or keeping pet cats, ABM competitor control and monitoring measures, scavenger-proof garbage containers, restoration of dune systems impacted by the construction, creation of a mitigation endowment for offsite acquisition of suitable ABM habitat, and the minimization and control of outdoor lighting. The Habitat Conservation Plan provides a funding source for these mitigation measures. Another alternative is Service acquisition of the property for inclusion into the BSNWR. A third alternative is no-action, or deny the request for authorization to incidentally take the ABM.

Dated: June 13, 1995.

Jerome M. Butler,

Acting Regional Director.

[FR Doc. 95–15012 Filed 6–19–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 10, 1995. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 5, 1995.

Carol D. Shull,

Keeper of the National Register.

Alabama

Morgan County

New Decatur—Albany Historic District, Roughly, 2d Ave. (100 block NE., 100 block SE. E side, 300 block SE. W side) and parts of Johnson and Moulton Sts., Decatur, 95000810

Florida

Dade County

Barracks and Mess Building—U.S. Coast Guard Air Station at Dinner Key, 2610 Tigertail Ave., Miami, 95000816

Georgia

Bulloch County

Donehoo—Brannen House, 332 Savannah Ave., Statesboro, 95000826

Dodge County

Eastman, William Pitt, House, 407 Eastman Way, Eastman, 95000824

Jackson County

Williamson—Maley—Turner Farm, GA 15 NE of Jefferson, Jefferson vicinity, 95000823

Stephens County

Martin Historic District, Along both sides of GA 17 and the Norfolk Southern RR tracks, Martin, 95000825

Iowa

Johnson County

St. Mary's Rectory, 610 E. Jefferson St., Iowa City, 95000811

Louisiana

Acadia Parish

Lewis & Taylor Lumberyard Office, 403 E. Louisiana Ave., Rayne, 95000812

De Soto Parish

Grand Cane Historic District, U.S. 171, roughly between Burrow and Graham Sts., Grand Cane, 95000815

Ouachita Parish

Filhiol, Roland M., House, 111 Stone Ave., Monroe, 95000813

Minnesota

Dakota County

First Presbyterian Church, 602 Vermillion St., Hastings, 95000822

Hennepin County

Chamber of Commerce, 400–412 S. 4th St., 301 4th Ave. S., Minneapolis, 95000821

Second Church of Christ, Scientist, Administration Building, 1115 Second Ave. S., Minneapolis, 95000820

New York

Warren County

Land Tortoise (radeau) Shipwreck Site, Address Restricted, Lake George vicinity, 95000819

South Dakota

Corson County

Holy Spirit Chapel, SE of SD 65 crossing of Grand R., N of Firesteel, Firesteel vicinity, 95000817

Vermont

Windsor County

Progressive Market, 63 S. Main St., Hartford, 95000814

Virginia

Brunswick County

Rocky Run Methodist Church, VA 616, 1.8 mi. E of jct. with VA 46, Alberta vicinity, 95000828

Hanover County

Laurel Meadow, VA 643 E side, 0.2 mi. S of jct. with VA 627, Mechanicsville vicinity, 95000827

Tazewell County

Old Kentucky Turnpike Historic District, Along Indian Creek Rd., Old Kentucky Tnpk., College Hill Rd. and Cedar Valley Dr., Cedar Bluff, 95000829

Richmond Independent City

Shockoe Hill Cemetery, Jct. of Hospital and 2nd Sts., Richmond (Independent City), 95000818.

In order to assist in the preservation of the following property, the commenting period has been shortened to 5 days:

Arkansas

Pulaski County

Beal—Burrow Dry Goods Building, (Thompson, Charles L., Design

Collection TR), 107 E. Markham, Little Rock, 87001546.

[FR Doc. 95–15022 Filed 6–19–95; 8:45 am]

BILLING CODE 4310–70–P

Draft Recommendations Regarding the Disposition of Culturally Unidentifiable Human Remains and Associated Funerary Objects

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comments.

SUMMARY:

The Native American Graves Protection and Repatriation Act (25 U.S.C. 3007(c)(5).) requires the Review Committee to recommend specific actions for developing a process for the disposition of culturally unidentifiable Native American human remains. The seven individuals on the committee have given this matter great thought and have developed the enclosed draft outlining their position and several options. The enclosed draft is intended for wide circulation to elicit comments from Indian tribes, Native Hawaiian organizations, museum, Federal agencies, and national scientific and museum organizations. We are publishing this draft in the *Federal Register* for broad public comment.

EFFECTIVE DATES:

Comments should be received by September 30, 1995 in order for them to receive the committee's full consideration at their next scheduled meeting. For additional information, please contact Dr. C. Timothy McKeown at (202) 343–4101.

Please note that we will not accept any comments in electronic form.

ADDRESS FOR COMMENT:

Anyone interested in commenting on the committee's draft recommendations should send written comments to:

The NAGPRA Review Committee

c/o Archeological Assistance Division

National Park Service

Box 37127, Suite 210

Washington DC, 20013–7127

Dated: June 14, 1995

Veletta Canouts,

Acting, Departmental Consulting Archeologist

Acting Chief, Archeological Assistance Division

Call For Comments

Draft Recommendations By The N.A.G.P.R.A. Review Committee On The Disposition Of Culturally Unidentifiable Native American Remains

Under NAGPRA (25 U.S.C. 3007(c)(5)) the Review Committee is specifically charged with ''compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains.'' What follows below is a draft of recommendations from the Review Committee to the Secretary in compliance with the mandate in NAGPRA. This draft is intended for wide circulation to elicit the comments, suggestions and opinions of members of Indian tribes, Native Hawaiian organizations, scientific organizations, and museums as described under 25 U.S.C. 3007 (e). We wish to emphasize that these recommendations are preliminary and every element is open to change depending on the comments of the public.

In fulfilling their responsibility, the Review Committee makes the following observations and recommendations:

1. Although the disposition of culturally ''unidentifiable human remains'' is left open in NAGPRA, there is a firmly established principle in the act that assigns responsibility for what happens to human remains and associated funerary objects to lineal descendants and culturally affiliated tribes. This general principle should be followed in determining the disposition of culturally ''unidentifiable human remains'' that are known to be ancestral Native Americans. It is true that there are remains and associated funerary objects in museums and Federal agencies for which it is not possible to identify specific cultural connections to any particular tribe today. However, such remains and objects, no matter how ancient, are nevertheless Native American, and they should be treated according to the wishes of the Native American community. *Ultimately, decisions about what happens to the remains of Native American individuals from anywhere in the United States and associated funerary objects should rest in the hands of Native Americans.* These decisions can and should be informed by anthropological, archaeological, historical, folkloric, biological, linguistic and spiritual evidence, and nonNative Americans can and should be consulted when appropriate in the decision making process. However, the final decision should be made entirely by Native American people.

2. Although the Act specifically mentions only ''unidentifiable human remains'', it is consistent with other aspects of the Act to include in this discussion ''associated funerary objects'' as well. Therefore all recommendations on the disposition of unidentifiable human remains also apply to any funerary objects that are associated with those remains as those terms are defined in the Act. It may be that additional legislation will be required to insure that Native American groups are provided with the opportunity to repatriate associated funerary objects accompanying unidentified remains.

3. The Committee has heard extensive testimony from physical anthropologists and archaeologists as to the broader scientific, medical, and humanistic values that may be gained from analysis of Native American skeletal remains from both the recent and distant path. While the Committee recognizes there may be potential value in such analyses, such values do not provide or confer a right of control over Native American human remains that supersedes the spiritual and cultural concerns of Native American people who clearly have the closest general affiliation to these remains. The issue is not whether there is positive benefit to be gained from analysis of remains, but who has the right and responsibility to make decisions about whether such analysis should take place.

It is the responsibility of archaeologists and physical anthropologists to communicate with Native American tribes and groups to inform them of the potential values of analysis of human remains and associated funerary objects and allow the tribes and groups to use this information as they choose in making their decisions about the treatment and disposition of those remains and objects.

4. The term ''unidentifiable human remains'' can be applied to three different groups of remains and these should be considered separately. The three categories include: 1. remains for which there is cultural affiliation with Native American groups who are not formally recognized by the BIA; 2. ancient remains for which there is specific information about the original location and circumstances of the burial; and 3. remains which may be Native American but which lack information about their original burial location.

1. Remains for which there is cultural affiliation with Native American groups who are not formally recognized by the BIA

There are remains that can be directly traced by a preponderance of the evidence to tribes, villages, communities of Native Americans which may not be formally recognized by the Bureau of Indian Affairs as ''Tribes''. In these cases, the remains are only ''unidentifiable'' because of the wording of the Act. In the Act, the definition of Indian ''Tribe'' has been interpreted by the Department of the Interior to mean only those groups that have received formal recognition by the BIA as ''tribes''. There are, however, many groups in the United States that are ''eligible for the special programs and services provided by the United States to Indians because of their status as Indians'' (25 U.S.C. 3001 (7)), but have not received formal BIA recognition by choice or other circumstances.

In cases where such groups are able to establish cultural affiliation with specific remains it is the unequivocal recommendation of the Review Committee that they should be accorded the same rights and responsibilities given to BIA recognized Tribes for the repatriation of those specific remains. Cultural affiliation in these cases should follow the guidelines of the Act and be determined by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion (25 U.S.C. 3006 a(4)).

The Review Committee Would Appreciate Suggestions on How to Identify and Recognize Those Native American Groups Who Should Be Eligible To Claim Remains For Repatriation But Are Not On The Bureau of Indian Affairs List Of Federally Recognized ''Tribes''

2. Ancient remains for which there is specific information about the original location and circumstances of the burial

There is a very large number of remains from across the United States which come from earlier time periods and it is not possible to trace directly ancestry to any known contemporary tribe or group. Remains coming from archaeological excavations at sites that were occupied before the arrival of Europeans will most commonly fall into this category. From available evidence, it is often possible to determine that several groups or tribes may have historical or deeper ancestral ties to the area. In these cases, it may or may not be possible to establish direct links between the ancient remains and any specific contemporary groups or tribes.

In these cases, responsibility for what happens to such remains rests with those tribes and groups who are able to show an affinity both to the territory and to the general time period from which the remains came. Tribes or groups will demonstrate such geographic and temporal affinity through evidence based on biological, archaeological, linguistic, folkloric, oral traditional or other relevant information or expert opinion. Tribes or groups who are able to demonstrate geographical and temporal affinity to ancient remains will decide on what happens to those remains based on consensual agreement. It is the responsibility of the tribes who claim affiliation to come forward and state their claim and present their evidence of affiliation. Based on information in the inventories received from museums and Federal agencies, the Review Committee will take responsibility for notifying all tribes who may be potentially affiliated with particular remains.

The Act anticipates the circumstances of more ancient remains to some extent in 25 U.S.C. 3006 (e), ''Competing Claims''. This section deals with situations in which there are multiple claims for remains or objects and advises that museums and Federal agencies retain those remains and objects until the ''requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this Act or by a court of competent jurisdiction.'' Although the case of ''unidentified'' remains may well not involve a dispute, the same general principles should apply. Specifically, a museum or Federal agency should retain ''culturally unidentified'' remains and associated funerary objects until such time as all potentially affiliated tribes and groups reach consensual agreement on disposition of the remains and associated objects.

3. Remains which are likely to be Native American but which lack information about their original burial location

There are remains in museums and Federal agencies which are known or appear to be Native American through museum records or simple visual examination but which lack sufficient information to identify more specific cultural or geographical affinities. There are two broad types of remains that may fall in this group. First, there are remains for which there may be some indication that they are culturally affiliated with one federally recognized Tribe or Native Hawaiian group, but there is insufficient independent evidence to confirm the affiliation. It is possible, for example, to have remains in museums which are labeled as belonging to one tribe or group, but with no supporting evidence of any kind to support that identification. In such cases the remains may be affiliated with one or more additional groups of Native Americans or with non-Native Americans. In these cases, however, the museum or Federal Agency should not have to bear the responsibility of determining whether the remains should be returned to a specific group. The Act actually does speak to this situation to some extent in 25 U.S.C. 3006 (a)(4). In this section there are guidelines for when a museum or federal agency is unable to establish cultural affiliation of remains in the inventory process. In these cases, the burden of responsibility goes to the Tribe to ''show cultural affiliation by a preponderance of the evidence''.

In cases such as this, when the museum or Federal agency is unable to reasonably confirm the cultural affiliation of specific Native American human remains, the inventory of these remains should be provided to the Review Committee, along with a summary made by the museum or Federal agency of whatever limited information is available that might relate to the identity of the individuals involved. The Review Committee then has the opportunity to review available information. The Committee can either decide there is sufficient evidence to reasonably determine cultural affiliation or that the remains should continue to be treated as ''unidentifiable.''

Another group of remains with limited cultural or geographical information remains are those for which there is no available information about their origins or any possible contemporary descendent Tribes or groups. There are, for example, remains in museums which are simply identified as ''Native American'' or ''Indian'', with no information about where they came from. In these cases, there is insufficient evidence to reasonably identify tribal affiliation either culturally, biologically or geographically. Although this is likely to be a relatively small number of individuals, they are no less important than the other remains held by museums and Federal agencies today.

If it has been determined that these remains are Native American, then broad regional associations of Native American tribes and groups may take responsibility for determining the ultimate disposition of such remains. One possibility that has been raised is

a series of regional cemeteries or mausoleums can be established on protected lands where these unidentified individuals can be reburied and protected forever. Other alternatives to regional cemeteries for the disposition of unidentifiable Native American remains may also be worked out by the regional associations.

5. Several groups have stepped forward and made explicit claims for all those Native American remains for which there are no identifiable cultural descendants. The sentiment of these groups expressed in this public commentary is that such remains should not be left unattended in museums, but should be returned for reconsecration in the earth. The exact cultural affiliation of these individuals is not as important as the fact that they were removed from their final resting places without consent. There is diverse opinion in the Native American community about the treatment of individuals without cultural affiliation. The conditions outlined above for individuals without specific tribal affiliations should be applied for all so-called ''unidentifiable'' individuals.

6. The continuance of a Review Committee is integral to the long-term resolution of issues and problems related to the ultimate disposition of culturally unidentified human remains and associated funerary objects.

7. The Review Committee recognizes that many Native American tribes and groups have already developed regional and cultural associations to address the issue of culturally unidentified remains. These existing associations provide good models for repatriating and caring for culturally ''unidentified'' remains (as defined by the Act) in an expeditious and respectful manner. The guidelines outlined above are explicitly intended to facilitate and encourage the efforts of these existing associations.

8. As a means of stimulating discussion, the Review Committee would like to offer some suggestions about possible alternative procedures for repatriating unidentifiable human remains. These are suggestions only and not intended in any way as proposed regulations. The Committee offers more than one option for resolving several procedural issues and would like to solicit comments about the relative desirability of these or other options.

Draft for Comment Only

Possible procedures for deciding the disposition of unidentified remains Procedures for identification of potential claimants

Option 1

(1) NPS compiles map of groups and tribes who may be related to all lands across time in the United States.

(2) NPS sends inventories of unidentifiable remains to groups with historical or cultural ties to the area from which the remains were taken, or where they currently reside if their original location is unknown.

(3) Interested Native American groups determine if there is evidence of a direct biological or cultural affinity between them and the remains.

(4) In the absence of such evidence, groups may use geographical and chronological information to establish an affinity to the remains.

Option 2

(1) NPS prepares abstracts of the complete national inventories and sends copies of these abstracts to every tribe and potentially descendant Native American group in the United States.

(2) Interested Native American groups review information on remains from areas where they maintain cultural and historical affinities.

(3) Interested groups determine if there is evidence of a direct biological or cultural affinity between them and the remains.

(4) In the absence of such evidence, groups may use geographical and chronological information to establish an affinity to the remains.

Procedures for Reviewing Claims

Option 1

(1) Tribe(s) or group(s) make a request for repatriation by providing NPS evidence of their affinity to the remains.

(2) NPS reviews claims for remains and, in consultation with the NAGPRA review committee, makes determinations of cultural affinity.

(3) The museum or requesting group may appeal the NPS decision to the NAGPRA review committee or appropriate courts.

Option 2

(1) Tribe(s) or group(s) requests repatriation by presenting evidence of an affinity with the collection to the museum or Federal agency holding the remains.

(2) Museum or Federal agency reviews request for repatriation and makes determinations of cultural affinity.

(3) If the museum or Federal agency decides an affinity does not exist, the requesting group may appeal the decision to the NAGPRA review committee or appropriate courts.

Procedures for making repatriations to Native American groups without BIA recognition

(1) If it is determined that a Native American group has an affinity with the remains, a notice of intent to repatriate is published in the federal register with an appropriate waiting period to allow other tribes enough time to file additional claims.

(2) If additional claims for specific remains are filed after this publication, the NPS will review the case for each additional request.

(3) If it is determined based on this review that the additional requesting tribe or group does have an affinity with the remains no repatriation will occur until all claimants reach a consensual agreement on the disposition of the remains.

(4) If agreement is reached, the remains will be repatriated to the requesting groups.

(5) If agreement cannot be resolved through consensual agreement, the claimants can ask the NAGPRA review committee to mediate the dispute or appeal to the appropriate courts.

[FR Doc. 95–14999 Filed 6–19–95; 8:45 am]

BILLING CODE 4310–70–F

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32697]

Norfolk Southern Railway Company—Trackage Rights Exemption—CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT) has agreed to grant overhead trackage rights to Norfolk Southern Railway Company (NS) over a total of approximately 1,442 feet of CSXT rail lines located in Chattanooga, TN. The lines involved are described as follows:

(1) A portion of Track No. 161–C beginning at Track Station (T.S.) 1+24 of Track No. 161–C at ownership point between CSXT and NS, 3,536 feet north of milepost J–149, and extending south to the point of switch for Track No. 161–C at T.S. 0+00 of Track No. 161–C, 3,412 feet north of milepost J–149, a distance of 124 feet.

(2) A portion of Track No. 161, known as the River Lead Track, beginning at the point of switch for Track No. 161–C, 3,412 feet north of milepost J–149, and extending south to the point of

switch for Track No. 161–A, 2,315 north of milepost J–149, a distance of 1,097 feet.

(3) A portion of Track No. 161–A beginning at the point of switch for Track No. 161–A at T.S. 0+00 of Track No. 161–A, 2,315 feet north of milepost J–149, and extending south to T.S. 0+97 of Track No. 161–A at the ownership point between CSXT and NS, 2,218 feet north of milepost J–149, a distance of 97 feet.

(4) A portion of Track No. 161–B beginning at the point of switch for Track No. 161–B at T.S. 0+00 of Track No. 161–B, 3,402 feet north of milepost J–149, and extending south to T.S. 1+24 of Track No. 161–B at the ownership point between CSXT and Siskin Steel & Supply Co., Inc., a distance of 124 feet.

The purpose of the transaction is to allow NS to continue serving Siskin Steel after a portion of NS's track is removed to accommodate an expansion of Siskin Steel's facility. The trackage rights were to become effective on or after June 7, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Greg E. Summy, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 12, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–15011 Filed 6–19–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Advisory Council on Violence Against Women

AGENCY: Department of Justice.

ACTION: Notice of establishment of the Advisory Council on Violence Against Women.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, and Executive Order No. 12838, the Attorney General is establishing the Advisory Council on Violence Against Women for the purpose of providing the Attorney General and Secretary of Health and Human Services practical and general policy advice concerning the implementation of the Violence Against Women Act (VAWA). The committee will work to bring national attention to the problem of violence against women and increase public awareness of the need for improved strategies to curb and/or eliminate violence against women. In addition, the committee will provide an organized public forum of discussion of issues relating to violence against women.

Necessity for this Advisory Council arose due to implementation of the VAWA. Through the creation of new federal crimes and enhanced penalties, and the commitment of federal resources, the VAWA seeks to reduce the incidence of violence against women and to improve the response of the criminal justice system and human services providers to such violence.

The Advisory Council shall be composed of 40 members representing law enforcement agencies, the health and mental health profession, victims services and other fields involved in countering violence against women. Criteria to be used in selecting members shall include: (1) A demonstrated background and interest in the issue of violence against women, particularly domestic violence and sexual assault; (2) balance in point of view or professional perspective, and (3) geographical balance.

The Advisory Council on Violence Against Women will function solely as an advisory body in compliance with the provision of the Federal Advisory Committee Act. Its charter will be filed in accordance with the provisions of the Act.

FOR FURTHER INFORMATION CONTACT: Bonnie Campbell, Director of the Office of Violence Against Women, 10th & Pennsylvania Avenue NW., Washington, DC. Room 5302, telephone (202) 616–8894.

Dated: June 13, 1995.

Bonnie Campbell,

Director, Office of Violence Against Women.

[FR Doc. 95–14986 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Office of Community Oriented Policing Services, COPS Universal Hiring Program

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services (''COPS'') announces the availability of grants to hire and/or rehire additional sworn law enforcement officers to engage in community policing. The COPS Universal Hiring Program permits interested agencies to supplement their current sworn forces or to establish a new law enforcement agency. Eligible applicants include State, local, and Indian law enforcement agencies, as well as jurisdictions seeking to establish a new law enforcement agency and other agencies serving specialized jurisdictions, such as transit, housing, college, school, or natural resources. Agencies that have received funds through COPS AHEAD or COPS FAST need not submit a new application for additional officers under the COPS Universal Hiring Program. The COPS Office will contact those grantees separately to determine their need for additional resources through this program.

DATES: COPS Universal Hiring Program Application Kits will be available on or about June 10, 1995. There will be three application deadlines for the Universal Hiring Program: July 31, 1995, for Round 1; October 15, 1995, for Round 2; and March 15, 1996, for Round 3. Funding for Rounds 2 and 3 is subject to future Congressional appropriations. Applications not funded in Rounds 1 and 2 will be carried over to subsequent rounds.

ADDRESSES: COPS Universal Hiring Program Application Kits will be mailed to all eligible agencies or may be obtained by writing to COPS Universal Hiring Program, 1100 Vermont Avenue NW., Washington, DC 20530, or by calling the Department of Justice Crime Bill Response Center, (202) 307–1480 or 1–800–421–6770. Completed COPS Universal Hiring Program Application Kits should be sent to COPS Universal Hiring Program, COPS Office, 1100 Vermont Avenue NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Crime Bill Response Center, (202) 307–1480 or 1–800–421–6770.

SUPPLEMENTARY INFORMATION: The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants for the hiring or rehiring of law enforcement officers to engage in community policing. The COPS Universal Hiring Program permits interested agencies to supplement their

current sworn forces or to establish a new law enforcement agency, through grants for up to three years. All law enforcement agencies, as well as jurisdictions considering establishing new law enforcement agencies, are eligible to apply for this program. In addition, law enforcement agencies serving specialized jurisdictions, such as transit, housing, college, school, natural resources, and others, are eligible to apply for this program.

Agencies which had submitted letters of intent or initial applications under COPS AHEAD or COPS FAST, but were not approved for funding, will need to submit an application under the COPS Universal Hiring Program because the COPS Office has not had an opportunity to review the community policing plans of these agencies. Agencies which have received grants through the COPS AHEAD or COPS FAST program do not need to submit a new application to be eligible for funding through the COPS Universal Hiring Program. These grantees will be contacted separately by the COPS Office to determine their need for additional resources through this program.

There are three application deadlines for this program: July 31, 1995, for Round 1; October 15, 1995, for Round 2; and March 15, 1995, for Round 3. Funding for Rounds 2 and 3 are subject to future Congressional appropriations. Departments may apply before any one of the deadlines and equal consideration will be given to applications in any round. Applications which are not funded in Round 1 or 2 will be carried over to subsequent rounds.

All applicants will be asked to provide basic community policing and planning information for their area of jurisdictions. In addition, new applicants serving jurisdictions of 50,000 and over, as well as all those jurisdictions seeking to establish a department and agencies serving specialized jurisdictions (such as transit, housing, college, school, or natural resources), will be asked to provide additional information relating to the applicant's community policing plan, local community policing initiatives and strategies, local community support for the applicant's community policing plans, and plans for retaining the officers at the end of the grant period. In addition to the requested community policing information, all applicants will be asked to submit a streamlined budget summary containing information relating to planned hiring levels, salary and fringe benefits, and decreasing federal share requirements. The COPS Universal Hiring Program Application offers two alternative budget worksheets which are tailored to the number of officers requested by each applicant; applicants requesting five or fewer officers will complete one budget worksheet for each officer, while applicants requesting more than five officers will complete a single budget worksheet based on the average yearly cost per officer.

Grants will be made for up to 75 percent of the total entry-level salary and benefits of each officer over three years, up to a maximum of $75,000 per officer, with the remainder to be paid by state or local funds. Waivers of the non-federal matching requirement may be requested under this program, but will be granted only upon a showing of extraordinary fiscal hardship. Grant funds may be used only for entry-level salaries and benefits. Funding will begin once the new officers have been hired or on the date of the award, whichever is later, and will be paid over the course of the grant.

In hiring new officers with a COPS Universal Hiring Program grant, grantees must follow standard local recruitment and selection procedures. All personnel hired under this program will be required to be trained in community policing. In addition, all personnel hired under this program must be *in addition to*, and not in lieu of, other hiring plans of the grantees.

An award under the COPS Universal Hiring Program will not affect the eligibility of an agency for a grant under any other COPS program.

Dated: June 8, 1995.

Joseph E. Brann,

Director.

[FR Doc. 95–14988 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Advisory Council on Violence Against Women

AGENCY: United States Department of Justice.

ACTION: Notice of meeting.

SUMMARY: The Council on Violence Against Women will meet on July 13, 1995, at the White House Conference Center, 726 Jackson Place. The meeting will start at 10:00 a.m. and end at approximately 4:00 p.m. Agenda items to be covered include: Strategies to improve public awareness of violence against women; new public/private alliances to address the problem, and other topics related to violence against women.

The meeting will be open to the public on a first-come, first-seated basis. Anyone wishing to submit written questions to this session should notify the Designated Federal Employee, prior to the start of the session. The notification may be by mail, telegram, facsimile, or a hand delivered note. It should contain the requestor's name; corporate designation, consumer affiliation, or Government designation; along with a short statement describing the topic to be addressed. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Bonnie Campbell, Director of the Office of Violence Against Women, 10th and Pennsylvania Avenue NW., Room 5302, telephone (202) 616–8894.

Dated: June 14, 1995.

Bonnie Campbell,

Director, Office of Violence Against Women.

[FR Doc. 95–14987 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

In accordance with Departmental policy, 28 C.F.R. 50.7 and pursuant to section 122 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9622, notice is hereby given that a proposed Amendment to Consent Decree in *United States* v. *Agrico Chemical Company, et al.*, Civil Action No. 93–23–C, was lodged on May 30, 1995, with the United States District Court for the Northern District of Florida, Pensacola Division. The Amendment to Consent Decree modifies the Consent Decree entered by the Court on May 4, 1994, regarding an action brought under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9606 and 9607, for implementation of Remedial Action and recovery of response costs incurred and to be incurred by the United States at Operable Unit One of the Agrico Chemical Superfund Site in Pensacola, Florida. This amendment requires implementation of Remedial Design and Remedial Action and recovery of response costs incurred and to be incurred by the United States at Operable Unit Two of the Agrico Chemical Superfund Site in Pensacola, Florida.

This case concerns a former fertilizer manufacturing facility at the intersection of Interstate 110 and Fairfield Drive in Pensacola, Florida,

known as the Agrico Chemical Company Superfund Site (the ''Site'').

Defendants Agrico Chemical Company, a division of Freeport-MacMoRan Resource Partners Limited Partnership, and Conoco, Inc., a wholly owned subsidiary of E.I. DuPont de Nemours and Company, Inc., (collectively, the ''Settling Defendants'') have agreed in the proposed Amendment to Consent Decree to pay the United States $351,234.45 for past response costs incurred at the Site, as well as all future response costs incurred by the United States in connection with this Site, including costs of overseeing the implementation of the Remedial Design and Remedial Action of Operable Unit Two. The Settling Defendants have also agreed to implement the remedy selected by EPA for the Site. EPA issued the Record of Decision (''ROD'') for Operable Unit Two on August 18, 1994. The selected remedy provides for natural attenuation of the groundwater contamination, in conjunction with Operable Unit One (which will prevent further contaminant loading to the groundwater), combined with institutional controls to restrict new wells, comprehensive groundwater monitoring, surface-water monitoring of Bayou Texar, and plugging and abandoning any impacted irrigation wells. The estimated present value of the selected remedy for Operable Unit Two is $1.7 million. The ROD also provides for a contingency remedy. If, in the future, fluoride levels in nearby public water supply wells exceed Florida's secondary drinking water standard of 2 mg/l, EPA will decide whether wellhead treatment or well replacement is needed. The estimated costs of the contingency remedy are $1 million for well replacement and $21 million for wellhead treatment.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Amendment to Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Agrico Chemical Company, et al.,* DOJ Ref. #90–11–2–863.

The proposed Amendment to Consent Decree may be examined at the Office of the United States Attorney, Northern District of Florida, 114 East Gregory Street, Pensacola, Florida; the Office of the United States Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Amendment to Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $38.75 (25 cents per page reproduction costs), payable to the Consent Decree Library for a copy of the Amendment to Consent Decree with attachments (ROD and Statement of Work) or a check in the amount of $4.25, for a copy of the proposed Amendment to Consent Decree without those attachments.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–14956 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree in Action Brought Under the Clean Air Act

In accordance with 28 CFR 50.7, notice is hereby given that on May 2, 1995, a proposed consent decree in *United States* v. *Nu-West Industries, Inc.,* Civil Action No. 95–0205–S–EJL, was lodged with the United States District Court for the District of Idaho.

This action was brought by the United States of America on behalf of the Environmental Protection Agency (''EPA'') pursuant to Section 113(b) of the Clean Air Act (''CCA''), 42 U.S.C. 7413(b) for injunctive relief and assessment of civil penalties against Nu-West Industries, Inc. (''Nu-West''). The complaint alleges that Nu-West violated Section 113 of the CAA, 42 U.S.C. 7413, the conditions and limitations of the Idaho State Implementation Plan (''SIP''), 40 CFR 52.670. and the Performance Standards for Sulfuric Acid Plants, 40 CFR Part 60, Subpart H. The alleged violations occurred at Nu-West's phosphate fertilizer facility located in Conda, Idaho.

Pursuant to the proposed consent decree defendant Nu-West will pay to the United States a civil penalty in the amount of $150,000 for historical violations of the SIP, will complete two Supplemental Environmental Projects, which are described fully in the consent decree, and will be subject to stipulated penalties for failure to meet the requirements of the consent decree. The consent decree further requires Nu-West to operate in compliance with the Clean Air Act, the Idaho State Implementation Plan, and the Performance Standards for Sulfuric Acid Plants.

The Department of Justice, for a period of thirty (30) days from the date of this publication, will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Nu-West Industries, Inc.,* DOJ number 90–5–2–1–1922.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, 877 W. Main St., Ste. 201, Boise, Idaho; and the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the consent decree, please enclose a check in the amount of $3.25 (25 cents per page reproduction costs) payable to the ''Consent Decree Library''. When requesting a copy please refer to *United States* v. *Nu-West Industries, Inc.,* DOJ number 90–5–2–1–1922.

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–14990 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *Slagle* v. *United States,* No. 5–90–170 (D. Minn.), was lodged with the United States District Court for the District of Minnesota on May 24, 1995.

The proposed consent decree constitutes a final settlement of all claims against the defendant Slagle pertaining to unpermitted discharge of pollutants into waters of the United States, in connection with defendant's violations of Clean Water Act (''CWA'') sections 301 and 404, 33 U.S.C. §§ 1311 and 1344, and pertaining to civil penalties pursuant to CWA section 309, 33 U.S.C. § 1319, for violations by defendant Slagle at a site located adjacent to Inguadona Lake, Cass County, Minnesota (''the Site'').

The proposed consent decree permanently enjoins defendant: (i) From taking any action at the Site which results in the discharge of dredged or fill material into the waters of the United States, (ii) to take all necessary actions to complete a program of restoration and

conservation in accordance with the activities and schedule set forth in the ''Requirements For Wetlands Remedial Plan'' attached as Exhibit A to the Consent Decree, and (iii) to take all necessary actions to mitigate the impacts upon wetlands caused by his activities at the Site. The defendant shall also pay a civil penalty of $10,000.

The Department of Justice will accept written comments relating to this proposed consent decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, U.S. Department of Justice, Attention: Robert E. Lefevre, Esquire, P.O. Box 23986, Washington, D.C. 20026–3986, and should refer to *Slagle* v. *United States,* No. 5–90–170 (D. Minn.) DJ Reference No. 90–5–1–5–92.

The proposed consent decree may be examined at the Clerk's Office, United States District Court, 316 North Robert Street, Room 708, St. Paul, Minnesota 55101, or at the office of Assistant United States Attorney Friedrick Siekert, 234 U.S. Courthouse, 110 S. fourth Street, Minneapolis, Minnesota 55401.

Letitia J. Grishaw,

Chief, Environmental Defense Section.

[FR Doc. 95–14989 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the ATM Forum

Notice is hereby given that, on May 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''), The ATM Forum (the ''ATM Forum'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in 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 of ATM Forum are: 3M, Austin, TX; Asahi Chemical Industry, Kawasaki City, Kanagawa 210, JAPAN; Bolt Beranek & Newman, Cambridge, MA; CSIRO Radiophysics, Epping, AUSTRALIA; Deustche Telekom AG, Darmstadt, GERMANY; EMC, Hopkinton, MA; Harris & Jeffries, Inc., Dedham, MA; Hyundai Electronics America, Milpitas, CA; Koninklijke PTT Nederland NV, Den Haag, THE NETHERLANDS; Level One Communications, Sacramento, CA; Matsushita Electric Works, Ltd., Tokyo, JAPAN; Mitsubishi Rayon Co., Ltd., Aichi, JAPAN; NPB Partners, LP, Reston, VA; NTIA/ITS, Bouler, CO; Net2net Corporation, Hudson, MA; Ossippee Networks, Waltham, MA; Rockwell International, Santa Barbara, CA; S–COM AG, Berne, SWITZERLAND; Synbios Logic, Inc., Ft. Collins, CO; TUT Systems, Inc., Santa Clara, CA; Tylink Corporation, Norton, MA; Victor Co. of JAPAN, Ltd., Kanagawa, JAPAN; Westell, Aurora, IL; and Xyplex, Inc., Littleton, MA. Company name changes include: Multimedia Communications to MCC Networks, Inc.; and Hughes LAN Systems to Whittaker Communications. The following companies are no longer members: Bipolar Integrated Technology; and Integrated Device Technology.

No changes have been made in the planned activities of ATM Forum. Membership remains open, and the members intend to file additional written notifications disclosing all changes in membership.

On April 19, 1993, ATM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 2, 1993 (58 FR 31415).

The last notification was filed with the Department on February 9, 1995. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 20, 1995 (60 FR 19779).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 95–14998 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Collaborative Decision Support for Industrial Process Control

Notice is hereby given that, on May 9, 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''), Honeywell, Inc., on behalf of the participants in the Collaborative Decision Support for Industrial Process Control has filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to the Collaborative Decision Support for Industrial Process Control 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, Chicago, IL; Applied Training Resources, Houston, TX; British Petroleum, Cleveland, OH; Chevron Research and Technology, Richmond, CA; Exxon Research and Engineering, Florham Park, NJ; Gensym Corp., Cambridge, MA; Honeywell, Inc., Minneapolis, MN; Mobil Research and Development, Princeton, NJ; Shell Oil Company, Houston, TX; Texaco, Bellaire, TX; SACDA, London Ontario CANADA.

The nature and objective of the collaborative research agreement performed by Honeywell and its team in accordance with a Cooperative Agreement from the Department of Commerce, National Institute of Standards and Technology (NIST) under NIST's Advanced Technology Program (ATP), is to work on the development of technologies for improving the performance and the efficient handling of process upsets of industry operations personnel in the petrochemical industry, thus reducing the impact of these situations by a factor of ten and assuring continued technology leadership for the U.S. in both petrochemical processing and in computerized process control.

Information about participation in the Collaborative Decision Support for Industrial Process Control may be obtained by contacting Wayne E. Prochniak, Honeywell, Inc., Minneapolis, MN.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14993 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1933—Financial Services Technology Consortium Inc.; Check Imaging Project

Notice is hereby given that, on May 2, 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 (1) the identities of the parties to the Check Imaging Project sponsored by the Consortium and (2) the nature and objectives of the Project. The notifications were filed for

the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the Project are: Citibank, N.A., New York, NY; The First National Bank of Boston, Boston, MA; The Chase Manhattan Bank, N.A., Brooklyn, NY; Huntington Bancshares Incorporated, Columbus, OH; and Chemical Bank, New York, NY.

The objectives of the Project is early technology for, and demonstration of the feasibility of, a national check imaging system

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14994 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute; ''Gas Pipeline Monitoring for Third-Party Damage''

In notice document 95–10314 appearing on page 20751, in the issue of Thursday, April 27, 1995, in the second column, on line seventeen (17), the word ''detected'' should read ''detection''.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14995 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gas Utilization Research Forum

Notice is hereby given that, on May 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 Gas Utilization Research Forum (''GURF'') Project No. 2, titled ''Mid-Range LNG Plant Liquefaction Process Study'', has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to GURF Project No. 2, 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 Amoco Corporation, Naperville, IL; Chevron Research and Technology Company, Richmond, CA; and Gaz de France, Research Division, Nates Cedex 01 FRANCE. The contemplated liquification process work is to be carried out under contract with the foregoing Participants by M.W. Kellogg Company, Houston, TX. The objective of this Project is to investigate the feasibility with respect to the technical definition and establishment of an LNG facility designed to export approximately sixty (60) million standard cubic feet of liquefied natural gas per day. The general objectives of the Study are to determine the preferred liquefaction process for mid-range LNG capacity plants, and then to develop a preliminary plant description and definition; conceptual design basis for the plant, e.g., capacity, plot plan, feed gas, etc.; and a preliminary capital and preliminary operating cost estimate for the plant.

Participation in this Project will remain open to interested persons and organizations until the Project Completion Date, which is presently anticipated to occur approximately five (5) months after the Project commences. The Participants intend to file additional written notifications disclosing all changes in the membership of the group of Participants involved in this Project.

Information regarding participation in the Project may be obtained from Robert J. Motal, Chevron Research and Technology Company, 100 Chevron Way, P.O. Box 4731, Richmond, CA 94802–0627.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15000 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Software Foundation, Inc.

Notice is hereby given that, on May 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''), Open Software Foundation, 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, the identities of the new, non-voting members of OSF are as follows: Citibank N.A. UK, London, UK; National Institute of Standards & Technology, Gaithersburg, MD; Picture Network International, Arlington, VA; Digital Equipment Corporation Australia, Rhodes, AUSTRALIA; Open System Solutions GMBH, Munchen, GERMANY; Software Associates P/L, N. Sydney, AUSTRALIA; US Army CECOM, Ft. Monmouth, NJ; Digital Equipment Corporation Japan, Tokyo, JAPAN; and North Carolina Office of the State, Raleigh, NC.

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 OSF intends to file additional written notifications disclosing all changes in membership.

On May 11, 1994, OSF 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 August 31, 1994 (59 FR 45009).

The last notification was filed with the Department on January 26, 1995. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 27, 1995 (60 FR 20749).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14996 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PDES, Inc.

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''), PDES, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes to its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following party has become a member of PDES: Integrated Support Systems, Inc., Clemson, SC. The following parties have withdrawn their membership in PDES: Digital Equipment Corporation; Grumman Corporation; Newport News Shipbuilding & Drydock Company; and Northrop Corporation.

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 PDES intends to file additional written notifications disclosing all changes in membership.

On September 20, 1988, PDES 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 October 14, 1988 (53 FR 40282).

The last notification was filed with the Department on October 7, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 1, 1994 (59 FR 61638).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14997 Filed 6–19–95; 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 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''), the Participants in the Petroleum Environmental Research Forum (''PERF'') Project No. 94–09 titled ''Improvements in Methods for Biological Treatment of Refinery Wastewater and Water Reuse'', 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 Amoco Corporation, Naperville, Illinois; Exxon Research and Engineering Company, Florham Park, New Jersey; and Chevron Research and Technology Company, Richmond, California. The general area of planned activity is to exchange research on the general topic of refinery wastewater treatment. Specific topics of interest are biological treatment, with an emphasis on nitrification, and water reuse.

Participation in this venture will remain open to all interested persons and organizations until the Project Completion Date, which is presently anticipated to occur in December, 1996. Also the parties intend to file additional written notifications disclosing all changes in the membership of the group of Participants involved in this project. Information regarding participation in the Project maybe obtained from Dr. Ramachandra Achar, Amoco Research Center, Mail Station H–7, 150 West Warrenville Road, Naperville, IL 60563.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14991 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Notification Water Heater Industry Joint Research and Development Consortium; Correction

In the **Federal Register** Notice appearing on page 15789 in the issue of Monday, March 27, 1995, in the second column, in the first paragraph, in the twenty-second (22) and twenty-third (23) lines, the company ''GSW Water Heater Company'' should read ''GSW Water Heating Company''.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14992 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Native American Employment and Training Council; Notice of Appointment of Members

SUMMARY: Notice is hereby given that appointments have been made to fill nine (9) vacancies from the eighteen (18) memberships on the Native American Employment and Training Council (NAETC).

The following seven (7) individuals have been reappointed to the Council:

Representing JTPA Section 401 Grantees

Mr. Elkton Richardson, JTPA Director, North Carolina Commission on Indian Affairs, Raleigh, North Carolina

Ms. Karen Kay, Executive Director, Michigan Indian Employment and Training Services, Inc., Holt, Michigan

Mr. Frank Siow, JTPA Director, Pueblo of Laguna, Laguna, New Mexico

Ms. Bernadine Wallace, JTPA Director, Montana United Indian Association, Helena, Montana

Ms. Carol Peloza, JTPA Director, Seattle Indian Center, Inc., Seattle, Washington

Mr. Harold Wauneka, JTPA Director, Navajo Tribe of Indians, Window Rock, Arizona

Representing Other Disciplines

Dr. Scott Butterfield, Principal, Hayesville Elementary School, Salem, Oregon

The following two (2) individuals have been newly appointed to the Council:

Mr. Warren Cook, Executive Director, Mattaponi, Pamunkey, Monacan Consortium, Prince William, Virginia

Mr. Bob Giago, President, United Urban Indian Council, Oklahoma City, Oklahoma

The NAETC was established under Section 401(k)(1) of Title IV of JTPA, as amended, to provide advice with respect to the implementation of JTPA programs for Native American youth and adults.

DATES: These appointments will be effective July 1, 1995, and will expire on June 30, 1997, subject to the rechartering of the NAETC as of July 1, 1995.

FOR ADDITIONAL INFORMATION CONTACT: Thomas W. Dowd, Chief, Division of Indian and Native American Programs, Office of Special Targeted Programs, Employment and Training Administration, Room N–4641, Washington, DC 20210. Telephone: 202–219–8502 (this is not a toll-free number).

Signed at Washington, DC this 15th day of June, 1995.

Timothy M. Barnicle,

Acting Assistant Secretary for Employment and Training Administration.

[FR Doc. 95–15074 Filed 6–19–95; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act, Title III, Demonstration Program: Specialized/Targeted Dislocated Worker Services Project

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant application (SGA).

SUMMARY: All information required to submit a proposal is contained in this announcement. The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces a demonstration program to provide specialized and/or targeted dislocated worker services to be funded with Secretary's National Reserve funds appropriated through Title III of the Job Training Partnership Act (JTPA). This notice describes the process that eligible entities must use to apply for demonstration funds, the subject area

for which applications will be accepted for funding, how grantees are to be selected, and the responsibilities of grantees. It is anticipated that up to $2 million will be available for funding 8–10 demonstration projects covered by this solicitation with no project being awarded more than $400,000.

DATES: Applications for grant awards will be accepted commencing June 20, 1995. The closing date for receipt of applications will be August 26, 1995, at 2:00 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to: Division of Acquisition and Assistance, Attention: Mr. Willie E. Harris, Reference: SGA/DAA 95–006, Employment and Training Administration, U.S. Department of Labor, Room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: *Mr. Willie E. Harris,* Division of Acquisition and Assistance, Telephone: (202) 219–7300 (this is not a toll-free number).

SUPPLEMENTAL INFORMATION: This announcement consists of five parts. Part I describes the authorities and purpose of the demonstration program and identifies demonstration evaluation and oversight policy. Part II describes the application process and provides detailed guidelines for use in applying for demonstration grants. Part III includes the statement of work for the demonstration projects. Part IV identifies and defines the selection criteria which will be used in reviewing and evaluating applications. Part V describes the reporting requirements.

Part I. Background

A. Authorities

Section 324 of the Job Training Partnership Act authorizes the use of funds reserved under Part B of Title III for demonstration programs of up to three years in length. Under section 324, the Secretary is required to conduct or provide for an evaluation of the success of each demonstration program.

The Department relies on applicants for grants to comply with all Federal and State laws in setting up their programs. For example, we expect that grantees will comply with requirements for licensing and that they would obtain necessary union concurrence when working within a labor agreement.

B. Purpose of the Demonstration

As authorized under Title III of JTPA, the Dislocated Worker Program provides a wide range of employment and training services to eligible dislocated workers to help them find and qualify for new jobs. While the overall population served by the program has received significant assistance, program experience indicates that a need for specialized services exists among those who face particular barriers to employment. Projects funded through this solicitation are to provide reemployment and retraining services—as described in Sections 314(c) and 314(d) of JTPA—to dislocated workers who as members of a specific target population may need and benefit from the receipt of specialized services. Participants must be eligible under Section 301(a) of JTPA and be members of the target population for which the project is designed. For purposes of this demonstration, appropriate target populations include those groups: (1) Who have experienced greater adverse labor market outcomes, and/or (2) who need more or specialized employment and training services, relative to the general dislocated worker population served by JTPA in the local area(s) of proposed demonstration project activity. Possible target populations could include dislocated workers, veterans, handicapped workers, limited-English speaking workers, displaced homemakers, or others with a documented record of labor market outcomes or service needs as noted above.

The purpose of this demonstration is to identify and test the services and service mix necessary to ensure that the following demonstration program goals are met for the target population: (1) At least 70 percent of project participants will find employment within 90 days after leaving the project at an average wage of at least 90 percent of their previous wage (or for those who had no previous wage, an average wage at least equivalent to the poverty level); and (2) at least 70 percent of the project participants will rate the services received as ''extremely'' or ''very valuable.''

C. Evaluation

Under a separate announcement, DOL will select and fund separate evaluation contractors to: (1) Provide technical assistance to grantees in establishing appropriate data collection methods and processes; and (2) conduct an independent evaluation of the outcomes, impacts and benefits of the demonstration projects, Grantees will be expected to make available participant records and access to personnel, as specified by the evaluation contractor.

In addition, DOL will establish, for each demonstration project site, and oversight group made up of federal, State and substate staff.

D. Definitions

Unless otherwise indicated in this announcement, definitions of terms used herein shall be those definitions found in the Job Training Partnership Act, as amended, particularly at Section 4 and Section 301.

Part II. Application Process—All Information Required to Submit a Proposal is Contained in This Announcement

A. Eligible Applicants

Eligible applicants for demonstration projects funded under this announcement include States, Title III substate grantees, and other organizations and institutions that can demonstrate the ability to deliver the services proposed and to ensure the integrity of the funds requested.

B. Contents

An original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts—Part I, the Financial Proposal, and Part II, the Technical Proposal.

1. *Financial Proposal*—The Financial Proposal, Part I, shall contain the SF–424, ''Application for Federal Assistance'' (Appendix No. 1), and SF 424–A, ''Budget'' (Appendix No. 2). The Federal Domestic Assistance Catalog number is 17.246. The budget shall include on separate pages: a cost analysis of the budget, identifying in detail the amount of each budget line item attributable to administrative costs and costs for one or more of the following categories: basic readjustment services [Section 314(c)(1–14, 16–18) of JTPA], supportive services [Section 314(c)(15)], and retraining services [Section 314(d)] requested through this grant [Note: Other Title III cost categories not mentioned are specifically excluded from grant expenditures, e.g. rapid response assistance and needs-related payments]; an identification of the amount of each budget line item which will be covered by other funds (if applicable), and the sources of those funds (including other Title III funds, employer funds, in-kind resources, secured and unsecured loans, grants, and other forms of assistance, public and private); and a justification for the average cost of service per placement. This is to be computed by dividing the number of proposed participants of the target population who will be employed within 90 days after leaving the project into the total funds requested, and is to be compared to existing local dislocated worker program costs.

Grant funds may cover only those costs which are appropriate and reasonable. Federal funds cannot be used to provide training which an employer is in a position to, and would otherwise, provide, nor can they be used to provide salaries for program participants.

Federal funds may not be used for acquisition of production equipment. The only type of equipment that may be acquired with Federal funds is equipment necessary for the operation of the grant. In the instance of a purchase, the cost of the equipment is to be prorated over the projected life of the equipment to determine the cost to the grant. USE OF GRANT FUNDS TO PURCHASE EQUIPMENT WITH A UNIT COST OF $5,000 OR MORE REQUIRES SPECIAL REVIEW AND APPROVAL FROM DOL PRIOR TO PURCHASE.

Applicants may budget limited amounts of grant funds to work with technical expert(s) to provide advice and develop more complete project plans.

2. *Technical Proposal*—The technical proposal shall demonstrate the offeror's capabilities in accordance with the Statement of Work/Project Summary in Part III of this solicitation. NO COST DATA OR REFERENCE TO PRICE SHALL BE INCLUDED IN THE TECHNICAL PROPOSAL.

C. Submission

Grant applications will be evaluated carefully by a panel convened by the Department after closing date of this solicitation. Incomplete or non-responsive proposals may be returned without evaluation. An application will be reviewed based upon the overall responsiveness of the application's content to the submission requirements and to the selection criteria found in Part IV, taking into consideration the extent to which funds are available.

D. Hand-Delivered Proposals

Proposals should be mailed at least five (5) days prior to the closing date for the receipt of applications. However, if proposals are hand-delivered, they shall be received at the designated place by 2 p.m., Eastern Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

E. Late Proposals

Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it—

(1) was sent by the U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of the application (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 30th of January must have been mailed by the 25th); or

(2) was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term ''working days'' excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent either by the U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late proposal sent by ''Express Mail Next Day Service—Post Office to Addressee'' is the date entered by the post office receiving clerk on the ''Express Mail Next Day Service—Post Office to Addressee'' label and the postmark on both the envelope and wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

F. Withdrawal of Proposals

Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person or by an applicant or an authorized representative thereof, if the representative's identify is made known and the representative signs a receipt for the proposal before an award.

G. Period of Performance

Project operators must be prepared to deliver services within 90 days following award. The delivery of services will be a period of 12 months. Grantees will be allowed up to 90 days for final reports and closeout. All projects must be completed not later than 18 months from the date of award.

H. Funding

DOL plans to set aside up to $2 million to be disbursed for 8–10 projects, contingent upon resources being available for this purpose. It is expected that no project will be awarded more than $400,000. No additional funds will be available under this demonstration. The project operator will be expected to seek continued support from funds distributed by formula through the JTPA system.

I. Availability of Funds

The Government's obligation under these grants are contingent upon the availability of appropriated funds from which payment for grant purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the Grant Officer for these grants and until the Grantees receive notice of such availability, to be confirmed in writing by the Grant Officer.

J. Page Count Limit

Applications are to be limited to 30 single-side pages 8.5 in. × 11 in., single-spaced, with a maximum of 15 pages of attachments.

K. Cost Limitations

Demonstration grants are not subject to the cost limitations for formula-funded Title III grants at Section 315 of the JTPA. However, any offeror proposing administrative costs that exceed 15 percent of the budget and/or supportive services that exceed 25 percent of the funds requested in the application shall provide a narrative justification.

Part III. Statement of Work

Each application should follow the format outlined here. For every section, A through G, the application should include: (1) information that responds to the requirements in this part; (2) information that indicates adherence to the provisions described in Parts I and II of this solicitation; and (3) other information the offeror believes will

address the selection criteria identified in Part IV.

A. Target Population

Describe the dislocated worker target population, including the size, location, and the documented needs of this population for specialized services related to the population's labor market outcomes and/or the availability of JTPA services in the local area(s) to be served (as indicated in Part I.B.); the barriers to employment faced by the target population; the number of target population members to be served by specifically identified local area; and the criteria and process for selecting those individuals to be served from among the total number of eligible persons in each area.

B. Components of the Specialized/ Targeted Dislocated Worker Service Demonstration

Describe the major elements of the specialized/targeted dislocated worker services demonstration project, including how the project works in terms of the individual worker getting access to the reemployment and retraining services which the individual needs. Specifically:

- What specialized and other services will be covered by the reemployment and retraining program? Describe mechanisms to ensure appropriate outreach and recruitment? Explain how these services are relevant to the target population to be served? [Note: Such services must be authorized under Sections 314(c) and 314(d) of JTPA and comply with applicable federal regulations at 20 CFR 627 and 631.]
- How will the reemployment and retraining service needs of the individual worker be determined? What will be the sequence of services provided and the criteria/decision points used to determine the appropriateness of specific services for individual participants? [Note: Include in the description of service sequence a flowchart and timelines.]
- How will qualified providers of reemployment and retraining services be determined?
- Will workers be given the choice of optional providers of services? If so, how will these options be developed, and how will the worker be able to access this information?
- How will the amount of funds to be used for an individual's training be determined?
- How will a participant's continuing participation in the program be monitored? At what point(s) will termination occur?
- How will new job openings and opportunities for the project participants be identified and developed including opportunities for jobs in nontraditional occupations?
- What information will be available to the worker to identify and evaluate alternative employment opportunities? How will this information be developed? How will the worker be able to access this information?

C. Administration and Management

Identify the management structure for the project and demonstrate the means to ensure accountability for funds as well as performance.

Provide a description of the process and procedures to be used to obtain feedback from participants and other appropriate parties on the responsiveness and effectiveness of the services provided. The description should include an identification of the types of information to be obtained, the method(s) and frequency of data collection, and how the information will be used in implementing and managing the project. Specific references should be made to collecting information needed to determine: (1) The achievement of project outcomes as indicated in section F (including 90 day follow-ups of participants to determine demonstration program goal achievement) and (2) the reporting of participants, outcomes, and expenditures. It is expected that grantees may employ focus groups and surveys, in addition to other methods, to collect feedback information.

Indicate the applicant's past experience in the management of projects similar to that being proposed, particularly regarding oversight and operating functions including financial management.

D. Use of Existing Services and Resources

A description of the relationship of the proposed project to the ongoing assistance to dislocated workers through the formula-funded JTPA Title III program in the service area and other existing public and private resources. This description must include written comments from the local Title III substate grantee regarding those procedures to be used to ensure non-duplication of services that are available to project participants through the formula-funded Title III program.

E. Coordinated and Linkages

Describe the consultation with relevant parties in developing the project design and the role of these parties in implementing the project. Suggested consultation shall include: State JTPA Dislocated Worker Unit, Substate Title III grantee(s) and administrative entity(ies), and local organizations in the project service area(s) providing education, training and supportive services.

F. Outcomes

Identify project outcomes and the specific measures, and planned achievement levels, that will be used to determine the success of the project.

These outcomes and measures should include, but are not limited to:

- The number of participants to be enrolled in services, those successfully completing services through the project, and those to be placed into new jobs;
- The number of participants not successfully completing their specific service plans, and the reasons for the non-completion;
- Measurable effects of the services provided to project participants as indicated by gains in individuals' skills, competencies, or other outcomes;
- Average wages of participants prior to and at completion of project;
- Customer satisfaction with the project, and at critical points in the service delivery; and
- Other additional measurable, performance-based outcomes that are relevant to the proposed intervention and which may be readily assessed during the period of performance of the project.

Note: An explanation of how such additional measures are relevant to the purpose of the demonstration program shall be included in the application.

The proposal must also describe how outcomes achieved by individuals served by the project are to be related to the demonstration program goals identified in Part I, section B.

G. Replicability

Describe the information to be provided on project activities that will allow other parties to replicate the proposed project.

Part IV. Evaluation Criteria

Prospective offerors are advised that the selection of grantee(s) for award is to be made after careful evaluation of proposals by a panel selected by DOL. Panelists will evaluate the proposals for acceptability based on the various factors enumerated below. The panel results are advisory in nature and not binding on the Grant Officer.

A. Technical Evaluation (80 Points)

Services and Target Group. (35 points) The responsiveness of the services to be provided, including the

degree to which the services appear to meet the documented specialized needs of the target population. The demonstrated relationship between the services to be provided and the jobs into which participants are to be placed. The scope of the project in terms of the number of participants to be served. (Relates to information requested in Part III, sections A, B, and F.)

Management Structure. (15 points) The extent to which the management structure ensures accountability for performance, monitors customer satisfaction, and includes procedures for continuous quality improvement. The ability of the management structure to determine the extent to which the planned project outcomes and demonstration program goals have been met by the project. (Relates to information requested in Part III, section C.)

Coordination and Linkages; Utilization of Resources. (10 points) The extent to which the project will be integrated with other existing public and private resources and is supported by appropriate State and local organizations. (Related to information requested in Part III, sections D and E.)

Demonstrated Experience. (10 points) Experience in the oversight and operation of projects requiring management capabilities and experience similar to the proposed project. (Relates to information requested in Part III, section C.)

Replacability. (10 points) The completeness of the information to be provided on project activities that will allow others to replicate the project. The likelihood that the approach may be applicable to a broad range of dislocated worker programs across the country. (Relates to information requested in Part III, section G.)

B. Cost Evaluation (20 Points)

The cost effectiveness of the project as indicated by the relationship of proposed costs to number of participants to be served, the range of services to be provided and the planned outcomes, as compared to other service strategies available for Title III grantees. The extent to which the budget is justified and supports the planned outcomes.

Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their applications. Applications may be rejected where the information requires is not provided in sufficient detail to permit adequate assessment of the proposal. The final decision on the award will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer.

Part V. Reporting Requirements

Applicants selected as grantees will be required to provide the following reports:

A. Dislocated Worker Special Project Reports as required by the grant award documents.

B. Standard Form 269, Financial Status Report Form, on a quarterly basis.

C. Quarterly Progress Reports.

D. Final Project Report including an assessment of project performance.

Signed at Washington, DC, this 15th day of June 1995.

Janice E. Perry,

Grant Officer, Division of Acquisition and Assistance.

Appendices

No. 1—Application for Federal Assistance (Standard Form 424)

No. 2—Budget Form—Non Construction Programs (Standard Form 424–A)

BILLING CODE 4510–30–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

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)
Prescribed by OMB Circular A-102

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.
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.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: *Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).*

(INSTRUCTIONS ON BACK OF FORM)

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. **Personnel:** Show salaries to be paid for project personnel.

2. **Fringe Benefits:** Indicate the rate and amount of fringe benefits.

3. **Travel:** Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. **Equipment:** Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.

5. **Supplies:** Include the cost of consumable supplies and materials to be used during the project period.

6. **Contractual:** Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. **Other:** Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. **Total, Direct Costs:** Add lines 1 through 7.

9. **Indirect Costs:** Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. **Training /Stipend Cost:** (If allowable)

11. **Total Federal funds Requested:** Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 95–15073 Filed 6–19–95; 8:45 am]
BILLING CODE 4510–30–C

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register**. Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: June 13, 1995.

Richard V. Zeutenhorst,

Associate Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–92–166–C
FR Notice: 57 FR 59361
Petitioner: Costain Coal, Inc.
Reg Affected: 30 CFR 75.360
Summary of Findings: Petitioner's proposal to establish a continuous monitoring station to monitor the air passing through the William Station intake air shaft, the 3rd East, the 8th Main North intake and the 9th Main North entries considered acceptable alternative method. Granted with conditions for the 3rd East, 8th Main North, and 8th Main North Parallel intake aircourses.

Docket No.: M–93–108–C
FR Notice: 58 FR 39238
Petitioner: Wenrich Coal Company
Reg Affected: 30 CFR 75.335
Summary of Findings: Petitioner's proposal for construction of seals using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs considered acceptable alternative method. Granted with conditions.

Docket No.: M–93–146–C
FR Notice: 58 FR 39569
Petitioner: RoxCoal, Inc.
Reg Affected: 30 CFR 75.1719–1
Summary of Findings: Petitioner's proposal to ensure that no equipment or pedestrians will travel in front of mobile roof support (MRS) while its being set up; to provide the MRS with reflective tape; and to use continuous mining machines to illuminate the MRS area of travel on the pillar line instead of illuminating the work area considered acceptable alternative method. Granted with conditions for the J. H. Fletcher mobile roof support, Model No. MRS–13 (MRS), used as mobile roof support for second mining.

Docket No.: M–93–149–C
FR Notice: 58 FR 39569
Petitioner: Little Rock Coal Company
Reg Affected: 30 CFR 75.335
Summary of Findings: Petitioner's proposal for construction of seals using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs considered acceptable alternative method. Granted with conditions.

Docket No.: M–93–210–C
FR Notice: 58 FR 44701
Petitioner: Drummond Company, Inc.
Reg Affected: CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal to install low-level carbon monoxide sensors as an early warning fire detection system in all belt entries in lieu of point-type heat sensors considered acceptable alternate method. Granted with conditions. Petitioner's request for relief to give effect to the modification granted.

Docket No.: M–93–211–C
FR Notice: 58 FR 44701
Petitioner: Drummond Company, Inc.
Reg Affected: 30 CFR 75.350
Summary of Findings: Petitioner's proposal to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used as intake aircourses. Granted for the use of belt air to ventilate active working sections. Petitioner's application for relief to give effect to the March 2, 1995, Proposed Decision and Order GRANTED.

Docket No.: M–93–252–C
FR Notice: 58 FR 50055
Petitioner: The Harriman Coal Corporation
Reg Affected: 30 CFR 77.409(b)
Summary of Findings: Petitioner's proposal to operate its Caterpillar Excavators, Model 245 without handrails on the outside of walkways considered acceptable alternative method. Granted with conditions.

Docket No.: M–93–267–C
FR Notice: 58 FR 57627
Petitioner: AMAX Coal Company
Reg Affected: 30 CFR 77.900
Summary of Findings: Petitioner's proposal to use electronic pump controllers to sense the volume of water coming into the pit pumps and automatically turn the pump on and off electronically considered acceptable alternative method. Granted with conditions for pontoon-mounted de-watering pumps to be operated with undervoltage protection provided by the ground monitor circuit breaker.

Docket No.: M–93–271–C
FR Notice: 58 FR 57627
Petitioner: Peabody Coal Company
Reg Affected: 30 CFR 75.364(b)(1)
Summary of Findings: Petitioner's proposal to establish evaluation points in each of the aircourse entries #1, #2, and #3 at the outby end of the 1st Sub-Main North aircourse near coordinate 1+70 and at the inby end near coordinate 12+70; to test these evaluation points on a weekly basis and record the test results in a designated book; and to travel the ''neutral entries'' adjacent to the 1st Sub-Main North entries on a weekly basis when monitoring the atmosphere that ventilates the entries considered acceptable alternative method. Granted with conditions for the 1st Sub-main North intake aircourse entries from coordinate 1+70 to 12+70, located between crosscut No. 15 to crosscut No. 84.

Docket No.: M–93–308–C
FR Notice: 58 FR 64972
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's request that paragraph 25 of MSHA's Proposed Decision and Order, docket number M–92–90–C be amended to eliminate conflict between paragraph 25 and MSHA's subsequently issued section 75.342(a)(2) requirements considered acceptable alternative method. Granted with conditions for the high-voltage longwall system at the Robinson Run No. 95 Mine.

Docket No.: M–93–309–C
FR Notice: 58 FR 64972
Petitioner: Tennessee Energy Corporation
Reg Affected: 30 CFR 75.333(g)
Summary of Findings: Petitioner's proposal to designate specific locations strategically positioned and to evaluate the quantity and quality of air entering and leaving the affected area instead of ventilating and evaluating each individual area considered acceptable alternative method. Granted with conditions for the unventilated room necks of the mine's main return aircourse for approximately 1,300 feet.

Docket No.: M–93–311–C
FR Notice: 58 FR 64972
Petitioner: Maple Meadow Mining Company
Reg Affected: 30 CFR 75.364(a)(1)
Summary of Findings: Petitioner's proposal to establish monitoring stations at a point 50 feet outby spad #2076, No. 3 Entry to monitor the quantity and direction of air entering and leaving the affected area due to deteriorating roof conditions considered acceptable alternative method. Granted with conditions for the intake aircourse through 2111 panel.

Docket No.: M–93–313–C
FR Notice: 58 FR 64972
Petitioner: Heatherly Mining, Inc.
Reg Affected: 30 CFR 75.1700
Summary of Findings: Petitioner's proposal to mine through oil and gas well boreholes considered acceptable alternative method. Granted with conditions.

Docket No.: M–93–317–C
FR Notice: 58 FR 68670
Petitioner: Richland Coal Company (now Canfield Energy, Inc.)
Reg Affected: 30 CFR 75.342
Summary of Findings: Petitioner's proposal to monitor continuously with a hand-held methane and oxygen detector instead of using a methane monitoring system on permissible three-wheel tractors with drag bottom buckets considered acceptable alternative method. Granted with conditions for the permissible three-wheel battery-powered tractors used to load coal.

Docket No.: M–93–318–C
FR Notice: 58 FR 68670
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.343(b)
Summary of Findings: Petitioner's proposal to ventilate the underground shop with intake air that is coursed through the affected air course directly into a return air course and that is not used to ventilate working places; and to establish check points to monitor for methane and the quantity of air in the affected area on a weekly basis due to deteriorating conditions considered acceptable alternative method. Granted with conditions for the underground shop known as the Bowers Air Shaft Motor Barn.

Docket No.: M–93–321–C
FR Notice: 58 FR 68671
Petitioner: Energy West Mining Company (formerly Utah Power and Light Company)
Reg Affected: 30 CFR 75.1101–8
Summary of Findings: Petitioner requests to amend MSHA's Proposed Decision and Order, dated April 29, 1987 granting petition for modification, docket number M–85–49–C. Petitioner's proposal to protect all belt drives in these mines with water sprinkler systems; to use upright type sprinkler heads as an alternative to the previously approved pendant type sprinkler heads; and to include an optional 2-inch outlet at the end of the 2-inch sprinkler pipe to extend the circuit in order to provide optional coverage of remote headrollers at its Deer Creek, Trail Mountain and Cottonwood Mines in Emery County, Utah considered acceptable alternative method. Granted with conditions.

Docket No.: M–93–327–C
FR Notice: 59 FR 1568
Petitioner: McElroy Coal Company
Reg Affected: 30 CFR 75.364(b)(2)
Summary of Findings: Petitioner's proposal to establish evaluation points at specific locations and to have a certified person monitor for methane and the quantity and quality of air at these evaluation points on a weekly basis and record the results in a book kept on the surface due to deteriorating roof conditions in certain areas of the return aircourse considered acceptable alternative method. Granted with conditions for the ''East Return'' aircourses between Monitoring Station No. 8 (near 2 South sealed area) and Monitoring Station No. 9 (near Big Tribble return air shaft).

Docket No.: M–94–03–C
FR Notice: 59 FR 4114
Petitioner: Peabody Coal Company
Reg Affected: 30 CFR 75.364(b)(4)
Summary of Findings: Petitioner's proposal to have a certified person to monitor on a weekly basis the methane and oxygen concentrations and quantity of air outby the No. 1 Permanent Seal at Station 41+10 in Entry 1 of the 1st Submain North off the 1st Submain East and inby the No. 1 Permanent Seal at Station 40+70 in Entry 1 of the 1st Submain North off the 1st Submain East due to hazardous roof conditions and to record the results in a book kept on the surface available to interested persons considered acceptable alternative method. Granted with conditions for the examination of the No. 1 seal of the 2nd Panel West at the Camp No. 1 Mine.

Docket No.: M–94–30–C
FR Notice: 59 FR 15238
Petitioner: Mon River Mining Corporation
Reg Affected: 30 CFR 75.364(b)(2)
Summary of Findings: Petitioner's proposal to establish evaluation check point No. 3 outby and check point No. 4 inby the crosscut due to deteriorating roof conditions in the right return in the crosscut outby the belt overcast and the adjacent heading at survey Station No. 45; to post danger signs and block off the affected area; to check each side of the crosscut for proper air movement and for methane and oxygen deficiency and record the date, time and initials on date board on each side of the crosscut; to make weekly examinations and record the results in a record book kept on the surface available to interested persons considered acceptable alternative method. Granted with conditions for approximately 50 feet of the return aircourse off the No. 1 and No. 2 Right rooms ventilated worked-out areas at the No. 1 Deep Mine.

Docket No.: M–94–35–C
FR Notice: 59 FR 17793
Petitioner: Mountain Coal Company
Reg Affected: 30 CFR 75.804(a)
Summary of Findings: Petitioner's proposal to use 2/0 and 4/0 Anaconda SHD+GC, and 2/0 and 4/0 Pirelli SHD-Center-GC type flame resistant cables with a flexible No. 16 A.W.G. ground check conductor for the ground check continuity check circuit on high-voltage longwall system(s) considered acceptable alternative

method. Granted with conditions for Mountain Coal Company's West Elk Mine's longwall systems at the West Elk Mine.

Docket No.: M–94–37–C
FR Notice: 59 FR 17793
Petitioner: Golden Oak Mining Company, L.P.
Reg Affected: 30 CFR 75.1710–1
Summary of Findings: Petitioner's proposal to operate its Joy 21 shuttle cars without canopies or cabs and assertion that application of the standard would result in a diminution of safety to the miners considered acceptable. Granted for the two-middle 21SC Joy shuttle cars on the 004–0 MMU section, in mining heights less than 48 inches at the Tango Mine .

Docket No.: M–94–53–C
FR Notice: 59 FR 24729
Petitioner: Kerr-McGee Coal Corporation
Reg Affected: 30 CFR 75.503
Summary of Findings: Petitioner's proposal to use electric motor-driven mine equipment in a longwall recovery room to serve as a power center (transformer) in intake air for furnishing power to roofbolters with a 1200 foot long, Number 2, G–GC, 2KV trail cable that is protected for a short circuit fault with an instantaneous circuit breaker set at not more than 600 amperes at all points of the recovery room considered acceptable alternative method. Granted with conditions for trailing cables supplying the 3 Flether single boom roof bolters, Model No. CDR–13–EC-F, approval No. 2G–2674A–4, Serial Nos. 91086, 91087, and 92048 at the Galatia No. 56–1 Mine.

Docket No.: M–94–58–C
FR Notice: 59 FR 26816
Petitioner: Costain Coal, Inc.
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage (2400 volts) operated equipment inby the last open crosscut at the working longwall sections considered acceptable alternative method. Granted with conditions for the permissible high-voltage longwall equipment at the Baker Mine.

Docket No.: M–94–60–C
FR Notice: 59 FR 29304
Petitioner: CONSOL of Kentucky, Inc.
Reg Affected: 30 CFR 75.1101–8
Summary of Findings: Petitioner's proposal to use a single overhead pipe system with ½-inch orifice automatic sprinklers located on 10 foot centers to cover 50 feet of fire-resistant belt or 150 feet of nonfire-resistant belt with actuation temperatures between 200 and 230 degrees fahrenheit with water pressure equal or greater than 10 psi and with sprinklers located 10 feet apart so that the discharge of water will extend over the belt drive, belt take-up, electrical control, and gear reducing unit considered acceptable alternative method. Granted with conditions at the Jones Fork #11bcde-h4 Mine.

Docket No.: M–94–62–C
FR Notice: 59 FR 29305
Petitioner: Air Products and Chemicals, Inc.
Reg Affected: 30 CFR 77.213
Summary of Findings: Petitioner's proposal to have an escapeway not less than 30 inches in diameter from the tunnel within 24 feet of the tail roller at the closed end of the tunnel; to install a cable type heat detection system set at 140 degrees fahrenheit in the enclosed portion of the tunnel; to install heat activated sprinklers in the tunnel; to install a carbon monoxide (CO) monitoring sensor in the tunnel near the tail roller in order to activate a visual alarm in the area of the tail roller and in the main and fuel handling control rooms when a level of 15 ppm is reached; and to install a pull cord throughout the tunnel to stop the belt conveyor considered acceptable alternative method. Granted with conditions for an alternate escapeway from the conveyor tunnel at the Cambria Cogeneration Facility.

Docket No.: M–94–66–C
FR Notice: 59 FR 32465
Petitioner: Blue Arc Coal Corporation, Inc.
Reg Affected: 30 CFR 75.342
Summary of Findings: Petitioner's proposal to monitor continuously with a hand-held methane and oxygen detector instead of using a methane monitoring system on permissible three-wheel tractors with drag bottom buckets considered acceptable alternative method. Granted with conditions for the Mescher permissible three-wheel battery-powered tractors used to load coal at the No. 2 Mine.

Docket No.: M–94–68–C
FR Notice: 59 FR 32465
Petitioner: Island Creek Coal Company
Reg Affected: 30 CFR 75.1100–2(b)
Summary of Findings: Petitioner's proposal to have a fire hose strategically located of sufficient length so that any affected area of the belt would be covered from the most proximate fire hose outlet; to have 700 feet of fire hose instead of the required 500 feet at a location in the immediate area of the longwall belt drive; to have crosscuts leading to the firehose outlets passable from the belt entry by removing a portion of the stoppings at or near the fire hose outlets or by providing stopping doors at or near the fire hose outlets considered acceptable alternative method. Granted with conditions for the retreating longwall sections at the VP–8 Mine.

Docket No.: M–94–82–C
FR Notice: 59 FR 35148
Petitioner: K & S Coal Company
Reg Affected: 30 CFR 75.1100–2(a)(2)
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water, cars, and other water storage are not practical considered acceptable alternative method. Granted with conditions for firefighting equipment in the working sections at the First Chance Slope Mine.

Docket No.: M–94–107–C
FR Notice: 59 FR 40924
Petitioner: Energy West Mining Company
Reg Affected: 30 CFR 75.804(a)
Summary of Findings: Petitioner's proposal to use Cablec Anacondabrand 5KV 3/C Type SHD+GC, Piralli Type SHD-CENTER-GC, or Tiger Brand 5KV Type SHD-CGC, MSHA-approved flame resistant cables with a flexible No. 16 A.W.G. ground check conductor for the ground continuity check circuit, on high-voltage longwall systems considered acceptable alternative method. Granted with conditions for longwall systems at the Deer Creek Mine.

Docket No.: M–94–114–C
FR Notice: 59 FR 40925
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.503
Summary of Findings: Petitioner's proposal to use 800 feet of trailing cables with three-phase 480 volt to supply power to loading machines, shuttle cars, roofbolters, and section ventilation fans while developing longwall panels considered acceptable alternative method. Granted with conditions for the loading machines, roofbolters, shuttle cars, and section ventilation fans used to develop three-entry longwall panels in the Dilworth Mine.

Docket No.: M–94–115–C
FR Notice: 59 FR 40925
Petitioner: R & S Coal Company
Reg Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to use the gunboat without safety catches and an increased rope strength safety factor and secondary safety connections which are securely

fastened around the gunboat and to the hoisting rope above the main connecting device because of the steep, frequently changing pitch and numerous curves and knuckles in the main haulage slope considered acceptable alternative method. Granted with conditions for the use of the gunboat without safety catches at the Primrose Slope Mine.

Docket No.: M–94–122–C
FR Notice: 59 FR 43869
Petitioner: Freeman United Coal Mining Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage (2400 volts) cables to power longwall equipment inby the last open crosscut and within 150 feet of pillar workings (gob) areas considered acceptable alternative method. Granted with conditions for the permissible high-voltage longwall equipment at the Orient No. 6 Mine.

Docket No.: M–94–131–C
FR Notice: 59 FR 46269
Petitioner: Monterey Coal Company
Reg Affected: 30 CFR 75.503
Summary of Findings: Petitioner's proposal to use two Fletcher Model CDR–15 slim line roof bolters with No. 2 AWG G-GC portable cables with 1,200 feet of the cable reaching across the face from the power center outby and near the end of the longwall panel in order to provide additional support for the face in preparation for equipment transfer to the next panel considered acceptable alternative method. Granted with conditions at the No. 1 Mine.

Docket No.: M–94–132–C
FR Notice: 59 FR 46269
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage (4160 volts) cables inby the last open crosscut to supply power to longwall equipment and that application of the standard would result in a diminution of safety to the miners considered acceptable alternative method. Granted with conditions for the hybrid longwall system (combination high-voltage and medium voltage) at the Showmaker Mine.

Docket No.: M–94–164–C
FR Notice: 59 FR 59435
Petitioner: Mallie Coal Company, Inc.
Reg Affected: 30 CFR 75.342
Summary of Findings: Petitioner's proposal to monitor continuously with a hand-held methane and oxygen detector instead of using a methane monitoring system on permissible three-wheel tractors with drag bottom buckets considered acceptable alternative method. Granted with conditions for the Mescher permissible three-wheel battery-powered tractors used to load coal at the No. 4 Mine.

Docket No.: M–94–183–C
FR Notice: 60 FR 3437
Petitioner: Southern Utah Fuel Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage (2400 volts) cables to power longwall equipment considered acceptable alternative method. Granted with conditions for the permissible high-voltage longwall equipment at the SUFCo Mine. Petitioner's application for relief to give effect to the March 17, 1995, Proposed Decision and Order GRANTED.

Docket No.: M–79–32–M
FR Notice: 45 FR 3678
Petitioner: Kerr-McGee Chemical Corp. (now New Mexico Potash Corporation)
Reg Affected: 30 CFR 57.11050 (previously 30 CFR 57.11–50)
Summary of Findings: Petitioner's granted petition for modification was reviewed and changes were noted which have occurred since petition was granted. Based on this review. MSHA has issued an amended Proposed Decision and Order. Petitioner's proposal to use a rescue changer instead of a second escapeway in certain limited situations considered acceptable alternative method. Granted with conditions.

Docket No.: M–81–01–M
FR Notice: 48 FR 12564
Petitioner: Sunshine Mining Company (now Sunshine Precious Metals, Inc.)
Reg Affected: 30 CFR 57.11059 (previously 57.11–59)
Summary of Findings: Petitioner's granted petition for modification was reviewed and changes were noted which have occurred since petition was granted. Based on this review, MSHA has issued an amended Proposed Decision and Order. Petitioner's proposal to use a one-hour self-contained breathing apparatus for their underground hoist operators considered acceptable alternative method. Granted with conditions.

Docket No.: M–82–03–M
FR Notice: 47 FR 8896
Petitioner: Franklin Limestone Company (now Franklin Industrial Minerals)
Reg Affected: 30 CFR 57.4761 (previously 57.4–61B)
Summary of Findings: Petitioner's granted petition for modification was reviewed and noted that changes were needed to the previous amended Proposed Decision and Order December 14, 1994, to incorporate the changes specified as it pertains to operating an underground shop without fire extinguishers installed. Based on this review, MSHA has issued an amended Proposed Decision and Order to correct the phrase to read ''. . . ordered that modification of the application of 30 CFR 57.4761 to the Crab Orchard Mine as it pertains to operating an underground shop without certain ventilation or mechanical fire control devices installed.'' Granted with conditions.

Docket No.: M–86–20–M
FR Notice: 52 FR 5217
Petitioner: Kennecott Utah Copper
Reg Affected: 30 CFR 56.9300 (previously 56.9022)
Summary of Findings: On December 3, 1986, Petitioner filed a petition seeking a modification of the application of 30 CFR 56.9022 to its Utah Copper Division Concentrator Plants located in Magna, Salt Lake County, Utah. The petitioner alleging that application of the standard would result in a diminution of safety to the miners and that the alternative method outlined in the petition would guarantee no less than the same measure of protection as the mandatory standard. A Proposed Decision and Order (PDO) was issued granting this petition on May 25, 1988. On June 24, 1988, petitioner submitted comments requesting correction to certain sections in the PDO. On July 14, 1988, MSHA issued an amended PDO incorporating the changes requested by petitioner, allowing the operator to use the tailings impoundment roadway without berms or guards conditioned upon petitioner's compliance with specific factors and upon circumstances existing at the mine at the time modification was granted. On October 24, 1988, the mandatory standard was revised and redesignated as 56.9300. On July 26, 1994, petitioner submitted a request for petition to be amended, noting that conditions have changed since previous petition was granted. After review of the entire record, and MSHA's investigative report and recommendations, an amended PDO was issued on March 8, 1995, modifying the granted modification of 30 CFR 56.9022 to Kennecott Utah Copper Concentrator—North. On March 28, 1995, petitioner submitted

comments requesting correction and/or clarification of certain sections in the PDO. This amended PDO incorporates the changes requested by the petitioner. Granted with conditions.

Docket No.: M–94–18–M
FR Notice: 59 FR 15239
Petitioner: Santa Fe Pacific Gold Corp.
Reg Affected: 30 CFR 56.6309
Summary of Findings: Petitioner's proposal to recycle used petroleum-based and lubrication oil from equipment and blend it with fuel oil to create a blasting agent (ANFO) was granted, MSHA Proposed Decision and Order (PDO) issued November 21, 1994, to the Twin Creeks Mine, allowing the operator to use waste oil instead of conventional oil when preparing Ammonium Nitrate Fuel oil blasting agents with specific conditions. On December 8 and 29, 1994, the petitioner submitted a review of the conditions relevant to the PDO. In that review it was noted that conditions No. 2, 6, and 14 were incorrect and needed to be modified. This PDO incorporates those modifications. Granted with conditions.

Docket No.: M–94–38–M
FR Notice: 59 FR 50008
Petitioner: Independent Aggregates
Reg Affected: 30 CFR 56.6306(b)
Summary of Findings: Petitioner's proposal to continue drilling the shop pattern while loading is in progress by completing a drill hole and immediately loading the hole while continuing to drill a new hole considered acceptable alternative method. Granted with conditions.

[FR Doc. 95–15055 Filed 6–19–95; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL INSTITUTE FOR LITERACY

Agency Information Collection Activities Under OMB Review

AGENCY: National Institute for Literacy.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 26, 1995.

FOR FURTHER INFORMATION CONTACT: Sondra Stein at (202) 632–1508.

SUPPLEMENTARY INFORMATION:

Title

Application for the Adult Learning Content Standards Development awards to public and private not-for-profit organizations operating at a State or national level to participate in a grassroots effort to improve the effectiveness of the system in preparing adults for their roles and responsibilities as parents, citizens, and workers.

Purpose

The purpose of the Adult learning Standards Grant is to launch an ambitious multi-year initiative to promote the improvement of adult learning systems through the development of content standards based on four customer-defined purposes for literacy.

Abstract

The National Literacy Act of 1991 established the National Institute for Literacy and required that the Institute to contribute to the establishment of systems for adult literacy and basic skills.

Burden Statement: The burden for this collection of information is estimated at 4 hours per response. This estimate includes the time needed to review instructions, complete the form, and review the collection of information:

Respondents: 500
Estimated Number of Respondents: 60
Estimated number of Responses Per Respondent: 1
Estimated Total Annual Burden on Respondents: 2400

Frequency of Collection: One time. Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to: Susan Green, National Institute for Literacy, 800 Connecticut Ave., NW., Suite 200 Washington, DC 20006, and Dan Chenok, Office of Management and Budget, office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: June 13, 1995.

Andrew J. Hartman,

Director, NIFL.

[FR Doc. 95–15113 Filed 6–19–95; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL SCIENCE FOUNDATION

Antarctic Tour Operators Meeting

The National Science Foundation announces the following meeting:

Name: Antarctic Tour Operators Meeting.

Date and Time: July 13, 1995, 9:00 a.m.–4:00 p.m.

Place: National Science Foundation, Room 375, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Nadene G. Kennedy, Polar Coordination Specialist, Office of Polar Programs, National Science Foundation, Arlington, VA 22230, Telephone: 703/306–1031; Fax: 703/306–0139.

Purpose of Meeting: Pursuant to the National Science Foundation's responsibilities under the Antarctic Conservation Act (Pub. L. 95–541) and the Antarctic Treaty, the U.S. Antarctic Program Managers plan to meet with Antarctic Tour Operators to exchange information concerning dates and procedures for visiting U.S. Antarctic stations, review the latest Antarctic Treaty Recommendations concerning the environment and protected sites, and other items designed to protect the Antarctic environment.

Agenda:

- Introduction and Overview
- Review of 1994–95 Visits to McMurdo, Palmer and South Pole Stations
- Tour Operator's Comments on 1994–95 Season Visits
- 1995–96 Visits to McMurdo, Palmer and South Pole Stations
- Information Dissemination
- Report on the 1994–95 Antarctic Site Inventory
- Oil Spill Contingency Plans
- Environmental Impact Assessments
- Report From the International Association of Antarctic Tour Operators (IAATO)
- Report from the 19th Antarctic Treaty Consultative Party Meeting in Seoul, Korea
- Other Items.

Dennis Peacock,

Head, Antarctic Science Section, Office of Polar Programs.

[FR Doc. 95–15070 Filed 6–19–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision
2. The title of the information collection: 10 CFR Part 21. ''Reporting of Defects and Noncompliance''

3. The form number if applicable: Not applicable
4. How often the collection is required: On occasion
5. Who will be required or asked to report: All directors and responsible officers of firms and organizations building, operating, or owning NRC licensed facilities as well as directors and responsible officers of firms and organizations supplying basic components and safety related design, analysis, testing, inspection, and consulting services to NRC licensed facilities or activities
6. An estimate of the number of responses: 350 annually (150 initial notifications, 150 written reports, and 50 interim reports)
7. An estimate of the average burden hours per response: 65 hours
8. An estimate of the total number of hours needed to complete the requirement or request: 22,913 (19,300 reporting hours and 3,613 recordkeeping hours)
9. An indication of whether Section 3504(h). Pub. L. 96–511 applies: Not applicable
10. Abstract: 10 CFR part 21 implements Section 206 of the Energy Reorganization Act of 1974, as amended. It requires directors and responsible officers of firms and organizations building, operating, owning, or supplying basic components to NRC licensed facilities or activities to report defects and noncompliances that could create a substantial safety hazard at NRC licensed facilities or activities. Organizations subject to 10 CFR Part 21 are also required to maintain such records as may be required to assure compliance with this regulation.

The NRC staff reviews 10 CFR Part 21 reports to determine whether the reported defects in basic components and related services and failures to comply at NRC licensed facilities or activities are potentially generic safety problems.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555–0001.

Comments and questions should be directed to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0035), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 12th day of June 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–15056 Filed 6–19–95; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Claim for Credit for Military Service

(2) *Form(s) submitted:* UI–44

(3) *OMB Number:* 3220–0072

(4) *Expiration date of current OMB clearance:* August 31, 1995

(5) *Type of request:* Extension of a currently approved collection

(6) *Respondents:* Individuals or households

(7) *Estimated annual number of respondents:* 300

(8) *Total annual responses:* 300

(9) *Total annual reporting hours:* 25

(10) *Collection description:* Under Section 2(c) of the Railroad Unemployment Act, military service can be used under certain conditions for entitlement to an extended or accelerated unemployment benefit period. The form will be used to obtain information about the applicant's claimed military service.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–14957 Filed 6–19–95; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35839; File No. SR–DTC–95–01]

Self-Regulatory Organizations; the Depository Trust Company; Order Approving a Proposed Rule Change Establishing a Procedure To Buy-in Securities To Eliminate Participants' Short Positions Older Than Ninety Days

June 12, 1995.

On January 13, 1995, the Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–95–01) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on March 17, 1995.[2] The Commission received no comment letters.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

DTC currently employs procedures to help eliminate short positions caused by book entry deliveries of callable securities made between the call publication date and the lottery processing date and procedures to help eliminate short positions caused by rejected deposits.[4] Under DTC rules, when DTC participants have short positions in their accounts, DTC debits the participants' accounts by an amount equal to 130% of the market value of the short position as determined by DTC. DTC believes collecting 130% of the value of the short position protects DTC against risk and provides participants with an incentive to cover short positions promptly. The short position is marked to the market daily until the short position is covered or matures.

DTC has established procedures that permit DTC to use the short position charge as a funding source to buy-in

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 35469 (March 10, 1995), 60 FR 14473.

[3] In response to an ''Important Notice'' to its members requesting comment on the proposed buy-in procedures, DTC received 11 comment letters. In general, DTC's members were opposed to an earlier version of the proposed buy-in procedures which used a tiered approach based on the age of the short position (*i.e.*, offerings starting at 110% after 90 days and extending to 130% after 150 days). DTC believes that this rule change addresses the concerns set forth by the commentors.

[4] For a complete description of DTC's procedures, refer to Securities Exchange Act Release No. 35034 (December 8, 1994), 59 FR 63396 [File Nos. SR–DTC–94–08 and SR–DTC–94–09] (order granting temporary approval of procedures to recall certain deliveries which have created short positions as a result of call lotteries and rejected deposits).

securities to cover short positions which have not been covered by participants within ninety days. Under the buy-in procedures, once a short position has aged beyond ninety calendar days DTC will broadcast to participants that have long positions in the security an Invitation to Cover Short Request (''ICSR'') message using the Participant Terminal System (''PTS'') operated by DTC.[5] DTC will issue the invitations at premiums above market value on a sliding scale set according to the following table:

SHORT POSITION VALUE

[Market Value]

Minimum	Maximum	Premium Percent	Maximum Possible Premium
$1	$50,000	12	$6,000
50,001	100,000	8	8,000
100,001	300,000	5	15,000
300,001	500,000	3	15,000
500,001	(1)	2	(2)

[1] Up.
[2] Unlimited.

If DTC is unsuccessful in finding a seller through the ICSR function, DTC will contact by telephone participants with long positions in the security. DTC may elect to use the services of a broker to obtain the securities at a price not to exceed the current market value plus the premium based upon the value of the short position.

If DTC is able to buy-in some or all of the securities needed to cover a participant's short position, DTC will: (1) Credit the securities to the participant's account, (2) reduce the short position charge by the amount of the purpose price of the securities together with the expense of the cover transaction including any brokerage fee or other administrative expense, and (3) if the short position has been eliminated entirely, credit the account of the participant with the balance, if any, of the short position charge.

II. Discussion

Section 17A(b)(3)(F)[6] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible. The Commission believes that DTC's rule change meets these requirements because it establishes additional procedures to eliminate aged short positions and therefore helps to protect DTC against risk.

DTC's procedures are modelled on existing DTC procedures used to eliminate short positions of participants whose DTC accounts have been closed.[7] DTC's rule change also is in response to concerns raised by the Federal Reserved Bank of New York urging DTC to take additional steps to eliminate aged short positions. The Federal Reserve Bank of New York has expressed concern about DTC continuing to give long position credits to its participants where such credits are not supported by securities in inventory.

The proposal will permit DTC to take affirmative steps to reduce the outstanding short positions and the risks associated with such short positions. Under DTC's procedures, participants are obligated to cover their short positions immediately. DTC participants are assessed a daily charge of 130% of the market value of the security as an incentive for the participant to cover the short position as soon as possible and as a cushion to protect DTC in the event of a sharp rise in the market price of the security.[8] By assessing a 130% daily charge to short positions in a participant's account, DTC will limit its risk of loss to instances when there is a rise in the market price of the security above 130%. The buy-in procedures will limit further DTC's risk of loss by permitting DTC to use the short position charge to take affirmative action to buy-in securities to cover short positions older than ninety days.

III. Conclusion

The Commission finds that the proposal is consistent with the requirements of the Act, particularly with Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–95–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14977 Filed 6–19–95; 8:45 am]

BILLING CODE 8010–01–M

[5] ICSR is the DTC service that enables DTC participants having short positions to invite DTC participants with long positions in the same or similar securities to tender securities to the participants with the short positions. Under DTC's buy-in procedures, DTC will initiate the ICSR procedures. For further discussion of ICSR, refer to Securities Exchange Act Release Nos. 26896 (June 5, 1989), 54 FR 25185 [File No. SR–DTC–89–07] (order approving rule change establishing ICSR procedures) and 27586 (January 4, 1990), 55 FR 1132 [File No. SR–DTC–89–18] (order approving rule change amending certain ICSR procedures).

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[7] Securities Exchange Act Release No. 33261 (November 30, 1993), 58 FR 64626 [File No. SR–DTC–92–11] (order approving a proposed rule change relating to the elimination of short positions in a retired participant's account).

[8] Securities Exchange Act Release No. 26896 (June 5, 1989), 54 FR 25185 [File No. SR–DTC–89–07] (order approving a proposed rule change concerning invitations to tender to cover short positions).

[9] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35846; File No. SR–MSRB–95–9]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Suitability, Transactions and Discretionary Accounts

June 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, notice is hereby given that on June 1, 1995, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change (File No. SR–MSRB–95–9). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. 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 MSRB is filing amendments to rule G–19 on suitability of recommendations and transactions and discretionary accounts. In April 1994, the Commission approved an amendment designed to strengthen rule G–19. The proposed rule change makes technical and clarifying changes to rule G–19 concerning discretionary accounts. The Board requests that the Commission set the effective date for 30 days after filing.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the

most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On April 7, 1994, the Commission approved an amendment to rule G–19, on suitability, designed to strengthen the rule.[1] As part of that amendment, the language of section (c) regarding suitability of recommendations was amended to ensure that in making a recommendation to customers, dealers must have reasonable grounds, based upon information about the security as well as the customer, for believing that the recommendation is suitable.

Section (d) of rule G–19 requires dealers effecting transactions for discretionary accounts to have prior written authorization and to make a suitability determination regarding the transaction, unless the transaction is specifically directed by the customer. A review of rule G–19 has indicated that a technical amendment to section (d) is necessary to correct a cross reference to the new language of section (c). The proposed rule change also clarifies the language of section (d) to ensure that dealers understand their duty to make a suitability determination before executing a transaction for a discretionary account unless the transaction is specifically directed by the customer without any recommendation having been made.

The Board believes the proposed rule change is consistent with section 15(b)(2)(C) of the Act which provides that the Board's rules:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, foster cooperation with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The proposed rule clarifies the responsibility of dealers to make suitability determinations before executing transactions for discretionary accounts and therefore the Board believes it will protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition 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

The Board 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

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) was provided to the Commission for its review at least five days prior to the filing date; and (4) does not become operative for thirty days from the date of its filing on June 2, 1995, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes the proposal would qualify as a ''non-controversial filing'' because it makes technical and clarifying changes to an existing MSRB rule. At any time within sixty 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–95–9 and should be submitted by July 11, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15040 Filed 6–19–95; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* Securities Exchange Act Release No. 33869 (April 7, 1994) 59 FR 17632.

[2] 17 CFR 200.30–3(a)(12).

[Release No. 34–35848; File No. SR–MSRB–95–7]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Fees for Backlog Document Collections of its Official Statement/Advance Refunding Document Subsystem of the Municipal Securities Information Library

June 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 24, 1995, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–95–7). The proposed rule change is described in Items, I, II, and III below, which Items have been prepared by the Board. 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 MSRB is filing herewith a proposed rule change to establish a price of $7,000 (plus delivery or postage charges) for its 1994 document collection relating to its Official Statement/Advance Refunding Document (''OS/ARD'') subsystem of the Municipal Securities Information Library (''MSIL'') system (the ''1994 backlog fee'').[1] The collection consists of imaged documents on magnetic tapes. The proposed 1994 backlog fees are structured to defray the Board's dissemination costs. This fee structure is consistent with the Board's MSIL fee policy, which is that the Board does not expect or intend to make a profit from the MSIL system, and reviews the MSIL

[1] Municipal Securities Information Library and MSIL are trademarks of the Board. The MSIL system, which was approved in Securities Exchange Act Release No. 29298 (June 13, 1991) 56 FR 28194, is a central facility through which information about municipal securities is collected, stored and disseminated.

system fees annually to ensure that dissemination costs are paid for from user fees.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The OS/ARD subsystem, which was activated on April 20, 1992, is a central electronic facility through which information collected and stored, pursuant to MSRB rule G–36, is made available electronically and in paper form to market participants and information vendors.[2] The annual subscription fee for daily tapes of images of current year documents from the OS/ARD system is $12,000.[3] The fees for backlog document collections are substantially less than fees for an annual subscription because an annual subscription requires the Board to send a computer tape to the subscriber each business day, but a backlog collection requires fewer tapes.[4]

In its prior filings with the Commission, the Board stated that it intends to use its general revenues for collection, indexing and storing the OS/ARD subsystem's documents, and that the costs of producing and disseminating magnetic tapes (and paper copies) would be paid for by user fees.[5] Thus, the Board is establishing fees to defray its cost of disseminating backlog tapes. This is consistent with the Commission's policy that self-regulatory organizations' fees be based on expenses incurred in providing information to the public. The Board believes that employing cost-based prices is in the public interest since it will ensure that a complete collection of vital information will be available, at fair and reasonable prices, for the life of the municipal securities.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which requires, in pertinent part, that the Board's rules:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSIL system is designed to increase the integrity and efficiency of the municipal securities market by, among other things, helping to ensure that the price charged for an issue in the secondary market reflects all available official information about that issue. The Board believes that the 1994 backlog fee is fair and reasonable in light of the costs associated with disseminating the information, and that the services provided by the MSIL system are available on reasonable and nondiscriminatory terms to any interested person.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e) thereunder because the proposal is ''establishing or changing a due, fee or other charge.'' At any time within sixty 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–95–7 and should be submitted by [insert date 21 days from the date of publication].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15041 Filed 6–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35849; File No. SR–MSRB–95–8]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Delivery of Official Statements to the Board

June 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, notice is hereby given that on June 1, 1995, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the

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[2] Rule G–36 requires underwriters to provide copies of final official statements and advance refunding documents within certain specified time frames for most new issues issued since January 1, 1990.

[3] This fee was filed with the Commission. *See* Securities Exchange Act Release No. 30306 (Jan. 30, 1992) 57 FR 4657. The Board does not intend at this time to change the OS/ARD annual subscription fee.

[4] Currently, two to three business day's worth of documents are on each tape in an annual collection. The backlog fee plus delivery costs for 1993 is $9,000; 1992 is $7,000; 1991 is $8,000; 1990 is $6,000. These fees were filed with the Commission. *See* Securities Exchange Act Release No. 32482 (June 16, 1993) 58 FR 34115 (1992 and 1990 fees); Securities Exchange Act Release No. 34602 (Aug. 25, 1994) 59 FR 45319 (1993 and 1991 fees). The fees for the backlog collections vary based on the number of documents received and processed in any given year.

[5] *See* Securities Exchange Act Release No. 29298 (June 13, 1991) 56 FR 28194.

[6] 17 CFR 200.30–3(a)(12)

Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change (File No. SR–MSRB–95–8). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. 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 MSRB is filing a proposed rule change to rule G–36 and Form G–36(OS), relating to delivery of official statements to the Board (hereafter referred to as the ''proposed rule change'') to correlate references to SEC Rule 15c2–12 [1] to the amended sections of the Rule and to add language to Form G–36(OS) to clarify that documents submitted with the Form will be made publicly available. The Board requests that the proposed rule change be effective on the same effective date as that for certain amendments to Rule 15c2–12, set for July 3, 1995, to which the proposed rule change refers.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On November 10, 1994, the Commission approved amendments to its Rule 15c2–12 to enhance disclosure in the secondary market for municipal securities.[2] The amendments revised and reorganized the subparts of the Rule. Part of these amendments will be effective in July 1995, while other parts will go into effect in January 1996.

Board rule G–36 requires that managing underwriters deliver to the Board copies of final official statements for most primary offerings of municipal securities, where an official statement was prepared. Rule G–36 also requires Form G–36(OS) to be sent with the official statement. The Board enters the official statement into the Municipal Securities Information Library (''MSIL'') system.[3] Rule G–36 applies to all primary offerings with official statements, with the exception of limited placements which are exempt under SEC Rule 15c2–12.

Rule G–36 and Form G–36(OS) reference, in several places, the definitions once found in SEC Rule 15c2–12(e) and the exemption found in Rule 15c2–12(c). However, since the amendments to Rule 15c2–12 moved the definitions to Rule 15c2–12(f) and the exemption to Rule 15c2–12(d), the proposed rule change to rule G–36 (a)(i), (a)(ii), and (c)(iii) and Form G–36(OS) update the citations to Rule 15c2–12 to correspond to the revised subparts of the amendments. The proposed rule change also makes a conforming change to the Form by adding the word ''or'' to item 10(c).

The proposed rule change to Form G–36(OS) also makes clear that any documents submitted to the Board with the Form will be public disseminated. The MSIL System has received several disclosure documents relating to primary offerings exempted from Rule 15c2–12 under current section (c)(1) (''limited placements''). Even though such primary offerings are exempt from Rule 15c2–12 and rule G–36, the Board has previously made clear in filings and in *MSRB Reports* that if such documents are voluntarily submitted to the MSIL system by dealers as official statements, they will be accepted and publicly disseminated.[4] A few recently received documents on limited placements contained language stating that they were not to be reproduced or used for any purpose other than in connection with the sale of the securities. Accordingly, the proposed rule change to Form G–36(OS) adds language clarifying that the submitter ''acknowledges that the document will be publicly disseminated.'' This addition will ensure that the submitter has agreed to public dissemination of the submitted document.

The Board believes the purposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement or Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board 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

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) was provided to the Commission for its review at least five days prior to the filing date; and (4) does not become operative for thirty days from the date of its filing on June 2, 1995, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes the proposal would qualify as a ''non-controversial filing'' because it makes technical and clarifying changes to an existing MSRB rule and form. Accordingly, it neither significantly affects the protection of investors or the public interest and does not impose any significant burden on competition. At any time with sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change it if 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, arguments concerning the foregoing. Persons

[1] 17 CFR 240.15c2–12.

[2] *See* Securities Exchange Act Release No. 34961 (Nov. 10, 1994) 59 FR 59590.

[3] The Municipal Securities Information Library system and the MSIL system are trademarks of the Board. The MSIL system, which was approved in Securities Exchange Act Release No. 29298 (June 13, 1991) 55 FR 29436, is a central facility through which information about municipal securities is collected, stored, and disseminated.

[4] *See e.g.*, File No. SR–MSRB–90–2 at 16; ''Delivery of Official Statements to the Board: Rules G–36 and G–8,'' *MSRB Reports*, Vol. No. 3 (July 1990).

making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–95–8 and should be submitted by July 11, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15042 Filed 6–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35847; File No. SR–NASD–95–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Failure to Honor Settlement Agreements Obtained in Connection With an Arbitration or Mediation

June 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 9, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend the Resolution of the Board of Governors—Failure to Act Under Provisions of Code of Arbitration Procedure (''Resolution'') to make the following acts a violation of Article III, Section 1 of the Rules of Fair Practice: (a) A failure to honor a written and executed settlement agreement obtained in connection with an arbitration conducted under the auspices of a Self-Regulatory Organization (''SRO''); and (b) a failure to honor a written and executed settlement agreement obtained in connection with a mediation conducted under the auspices of the NASD. The instant filing also proposes to amend Article VI, Section 3 of the NASD By-Laws to permit the NASD to suspend or cancel the membership or registration of a member or associated person for failing to honor a written and executed settlement agreement obtained in connection with an arbitration or mediation conducted under the auspices of the NASD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Enforcing Settlement Agreements

In connection with the administration of its arbitration program the NASD states that many disputes or claims for damages submitted to arbitration before the NASD, or another SRO forum or the American Arbitration Association (''AAA''), are settled prior to a hearing on the merits. In addition, the NASD is currently developing a mediation program, to be administered in connection with the arbitration program, where parties will be participating in a process that the NASD believes will increase the number of claims that are settled prior to a hearing.[2]

The NASD also notes that occasionally members and persons associated with members fail to comply with settlement agreements reached in connection with arbitration proceedings. These settlements may have been reached prior to the hearing on the matter and, as a result, the hearing is canceled only to be rescheduled following a party's failure to honor the settlement. In other cases, matters are settled and claims withdrawn only to be refiled later after a member or associated person fails to honor the agreement.

The NASD is concerned that a failure by a member or associated person to honor a settlement agreement imposes substantial added costs on the prevailing party or parties in the form of delayed recoveries, actions to enforce the agreements and additional fees connected with short-notice cancellation of hearings. The NASD's Arbitration Department also incurs additional costs in rescheduling hearings, and on occasion has had to appoint new arbitrators to hear a matter. In addition, the NASD believes that the credibility of the arbitration process suffers if members and their associated persons are able to delay the resolution of a dispute by failing to honor a settlement agreement.

The Resolution states that ''it may be deemed * * * a violation of Article III, Section 1 of the Rules of Fair Practice for a member or person associated with a member to * * * fail to honor an [arbitration] award * * *.'' The Resolution was adopted in 1973 and has been used to discipline members and associated persons who fail to pay an arbitration award unless they have moved to vacate the award.[3] The Resolution applies to awards rendered in NASD arbitrations, as well as arbitrations sponsored by other SROs and the AAA.

The NASD believes that the failure by a member or associated person to honor a settlement agreement entered into in connection with an arbitration proceeding or a mediation should have the same consequences as the failure to pay an arbitration award. Therefore, the NASD is proposing to amend the Resolution to make the failure by a member or associated person to honor a written and executed settlement

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[5] 17 CFR 200.30–3(a)(12)

[1] The NASD originally submitted the proposed rule change on May 10, 1995. The NASD subsequently submitted two minor technical amendments, the text of which may be examined in the Commission's Public Reference Room. *See* Letters from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Division of Market Regulation, SEC (May 16, 1995 and June 9, 1995). This notice reflects those amendments.

[2] The NASD has separately submitted a proposed rule change relating to the establishment of a Mediation Program. *See* Securities Exchange Act Release No. 35830 (June 9, 1995).

[3] Under the Federal Arbitration Act and many state statutes such a motion to vacate must be filed within 90 days after the award is rendered.

agreement actionable as a violation of Article III, Section 1 of the Rules of Fair Practice. The amendment is limited to settlement agreements that have been reduced to writing and have been executed. The amendment, therefore, will not encompass unexecuted settlements.

2. Use of Revocation Procedures

In 1993, the NASD amended Article VI, Section 3 of the By-laws to specify that a membership or registration could be suspended or cancelled on fifteen (15) days notice for failing to honor an arbitration award rendered in an NASD arbitration. The use of such an expedited or ''revocation'' proceeding was limited to awards in NASD sponsored proceedings because the NASD's oversight of the arbitration process provided greater assurance about the awards that would be enforced in such proceedings.[4]

The NASD believes that the failure by a member or an associated person of a member to honor settlement agreements entered into in connection with an arbitration proceeding or mediation sponsored by the NASD should be subject to the same revocation proceedings as are arbitration awards. Accordingly, the NASD is also proposing to amend Article VI, Section 3 of the By-Laws to specify that membership or registration can be suspended or cancelled on fifteen (15) days notice for failing to honor a settlement agreement obtained in connection with an NASD arbitration or mediation. The action of the NASD under Article VI, Section 3 of the By-Laws with respect to failure to honor settlement agreements will be conducted as a revocation proceeding pursuant to the provisions of Article VI of the Code of Procedure, which provides an opportunity for review of the NASD's action upon written request of the member or associated person.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[5] in that forcing members or associated persons of a member to abide by settlement agreements entered into in compromise of a dispute pending in arbitration or mediation will enhance the effectiveness of arbitration and mediation as alternative dispute resolution forums and eliminate the unfair impact and waste of resources experienced by the public, other litigants and the arbitration/mediation forum that results from the failure to honor a settlement agreement.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–95–20 and should be submitted by July 11, 1995.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14979 Filed 6–19–95; 8:45 am]

BILLING CODE 8010–01–M

[4] Revocation proceedings initiated under Article VI, Section 3 of the By-Laws are conducted pursuant to Article VI of the NASD's Code of Procedure. As such they are subject to review by a hearing panel upon request of the member or associated person. The use of Article VI of the Code of Procedure for such proceedings was initiated in connection with the NASD's adoption of an amendment to Article VI, Section 3 of the By-Laws relating to failure to pay arbitration awards. *See,* SR–NASD–91–73, approved by the SEC in Securities Exchange Act Release No. 31763 (January 28, 1993).

[5] 15 U.S.C. 78*o*–3.

[6] 17 CFR 200.30–3(a)(12).

[Rel. No. IC–21135; 812–9616]

National Equity Trust, et al.; Notice of Application

June 14, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: National Equity Trust and Prudential Securities Incorporated (''Prudential'').

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act that would exempt applicants from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit a terminating series of a unit investment trust to sell portfolio securities to a new series of the trust.

FILING DATE: The application was filed on May 26, 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 July 10, 1995 and should be accompanied by proof of service on the 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, DC 20549. Applicants, c/o Prudential Securities Incorporated, Unit Trust Department, One New York Plaza, New York, New York 10292, Attn.: Kenneth Swankie.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson,

Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. National Equity Trust, a unit investment trust registered under the Act, consists of several series (each a ''Series''). All of the Series currently outstanding are Low 5 Series (''Low 5 Series''). Prudential is the Series' sponsor. Applicants request that the relief sought herein apply to future Series for which Prudential serves as sponsor.

2. The investment objective of each Low 5 Series is total return through investment in certain stocks from among those comprising the entire related index (''Index'') (*e.g.*, the Dow Jones Industrial Average). Each Low 5 Series acquires approximately equal values of the five lowest dollar price per share stocks of the ten stocks in the Index having the highest dividend yields as of a specified date (''Select Five'') and holds those stocks for approximately one year. Prudential intends that, as each Low 5 Series terminates, a new Series based on the appropriate Index will be offered for the next year.

3. Each Series has or will have a date (a ''Rollover Date'') on which holders of units in that Series (a ''Rollover Series'') may at their option redeem their units in the Rollover Series and receive in return units of a subsequent Series of the same type (a ''New Series'') which is created on or about the Rollover Date, and has a portfolio which contains securities (''Qualified Securities''). Qualified Securities are securities that are (a) actively traded (*i.e.*, have had an average daily trading volume in the preceding six months of at least 500 shares equal in value to at least 25,000 United States dollars) on an exchange (a ''Qualified Exchange'') which is either (i) a national securities exchange which meets the qualifications of section 6 of the Securities Exchange Act of 1934 or (ii) a foreign securities exchange which meets the qualifications set out in the proposed amendment to rule 12d3–1(d)(6) under the Act as proposed by the SEC and which releases daily closing prices, and (b) included in an Index.

4. There is normally some overlap from one year to the next in the stocks having the highest dividend yields in an Index and, therefore, between the portfolio of a Rollover Series and the New Series. In the case of the Select 5 on January 1, 1994 as compared to the Select 5 on January 1, 1995, two of the five securities were the same. Prudential estimates that the brokerage charge on a purchase or sale transaction averages approximately 5 cents a share. Prudential anticipates that substantial savings of commissions can be realized if a Series can purchase securities directly from a prior Series rather than using the open market as an intermediary between the two Series. Applicants, therefore, request an exemptive order to permit any Rollover Series to sell portfolio securities to a New Series and a New Series to purchase those securities.

5. In order to minimize overreaching, applicants agree that Prudential will certify to the trustee, within five days of each sale from a Rollover Series to a New Series, (a) that the transaction is consistent with the policy of both the Rollover Series and the New Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of such transaction, and (c) the closing sales price on the Qualified Exchange for the sale date of the securities subject to such sale. The trustee will then countersign the certificate, unless, in the unlikely event that the trustee disagrees with the closing sales price listed on the certificate, the trustee immediately informs Prudential orally of any such disagreement and returns the certificate within five days to Prudential with corrections duly noted. Upon Prudential's receipt of a corrected certificate, if Prudential can verify the corrected price by reference to an independently published list of closing prices for the date of the transactions, Prudential will ensure that the price of units of the New Series, and distributions to holders of the Rollover Series with regard to redemption of their units or termination of the Rollover Series, accurately reflect the corrected price. To the extent that Prudential disagrees with the trustee's corrected price, Prudential and the trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of closing sales prices for the date of the transaction.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally makes it unlawful for an affiliated person of a registered investment company to sell securities to or purchase securities from the company. Investment companies under common control may be considered affiliates of one another. The Series may be under common control because they have Prudential as a sponsor.

2. Pursuant to section 17(b), the SEC may exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Under section 6(c), the SEC may exempt classes of transactions 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. Applicants believe that the proposed transactions satisfy the requirements of sections 6(c) and 17(b).

3. Rule 17a–7 under the Act permits registered investment companies that might be deemed affiliates solely by reason of common investment advisers, directors, and/or officers, to purchase securities from or sell securities to one another at an independently determined price, provided certain conditions are met. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor procedures for these transactions to assure compliance with the rule. A unit investment trust does not have a board of directors and, therefore, may not rely on the rule. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraph (e).

4. Applicants represent that purchases and sales between Series will be consistent with the policy of the Series, as only securities that would otherwise be bought and sold on the open market pursuant to the policy of each Series will be involved in the proposed transactions. Applicants further believe that the practice of buying and selling on the open market leads to unnecessary brokerage fees on sales of securities and is therefore contrary not only to the policies of the Series but to the general purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each sale of Qualified Securities by a Rollover Series to a New Series will be effected at the closing price of the securities sold on a Qualified Exchange on the sale date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of such transactions will be fully disclosed to investors in the appropriate prospectus of each future Rollover Series and New Series.

3. The trustee of each Rollover Series and New Series will (a) review the procedures relating to the sale of securities from a Rollover Series and the purchase of securities for deposit in a New Series and (b) make such changes to the procedures as the trustee deems necessary that are reasonably designed to comply with paragraphs (a) through (d) of rule 17a–7.

4. A written copy of the procedures and a written record of each transaction will be maintained as provided in rule 17a–7(f).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15043 Filed 6–19–95; 8:45 am]

BILLING CODE 8010–01–M

SELECTIVE SERVICE SYSTEM

Form Submitted to the Office of Management and Budget for Clearance

The following form has been submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS Form—404

Title: Potential Board Member Information.

Need and or Use: Is used to identify individuals willing to serve as members of local, appeal or review boards in the Selective Service System.

Respondents: Potential board members.

Burden: A burden of 15 minutes or less on the individual respondent.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, VA 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of publication of this notice to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, VA 22209–2425.

A copy of the comments should be sent to Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: June 12, 1995.

Gil Coronado,

Director.

[FR Doc. 95–14958 Filed 6–19–95; 8:45 am]

BILLING CODE 8015–01–M

SMALL BUSINESS ADMINISTRATION

[Application No. 99000169]

CF Investment Co.; Notice of Filing of an Application for a License to operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by CF Investment Company, at 102 South Main Street, Greenville, South Carolina 29601 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et seq.), and the Rules and Regulations promulgated thereunder.

CF Investment Company, a South Carolina corporation, is a wholly owned subsidiary of Carolina First Corporation, a bank holding company. The applicant's officers will be William S. Hummers III (President), Catherine W. Batson (Secretary), and Mary M. Gentry (Treasurer). All three of these individuals are officers of Carolina First Corporation and/or Carolina First Bank, and each has extensive experience in banking, finance, and investment analysis.

CF Investment Company will begin operations with committed capital of $2.5 million, with another $1.5 million or more available to the applicant from Carolina First Corporation as investment opportunities arise. CF Investment Company's entire $2.5 million of initial private capital is being contributed by Carolina First Corporation, its sole shareholder, by means of a private placement. Accordingly, the following shareholder will own 10 percent or more of the proposed SBIC:

Name: Carolina First Corporation, 102 South Main Street, Greenville, South Carolina 29601.

Percentage of ownership: 100%.

CF Investment Company is being formed primarily as a vehicle for investment in small enterprises that engaged in businesses that relate to, but do not directly constitute, banking or financial services. The applicant will be a source of debt and equity financing for qualified small business concerns that are based in South Carolina or that serve South Carolina. The applicant does not plan to seek financing from the SBA.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Greenville, South Carolina.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: June 13, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–15010 Filed 6–19–95; 8:45 am]

BILLING CODE 8025–01–M

Javelin Capital Fund, L.P.; Notice of Filing of an Application for a License To Operate as a Small Business Investment Company

[Application No. 99000170]

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to section 107.102 of the Regulation governing small business investment companies (13 CFR 107.102 (1994)) by Javelin Capital Fund, L.P. at 1075 13th Street South, Birmingham, Alabama 35205 for a license to operate as a small business investment company (SBIC under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. seq.), and the Rules and Regulations promulgated thereunder. Its principal area of operation will generally be in the South and Southeast portion of the United States.

Javelin Capital Fund, L.P., a Delaware limited partnership, will be managed by Tullis-Dickerson & Company, Inc., a Delaware S-Corporation, and JVP, LLC, a Delaware Limited Liability Company and sole general partner of the applicant. The executive officers of Tullis-Dickerson & Company, Inc. and the General Partner will be Lyle A.

Hohnke, Joan P. Neuscheler, James L. L. Tullis, and Thomas P. Dickerson. The applicant's four general partners have 54 years of combined experience in the investment business and 24 years as general partners in established venture capital funds. In addition, the applicant will avail itself of the services of an Advisory Board which will provide advisory services to the General Partner and the Management Company regarding potential investments. The Advisory Board will have between five and seven members, who shall initially be as follows: Henry Wendt, Stephen Wiggins, Lawrence Flinn, Charles A. McCallum, and Peter Farley.

The following limited partners will own 10 percent or more of the proposed SBIC:

Name	Percentage of ownership
University of Alabama at Birmingham, Education Foundation, Medical Towers Bldg., Suite 103A, 1717 11th Avenue South, Birmingham, AL 35205	22
Alabama Power Company, 600 North 18th Street, Birmingham, AL 35291	22
Protective Life Ins. Co., 2801 Highway 280 South, Birmingham, AL 35223	11

The applicant will begin operations with Regulatory Capital of $7 million and will focus its investment portfolio in teh health care industry while providing additional concentrations in the animal health and agricultural research, technology, communications, food, and specialty materials development areas. The applicant will generally make early and seed stage investments to achieve the development and commercialization of technology and innovative business strategies.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Birmingham, Alabama.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: June 9, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–15009 Filed 6–19–95; 8:45 am]

BILLING CODE 8025–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Defense Policy Advisory Committee for Trade; Meeting

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of closed meeting. The June 28, 1995 meeting of the Defense Policy Advisory Committee for Trade will be closed to the public.

SUMMARY: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to any trade agreement, the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States.

DATES: The meeting is scheduled for June 28, 1995, unless otherwise notified.

ADDRESSES: The meeting will be held at the Pentagon, Arlington, Virginia, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Clayton Parker, Director of Intergovernmental Affairs, Office of the United States Trade Representative, Executive Office of the President (202) 395–6120.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95–15005 Filed 6–19–95; 8:45 am]

BILLING CODE 3190–01–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).

DATES: June 15, 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, DC 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 June 15, 1995:

DOT No: 4057
OMB No: 2115–0071
Administration: United States Coast Guard
Title: Official Logbook
Need for Information: Title 46 USC 11301–03, requires commercial shipping companies to maintain an official logbook aboard their vessels
Proposed Use of Information: This information will be used by Coast

Guard and various federal maritime casualty investigators of Federal and Civil courts in instances of injury or litigation between a seamen and his shipping company. Coast Guard inspectors use the information to determine compliance with various laws and to examine incidences of shipboard misconduct
Frequency: On occasion
Burden Estimate: 1,750
Respondents: Shipping Companies and U.S. Merchant Marineers
Form(s): CG–706B
Average Burden Hours Per Response: 1 hour

DOT No: 4058
OMB No: 2115–0579
Administration: United States Coast Guard
Title: Application for a permit to transport municipal or commercial waste
Need for Information: As mandated by the Shore Protection Act, the Coast Guard issued interim regulations requiring owners/operators or commercial vessels to apply for a permit to transport municipal or commercial waste on the coastal waters of the U.S.
Proposed Use of Information: This information will be used by the Coast Guard to issue permits and identification numbers to owners/operators of commercial vessels that transport municipal or commercial waste
Frequency: Every three years.
Burden Estimate: 366 hours
Respondents: Owners/operators of municipal or commercial vessels transporting waste
Form(s): None
Average Burden Hours Per Response: 50 minutes reporting

DOT No: 4059
OMB No: 2127–0052
Administration: National Highway Traffic Safety Administration
Title: Brake Hose Manufacturing Identification Standard 106
Need for Information: Under the authority of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, Title 15 U.S.C. 1932, Section 103, authorizes the issuances of Federal Motor Vehicle Safety Standards
Proposed Use of Information: The information will be used to ensure traceability of the manufacturer should a noncompliance or safety related defect be discovered
Frequency: On Occasion
Burden Estimate: 30 hours
Respondents: Manufacturers
Form(s): None
Average Burden Hours Per Response: 1.5 hours

DOT No: 4060
OMB No: 2115–0582
Administration: United States Coast Guard
Title: Commercial Fishing Industry Vessel Regulations
Need for Information: The Commercial Fishing Industry Vessels Safety Act of 1988 requires the Coast Guard to prescribe procedures to reduce the high level of fatalities and accidents in the commercial fishing industry. Reporting of casuality information from underwriters of insurance on commercial fishing industry vessels is required at 46 U.S.C. 6104
Proposed Use of Information: The information will be used by the Coast Guard to improve safety in the commercial fishing industry
Frequency: On occasion
Burden Estimate: 91,920 hours
Respondents: Insurers, vessel owners, agents and individuals in charge of commercial fishing vessels
Form(s): None
Average Burden Hours Per Response: 1 hour reporting and 1 hour recordkeeping

DOT No: 4061
OMB No: 2125–0514
Administration: Federal Highway Administration
Title: Develop and Submit Utility Accomodation Policies
Need for Information: In carrying out the requirements of 23 U.S.C. 116 to assure Federal-aid highway projects are being properly maintained and 23 U.S.C. 109 to determine whether any rights-of-way on Federal-aid systems should be used for accomodating utility facilities, the Secretary of Transportation is authorized by 23 U.S.C. 315 to prescribe and promulgate rules and regulations
Proposed Use of Information: The information will be used to review and approve state highway agencies utility accommodation policies.
Frequency: After initial submission, submission on 3 to 5 year cycle as needed
Burden Estimate: 2,800 hours
Respondents: State highway agencies
Form(s): None
Average Burden Hours Per Response: 280 hours

DOT No: 4062
OMB No: 2125–0541
Administration: Federal Highway Administration
Title: Certification of Enforcement of Heavy Vehicle Use Tax
Need for Information: Title 23, U.S.C. 141(d), provides that a States's apportionment of funds under 23 U.S.C. 104(b)(5) shall be reduced in an amount up to 25 percent of the amount to be apportioned during any fiscal year beginning after September 30, 1984, during which vehicles subject to the Federal heavy vehicle use tax are lawfully registered without having presented proof of payment of tax
Proposed Use of Information: The information will be used to certify proof of payment of heavy vehicle use tax and to provide supporting records for each vehicle subject to the tax. The certification procedure is the critical factor in establishing a managable and reasonable procedure for determining State compliance with the Statue 23 U.S.C. 141(d)
Frequency: Annually
Burden Estimate: 612 hours
Respondents: State highway agencies
Form(s): None
Average Burden Hours Per Response: 2 hours processing and 10 hours recordkeeping

DOT No: 4063
OMB No: 2125–0515
Administration: Federal Highway Administration
Title: Eligibility Statement for Utility Adjustments
Need for Information: Under the provisions of 23 U.S.C. 123, Federal-aid highway funds may be used to reimburse State (or local) highway agencies when they have paid for the cost of relocation of utility facilities necessitated by the construction of Federal-aid highway projects
Proposed Use of Information: The information will be used by the Federal Highway Administration to determine whether the State's statutes or ordinances regarding payment for utility relocations are acceptable under 23 U.S.C. 123
Frequency: On occasion
Burden Estimate: 180 hours
Respondents: State highway agencies
Form(s): None
Average Burden Hours Per Response: 36 hours

DOT No: 4064
OMB No: 2125–0542
Administration: National Highway Traffic Safety Administration
Title: Petitions for Exemption from the Vehicle Theft Prevention Standard, 49 CFR part 543
Need for Information: 29 U.S.C. Chapter 331 requires the Secretary of Transportation to promulgate a theft prevetion standard to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft

Proposed Use of Information: This information will be used by the National Highway Traffic Safety Administration in exercising its delegated authority to grant exemptions from the vehicle identification requirements of 49 CFR part 541

Frequency: one-time only

Burden Estimate: 96 hours reporting

Respondents: Businesses

Form(s): None

Average Burden Hours Per Response: 8 hours

DOT No: 4065

OMB No: 2120–0101

Administration: Federal Aviation Administration

Title: Physiological Training

Need for Information: The submission of the application is authorized by Sections 302(k), 605,311, and 313(d) of the Federal Aviation Act of 1958 (49 U.S.C. 1343(k), 1346, 1352, 1354(d)

Proposed Use of Information: This information will be used by the Aeromedical Education Division (AAM–400) to determine if the applicant is qualified to receive physiological training

Frequency: On occasion.

Burden Estimate: 458 hours annually

Respondents: Individual air crew members

Form(s): FAA Form 3150–7

Average Burden Hours Per Response: 5 minutes per response

DOT No: 4066

OMB No: 2120–0056

Administration: Federal Aviation Administration

Title: Report of Inspections Required by Airworthiness Directives PAR part 39

Need for Information: FAR 39 authorized principally by 49 U.S.C., Subtitle VII—Aviation Programs, Section 40113(a), Section 44701, and Section 44702

Proposed Use of Information: This information will be used by the Federal Aviation Administration to determine if the corrective action called for in the airworthiness directive has been sufficient to eliminate the unsafe condition, and if not, a new airworthiness directive to correct the unsafe condition will be issued

Frequency: As needed

Burden Estimate: 21,250 hours annually

Respondents: Owners and operators of the affected products

Form(s): None

Average Burden Hours Per Response: 5 minutes per response.

Issued in Washington, D.C. on June 15, 1995.

Paula R. Ewen,

Chief, Information Management Division.

[FR Doc. 95–15063 Filed 6–9–95; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements filed During the Week Ended June 9, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50388

Date filed: June 8, 1995

Parties: Members of the International Air Transport Association

Subject: COMP Telex—Reso 024f, Local Currency Fare Changes—Hungary

Proposed Effective Date: July 1, 1995

Paulette V. Twine,

Chief Documentary Services Division.

[FR Doc. 95–15061 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 9, 1995.

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50383

Date filed: June 6, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 5, 1995

Description: Application of American Airlines, Inc., pursuant to 49 USC 41102 and 14 CFR part 377, and Subpart Q of the Regulations applies for renewal of Segment 2 of its certificate of public convenience and necessity for Route 370 (Chicago-Milan/Rome), most recently reissued by Order 93–2–34, February 16, 1993.

Docket Number: 50384

Date filed: June 6, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 5, 1995

Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. Section 41101 of the Act and Subpart Q of the Regulations applies for renewal of its certificate of public convenience and necessity for Route 580, which authorizes Northwest to engage in foreign air transportation of persons, property and mail between the coterminal points of Guam, Saipan, and Northern Mariana Islands, on the one hand, and the terminal point Naha, Japan on the other hand. The authority originally was granted by Order 90–5–21, issued on May 9, 1990 and effective as of June 17, 1990, with a five-year term. The authority is due to expire on June 17, 1995.

Docket Number: 44944

Date filed: June 9, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 7, 1995

Description: Application of Aeronaves Del Peru, pursuant to Section 402 of the Act and Subpart Q of the Regulations, requests renewal of its foreign air carrier permit for an additional indefinite period authorizing it to engage in scheduled foreign air transportation of property and mail twice weekly between Lima, Peru; via the intermediate points Panama City, Panama; Guayaquil, Ecuador (blind sector); Bogota and Cali, Colombia (blind sectors); and the terminal point Miami, Florida.

Paulette V. Twine,

Chief Documentary Services Division

[FR Doc. 95–15062 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–62–P

Bureau of Transportation Statistics

Public Notice; DOT Moves Airline Statistics Office to Bureau of Transportation Statistics

SUMMARY: Effective May 28, 1995, the Office of Airline Statistics (OAS) of the Research and Special Programs Administration (RSPA), U.S. Department of Transportation, was transferred from RSPA to the Bureau of Transportation Statistics (BTS). The office has been renamed the Office of Airline Information (OAI), mail code K–25, and is located in Room 4125 at the Department's headquarters, telephone 202/366–9059. Mr. Timothy E. Carmody from the Office of the Secretary's Office of Aviation Analysis, was named as Acting Director of the new BTS office. The office functions, organizational

structure, personnel, and telephone numbers remain the same.

ADDRESSES: The mailing address for airline submissions is Data Administration Division, K–25, Rm 4125, Office of Airline Information, BTS, Department of Transportation, 400 7th Street, SW, Washington, DC 20590–0001 (Telephone 202–366–9059).

Dated: June 14, 1995.

Philip N. Fulton,

Associate Director for Data User Services.

[FR Doc. 95–15008 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–60–P

Coast Guard

[CGD 95–050]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: A meeting of the New York Harbor Traffic Management Advisory Committee (NYHTMAC) will be held on July 12, 1995. Topics for this meeting include a report on upcoming marine events, dredging operations in New York Harbor, update on Vessel Traffic Service and Coast Guard regulatory initiatives, environmental monitoring initiatives, committee business, and topics from the floor.

DATES: The meeting will be held at 10 a.m. on July 12, 1995.

ADDRESSES: The meeting will be held in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander D.S. HILL, USCG, NYHTMAC Executive Secretary, Vessel Traffic Service New York, Building 108, Governors Island, New York, NY 10004–5070; or by calling (212) 668–7429.

SUPPLEMENTARY INFORMATION: Authority for conducting NYHTMAC meetings is granted pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 USC App. I).

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntary without compensation from the Federal Government.

Topics for this meeting include a report on upcoming marine events, dredging operations in New York Harbor, update on Vessel Traffic Service and Coast Guard regulatory initiatives, environmental monitoring initiatives, committee business, and topics from the floor.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director no later than one day before the meeting. Any member of the public may present a written statement to the Committee at any time.

The New York Harbor Traffic Management Advisory Committee continues to seek additional members who represent the many diverse interests in the Port of New York and New Jersey.

Dated: June 6, 1995.

T.H. Gilmour,

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

[FR Doc. 95–15079 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD 95–047]

National Environmental Policy Act: Agency Procedures for Categorical Exclusions

AGENCY: Coast Guard, DOT.

ACTION: Notice of agency policy.

SUMMARY: The Coast Guard is announcing two changes in its policy concerning agency actions that are categorically excluded from additional environmental analysis under the National Environmental Policy Act (NEPA). One change concerns the need for an environmental analysis checklist in the development of drawbridge regulations and procedures. The other change concerns permits for sailing competitions and demonstrations.

FOR FURTHER INFORMATION CONTACT: Mr. David Reese, Environmental Compliance and Restoration Branch, (202) 267–1942.

SUPPLEMENTARY INFORMATION:

Background

Under regulations implementing the National Environmental Policy Act (NEPA) (40 CFR parts 1500 through 1508), each Federal agency is required to adopt procedures to supplement those regulations (40 CFR 1507.3). The Coast Guard's procedures and policies are published as a Commandant instruction entitled ''National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts'' (COMDTINST M1675.1B). On July 29, 1994, the Coast Guard published a notice in the **Federal Register** (59 FR 38654) announcing the revision of section 2.B.2 of the instruction. Section 2.B.2 lists the proposed agency actions that are categorically excluded from the requirement that the actions undergo the analysis that accompanies preparation of an Environmental Assessment or Environmental Impact Statement.

Discussion of Changes

(1) The Coast Guard has determined that the requirement under section 2.B.2.e.(32)(e) of COMDTINST M16475.1B (as published in 59 FR 38658; July 29, 1994) to prepare an environmental analysis checklist should not apply to the promulgation of operating regulations or procedures for drawbridges. A checklist is an internal administrative document devised by the Coast Guard to assist in analyzing agency actions that might have a significant effect on the human environment. After numerous cases, the Coast Guard has found that these actions are not likely to have a significant effect on the human environment. Therefore, the Coast Guard is removing the words ''(Checklist required).'' from section 2.B.2.e.(32)(e). This removal has no affect on the Coast Guard's responsibility to consider the effects of its actions on the human environment.

(2) Section 2.B.2.e.(35)(c) is corrected to refer to sailing competitions or demonstrations involving approximately ''100 sailboats or sailboards,'' not ''100 sailboats or sailboats.''

For the reasons set out in the preamble, the Coast Guard announces the following amendments to section 2.B.2.e. of COMDTINST M 16475.1B:

2.B.2.e. *Categorical Exclusion List*

(32) * * *

* * * * *

(e) Promulgation of operating regulations or procedures for drawbridges.

* * * * *

(35) * * *

* * * * *

(c) Sailing competitions or demonstrations involving approximately 100 sailboats (up to approximately 26 feet in length) or sailboards and not more than approximately 200 spectator craft.

* * * * *

Dated: June 13, 1995.

E. J. Barrett,

Rear Admiral, U.S. Coast Guard, Chief, Office of Engineering, Logistics and Development.

[FR Doc. 95–15078 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Change to AC No. 120–42A]

Proposed Appendix 7, Reduction of Operator's Inservice Experience Requirement Prior to the Granting of an ETOPS Operational Approval [Accelerated ETOPS Operational Approval], to Advisory Circular 120–42A, Extended Range Operation with Two-Engine Airplanes (ETOPS)

Correction

In notice document 95–13403 beginning on page 28643 in the issue of Thursday, June 1, 1995, Appendix 7 of Advisory Circular 120–42A was inadvertently not published in the original document. Appendix 7 of Advisory Circular 120–42A reads as follows:

Appendix 7: Reduction of Operator's in Service Experience Requirement Prior to the Granting of ETOPS Operational Approval (Accelerated ETOPS Operational Approval)

1. General

a. Paragraph 9(b) of AC 120–42A states the following:

(1) (In service experience) guidelines may be reduced or increased following review and concurrence on a case-by-case basis by the Director, Flight Standards Service.

(2) Any reduction * * * will be based on evaluation of the operators ability and competence to achieve the necessary reliability for the particular airframe/engine combination in extended range operations.

(3) For example, a reduction in inservice experience may be considered for an operator who can show extensive inservice experience with a related engine on another airplane which has achieved acceptable reliability.

(4) The substitution of in service experience which is equivalent to the actual conduct of 120-minute ETOPS operations will also be established by the Director, Flight Standards Service AFS–1, on a case by case basis.

b. The purpose of this appendix is to establish the factors which the Director, Flight Standards Service may consider in exercising the authority to allow reduction or substitution of operators inservice experience requirement in granting ETOPS Operational Approval.

c. Paragraph 7 of AC 120–42A states that * * * the concepts for evaluating extended range operations with two-engine airplanes * * * ensure that two-engine airplanes are consistent with the level of safety required for current extended range operations with three and four-engine turbine powered airplanes without unnecessarily restricting operation.

d. It is apparent that the excellent propulsion related safety record of two-engine airplanes has not only been maintained, but potentially enhanced, by the process related provisions associated with ETOPS Type Design and Operational Approvals. Further, currently available data shows that these process related benefits are achievable without extensive inservice experience. Therefore, reduction or elimination of inservice experience requirements may be possible when the operator shows to the FAA that adequate and validated ETOPS processes are in place.

e. The Accelerated ETOPS Operations Approval Program with reduced inservice does not imply that any reduction of existing levels of safety should be tolerated but rather acknowledges that an operator may be able to satisfy the objectives of AC 120–42A by a variety of means of demonstrating that operator's capability.

f. This Appendix permits an operator to start ETOPS operations when the operator has demonstrated to the FAA that those processes necessary for successful ETOPS operations are in place and are considered to be reliable. This may be achieved by thorough documentation of processes, demonstration on another airplane/validation (as described in paragraph 7 of this Appendix) or a combination of these.

2. Background

a. When AC 120–42 was first released in 1985 ETOPS was a new concept, requiring extensive inservice verification of capability to assure the concept was a logical approach. At that time, the FAA recognized that reduction in the inservice experience requirements or substitution of inservice experience, on another airplane, would be possible.

b. The ETOPS concept has been successfully applied for close to a decade; ETOPS is now widely employed. The number of ETOPS operators has increased dramatically, and in the North Atlantic U.S. airlines have more twin operations than the number of operations accomplished by three and four engine airplanes. ETOPS is now well established.

c. Under AC 120–42A, an operator was generally required to operate an airframe-engine combination for one (1) year, before being eligible for 120-minute ETOPS; and another one (1) year, at 120-minute ETOPS, before being granted 180-minute ETOPS approval. For example, an operator who currently has 180-minute ETOPS approval on one type of airframe-engine or who is currently operating that route with an older generation three or four engine airplane was required to wait for up to two (2) years for such an approval. Such a requirement could create undue economic burden on operators, while not contributing materially to safety. Data indicates that compliance with processes has resulted in successful ETOPS operation at earlier than the standard time provided for in the advisory circular.

d. ETOPS operational data indicates that twins have maintained a high degree of reliability due to implementation of specific maintenance, engineering and flight operation process related requirements. Compliance with ETOPS processes is crucial in assuring high levels of reliability of twins. Data shows that previous experience on an airframe-engine combination prior to operating ETOPS, does not necessarily make a significant difference in the safety of such operations. Commitment to establishment of reliable ETOPS processes has been found to be a much more significant factor. Such commitment, by operators, to ETOPS processes has, from the outset, resulted in operation of twins at a mature level of reliability.

e. ETOPS experience of the past decade shows that a firm commitment by the operator to establish proven ETOPS processes prior to the start of actual ETOPS operations and to maintain that commitment throughout the life of the program is paramount to ensuring safe and reliable ETOPS operations.

3. Definitions

a. *Process.* A process is a series of steps or activities that are accomplished, in a consistent manner, to assure that a desired result is attained on an ongoing basis. Paragraph 4 documents ETOPS processes that should be in place to ensure a successful Accelerated ETOPS program.

b. *Proven Process.* A process is considered to be proven when the following elements are developed and implemented:

(1) Definition and documentation of process elements.

(2) Definition of process related roles and responsibilities.

(3) Procedure for validation of process of process elements.

(i) Indications of process stability/reliability.

(ii) Parameters to validate process and monitor (measure) success.

(iii) Duration of necessary evaluation to validate process.

(4) Procedure for follow-up inservice monitoring to assure process remains reliable/stable.

Methods of process validation are provided in paragraph 7.

4. ETOPS Processes

a. The two-engine airframe/engine combination for which the operator is seeking Accelerated ETOPS Operational Approval must be ETOPS Type Design approved prior to commencing ETOPS. The operator seeking Accelerated ETOPS Operational Approval must demonstrate to the FAA that it has an ETOPS program in place that addresses the process elements identified in this section.

b. The following are the ETOPS process elements:

(1) Airplane/engine compliance to Type Design Build Standard (CMP).

(2) Compliance with the Maintenance Requirements as defined in paragraph 10 and Appendix 4 of AC 120–42A:

(i) Fully developed Maintenance Program (Appendix 4, paragraph 1(a)(2)) which includes a tracking and control program.

(ii) ETOPS manual (Appendix 4, paragraph 1(a)(3)) in place.

(iii) A proven Oil Consumption Monitoring Program. (Appendix 4, paragraph 1(a)(5)).

(iv) A proven Engine Condition Monitoring and Reporting system. (Appendix 4, paragraph 1(a)(5)).

(v) A proven plan for Resolution of Airplane Discrepancies. (Appendix 4, paragraph 1(a)(6)).

(vi) A proven ETOPS Reliability Program. (Appendix 4, paragraph 1(a)(7)).

(vii) Propulsion system monitoring program (Appendix 4, paragraph 1 (a)(8)) in place. The operator should establish a program that results in a high degree of confidence that the propulsion system reliability appropriate to the ETOPS diversion time would be maintained.

(viii) Training and qualifications program in place for ETOPS maintenance personnel. (Appendix 4, paragraph 1(a)(9)).

(ix) Established ETOPS parts control program (Appendix 4, paragraph 1(a)(10)).

(3) Compliance with the Flight Operations Program as defined in paragraph 10 and Appendix 5 of AC 120–42A:

(i) Proven flight planning and dispatch programs appropriate to ETOPS.

(ii) Availability of meteorological information and MEL appropriate to ETOPS.

(iii) Initial and recurrent training and checking program in place for ETOPS flight operations personnel.

(iv) Flight crew and dispatch personnel familiarity assured with the ETOPS routes to be flown; in particular the requirements for, and selection of, enroute alternates.

(4) Documentation of the following elements:

(i) Technology new to the operator and significant difference in primary and secondary power (engines, electrical, hydraulic and pneumatic) systems between the airplanes currently operated and the two-engine airplane for which the operator is seeking Accelerated ETOPS Operational Approval.

(ii) The plan to train the flight and maintenance personnel to the differences identified in paragraph 1 above.

(iii) The plan to use proven validated Training and Maintenance and Operations Manual procedures relevant to ETOPS for the two-engine airplane for which the operator is seeking Accelerated ETOPS Operational Approval.

(iv) Changes to any previously proven validated Training, Maintenance, or Operations Manual procedures described above. Depending on the nature and extent of any changes, the operator may be required to provide a plan for validating such changes.

(v) The validation plan for any additional operator unique training and procedures relevant to ETOPS.

(vi) Details of any ETOPS program support from the airframe manufacturer, engine manufacturer, other operators or any other outside person.

(vii) The control procedures when maintenance or flight dispatch support is provided by an outside person as described above.

5. Application

a. Paragraph 10(a) of AC 120–42A requires that requests for extended range operations be submitted at least sixty (60) days prior to the start of extended range operations. Normally, the operator should submit an Accelerated ETOPS Operational Approval Plan to the FAA six (6) months before the proposed start of extended range operations. This time will permit the FAA to review the documented plans and assure adequate ETOPS processes are in place. The operators application for Accelerated ETOPS should:

(1) Define proposed routes and the ETOPS diversion time necessary to support these routes.

(2) Define processes and related resources being allocated to initiate and sustain ETOPS operations in a manner that demonstrates commitment by management and all personnel involved in ETOPS maintenance and operational support.

(3) Identify, where required, the plan for establishing compliance with the build standard required for Type Design Approval, e.g., CMP (Configuration, Maintenance and Procedures Document) compliance.

(4) Document plan for compliance with requirements in paragraph 4.

(5) Define Review Gates. A Review Gate is a milestone tracking plan to allow for the orderly tracking and documentation of specific requirements of this Appendix. Each Review Gate should be defined in terms of the tasks to be satisfactorily accomplished in order for it to be successfully passed. Items for which the FAA visibility is required or the FAA approval is sought should be included in the Review Gates. Normally, the Review Gate process will start six (6) months before the proposed start of extended range operations and should continue at least until six (6) months after the start of extended range operations. Assure that the proven processes comply with the provisions of paragraph 3 of this Appendix.

6. Operational Approvals

a. Operational approvals that are granted with reduced inservice experience will be limited to those areas agreed on by the FAA at approval of the Accelerated ETOPS Operational Approval Plan. When an operator wishes to add new areas to the approved list, FAA concurrence is required.

b. Operators will be eligible for ETOPS Operational Approval up to the Type Design Approval limit, provided the operator complies with all the requirements in paragraph 4.

7. Process Validation

a. Paragraph 4 identifies those process elements that need to be proven prior to start of Accelerated ETOPS.

b. For a process to be considered proven, the process must first be defined. Typically this will include a flow chart showing the various elements of the process. Roles and responsibilities of the personnel who will be managing this process should be defined including any training requirement. The operator should

demonstrate that the process is in place and functions as intended. The operator may accomplish this by thorough documentation and analysis, or by demonstrating on an airplane that the process works and consistently provides the intended results. The operator should also show that a feedback loop exists to illustrate need for revision of the process, if required, based on inservice experience.

c. Normally the choice to use, or not use, demonstration on an airplane as a means of validating the process should be left up to the operator. With sufficient preparation and dedication of resources such validation may not be necessary to assure processes should produce acceptable results. However, in any case where the proposed plan to prove the processes is determined by the FAA to be inadequate or the plan does not produce acceptable results, validation of the process in an airplane will be required.

d. If an operator is currently operating ETOPS with a different airframe and/or engine combination it may be able to document that it has proven ETOPS processes in place and only minimal further validation may be necessary. It will, however, be necessary to demonstrate that means are in place to assure equivalent results will occur on the airplane being proposed for Accelerated ETOPS Operational Approval. The following elements which while not required, may be useful or beneficial in justifying a reduction in the validation requirements of ETOPS processes:

(1) Experience with other airframes and/or engines.

(2) Previous ETOPS experience.

(3) Experience with long range, overwater operations with two, three or four engine airplanes.

(4) Experience gained by flight crews, maintenance personnel and flight dispatch personnel while working with other ETOPS approved operators.

e. Process validation may be done in the airframe-engine combination that will be used in Accelerated ETOPS operation or in a different type airplane than that for which approval is being sought, including those with three or four engines.

f. A process may be validated by first demonstrating the process produces acceptable results on a different airplane type or airframe/engine combination. It should then be necessary to demonstrate that means are in place to assure equivalent results should occur on the airplane being proposed for Accelerated ETOPS Operational Approval.

g. Any validation program should address the following:

(1) The operator should show that it has considered the impact of the ETOPS validation program with regard to safety of flight operations. The operator should state in its application any policy guidance to personnel involved in the ETOPS process validation program. Such guidance should clearly state that ETOPS process validation exercises should not be allowed to adversely impact the safety of operations especially during periods of abnormal, emergency, or high cockpit workload operations. It should emphasize that during periods of abnormal or emergency operation or high cockpit workload ETOPS process validation exercises may be terminated.

(2) The validation scenario should be of sufficient frequency and operational exposure to validate maintenance and operational support systems not validated by other means.

(3) A means must be established to monitor and report performance with respect to accomplishment of tasks associated with ETOPS process elements. Any recommended changes to ETOPS maintenance and operational process elements should be defined.

(4) Prior to the start of the process validation program, the following information should be submitted to the FAA:

(i) Validation periods, including start dates and proposed completion dates.

(ii) Definition of airplane to be used in the validation. List should include registration numbers, manufacturer and serial number and model of the airframes and engines.

(iii) Description of the areas of operation (if relevant to validation objectives) proposed for validation and actual extended range operations.

(iv) Definition of designated ETOPS validation routes. The routes should be of duration necessary to ensure process validation occurs.

(5) Process validation reporting—The operator should compile results of ETOPS process validation. The operator should:

(i) Document how each element of the ETOPS process was utilized during the validation.

(ii) Document any shortcomings with the process elements and measures in place to correct such shortcomings.

(iii) Document any changes to ETOPS processes that were required after an inflight shut down (IFSD), unscheduled engine removals, or any other significant operational events.

(iv) Provide periodic Process Validation reports to the FAA. This may be addressed during the Review Gates.

Thomas C. Accardi,

Director, Flight Standards Service.

[FR Doc. 95–15007 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–13–M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Fort Lauderdale-Hollywood International Airport, Fort Lauderdale, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the updated noise exposure maps submitted by the Broward County Aviation Department, Fort Lauderdale, Florida for Fort Lauderdale-Hollywood International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program update that was submitted for Fort Lauderdale-Hollywood International Airport under part 150 in conjunction with the noise exposure maps, and that this program update will be approved or disapproved on or before November 28, 1995.

EFFECTIVE DATE: The effective date of the FAA's determination on the updated noise exposure maps and of the start of its review of the associated noise compatibility program update is June 1, 1995. The public comment period ends July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397, (407) 648–6583. Comments on the proposed noise compatibility program update should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the updated noise exposure maps submitted for Fort Lauderdale-Hollywood International Airport are in compliance with applicable requirements of part 150, effective June 1, 1995. Further, FAA is reviewing a proposed noise compatibility program update for that airport which will be approved or disapproved on or before November 28, 1995. This notice also

announces the availability of this program update for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties to the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Broward County Aviation Department, Fort Lauderdale, Florida, submitted to the FAA on May 22, 1995, updated noise exposure maps, descriptions and other documentation which were produced during the Fort Lauderdale-Hollywood International Airport FAR Part 150 Program Update conducted between November 25, 1992 and May 18, 1995. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the updated noise exposure maps and related descriptions submitted by the Broward County Aviation Department, Fort Lauderdale, Florida. The specific maps under consideration are ''EXISTING CONDITIONS (1992) *NOISE EXPOSURE MAP'' and ''FUTURE CONDITIONS (1977) *NOISE EXPOSURE MAP'' in the submission. The FAA has determined that these maps for Fort Lauderdale-Hollywood International Airport are in compliance with applicable requirements. This determination is effective on June 1, 1995. FAA's determination on an airport operator's noise exposure maps is limited to finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program update for Fort Lauderdale-Hollywood International Airport, also effective on June 1, 1995. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program update. The formal review period, limited by law to maximum of 180 days, will be completed on or before November 28, 1995.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program update with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the updated noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program update are available for examination at the following locations:

Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5386,

Broward County Aviation Department, Fort Lauderdale-Hollywood International Airport, 1400 Lee Wagener Boulevard, Fort Lauderdale, FL 33315.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**:

Issued in Orlando, Florida June 1, 1995.

Charles E. Blair,

Manager, Orlando Airports District Office.

[FR Doc. 95–15006 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting

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 Aviation Rulemaking Advisory Committee to discuss air carrier/general aviation maintenance issues.

DATES: The meeting will be held on July 27, 1995, at 8:30 a.m. and should adjourn by 3 p.m. Arrange for oral presentations by July 17, 1995.

ADDRESS: The meeting will be held at the Air Transport Association of America, 1301 Pennsylvania Avenue NW., Suite 1100, Washington, DC, at 8:30 a.m.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Herber, Meeting Coordinator, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3498; fax number (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 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 (ARAC) to consider air carrier/general aviation maintenance issues. The

meeting will be held on July 27, 1995, at Air Transport Association of America, 1301 Pennsylvania Avenue NW., Suite 1100, Washington, DC, at 8:30 a.m. The agenda will include:

- Possible consideration of a new task for ARAC concerning revisions to § 121.375 of the Federal Aviation Regulations.
- Dissolution of the Weight and Balance Working Group.
- Discussion of Suspected Unapproved Parts initiatives with senior FAA officials.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements on or before July 17, 1995, to present oral statements at the meeting. The public may present written statements at any time by providing 35 copies to the Assistant Chair or by presenting 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 meeting coordinator listed under the heading **FOR FURTHER INFORMATION CONTACT.** The Assistant Chair may limit the time allowed for oral statements to fit the time available. The Assistant Chair may also allow questions from the public, again subject to time available.

Issued in Washington, DC, on June 14, 1995.

Benjamin J. Burton, Jr.,

Acting Assistant Executive Director for Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–15065 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting to solicit information from the aviation maintenance community concerning maintenance, preventive maintenance, rebuilding and alteration, and inspection of certain aircraft. The information is requested to assist the Aviation Rulemaking Advisory Committee (ARAC) in its deliberations.

DATES: The meeting will be held on June 27, 1995, beginning at 1:00 p.m.

ADDRESSES: The meeting will be held at the Machinist's Building, 3830 South Meridian, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Leonard, Professional Aviation Maintenance Association, 1008 Russell Lane, West Chester, PA 19382; telephone (610) 399–9034.

SUPPLEMENTARY INFORMATION: Pursuant to section 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 to solicit information from the aviation maintenance community concerning maintenance, preventive maintenance, rebuilding and alteration, and inspection of certain aircraft. The information is requested to assist the Aviation Rulemaking Advisory Committee in its deliberations with regard to a task assigned to ARAC by the Federal Aviation Administration.

Specifically, the task is as follows:

Review Title 14 Code of Federal Regulations, parts 43 and 91, and supporting policy and guidance material for the purpose of determining the course of action to be taken for rulemaking and/or policy relative to the issue to general aviation aircraft inspection and maintenance, specifically section 91.409, part 43, and Appendices A and D of part 43. In your review, consider any inspection and maintenance initiatives underway throughout the aviation industry affecting general aviation with a maximum certificated takeoff weight of 12,500 pounds or less. Also consider ongoing initiatives in the areas of: maintenance recordkeeping; research and development; the age of the current aircraft fleet; harmonization; the true cost of inspection versus maintenance; and changes in technology.

Attandance is open to the interested public but may be limited to the space available. In addition, sign and oral interpretation can be made available at the meeting, as well as an assisitive listening device, if requested 10 calendar days before the meeting is held. Arrangements may be made by contacting the meeting coordinator listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on June 14, 1995.

Benjamin J. Burton, Jr.,

Acting Assistant Executive Director, Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–15064 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

National High-Speed Ground Transportation (HSGT) Policy Outreach Meeting

AGENCY: Federal Railroad Administration; Department of Transportation.

ACTION: Notice of Public Meeting.

SUMMARY: The Federal Railroad Administration (FRA) will hold a regional public outreach meeting in New Orleans, Louisiana on June 27, 1995, to invite public input for developing the National High Speed Ground Transportation (HSGT) Policy, as mandated by the Intermodal Surface Transportation Efficiency Act. The public is invited to attend and/or submit written comments.

DATES: Due to this additional meeting, FRA has extended the time during which written comments will be accepted through July 1, 1995. Comments should be submitted by mail to the address below and will be accepted in person at the meeting. The New Orleans session will take place as follows:

Date: June 27, 1995.

Place: The Westin Hotel, Ballroom 1, 12th Floor, 100 Rue Iberville, New Orleans, Louisiana 70130, (504) 553–5017.

Time: 4 p.m. to 7:00 p.m.

Local Contact: Carol Cranshaw, Louisiana DOT, (504) 379–1436.

Registration: Attendees are asked to arrive 30 minutes prior to the beginning of the meeting for registration.

Addresses: All written statements should be submitted to: Honorable Jolene M. Molitoris, Administrator, Federal Railroad Administration, Attn: HSGT Policy, 400 Seventh Street, S.W., Room 8206, Washington, D.C. 20590.

BACKGROUND: The FRA recently conducted a series of seven outreach meetings to obtain public input for the development of a National HSGT Policy. On June 15, 1995, the FRA received a request for a regional outreach meeting on the HSGT policy from the Governor of Louisiana on behalf of the Southern states. FRA is co-hosting this meeting in response to that special request.

FOR FURTHER INFORMATION CONTACT: John F. Cikota, (202) 366–9332.

Issued in Washington, DC on June 14, 1995.

Donald M. Itzkoff,

Deputy Administrator Federal Railroad Administration.

[FR Doc. 95–15053 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–06–P

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the

requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3357

Applicant: Norfolk Southern Railway Company, Mr. J. W. Smith, Chief Engineer—C&S, Communication and Signal Department, 99 Spring Street SW., Atlanta, Georgia 30303.

The Norfolk Southern Railway Company, Central of Georgia Railway seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track ''O'' Line and sidings between Fort Benning Junction, Georgia, milepost 4.2 and B.V.& E. Junction, Georgia, milepost 60.0, Georgia Division, Americus District, a distance of approximately 56 miles.

The reason given for the proposed changes is to reduce maintenance costs without affecting the safety of operations, in connection with the pending lease of the ''O'' Line to the Georgia Southwestern Railroad.

BS–AP–No. 3358

Applicants: Metro North Commuter Railroad Company, Mr. G. F. Walker, Assistant Vice President-Operations, 347 Madison Avenue, New York, New York 10017

Connecticut Department of Transportation, Mr. L. J. Forbes, Rail Administrator, P. O. Box 317546, Newington, Connecticut 06131–7546.

Metro North Commuter Railroad Company and the Connecticut Department of Transportation jointly seek approval of the proposed modifications, near New Haven Interlocking, milepost 72.3, in New Haven, Connecticut, on the New Haven Line; consisting of the reconfiguration of New Haven Interlocking, the installation of CP 271 between milepost 71.16 and milepost 71.46, and installation of a new computer based office control system.

The reason given for the proposed changes is that with the proposed electrification east of New Haven and the number of freight trains and engine changes reduced significantly, the current design of New Haven Interlocking no longer meets the needs of its users. Also, as part of the Northeast Corridor Highspeed Rail Project, New Haven Interlocking must be reconfigured to safely accommodate the proposed mixes of rail traffic and speed.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on June 15, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–15066 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. 95–26; Notice 1]

Uniform Data Collection and Reporting Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice invites comments, suggestions and recommendations from individuals and organizations with an interest in data support for highway and traffic safety problem identification and countermeasure activities. In particular, it solicits participation from the traffic safety community regarding a uniform data collection methodology and process pursuant to the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, which required that the Secretary establish a highway safety program for the collection and reporting of data on traffic related deaths and injuries by the States. Comments should address the specific questions listed in the notice and any relevant data-related concerns applicable to the concept of a national uniform data system or to the ISTEA requirement.

DATES: Comments are due no later than July 20, 1995.

ADDRESSES: Written comments should refer to the docket number of this notice and should be submitted to: Docket Section, NHTSA, Room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Janet Johnson, Office of Strategic Planning and Evaluation, NPP–11, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; telephone 202/366–2571.

SUPPLEMENTARY INFORMATION: When the Highway Safety Act of 1966 was enacted, state central traffic records systems generally contained basic files on crashes, drivers, vehicles and roadways. Highway Safety Program Standard 10, issued by NHTSA in 1967, established a formal traffic records program. It provided: ''Each State, in cooperation with its political subdivisions, shall maintain a traffic records system. The Statewide system shall include data for the entire State. Information regarding drivers, vehicles, accidents, and highways shall be compatible for purposes of analysis and correlation.''

Since that time, an increasingly comprehensive traffic records program has emerged to meet the need for planning (problem identification), operational management, evaluation of motor vehicle fleet characteristics and state highway safety program activities. States receive funds under the NHTSA/FHWA Section 402 State and Community Highway Safety Grant program. These funds may be used by states to support their traffic records programs. Traffic Records has been identified by NHTSA and FHWA as a priority program under Section 402.

NHTSA's National Center for Statistics and Analysis (NCSA) maintains a number of systems that either collect data or use state-collected data to diagnose problems in motor vehicle safety, analyze potential safety improvements, and evaluate the effects of safety measures that are in place. These data systems include the Fatal Accident Reporting System (FARS), the National Accident Sampling System's Crashworthiness Data System (CDS) and the General Estimates System (GES). NCSA also obtains the crash data files from 17 states for use in its analysis.

While existing data sources meet many of the highway safety community's data needs, it is necessary to periodically examine those needs to see how well they are being satisfied and to identify any new safety areas for which it might become necessary to collect data. Fortunately, the advanced capabilities of computerized data collection, storage and manipulation have made sophisticated information creation and exchange a plausible activity. The availability of uniform or standard data elements enhances the

usefulness of these data for all highway safety related activities, not the least of which is the potential for injury and fatality data to become an increasingly valuable resource for purposes of more pinpointed problem identification.

Uniform Data

NHTSA and FHWA support the ANSI Standard D20.1, Data Element Dictionary for Traffic Record Systems, and ANSI Standard D16.1, Manual on Classification of Motor Vehicle Traffic Accidents. Neither, however, specifies those variables and elements that should be included in a typical motor vehicle crash reporting system or identifies those variables which, if collected and automated, would be appropriate for a full range of problem identification and analytical activities.

NHTSA's most recent activity to focus on standardized data was its development of the CADRE (Critical Automated Data Reporting Elements). CADRE is a set of variables NHTSA believes, if uniformly collected, would improve the usability of state crash data for analytical purposes. CADRE was not intended to serve as a minimal set of elements to cover all aspects of crash data collection. Although the definition of variables to be collected on police crash reports is clearly a state determination, the lack of standardization both of variables across states and of the application of variable definitions within states makes comparison and analysis difficult for all highway safety data users.

Intermodal Surface Transportation Efficiency Act (ISTEA)

On December 18, 1991, the Intermodal Surface Transportation Efficiency Act (ISTEA) (Pub. L. 102–240) was signed into law. Section 2002 (a) of ISTEA was enacted to ensure national uniform data on traffic related deaths and injuries in the U.S. It requires that the following action be taken:

The Secretary shall establish a highway safety program for the collection and reporting of data on traffic related deaths and injuries by the States. Under such program, the States shall collect and report such data as the Secretary may require. The purposes of the program are to ensure national uniform data on such deaths and injuries and to allow the Secretary to make determinations for use in developing programs to reduce such deaths and injuries and making recommendations to Congress concerning legislation necessary to implement such programs. The program shall include information obtained by the Secretary under section 4007 [1] of the Intermodal Surface Transportation Efficiency Act of 1991 and provide for annual reports to the Secretary on the efforts being made by the States in reducing deaths and injuries occurring at highway construction sites and the effectiveness and results of such efforts. The Secretary shall establish minimum reporting criteria for the program. Such criteria shall include, but not be limited to, criteria on deaths and injuries resulting from police pursuits, school bus accidents, and speeding, on traffic-related deaths and injuries at highway construction sites and on the configuration of commercial motor vehicles involved in motor vehicle accidents.

In 1994, NHTSA began a strategic planning process intended to develop a comprehensive, long-range approach to crash and injury prevention. NHTSA's Strategic Plan was crafted to support the goals of DOT's Strategic Plan and the legislative mandates of the Agency. Eleven strategic goals were developed and derived from the Agency's mission. One of these goals addressed the improvement of data collection and analysis so as to ''* * * better identify and understand problems and to support and evaluate programs * * *''

Uniform Data Issues

Section 2002(a) of ISTEA requires the Secretary to ''establish a highway safety program for the collection and reporting of data.'' It further provides that the Secretary ''shall establish minimum reporting criteria for the program,'' and that ''the states shall collect and report such data as the Secretary requires.'' The Agency solicits comments on these requirements, and is particularly interested in answers to the following questions:

1. Commenters should indicate whether they believe there is a need to create a set of uniform definitions for all states to use and should provide a rationale for their position. How would data analysis activities for which commenters have responsibility, use, or benefit from, be specifically affected by having a uniform set of definitions? Is there already an acceptable level of uniformity? If yes, please provide a basis for that determination.

2. If commenters support the development of a uniform set of elements, they should indicate what they believe to be the best way to go about establishing standard or uniform data elements or sets. Who would be best qualified to take on this task? What forum should be used to explore the establishment and adoption of a national uniform data set: a series of public meetings? another **Federal Register** Notice? Other?

3. Commenters should identify financial impacts of establishing a uniform system and assess their capability to meet those funding commitments. What solutions might be proposed to accomplish this? Commenters should describe what they see as DOT's role in establishing and implementing such a system, the state's role, and the role of the highway safety community.

4. Besides the CADRE elements, commenters should indicate what other elements might serve as a core set of elements sufficient to allow for meaningful inter/intrastate comparisons and analyses. Are there any CADRE elements that should be deleted? If so, please include a rationale.

5. If commenters have adopted some or all of the CADRE elements, what adjustments were made to the police accident report (PAR) to accommodate this activity? If commenters have made a decision not to adopt CADRE, what are the impediments to implementation that have been identified? What nationally uniform data elements would the commenter consider adopting?

Minimum Reporting Criteria Issues

Section 2002(a) provides that the Secretary shall establish ''minimum reporting criteria'' and that the criteria ''shall include, but not be limited to, criteria on deaths and injuries resulting from police pursuits, school bus accidents, and speeding, on traffic-related deaths and injuries at highway construction sites and on the configuration of commercial motor vehicles involved in motor vehicle accidents.''

Many states currently collect some information about these crash characteristics on their PARs. However, not all states do so, and for those that do, the data definitions and variables collected vary widely. Included below is a brief discussion of issues relating to each of these areas and questions to which NHTSA seeks input from commenters.

Police Pursuits

To determine the nature and extent of the relationship of police pursuit to motor vehicle crashes, DOT believes it may be useful to develop a uniform definition of police pursuit and a data element(s) to properly identify and code whether a police pursuit may have been a contributing factor to a crash. Since the 1994 Fatal Accident Reporting System (FARS) data collection year, police pursuit has been coded as a special circumstance in the Accident Level-Related Factors section and also as a factor in the Driver Level section.

[1] The reference to Section 4007 is incorrect. We believe the intended reference was Section 4003, which added a new section 407 to Part A of title IV of the Surface Transportation Assistance Act of 1982 (49 U.S.C. App. 2301–2305).

FARS is NHTSA's and FHWA's only data system that codes police pursuit related data. Because there is no uniform variable across all states, the NASS General Estimates System (GES), which codes only data collected on PARs cannot collect this information.

During 1994, FARS conducted a special study to determine if police pursuit-related crashes were being reported on state police crash reporting forms. A national news clipping service was engaged to collect news stories where police pursuit was reported in a fatal crash. Preliminary results indicate that for 26 percent of the news clips reviewed, information identifying that a police pursuit was involved was not included on the PAR. Accordingly, we solicit input on the following questions:

6. How does your State currently define a police pursuit? Is information related to police pursuits collected on your PAR? If yes, what is the nature of that information?

7. Is information collected when a police pursuit may have been a contributing factor to the crash or was terminated immediately prior to the crash?

8. What would be an appropriate definition of police pursuit and police pursuit-related crashes? What type of variable would be necessary to capture this information on a PAR?

9. Would information on police pursuit-related crashes be more appropriately collected under a special study? What types of special studies would be most useful? Please be specific.

10. Identify any impediments to obtaining and collecting accurate data on police pursuit-related crashes. How can these impediments be eliminated?

Work Zones

Work zone safety is a national priority for DOT. FHWA has developed a National Work Zone Safety Program and recently held a national conference to discuss this issue. Since 1981, FARS has identified work zone-related crashes in the Accident Level section. In 1995, GES added a similar variable. Both systems distinguish between motorist and nonmotorist fatalities and injuries. However, if information distinguishing highway construction projects from utility company projects or construction workers from nonworkers is needed, both systems can do so only if the information is readily available on the PAR. Recent research on work zone safety has included the testing and recommendation of various types of work zone equipment, barriers, signs, pavement markings, and worker practices. However, more detailed crash statistics are needed to better understand the cause and characteristics of work zone crashes. Preliminary investigations have indicated that work zone crashes may be understated due to the lack of a standard definition and the practice of recording (on PARs) these types of crashes as part of other variables, such as ''Road Defects.'' Consequently, we invite comments on the following issues:

11. How does your state currently define a work zone? Is any information on work zone related crashes collected on any of your state PARs?

12. Does this definition discriminate between highway construction and utility company operations? If so, how is this information used?

13. Does this definition discriminate between construction workers and nonworkers involved in the crash? If so, how is this information used?

14. DOT is considering developing a standard definition for work zone crashes and recommending that states include this as a separate variable on PARs. What would be an appropriate definition of a work zone and a work zone-related crash? What type of variable would be necessary to capture this information on a PAR?

15. Would information on work zone related crashes be more appropriately collected by means of a special study? What types of special studies would be most useful? Please be specific.

School Buses

Currently all states collect data on school bus and school bus related crashes. Consequently, the information can be collected and coded by both FARS and GES. Although there does not appear to be a need to collect any additional data at this time or to propose any changes to the existing national data collection systems, some in the safety community believe these crashes to be underreported.

16. Do commenters believe these crashes are underreported? If so, do you believe changes in collecting school bus data should be made to address this? What specific changes do you recommend?

17. If commenters agree that collection of additional data at this time is not necessary, please state this and include your reasons.

Speeding

Many states currently collect some data on speed, usually as a contributing cause of crashes. One of the difficulties in using current data is that speed can be a contributing factor in a number of ways, e.g., exceeding the posted speed limit or driving too fast for conditions. In addition, the recording of speed as a contributing cause presents some difficulties. Police officers might report speeding as a contributing cause when the crash cause is not clear. On the other hand, a police officer might suspect that speed was a contributing cause but not have enough evidence to issue a citation and consequently, be reluctant to indicate speed as a contributing factor. NHTSA and FHWA also recognize that a research study may be more appropriate to collect the type of information required to fully understand the impacts of speed. We are considering periodic studies of the speed/crash relationship where detailed data would be collected. However, there is still a need for continuous collection of the number and types of speed-related crashes by states and by DOT through its FARS, GES and CDS to provide the problem identification data needed for program development. Therefore, we solicit responses to the following questions:

18. How does your state define a speed-related crash? Do PARs contain a variable to collect this information?

19. What would be an appropriate definition of a speed-related crash? What type of variable would be necessary to capture this information on a PAR?

20. Would information on speed-related crashes be more appropriately collected under a special study? What types of special studies would be most useful? Please be specific.

Commercial Vehicle Related Crashes

Currently DOT, through FHWA's Office of Motor Carriers, collects crash data on commercial vehicles involved in interstate and intrastate commerce (as long as the crash meets the National Governors' Association [NGA] reportable accident criteria). Uniform data elements have been defined and recommended, and all states collect some of the elements. These data elements will be reviewed in 1997, and may be updated to accommodate changes in vehicle and highway travel. With these data and those collected on truck-involved crashes by FARS and GES, NHTSA and FHWA currently plan no major changes in these data collection systems, but solicit comments on this determination and on the following additional issues:

21. Do commenters agree that there is currently no need for any major changes in these data collection systems? If not, please include a rationale.

22. The definition of ''longer commercial vehicle'' (LCV) is not standard. Should a standard definition be established? If so, by what method?

23. If some double combinations are to be classified as LCV's and others are not to be classified as LCV's, how shall the difference be defined?

Injury Severity Determinations

NHTSA and FHWA are interested in the public's comments and suggestions regarding data collection issues not only on the specific safety areas addressed above, but also relating to the issue of injury severity determinations. There is currently no consistent application of the standard definition of injury severity found in the ANSI D16.1 Manual on Classification of Motor Vehicle Traffic Accidents: fatal, incapacitating, nonincapacitating, possible, no injury. Application of this injury scale depends on evaluation at the crash scene by police officers with little or no medical training. Consequently, people with injuries of different medical severities are often included within the same class because of differing interpretations of how severely a crash victim is injured. Frequently, emergency medical services transport of a victim for treatment is enough to code ''incapacitating injury.'' On the other hand, some injuries are not immediately evident at the scene of the crash, and a victim who is later diagnosed with a serious injury can be initially classified as ''not injured.'' This lack of standard application makes it difficult to determine the extent of the injury problem or to combine data from various jurisdictions. We are soliciting information on the following issues:

24. Is it feasible to standardize or change the application of the injury classification scale in a way that would allow valid judgments by officers on the scene?

25. If so, how should the highway safety community accomplish this?

26. Are there other methods for determining the nature and extent of the injury problem without requiring the collection of these data at the crash site? What are these methods?

27. Is it feasible to collect this information through the linking of EMS and hospital data with PARs?

NHTSA seeks public comment on the issues discussed above. Interested individuals or groups are invited to submit comments on these and any related issues. It is requested, but not required that ten copies of each comment be submitted. Written comments to the docket must be received on or before July 20, 1995. In order to expedite the submission of comments, simultaneous with the issuance of this notice, copies will be mailed to all State Governor's Highway Safety Representatives. Comments should not exceed 15 (fifteen) pages in length. Necessary attachments may be appended to those submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise manner. All comments received before the close of business on the comment closing date listed above will be considered and will be available for examination in the docket room at the above address both before and after that date. To the extent possible, comments filed after the closing date will be considered. The Agency will continue to file relevant information as it becomes available. It is recommended that interested persons continue to examine the docket for new material. Those people desiring to be notified upon receipt of their comments by the docket section should include a self-addressed, stamped postcard in the envelope with their comments. Upon receipt of their comments, the docket supervisor will return the postcard by mail.

Issued on: June 15, 1995.

Donald C. Bischoff,

Associate Administrator for Plans and Policy.

[FR Doc. 95–15067 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 95–10]

Preemption Determination

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

ACTION: Notice.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing its response to a written request for the OCC's determination of whether Federal law preempts the application of a Texas regulation that prescribes certain requirements relating to the signs and advertising used to identify branch banking facilities located in Texas. The OCC has determined that Federal law does not preempt the application of this regulation to national banks located in Texas. Section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (the Riegle-Neal Act) requires publication of opinion letters concluding that Federal law preempts certain State statutes and regulations. While publication is not required for opinion letters concluding that Federal law does not preempt the State law, the OCC has decided to publish this letter in order to disseminate broadly its conclusions on preemption issues covered by the Riegle-Neal Act's publication requirements.

FOR FURTHER INFORMATION CONTACT: Sue E. Auerbach, Senior Attorney, Bank Activities and Structure Division, 250 E Street, SW, Eighth Floor, Washington, DC 20219, (202) 874–5300.

SUPPLEMENTARY INFORMATION:

Background

Section 114 of the Riegle-Neal Act, Pub.L. 103–328 (12 U.S.C. 43), generally requires the OCC to publish in the **Federal Register** a descriptive notice of certain requests that the OCC receives for preemption determinations. The OCC must publish this notice before it issues any opinion letter or interpretive rule concluding that Federal law preempts the application to a national bank of any State law regarding community reinvestment, consumer protection, fair lending, or the establishment of intrastate branches (four designated areas). The OCC must give interested persons at least 30 days to submit written comments, and must consider the comments in developing the final opinion letter or interpretive rule.

The OCC must publish in the **Federal Register** any final opinion letter or interpretive rule that concludes that Federal law preempts State law in the four designated areas. It may, at its discretion, publish any final opinion letter or interpretive rule that concludes that State law in these areas is not preempted. The Riegle-Neal Act also provides certain exceptions, not applicable to the present request, to the **Federal Register** publication requirements.

Specific Request for OCC Preemption Determination

On March 10, 1995, the OCC published in the **Federal Register** (60 FR 13205) notice of a request for the OCC's determination of whether Federal law preempts the application of Texas Rule 3.92, 7 Tex. Admin. Code Section 3.92 (Rule), ''Naming and Advertising of Branch Facilities,'' in its entirety, to national banks. The Rule was adopted by the Texas State Finance Commission on August 19, 1994, pursuant to Texas Civil Statutes section 342–917, ''Identification of Facilities,'' which generally provides that a bank may not use any form of advertising that implies or tends to imply that a branch facility is a separate bank.

The Rule, like the statute, prohibits advertising of a branch facility in a manner which implies or fosters the

perception that a branch facility is a separate bank. The Rule is more explicit than the statute in identifying prohibited signage and advertising and provides specific guidance in certain situations.

Comments

The comment period closed on April 10, 1995. The OCC received two comments in response to the March 10, 1995, notice. One commenter, a law firm representing certain national banks, believed that Federal law preempted the Rule because the national banking laws provide the OCC with exclusive authority over the corporate affairs of national banks and further because compliance with the Rule would be burdensome. The other commenter, an association of state bank regulatory officials, believed that Federal law did not preempt the Rule because (1) the Rule does not conflict with any provision of Federal law; (2) legislative history of the national banking laws indicates that Congress believed there to be little federal supervisory interest in national bank names; and (3) the Rule is not burdensome.

OCC Determination

The OCC, after carefully considering the comments, believes that Federal law does not preempt the application of the Rule to national banks located in Texas. As discussed in the opinion letter, not only is there no actual conflict between Federal law and the Rule, but certain amendments to the national banking laws provide evidence that Congress intended questions regarding bank names to be settled primarily by reference to State law. In addition, there is no evidence that compliance with the Rule will be burdensome such that it will frustrate the ability of national banks to exercise any of their authorized powers. The Rule therefore is applicable to national banks in Texas.

The Riegle-Neal Act requires publication of opinion letters which conclude that Federal law preempts State statutes or regulations. While the Riegle-Neal Act does not require publication of letters concluding that State law is not preempted, the OCC has decided to publish its letter in order to disseminate broadly its preemption determinations under the Riegle-Neal Act, and in this case also to provide national banks located in Texas with notice and information regarding their obligations under the Rule.

The OCC's letter appears as an appendix to this Notice.

Dated: June 9, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

Appendix

June 9, 1995

Mr. Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705–4294.

Re: Proposed Branch Advertising and Naming Rule/7 Tex. Admin. Code § 3.92

Dear Mr. Jobe: This is in response to your inquiry, raised in your letters of June 17, 1994, to Randall Ryskamp, and October 24, 1994, to Dean Marriott (respectively, the District Counsel and Deputy Comptroller of the OCC's Southwestern District Office), and subsequently discussed in telephone conversations with OCC legal staff, whether federal law preempts the application to national banks of a state regulation relating to the signs and advertising used to identify branch banking facilities located in Texas. In our opinion, for the reasons discussed below, we believe that the regulation in question is not preempted by federal law and is applicable to national banks.

Background

On August 19, 1994, the Texas State Finance Commission adopted Rule 3.92 (''Rule'') entitled ''Naming and Advertising of Branch Facilities.'' [1] The Rule was adopted pursuant to Texas Civil Statutes § 342–917, ''Identification of Facilities,'' which generally provides that a bank may not use any form of advertising that implies or tends to imply that a branch facility is a separate bank.[2] The preamble to the Rule states that the Texas legislature, in regulating identification of branch facilities, had two substantive purposes. One was the possibility that unfair and misleading competition could result if a failed bank is taken over by another institution which continues to represent and advertise the resulting branch as the original failed institution. The second was that depositors could exceed the limits of Federal Deposit Insurance Corporation insurance coverage by unintentionally depositing excess amounts in two branches of the same bank in the mistaken belief that they were two different banks. The Rule, which was published for public comment, states that enforcement authority with respect to national banks is vested in the OCC.

The Rule, like the statute, prohibits advertising of a branch facility in a manner which implies or fosters the perception that a branch facility is a separate bank. However, it is longer and far more explicit than the statute in identifying prohibited signage and advertising and provides specific guidance in certain situations characterized as misleading. While the Rule applies to all state and national banks domiciled in Texas, its provisions and prohibitions would most directly affect those banks that have what might be termed a generic name followed by a geographic modifier (e.g., First National Bank of Dallas, Second State Bank of Austin), rather than what the Rule terms a ''unique legal name'' such as ''Jones National Bank'' or ''Smith Bank.'' The principal provisions of the Rule include the following:

1. Upon acquisition of one bank to serve as a branch of another bank, use of the prior name of the extinguished bank to identify the acquired bank facility is prohibited. This prohibition applies to signs, advertising, and bank documents.

2. A sign directing the public to a branch facility must contain either the legal name of the bank or a unique logo, trademark or service mark of the bank. If a separate identifying name is used for the branch facility that either contains the word ''bank'' or does not contain the word ''branch'' and further does not identify the facility as a branch, then an additional sign at the branch facility must identify the legal name of the bank and identify the facility as a branch. This additional sign could, for example, consist of lettering on the entrance door or any other lettering visible to the public.

3. The legal name of a bank is the full bank name as reflected in its charter, except that in signs and advertising a bank may omit terms which are either indicators of corporate status (N.A., Inc., Corp., L.B.A.) or geographic modifiers. However, where a bank without a unique legal name proposes to establish a branch facility (other than one within the city of domicile) within the same city as or within a thirty-mile radius of a pre-existing facility of a bank with the same or substantially similar legal name, the bank must either include the geographic modifier on its signs, disclose the city of its domicile on all signs directing the public to the branch, or else put up a separate sign notifying the public that the facility is a branch.

For example, a bank called First National Bank of Austin could put up branches within the city of Austin with signs saying merely ''First National Bank.'' However, if the bank wishes to open a branch in San Antonio, and another bank called First National Bank of San Antonio already exists, then the First National Bank of Austin would be required under the Rule to have signs reading either ''First National Bank of Austin'' or something like ''First National Bank, San Antonio Branch.'' Alternatively, it could have a sign that said merely ''First National Bank'' provided that another sign, or lettering on the door, or anywhere visible to the public, clearly identified the facility as a branch or gave the domicile of the bank, or both. In this case, the second sign might say ''San Antonio branch'' or ''a branch of First National Bank of Austin.'' However, the bank would be in violation of the Rule if it only had signs saying ''First National Bank'' or ''First

[1] Your letter to Mr. Ryskamp referred to the ''revised proposed rule'' that was then scheduled for publication in the June 28th issue of the *Texas Register.* Since that time, the Rule has been published and adopted by the State Finance Commission. It became effective on September 13, 1994.

[2] Sec. 342–917 provides: A bank may not use a form of advertising, including a sign or printed or broadcast material, that implies or tends to imply that a branch facility is a separately chartered or organized bank. A sign at a branch facility and all official bank documents, including checks, cashier's checks, loan applications, and certificates of deposit, must bear the name of the principal bank and if a separate branch name is used must identify the facility as a branch.

National Bank, San Antonio'' because there is no disclosure to the public that the facility is a branch.

4. If a bank without a unique legal name chooses not to place the signs as described in the foregoing paragraph, then the Rule requires that it provide notice to all pre-existing bank facilities of other banks within the same banking market as the proposed branch location that have the same or substantially similar legal name, disregarding geographic modifiers, specifically advising the recipient of the name to be used in connection with the proposed branch facility. Banks so notified then have the opportunity to file a protest regarding the name of the proposed branch.

For example, if a bank called First National Bank of Austin did not wish to put up the requisite signs (as discussed above) for its branch in San Antonio, it would, under the Rule, be required to search the San Antonio banking market and provide notice of its proposed branch to other banks named ''First National Bank'' or ''First National Bank of San Antonio.'' The banks so notified would then have the opportunity to file a protest with your office (for state banks) or with the OCC (for national banks).

You have indicated your expectation that few banks will choose the notification alternative. It is your view, and in fact the goal of the Rule, that banks in Texas will choose to put up clarifying signs to identify for the public which bank facilities are branches.

5. While banks in Texas are permitted, like other businesses, to operate under an assumed or professional name, they may not use an assumed name to evade the Rule.

The Texas Assumed Business or Professional Name Act, Texas Business and Commerce Code, Chapter 36, permits banks and other businesses to operate under a business or assumed name provided certain documents are filed with appropriate Texas authorities. However, permission to operate under an assumed name would not dispel a bank's obligation under the Rule to identify its branch facilities to the public. Therefore, even if the above-mentioned First National Bank of Austin had properly assumed the name ''First National Bank,'' it would still, with respect to its branches, be required under the Rule to put up the signs discussed in ¶ 3, *supra,* or provide the notification described in ¶ 4, *supra.*

6. The Rule does not prescribe such specifics as number, size, or location of signs, size of lettering, and so on. Further, it does not require that branch names, signs, or advertising be approved by any regulatory authority. You have stated that the goal of the Rule is simply that the public be advised which bank facilities are branches, and that any signs, or combination of signs, reasonably making such identification will be permissible.

Discussion

The question of the extent to which national banks are subject to state laws has existed since the inception of the first National Bank Act in 1863. Under the dual banking system, all banks, including national banks, are subject to the laws of the state in which they are located unless those state laws are preempted by federal law or regulation. The basic premise, expressed numerous times by the United States Supreme Court, is:

> that the national banks organized under the Acts of Congress are subject to state legislation, except where such legislation is in conflict with some Act of Congress, or where it tends to impair or destroy the utility of such banks, as agents or instrumentalities of the United States, or interferes with the purposes of their creation.

Waite v. *Dowley,* 94 U.S. 527, 533 (1877). *See also Davis* v. *Elmira Savings Bank,* 161 U.S. 275 (1896); *Anderson National Bank* v. *Luckett,* 321 U.S. 233, 248 (1944). Banking is the subject of comprehensive regulation at both the federal and state level and the valid exercise of concurrent powers is the general rule unless the state law is preempted. State law applicable to national banks will generally be presumed valid unless it conflicts with federal law, frustrates the purpose for which national banks were created, or impairs their efficiency to discharge the duties imposed upon them by federal law. *National State Bank, Elizabeth, N.J.* v. *Long,* 630 F. 2d 981, 987 (3d Cir. 1980); *see, generally, Michie on Banks and Banking,* Vol. 7 ¶ 5 (1989 Repl.) This principle applies to substantive state regulations as well as state statutes, since it is well established that a rule or regulation of a public administrative body, duly promulgated or adopted in pursuance of properly delegated authority, has the force and effect of law. *See generally,* 73 C.J.S. ''Public Administrative Bodies and Procedures,'' § 97.

In this instance, neither the Texas statute (Art. 342–917) nor the Rule is in conflict with any federal law, since no provision under the national banking laws governs national bank names or requires their approval by a federal authority. On the contrary, while the national banking laws did govern this issue at one time, Congress changed the law in 1982 and left little doubt of its intent that approval of national bank names (except for registered trademarks) not be subject to federal regulation.

Prior to 1982, a national bank was required, pursuant to 12 U.S.C. §§ 22 and 30, to obtain approval from the OCC both for its initial name and for subsequent name changes. However, the Garn-St Germain Depository Institutions Act of 1982 amended Sections 22 and 30 to delete this requirement for OCC approval of bank name or name change. P.L. No. 320, 97th Cong., 2d Sess., § 405, 96 Stat. 1469, 1512 (1982). The Senate Report accompanying this change gave the following explanation:

> Comptroller approval for bank name changes will no longer be required. There exists little supervisory interest in the name of a particular national bank. Federal approval procedures are to be replaced by a simple notice requirement. Any confusion between bank names shall be resolved under other laws, including the federal Lanham Act and state statutory and common law principles of unfair competition. S. Rep. No. 536, 97th Cong., 2d Sess. 28, reprinted in 1982 U.S. Code Cong. & Ad. News 3054, 3082.[3]

OCC regulations were amended accordingly to provide that the OCC would simply receive notice of the initial name and subsequent name changes. 12 CFR 5.42.[4] The only explicit requirement remaining under the national banking laws is that bank names, whether new or revised, include the word ''national.'' 12 U.S.C. §§ 22 and 30(a). Congress has thus made clear its intention that issues related to the names of national banks are subject to state law.

Since these 1982 amendments, the OCC's policy on this matter is that the naming of a national bank, or of a branch office of a national bank, is primarily a business decision of the bank, subject to applicable state law. However, should the OCC determine that a national bank's name or advertising is so misleading or confusing as to constitute an unsafe or unsound practice, it may initiate enforcement action under 12 U.S.C. 1818(b). Further, while there is little supervisory interest in the name of a national bank, the OCC generally does not permit branches of a bank to operate under a different bank name. To do so would not only violate the provisions of 12 U.S.C. 22 and 30, which anticipate that a bank operate under a single title, but could lead customers unwittingly to exceed FDIC insurance limits by depositing excess amounts in two bank branches in the mistaken belief that they were dealing with different banks.

In light of both the federal legislative history on this issue and judicial preemption guidelines, we conclude that the Texas Rule is not preempted with respect to national banks. Not only is there no federal statute dealing with this issue, but there is no indication that the Rule is unduly burdensome to national banks or that it impairs their ability to discharge the duties imposed by federal law. *Long, supra* at 987; *Franklin National Bank* v. *New York,* 347 U.S. 373 (1954). The national banking laws do not prevent state measures aimed at preventing misleading advertising, as long as the state regulations do not put national banks at a competitive disadvantage relative to state financial institutions. As stated above, the Rule does not prescribe any particular type of sign or advertising. Its principal requirements are that banks which become branches of another bank as part of an acquisition cease use of the former bank name, and that bank branches identify themselves as branches. Since it is obvious

[3] The Lanham Act is a common name for the Trademark Act of 1946, 15 U.S.C. § 1051 et seq., which gives federal courts jurisdiction over trademarks and trade names registered with the United States Patent Office. It has no direct relevance to the present discussion.

[4] The regulations prior to the Garn-St Germain amendment provided for OCC approval of national bank names and name changes:

> The [OCC] considers an application for change in corporate title to be primarily a business decision of the applicant. An application will be approved if the proposed new title is sufficiently dissimilar from that of any other existing or proposed unaffiliated bank or depository financial institution so as not to substantially confuse or mislead the public in a relevant market. 12 CFR 5.42(b) (1981).

that every bank, bank branch, or other bank facility will have some sort of sign identifying the premises to the public, it is not burdensome to require that the sign not be confusing or misleading. Equally, it is not burdensome to prohibit a bank branch resulting from a corporate acquisition within a reasonable time thereafter to cease using the name of its extinguished corporate predecessor.

Nor does the Rule appear to hamper banks in their operations or efficiency or limit their ability to carry out their functions. The situation here is unlike the situation in *Franklin, supra,* 347 U.S. 373, 377, in which a state law was determined to be preempted because it prohibited national banks from advertising in connection with one of their authorized activities (receiving deposits). Under the Rule, banks are not prohibited from advertising any authorized activity. They are not prevented from using abbreviated ''advertising'' names, such as ''FNB'' instead of ''First National Bank,'' although if there should be two different ''First National Banks'' in one city, the Rule requires the second one establishing a bank facility, which will usually be an out-of-town bank, to identify either its domicile city or its branch status: *e.g.,* ''FNB Austin'' or ''San Antonio Branch.'' Such requirements do not infringe upon a national bank's ability to establish branches under 12 U.S.C. 36(c) or to carry out any other authorized activity.

Since the Texas Rule and the underlying statute are not in conflict with federal law, do not prevent national banks from carrying out their authorized functions under the national banking laws, and do not unduly burden them in operating, it is my opinion that they are applicable to national banks. The OCC, as the authority responsible for administering and enforcing laws and regulations applicable to national banks, will, as the Rule envisions, determine compliance with the Rule with respect to national banks.

I trust this is responsive to your inquiry.

Sincerely,

/s/

Julie L. Williams,

Chief Counsel.

[FR Doc. 95–15060 Filed 6–19–95; 8:45 am]

BILLING CODE 4810–33–P

Customs Service

[T.D. 95–50]

Revocation of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Broker License Revocations.

SUMMARY: Notice is hereby given that on March 30, 1995, the Secretary of the Treasury, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Part 111.74 of the Customs Regulations, as amended (19 CFR 111.74), ordered the revocation of the following Customs broker licenses due to the failure of the broker to file the status report as required by 19 CFR 111.30(d). These licenses were issued in the Los Angeles District. The list of affected brokers is as follows:

Gilbert E. Amador—03970
Stanley K. Appel—06305
Carol J. Boldt-Miller—06617
Elayne C. Brenner—11744
Marshall R. Brownfield—05207
Yolanda Curry—07856
P.R. Domey—02998
David W. Doran—11777
Ferdinand M. Dreifuss—04236
Herbert S. Fischer—04484
Charlene Marie Fluster—11742
James Thomas Gibbs—12819
Peggy Changsoon Kim—13616
Young Mok Kim—05804
Josefina G. Klink—06673
Suzanne Knight—11170
Regis Francis Kramer—03279
Michael O. Larson—05567
James W. McDonald—04563
Kay J. Meggison—05847
Maria D. Oria—03319
Hal Dennis Pope—10598
Klaus Roessel—04052
David C. Salazar—11457
Morris H. Schneider—03588
Jack Neal Schulman—07871

Dated: June 14, 1995.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 95–14959 Filed 6–19–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–49]

Revocation of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Broker license revocations.

SUMMARY: Notice is hereby given that on March 30, 1995, the Secretary of the Treasury, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Part 111.74 of the Customs Regulations, as amended (19 CFR 111.74), ordered the revocation of the following Customs broker licenses due to the failure of the broker to file the status report as required by 19 CFR 111.30(d). These licenses were issued in the Houston-Galveston District. The list of affected brokers, both individual and corporate, is as follows:

George Anki, Jr.—05896
Lester M. Barnes, Jr.—02448
Dan Beadle—05532
Ann M. Beardsley—07523
Jane Bentley Bowers—05859
Sandra L. Brown—09523
Ernest M. Bruni—07706
Natalie L. Byrd—11151
John Howard Callaway—07262
Rodger A. Chilton—07197
James Costello—06974
David L. Elmers—07263
Arthur Oran Evans, III—05069
Margaret L. Graeff—05480
David W. Gray—05971
Arnold Gene Greathouse—05230
James A. Green, Jr.—03928
Fred M. Hall—05393
Joseph M. Hankins—07648
Gulshan Kala—10188
John William Kenehan—05585
Salvatore Lobello—07784
Jose R. Lopez—06998
Alger L. McDonald—07829
David R. McIntyre—04747
Adolph Kennon Meadows—04109
Jack B. Morgan—04761
William Cary Okerlund—08042
Barbara A. Painter—06507
Joseph B. Peloso—07882
Gregory L. Perun—06119
J.G. Philen, Jr.—07082
J.J. Portier—07280
Rita R. Powell—05758
Jerry E. Rojas—05129
Abelardo A. Salinas—07901
Charles H. Simpson—05276
Robert Wilbur Smith, Jr.—03944
Jose A. Soto, Jr.—07965
Benny Roy Sprayberry—05146
Scott Taylor—07395
Robert J. Villiard—06666
Phillip Andrew Walsh—06126
James A. Webster—05525
Thomas A. Weiderhold—06027
Rebecca O. Young—09577
Joe Zaragoza, Jr.—05738

Corporate

Accelerated Customs Brokers—07504
Alan Customs Service, Inc.—08048
All-Phase Freight, Inc.—07448
Cargo Express, Inc.—11740
Darrell J. Sekin Co., Inc.—05249
Davis Import Consultants—06704
Green, James A., jr. & Co.—04108
HLZ Import Service, Inc.—09765
Jetero Int'l Services, Inc.—07908
L. Braverman & Company—04365
Livingston International Inc.—04725
McLean Cargo Specialist, Inc.—05977
Panalpina Airfreight, Inc.—04616
Salinas Forwarding Co., Inc.—07068
Sauter Corporation—09632
Shipco, Inc.—04861

Dated: June 14, 1995.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 95–14960 Filed 6–19–95; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction act (44 U.S.C. Chapter 35), agencies are required to

submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256. USIA is requesting approval for a three-year extension as well as approval for revisions made to the Office of Arts America, Performing Arts Division, United States Information Agency, Application for Panel Rating under OMB control number 3116–0165 which expires August 31, 1995. The proposed revisions are suggested to enhance clarity of required information. Estimated burden hours per response is one (1) hour. Respondents will be required to respond only one time.

DATES: Comments are due on or before July 20, 1995.

COPIES: Copies of the Request for Clearance (OMB 83–1), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/ADD, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619–4408; and OMB review: Mr. Jefferson Hill, Office of Information And Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 1002, NEOB, Washington, DC 20503, telephone (202) 395–3176.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0165) is estimated to average one (1) hour 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 this collection of information, including suggestions for reducing this burden to the United States Information Agency, M/ADD, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, DC 20503.

Title: Office of Arts America Performing Arts Division United States Information Agency Application for Panel Rating.

Form Number: IAP–90.

Abstract: The USIA form IAP–90 facilitates submission of tapes and supporting materials to the U.S. Information Agency for artistic panel evaluation of artists being considered for USG financial support as a cultural presentation, and/or inclusion in USIA's quarterly listing of performers touring privately, sent to all American Embassies for possible facilitation assistance.

Proposed Frequency of Responses: No. of Respondents—500, Total Annual Burden—500.

Dated: June 14, 1995.

Rose Royal,

Federal Register Liaison.

[FR Doc. 95–14952 Filed 6–19–95; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974, New Routine Use Statements Amendment of System; Notice

AGENCY: Department of Veterans Affairs.

ACTION: Notice; New routine use statements.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is adding two new routine uses to, and is amending other parts of, a system of records.

DATES: Interested persons are invited to submit written comments, suggestions, or objections regarding the new routine uses. All relevant material received before July 20, 1995, will be considered. All written comments received will be available for public inspection in room 315, Information Management Service, 801 I St., NW, Washington, DC, 20001 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays until July 31, 1995. If no public comment is received during the 30 day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, the routine uses included herein are effective July 20, 1995. Other changes to the system of records notice contained herein are effective upon publication (June 20, 1995).

ADDRESSES: Written comments concerning the new routine uses may be mailed to the Secretary of Veterans Affairs (045A4), 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: John Muenzen, Information Resources Management Coordination and Field Support Division, Chief, Office of Information Technology (20M52), Veterans Benefits Administration, NW., Washington, DC 20420 (202) 273–6947.

SUPPLEMENTARY INFORMATION: VA has published final rules (59 FR 47082 (9–19–94)) amending its regulations to add sections 38 CFR 14.640 through 14.643 to provide for expanded remote access to computerized claims records by individuals approved by the Department to represent claimants before VA in the preparation, presentation, and prosecution of claims for veterans' benefits.

Those regulations provide that VA will disclose information concerning how these representatives use their access privileges in two circumstances for which routine uses do not currently exist. First, if VA is considering whether to revoke the individual representative's access privileges generally, VA will notify the representative's employer. Second, if the representative is licensed by a governmental entity, such as a state bar association, VA will report the conduct of the representative to that entity after revocation of access privileges if VA concludes that the conduct which was the basis for revocation of access privileges merits reporting.

Consequently, VA is adding the following two new routine uses as part of the implementation of the remote access regulations.

First, if VA is considering whether to deny or suspend or revoke an individual's access privileges generally, VA may then notify the representative's employer or any recognized service organization with which such a representative is affiliated. Second, if the representative is licensed by a governmental entity, such as a state bar association, VA will report the conduct of the representative to that entity after revocation of access privileges if VA concludes that the conduct which was the basis for revocation of access privileges merits reporting.

Both routine sues satisfy the compatibility requirement of subsection (a)(7) of the Privacy Act. VA will gather this information for the purposes of determining whether it should grant,

deny, suspend or revoke an individual's remote access privileges to claimants' automated claim records generally, as well as ensuring the individual's continued compliance with the agency's requirements for exercise of the remote access privileges. This information concerns the qualifications and conduct of the individual, that is, the appropriateness of the individual to have remote access privileges to represent beneficiaries and claimants.

State licensing entities, such as bar associations, routinely monitor and enforce the individual member's compliance with the rules of conduct which are intended, at least in part, to protect the public. Additionally, under the rules of these organizations, these persons normally have a responsibility to protect and preserve the confidentiality of information concerning their clients.

VA's proposed routine use authorizing disclosures to state licensing entities would allow VA to provide those state licensing entities with information which is relevant to their enforcement activities concerning compliance with those rules. VA gathered the information, at least in part, to help ensure the confidentiality of the VA's information on people who are, in essence, the clients of the individuals who are licensed by the state governmental entities. The purposes are sufficiently similar that the disclosure satisfies the compatibility requirement of subsection (a)(7) of the Privacy Act.

Veterans service organizations and other entities represent veterans on claims matters. To do so effectively, they must have access to the confidential claims records of those veterans. Part of their acceptance within the community they serve is a confidence on the public's part that they and their accredited representatives and employees will zealously protect the privacy of their clients. If veterans perceive that the confidentiality of their records will not be honored, it will limit the effectiveness of these organizations in representing their clients. Thus, in order to effectively represent veterans, they are concerned about ensuring that individuals whom they use to conduct their representational activities act in a manner consistent with the organization's goal of preserving the confidentiality of their clients' claim records.

As we stated in regard to the routine use authorizing disclosure of records to state licensing entities, VA gathered the information about remote access users, at least in part, to help ensure the confidentiality of the VA's information on it claimants who are, in essence, the clients of the organization which uses the individual representatives and claims agents to prosecute the veterans claims. The purposes are sufficiently similar that the disclosure satisfies the compatibility requirement of subsection (a)(7) of the Privacy Act.

VA has determined that release of information under the circumstances described above is a necessary and proper use of information in this system of records and that the specific routine uses proposed for the transfer of this information is appropriate.

VA is also amending the storage policies and practices for the records in this system of records to reflect the policies and practices applicable to claimants' representatives and attorneys who are granted access to automated claimants' records.

An altered system of records report and a copy of the revised system notice have been sent to the House of Representatives Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) and guidelines issued by OMB (59 FR 37906, 37916–18 (7–25–94)).

The proposed routine uses will be added to the system of records entitled ''Veterans and Beneficiaries Identification and Records Location Subsystem—VA'' 38VA23) published at 49 FR 38095, August 26, 1975, and amended at 41 FR 11631, March 19, 1976, 43 FR 23798, June 1, 1978, 45 FR 77220, November 21, 1980, 47 FR 367, January 5, 1982, 48 FR 45491, October 5, 1983, 50 FR 13448, April 4, 1985.

Approved: June 5, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

Notice of Amendment to System of Record

In the system of records identified as 38VA23, ''Veterans and Beneficiaries Identification and Records Location Subsystem—VA,'' published at 40 FR 38095, August 26, 1975, and amended at 41 FR 11631, March 19, 1976, 43 FR 23798, June 1, 1978, 45 FR 77220, November 21, 1980, 47 FR 367, January 5, 1982, 48 FR 45491, October 5, 1983, 50 FR 13448, April 4, 1985, is amended by adding the information and revising the entries as shown below:

38VA23

SYSTEM NAME:

Veterans and Beneficiaries Identification and Records Location Subsystems—VA

SYSTEM LOCATION:

Records are maintained at the VA Data Processing Center, 1615 East Woodward Street, Austin, TX, 78722; VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420; VA Records Processing Center, PO Box 5020, St. Louis, MO 63115 and at Neosho, MO.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

18. The name and address of a prospective, present, or former accredited representative, claims agent or attorney and any information concerning such individual relating to a suspension, revocation, or potential suspension or revocation of that individual's privilege of remote access to Veterans Benefits Administration automated claim records, may be disclosed to any recognized service organization with which the accredited representative is affiliated, and to any entity employing the individual to represent veterans on claims for veterans benefits.

19. The name and address of a former accredited representative, claim agent or attorney, and any information concerning such individual, except a veterans' name and home address, which is relevant to a revocation of remote access privileges to Veterans Benefits Administration automated claim records may be disclosed to an appropriate governmental licensing organization where VA determines that the individual's conduct which resulted in revocation merits reporting.

* * * * *

POLICIES AND PRACTICES FOR STRONG, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The basic file is on automated storage media (e.g., magnetic tapes and disks), with backup copies of the information on magnetic tape. Such information may be accessed through a data telecommunication terminal system designated the Benefits Delivery Network (BDN). BDN terminal locations include VA Central Office, regional offices, VBA Debt Management Center, some VA health care facilities, Department of Defense Finance and Accounting Service Centers and the U.S. Coast Guard Pay and Personnel Center. An adjunct file (at the Records Processing Center in St. Louis, MO) contains microfilm and paper documents of former manual Central Index claims numbers registers, partial

files of pensioners with service prior to 1930, personnel with service between 1940 and 1948 with VA insurance, and partial lists of other Armed Forces personnel indexed by service number. A duplicate of the microfilm is also located at VA Central Office.

Remote on-line access is also made available to authorize representatives of claimants and to attorneys of record for claimants. A VA claimant must execute a prior written consent or a power of attorney authorizing access to his or her claims records before VA will allow the representative or attorney to have access to the claimant's automated claims records. Access by representatives and attorneys of record is to be used solely for the purpose of assisting an individual claimant whose records are accessed in a claim for benefits administered by VA.

RETRIEVABILITY:

Information is retrievable by the use of name only, name and one or more numbers (service, social security, VA claims file and VA insurance file), name and one or more criteria (e.g., dates of birth, death and service), number only, or initials or first five letters of the last name with incorrect file number.

SAFEGUARDS:

Access to the basic file in the Austin DPC (Data Processing Center) is restricted to authorized VA employees and vendors. Accredited service organization representatives, VA-approved claims agents and attorneys acting under a declaration of representation so that these individuals can aid veterans in the preparation, presentation, and prosecution of claims under the laws administered by VA are provided read-only access.

Access to BDN data telecommunications network is by authorization controlled by the site security officer who is responsible for authorizing access to the BDN by a claimant's representative or attorney approved for access in accordance with VA regulations. The site security officer is responsible for ensuring that the hardware, software and security practices of a representative or attorney satisfy VA security requirements before granting access. The security requirements applicable to access to automated claims files by VA employees also apply to access to automated claims files by claimants' representatives or attorneys. The security officer is assigned responsibility for privacy-security measures, especially for review of violation logs, information logs and control of password distribution, including password distribution for claimants' representatives.

Access to the computer room where the basic file is maintained within the DPC is further restricted to authorized VA employees and vendor personnel on a ''need to know'' basis and is protected from unauthorized access by an alarm system, the Federal Protective Service, and VA security personnel. As to access to Target terminals, see Safeguards, Compensation, Pension, Education, and Rehabilitation Records—58VA21/22. Authorized terminals with access to the VBA Benefits Delivery Network are located only at VA regional officers, VA medical facilities, VA Central Office, VBA Debt Management Center, National Cemetery System facilities, Railroad Retirement Board through the Chicago Regional Office, the National Personnel Records Center, the U.S. Army Reserve Components Personnel and Administration Center at St. Louis, MO, and at remote sites nationwide. The adjunct file is accessible for official use only by personnel assigned to Systems Development Service (20M4), VA Central Office, Washington, DC, and the Administrative Division at VA Records Processing Center, St. Louis, MO.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, VBA Systems Development Service (20M4), VA Central Office, 810 Vermont Ave., NW., Washington, DC 20420.

* * * * *

[FR Doc. 95–14982 Filed 6–16–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 118
Tuesday, June 20, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 7, 1995.

PLACE: 2033 K St. N.W., Washington, DC 8th Floor Hearing Room

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–15161 Filed 6–16–95; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 14, 1995.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–15162 Filed 6–16–95; 11:37 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 21, 1995.

PLACE: 2033 K St. NW., Washington, DC., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–15163 Filed 6–16–95; 11:37 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 28, 1995.

PLACE: 2033 K St. N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–15164 Filed 6–16–95; 11:37 am]

BILLING CODE 6351–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Friday, June 23, 1995.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Multiple Tube Mine and Shell Fireworks

The Commission will consider whether to issue a Notice of Proposed Rulemaking (NPR) for multiple tube mine and shell fireworks.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330, East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: June 15, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–15176 Filed 6–16–95; 1:00 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 22, 1995.

LOCATION: Room 420, East West-Towers, 4330 East-West Highway, Bethesda, Maryland.

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

Toy Labeling/Reporting Requirements

The staff will brief the Commission and the Commission will consider three remaining issues from the toy labeling and reporting rules under the Child Safety Protection Act.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East-West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: June 15, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–15175 Filed 6–16–95; 1:00 pm]

BILLING CODE 6355–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 26, 1995.

PLACE: William McChesney Martin, Jr. 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: June 16, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15233 Filed 6–16–95; 2:56 pm]

BILLING CODE 6210–01–P

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, June 27, 1995.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 32467, *National Railroad Passenger Corporation And Consolidated Rail Corporation—Application*

Under Section 402(a) of The Rail Passenger Service Act For An Order Fixing Just Compensation.

Docket No. AB–362 (Sub-No. 2X), *Texas And Oklahoma R.R. Company—Abandonment—Between The Oklahoma-Texas State Line And Orient Junction (Sweetwater), Texas.*[1]

Finance Docket No. 32607, *WFEC Railroad Company—Construction And Operation Exemption—Choctaw And McCurtain Counties, OK.*

Finance Docket No. 32433, *Chicago And North Western Transportation Company—Construction And Operation Exemption—City Of Superior, Douglas County, WI.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Press Services, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Vernon A. Williams,

Secretary.

[FR Doc. 95–15075 Filed 6–15–95; 2:30 pm]

BILLING CODE 7035–01–P

[1] This options paper also embraces *Texas and Oklahoma R.R. Co.—Abandonment Exemption—In Foard and Wilbarger Counties, TX,* Docket No. AB–362 (Sub-No. 3X).

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Tuesday, November 14, 1995 from 9:00 a.m. to 9:45 a.m. The public sessions of the Commission and the Committee meeting will be held on Tuesday, November 14, from 10:00 a.m. to 6:00 p.m., on Wednesday, November 15, from 9:00 a.m. to 6:00 p.m., and on Thursday, November 16, from 9:00 a.m. to 1:00 p.m.

PLACE: The Fairbanks Princess Hotel, 4477 Pikes Landing Road, Fairbanks, Alaska, 99709.

STATUS: The executive session will be closed to the public. At it, matters relating to personnel, the internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed as time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. While subject to change, among the issues that the Commission plans to consider are: implementation of the 1994 amendments to the Marine Mammal Protection Act; the health and stability of the Bering Sea ecosystem; domestic and international polar bear programs; Glacier Bay National Park vessel entry regulations; bowhead whale research and management issues; the Arctic Environmental Protection Strategy; the Russian Marine Mammal Council; Steller sea lions; harbor seals; North Pacific fur seals; sea otters; and standards and guidelines for the care and maintenance of captive marine mammals.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1825 Connecticut Avenue, NW., Room 512, Washington, DC 20009, 202/606–5504.

Dated: June 16, 1995.

John R. Twiss, Jr.

Executive Director.

[FR Doc. 95–15148 Filed 6–16–95; 10:52 am]

BILLING CODE 6820–31–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 19, 26, July 3, and 10, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 19

Wednesday, June 21

9:00 a.m.
Discussion of Management Issues (Closed—Ex. 2 and 6)

10:30 a.m.
Briefing on Use of Expert Elicitation in HLW Performance Assessments (Public Meeting)
(Contact: Janet Kotra, 301–415–6674)

Thursday, June 22

9:00 a.m.
Briefing on Results of Senior Management Review of Operating Reactors, Fuel Facilities, and Related Activities (Public Meeting)
(Contact: Victor McCree, 301–415–1711)

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
(**Please Note:** These items will be affirmed immediately following the conclusion of the preceding meeting.)
a. Final Rule on ''Clarification of Decommissioning Funding Assurance Requirements'' (Tentative)
b. Final Rule Revising 10 CFR part 110, Import and Export of Radioactive Waste (Tentative)
c. Georgia Power Company's Motion for Order Preserving the Licensing Board's Jurisdiction (Docket Nos. 50–424–OLA–3, 50–425–OLA–3) (Tentative)
d. Final Rulemaking Package for 10 CFR 50.36, ''Technical Specifications'' (Tentative)
(Contact: Andrew Bates, 301–415–1963)

Week of June 26—Tentative

Thursday, June 29

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 3—Tentative

There are no meetings scheduled for the Week of July 3.

Week of July 10—Tentative

Wednesday, July 12

10:00 a.m.
Briefing on Status of Watts Bar and Browns Ferry 3 (Public Meeting)
Contact: Fred Hebdon, 301–415–1485)

Notes: Beginning July 2, 1995, the Commission will be operating under a delegation of authority to Chairman Jackson, because with three vacancies, it will be temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply, but in the interests of openness and public accountability, the Commission will continue to conduct business as though the Sunshine Act were fully applicable.

Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific times are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording) (301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill, (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: June 16, 1995.

William M. Hill, Jr.

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–15218 Filed 6–16–95; 2:55 pm]

BILLING CODE 7590–01–M

UNITED STATES ENRICHMENT CORPORATION BOARD OF DIRECTORS

TIME AND DATE: 10:00 a.m., Monday, June 19, 1995.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial and financial issues of the Corporation
- Procedural matters

CONTACT PERSON FOR MORE INFORMATION:
Barbara Arnold, 301–564–3354.

Dated: June 15, 1995.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 95–15125 Filed 6–16–95; 9:12 am]

BILLING CODE 8720–01–M

federal register

Tuesday
June 20, 1995

Part II

Nuclear Regulatory Commission

10 CFR Parts 170 and 171

Revision of Fee Schedules; 100% Fee Recovery, FY 1995; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AF07

Revision of Fee Schedules; 100% Fee Recovery, FY 1995

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1995 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1995 is approximately $503.6 million.

EFFECTIVE DATE: July 20, 1995.

ADDRESSES: Copies of comments received and the agency workpapers that support these final changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–415–6213.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Responses to Comments.
III. Final Action.
IV. Section-by-Section Analysis.
V. Environmental Impact: Categorical Exclusion.
VI. Paperwork Reduction Act Statement.
VII. Regulatory Analysis.
VIII. Regulatory Flexibility Analysis.
IX. Backfit Analysis.

I. Background

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), enacted November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE) administered NWF, for FYs 1991 through 1995 by assessing fees. OBRA–90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through FY 1998.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses or approvals, and amendments to or renewal of licenses or approvals. Second, annual fees, established in 10 CFR part 171 under the authority of OBRA–90, recover generic and other regulatory costs not recovered through 10 CFR part 170 fees.

On March 20, 1995 (60 FR 14670), the NRC published its proposed rule establishing the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1995, less the appropriation received from the Nuclear Waste Fund.

Several changes were proposed by the NRC to the fees to be assessed for FY 1995. These changes were summarized in the proposed rule (60 FR 14671; March 20, 1995) and are as follows:

1. Change the method for allocating the budgeted costs that cause fairness and equity concerns. Approximately $56 million would be allocated to all NRC licensees based on the budgeted dollars for each class of licensees.

2. Eliminate the materials ''flat'' inspection fees in 10 CFR 170.31 and include the inspection costs with the annual materials fees in 10 CFR 171.16(d). These actions would streamline the license fee process and result in more predictable fees.

3. Change the methodology for calculating the professional hourly rate to better align the budgeted costs with the major classes of licensees. Two professional staff-hour rates were proposed instead of a single rate.

4. Change the methodology for calculating annual fees for power reactors, fuel facilities, and uranium recovery licensees to improve the relationship between annual fees and the cost of providing regulatory services to the classes and subclasses of licensees, and to improve NRC efficiency.

5. Implement the newly promulgated NRC small entity size standards and establish a new lower-tier size standard for annual fee purposes.

The Commission held a public meeting on March 15, 1995, at which the NRC staff briefed the Commission on the proposed changes for FY 1995. A transcript of the Commission meeting is available and has been placed in the Public Document Room.

The American Mining Congress [1] filed a Petition for Rulemaking which requested among other things that (1) annual fees not be assessed for mills in a standby status; and (2) a licensee review board to oversee NRC fees be established. The Commission denied the request on April 28, 1995 (60 FR 20918) noting that (1) the NRC will continue its current practice of providing available backup data to support 10 CFR Part 170 licensing and inspection billings upon request by the applicant or licensee and (2) petitioner's request that the Department of Energy be assessed fees for Uranium Mill Tailings Radiation Control Act (UMTRCA) actions was implemented in the final fee rule for FY 1994.

II. Responses to Comments

The NRC received twenty-two comments on the proposed rule. Although the comment period ended on April 19, 1995, the NRC has reviewed and evaluated all comments received, including those that were late.

Many of the comments were similar in nature. For evaluation purposes, these comments have been grouped, as appropriate, and addressed as single issues in this final rule. The comments are as follows:

A. Comments regarding the major changes proposed in the FY 1995 fee rule.

1. Change the Method for Allocating Those Budgeted Costs (About $56 Million) That Cause Fairness and Equity Concerns

Comment. The commenters agreed that the proposed method for allocating approximately $56 million in budgeted costs for NRC activities which are not directly related to the cost of regulating licensees represented a more equitable method for distributing the costs. Many commenters indicated that, pending legislative relief by Congress to remedy this inequitable situation, they supported the proposal to treat these costs similar to overhead and distribute these costs based on the percentage of the budget directly attributable to a class of licensees. However, the commenters also believed that these costs should not be paid by any licensee and recommended that the NRC should continue to urge Congress to modify OBRA–90 to remove these costs from the fee base. For example, one commenter stated that the proposed 89% allocation of these costs to power reactors results in a charge of $511,000

[1] The American Mining Congress merged with the National Coal Association on February 13, 1995, and is now the National Mining Association.

per operating power reactor. The commenter argued that ''power reactor licensees should not have to bear this ever increasing additional fee charge for NRC agency costs that are not related to the regulatory costs of these licensees. Accordingly, these costs should not be included in the user fee base to be recovered from power reactor licensees.''

Response. The NRC is adopting in this final rule the allocation method in the proposed rule because it represents an equitable way to allocate the costs and most of the comments supported use of the revised methodology. As noted in the comments, on February 23, 1994, the NRC submitted its report to Congress on fees in compliance with the Energy Policy Act of 1992. This report concluded that modifications to existing statutes governing NRC fees are necessary to alleviate licensees' major concerns about fairness and equity and to reduce the NRC administrative burden resulting from assessing fees. The report recommended enactment of legislation that would reduce the amount to be recovered from fees from 100 percent of the NRC budget to approximately 90 percent, and eliminate the requirement that NRC assess 10 CFR Part 170 fees. Because the requested legislation has not been enacted, the NRC in this final rule will allocate the costs (approximately $56 million) that have raised fairness and equity concerns among the broadest base of NRC licensees. The Commission will continue to discuss and work with the Congress to make fees more fair and equitable.

2. Streamline and Stabilize Fees

Comment. Commenters, for the most part, supported the proposal to stabilize fees by adjusting the annual fees starting in FY 1996 by the percentage change (decrease or increase) in the NRC's total budget. Commenters also supported the NRC's plan to reexamine this approach should there be a substantial change in the total NRC budget or in the magnitude of a specific budget allocation to a specific class of licensees. Commenters also were in agreement that the ''flat'' materials inspection fees of 10 CFR part 170 should be eliminated and the costs included in the 10 CFR Part 171 annual fees. Most commenters agreed that the proposed changes represent a simplification and streamlining of the fee-setting procedures and are necessary in order to eliminate the large swings in annual fees that have occurred in past years and to allow for greater predictability of fees. Other commenters indicated, however, that they are concerned about the simple annual percentage change adjustment to future annual fees because there has been no resolution of certain long-standing concerns associated with the fairness and equity of NRC fees.

Response. The NRC is adopting in this final rule the proposed methodology to streamline and stabilize fees based on the comments received supporting the methodology. Although not a specific change in this rule, the NRC plans to adjust the annual fees only by the percentage change in NRC's total budget beginning in FY 1996. The NRC believes that this action will help stabilize and improve the predictability of fees. The fees established in this final rule will be used as the base annual fee in subsequent years and the percentage change (plus or minus) in the NRC total budget, adjusted to reflect changes in the total number of licensees paying fees and estimated collections from 10 CFR part 170 licensing and inspection fees, will be used to establish annual fees. However, the NRC will make modifications should there be a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees. To streamline fees, the NRC is eliminating the materials ''flat'' inspection fees in 10 CFR part 170 by including the cost of inspections in certain materials licensees' 10 CFR part 171 annual fees.

3. Change the Methodology for Calculating the Professional Hourly Rate to Better Align the Budgeted Costs With the Major Classes of Licensees

Comment. All commenters responding to this proposed change supported the revised method of calculating hourly rates to separately, and more equitably, allocate the costs associated with the reactor and materials programs. Commenters believe that the new dual rate structure, which establishes different rates for reactor and materials reviews, is inherently fairer and more equitable to licensees. Most commenters were pleased that the rates for both the reactor and materials classes of applicants have been reduced as compared to FY 1994 and indicated that changing the method of calculating hourly rates is a step in the right direction towards providing a more reasonable relationship to the cost of providing regulatory services. Commenters supported the use of the ''cost center'' concept to identify and allocate the NRC budgeted resources to different types of major programs, namely reactor and material licensees, and indicated that this methodology is more consistent with Congressional intent that the NRC identify and properly assess fees to the entities that utilize NRC resources and regulatory services.

Other commenters, however, indicated that while they appreciate the 13 percent reduction in the professional hourly rate for the materials program (from $133 per hour to $116 per hour), applying such a uniformly high rate for NRC staff cannot be justified. These commenters point out that the $116 hourly rate equals or exceeds the hourly charges of senior consultants, principals, or project managers at major consulting firms and substantially exceeds the generally accepted rate for technical staff performing similar work in private industry. Commenters encouraged the NRC to continue examining its budget structure and cost allocation methods so that the hourly rate can be made consistent with and representative of comparable services performed by private industry. One commenter stated that the NRC has still not adequately explained the derivation of the hourly rate, aside from basing it on a presumed number of chargeable hours per full-time equivalent, or how it relates to the services provided. Another commenter stated that the hourly rates are arbitrary and do not reflect the costs of providing regulatory services to licensees.

Response. In this final rule, the NRC has established two professional hourly rates for FY 1995 which will be used to determine the 10 CFR Part 170 fees. A rate of $123 per hour is established in § 170.20 for the reactor program and a second rate of $116 per hour is established in § 170.20 for the nuclear materials and nuclear waste programs. The two rates are based on the ''cost center'' concept that is now being used for budgeting purposes.

The NRC professional hourly rates are established to recover approximately 100 percent of the agency's Congressionally-approved budget, less the appropriation from the Nuclear Waste Fund (NWF), as required by OBRA–90. The rates reflect the NRC cost per direct professional hour. This cost includes the salary and benefits for the direct hours, and a prorata share of the salary and benefits for the program and agency overhead and agency general and administrative expenses (e.g., rent, supplies, and information technology). Both the method and budgeted costs used by the NRC in the development of the hourly rates of $123 and $116 are discussed in detail in Part III, Section-by-Section Analysis, relating to § 170.20 of the proposed rule (60 FR 14676; March 20, 1995) and the same section of this final rule. For example, Table III shows the budgeted costs and

the direct FTEs that must be recovered through fees assessed for the hours expended by the direct FTEs. Additional details on the hourly rate are provided in the NRC workpapers located in the Public Document Room.

4. Modify NRC Small Entity and Lower-Tier Size Standards for Annual Fee Purposes

Comment. Two commenters addressed the changes proposed by the NRC for small entity fees. While generally supporting the changes, they believed additional changes should be made. One commenter stated that while he was relieved to see the dramatic reduction in materials annual fees, the company's well logging *department* of only six employees is still unable to qualify as a small entity even under the new standard because the overall gross annual receipts of the consulting company exceed $7 million. The second commenter stated that the proposed rule that would raise the dollar threshold for a medical program from $1 million to $5 million will afford him great relief and ensures that service will continue to be provided to patients. The commenter, however, believes that a more equitable approach would be to base fees on the nuclear medicine activity levels or nuclear medicine billing-receipts levels rather than the total dollar volume of the entire company.

Response. The NRC uses the receipts-based size standards established by the Small Business Administration (SBA) to establish its own small entity size standards. The SBA recently adjusted its receipts-based size standard levels to account for the effects of inflation. The NRC adjusted its receipts-based size standards in turn from $3.5 million to $5 million, to conform to the SBA rule (60 FR 18344; April 11, 1995). The NRC has also eliminated the separate $1 million size standard for private practice physicians and will apply the receipts-based standard of $5 million to this class of licensees. This mirrors the revised SBA standard of $5 million for medical practitioners. The NRC believes that these actions will reduce the impact of annual fees on small businesses.

With respect to basing fees on the gross receipts for a department within a company, or on activity levels or nuclear medicine billing-receipts levels rather than the total dollar volume of the entire entity, the NRC's size standards are based on the SBA guidance which defines annual receipts as those which include ''revenues from sales of products or services, interest, rent, fees, commissions and/or whatever sources derived.'' Moreover, as NRC has stated previously, it is impractical to base fees on the criteria suggested by the commenter. See Regulatory Flexibility Analysis in Appendix A to the final rule published July 10, 1991 (56 FR 31511–31513).

5. Change the Methodology for Calculating Annual Fees for Power Reactors, Fuel Facilities, and Uranium Recovery Licensees

Comment. All the commenters representing the power reactor, fuel facility, and uranium recovery industries supported the simplification of annual fees and are encouraged that the annual fees have been reduced compared to FY 1994 levels. Commenters from the reactor industry favored a uniform fee for each operating power reactor. Commenters from the uranium recovery industry supported attempts to make the annual fees more accurately reflect the cost of providing regulatory services and agreed that the proposed fees are far more reasonable than in past years. However, these commenters believe that NRC needs to address a fundamental industry concern that, as the industry continues to shrink in size thereby decreasing the number of licensees being charged annual fees, the costs associated with regulatory services will continue to increase significantly for each remaining licensee. This trend will force more hardships on an industry that is already severely depressed. Other uranium recovery licensees commented that they are concerned with the NRC's proposed fee calculation matrix, which uses a qualitative estimation ranking of ''significant'', ''some'', ''minor'', or ''none'' to determine a factor used for establishing the annual fee amount for each license. Commenters suggest a more quantitative approach should be applied, using actual costs and resource time allocations, to determine a more accurate fee assessment schedule.

Response. In this final rule, the NRC has established a single uniform annual fee for each operating power reactor and has refined its method of calculating annual fees for fuel facilities and uranium recovery facilities. The NRC indicated in the final FY 1994 fee rule that given the questions raised at that time by B&W Fuel Company, General Atomics, and other fuel facilities, it would reexamine the fuel facility subclass categorizations, and include any restructuring resulting from this reexamination in the FY 1995 proposed rule for notice and comment (59 FR 36901; July 20, 1994). The NRC's revised methodologies for determining annual fees for fuel facility and uranium recovery licensees, described in the proposed rule, are based on this reexamination. These revised methodologies have been used to determine the final FY 1995 annual fees. The use of the revised methodologies results in an annual fee that more accurately reflects the cost of providing regulatory services to the subclasses of fuel facility and uranium recovery licensees. The revised methodologies are explained in more detail in Section IV—Section-by-Section Analysis of this final rule.

With respect to the suggestion that a more quantitative approach be used to develop the annual fees, the NRC has corroborated the qualitative estimates with resource and time allocation data where such data exist. However, such data in some cases are not available at the level necessary to corroborate the qualitative determinations. The NRC believes that in such cases the approach to be used still results in a more fair and accurate annual fee being charged to fuel facility and uranium recovery licensees.

In response to the comment relative to annual fee increases as a result of the decrease in the number of licenses, the changes in this final rule to stabilize fees should minimize large fee changes as a result of decreases in licenses. See response to Comment A.1.

B. Other Comments

1. Amendments to § 170.11

Comment. One commenter supported the proposal to amend § 170.11 to conform to section 161w. of the Atomic Energy Act which would permit charging 10 CFR Part 170 fees to not only power reactors operated by the Tennessee Valley Authority and other Federal government entities, but also to uranium enrichment facilities operated by the United States Enrichment Corporation (USEC).

Response. The NRC has been assessing the USEC 10 CFR Part 170 fees under the authority provided in 161w. of the Atomic Energy Act of 1954, as amended (AEA). The NRC is amending § 170.11 to conform its regulations to this statutory provision.

2. Low-Level Waste Costs

Comment. One commenter was concerned that the proposed fee schedule does not adequately reflect the long-term regulatory costs which are associated with power reactors. The commenter believed that the NRC's $7 million in annual costs for generic low-level waste work is low in comparison to long-term costs associated with these activities. The commenter indicated that it might be prudent to assume that the long-term costs associated with low-

level waste sites will eventually exceed the revenues immediately collected upon disposal.

Response. The amount of $7 million for NRC's low-level waste activities is the amount identified in the FY 1995 budget to be recovered through fees for these activities. If the NRC costs of these activities increase over the long term and are included in the NRC budget, the NRC is required by OBRA–90 to identify and to recover the increased costs from its licensees in the year in which the costs are budgeted. OBRA–90 does not permit the NRC to recover potential future costs that are not included in the current FY 1995 budget.

3. Spent Fuel Storage

Comment. One commenter encouraged the NRC to ensure that any costs associated with spent fuel storage and transportation, particularly the costs associated with the review of the Department of Energy's (DOE) multi-purpose canister program, are kept properly separated from the costs for specific utility licensing actions. Because these activities are funded from different sources, the commenter stated that NRC must ensure that the cost burden for the DOE reviews is not reflected in utility licensing fees. The commenter noted that in the FY 1995 proposed rule there is no explanation for maintaining the fees for general licenses for storage of spent fuel at substantially higher levels than the fee in 1992 ($43,000) or 1993 ($136,000). The commenter questioned whether the fee charged to spent fuel storage licensees includes amounts allocated for other activities.

Response. The costs associated with the review of the DOE's multi-purpose canister program are costs related to the High-Level Waste program which are appropriated from the High Level Waste Fund and separated from specific utility licensing actions. Therefore, in accordance with OBRA–90, the DOE review costs are not included in utility licensing fees, but rather are recovered from the Nuclear Waste Fund. Although the FY 1995 annual fee for spent storage licenses ($279,000) is higher than in FY 1992 ($43,000) or 1993 ($136,000), it is lower than the fee assessed in FY 1994 ($365,170). The reasons for the increases over FY 1992 and FY 1993 were explained in detail in the final FY 1994 rule (59 FR 36902; July 20, 1994). To recap, first, the budgeted amount necessary to regulate spent fuel facilities increased to provide regulatory oversight for the increased number of facilities. Additionally, as the licensing of these facilities was completed, the amount of fees from 10 CFR part 170 necessarily decreased. This resulted in an increased amount that must be recovered from annual fees in 10 CFR part 171.

4. Annual Fees Should Be Prorated When a License is Downgraded

Comment. One commenter proposed that § 171.17(b) be amended to allow proration of annual fees for licenses that are downgraded during the year.

Response. The NRC agrees with the commenter that some provision should be made in the annual fee regulations for those instances where a license is downgraded to a license category with a lower annual fee during the fiscal year. Although the NRC currently has in place a system to track applications for new licenses and terminations which can be readily used for fee purposes, no similar system exists that could easily track upgrades or downgrades of licenses. As a result, § 171.17 is amended to allow for proration of the annual fee for a downgraded license upon request of the licensee. Such a request must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded license filed beyond that date will not be considered.

If a timely proration request is filed, annual fees for licenses downgraded after October 1 of a fiscal year will be prorated on the basis of when the applications for downgrade are received by the NRC, provided the licensee permanently ceased the stated activities during the specified period. Annual fees for licenses for which applications to downgrade are filed during the period October 1 through March 31 of the fiscal year will be prorated as follows: (1) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category(ies) and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not affected by the downgrade; and (2) licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories. Licenses for which applications for downgrade are filed on or after April 1 of the fiscal year are assessed the full fee for that fiscal year.

5. Avoid Billing for Services Rendered One Year Prior to Billing Date

Comment. One commenter proposed that the NRC void any bill for costs of regulatory services that were performed more than one year prior to the invoice date. The commenter stated that this would result in the NRC striving to issue invoices in a timely manner to assure recovery of its budget authority and would not place the licensee in a position of having to pay an unexpected and potentially large invoice.

Response. The NRC has not included this proposal in the final rule. The NRC is required by the Federal Claims Collection Act of 1966 and the Debt Collection Act of 1982 to pursue debts and claims owed to the U.S. government. However, the NRC has made efforts to issue bills in a more timely manner. During the past year, the NRC has implemented procedures to bill for licensing reviews and inspections within 30 days of the close of the billing quarter during which the review or inspection occurred or was completed. Although there have been rare cases where bills were not issued in a timely manner for licensing and inspection activities, the NRC believes that the 30-day billing procedures will help to minimize the number of such occurrences in the future.

6. Reinstate Fee Ceiling for Topical Report Reviews

Comment. One commenter requested that the NRC reinstate a fee ceiling in 10 CFR part 170 for topical report reviews because a fee ceiling would encourage the submittal of topical reports, thus contributing to the advance of the state-of-the-art in the nuclear industry and the resultant improvement in nuclear plant safety. The commenter stated that the current uncapped fee structure encourages prolonged and unreasonably detailed technical reviews by NRC contractors.

Response. The NRC indicated in the FY 1991 final fee rule that it had decided to eliminate the ceiling for topical report reviews based on the 100 percent recovery requirement and Congressional guidance that each licensee or applicant pay the full costs of all identifiable regulatory services received from the NRC. Further, the NRC's costs for topical report reviews vary significantly depending on the particular topical report reviewed. This makes it impractical to establish an equitable fee ceiling or flat fee (56 FR 31478; July 10, 1991). Recently, the Commission revisited this issue as part of its review of fee policy required by EPA–92. The policy of assessing 10 CFR

part 170 fees, without a ceiling, for the review and approval of topical reports was reconfirmed. For these reasons, the NRC is not establishing a fee ceiling for topical reports in this final rule.

7. Comment

Several comments were received from uranium recovery licensees. Commenters suggested (1) a tiered fee system that would result in full fees for operating facilities and reduced fees for facilities in shutdown or standby status; (2) a licensee review board be established to review NRC fees annually; (3) the NRC establish standards for its activities, such as a schedule for response intervals for processing licensing actions; and (4) 10 CFR part 170 bills be itemized to show hours spent, a description of the work performed, the names of individuals who completed the work and the dates the work was performed.

Response. In response to a petition for rulemaking from the American Mining Congress (60 FR 20918), the NRC addressed each of these comments in the **Federal Register** on April 28, 1995. While denying the petition, the NRC noted that it would continue its current practice of providing available backup data to support Part 170 licensing and inspection billings upon request by the licensee or applicant.

8. Establish Reimbursable Agreements With Agreement States and Other Government Agencies

Comment. Several commenters chose to comment on this change, even though the NRC indicated in the proposed rule that the issue of reimbursable agreements falls outside the scope of the proposed rulemaking. The commenters indicated that such action by NRC will affect the levels of fees to be paid by licensees. Those commenting on this change were encouraged by the NRC's initiative in seeking a better way to charge these expenses and supported the NRC's decision to increase the use of reimbursable agreements to eliminate certain costs that do not benefit NRC licensees. Most of the commenters on this issue, however, encouraged the NRC to proceed immediately to negotiate these reimbursable agreements and not wait until FY 1997 because NRC licensees are currently paying for these costs. One commenter suggested that, in the interest of properly and fairly allocating costs, this program be expanded to cover more, if not all, of the costs of the regulatory support to and oversight of Agreement States (about $20 million) rather than limit recovery under reimbursable agreement to costs associated with training, travel and technical support provided to Agreement States.

In addition, several commenters believe that the NRC should assess the Environmental Protection Agency (EPA) for NRC work such as review of regulations promulgated by EPA relating to radionuclide emission standards. One commenter stated that costs to support certain activities related to international treaties may best be covered by the Department of State, the Department of Energy or the Agency for International Development.

On April 5 and 6, 1995, the NRC hosted an Agreement State Managers Workshop in Rockville, Maryland. At that meeting, the Agreement States expressed strong opposition to the reimbursable agreement concept, arguing that such agreements would have a negative impact on their programs. The NRC has also received letters from Agreement States expressing strong disagreement with the reimbursable program.

Response. The NRC indicated in the proposed rule (60 FR 14672; March 20, 1995) that it planned to increase the use of reimbursable agreements with Agreement States and Federal agencies and because this change affected the budget and does not alter fee policies or methods, it falls outside the scope of this rulemaking for FY 1995. It is, however, a subject that has generated strong responses, both positive and negative, on the part of licensees and Agreement States. As indicated previously, this policy does not affect the issuance of this FY 1995 rule and the NRC is proceeding to issue the FY 1995 final rule. The reimbursable agreement issue will be addressed as a separate policy issue in the future.

With respect to the interaction between the NRC and EPA on the promulgation of regulations, the Independent Offices Appropriation Act of 1952, as amended, precludes the NRC from charging fees to Federal agencies for specific services rendered. While the NRC can assess annual fees to Federal agencies holding NRC licenses, the EPA is not considered a licensee of the NRC with respect to regulations promulgated by EPA relating to radionuclide emission standards. Further, NRC interactions with EPA are an integral part of NRC's responsibilities under the Atomic Energy Act. Therefore, NRC must include the costs of this work in its budget and cannot perform such work under reimbursable agreements.

With respect to the NRC's international activities, the NRC budget includes certain international activities that are not directly related to NRC applicants or licensees. These activities are performed because of their benefit to U.S. national interests. The NRC is required to perform some of these activities by the Atomic Energy Act (AEA) and, therefore, must budget for them. Over the past several years, the NRC has considered various means to recover the costs for international activities involving broad U.S. national interests, but has found no viable, fair way to do so. Further, it would not be practical to assess fees to foreign organizations, foreign governments, or to the State Department to whom some of the support is provided. For example, assessment of such fees might create foreign policy tensions that could complicate U.S. goals such as foreign reactor safety and nuclear non-proliferation. Until such time as legislation is enacted allowing the NRC to exclude the cost of international activities from the fee base, the cost of these activities must continue to be recovered from NRC licensees. These costs will be recovered from the broadest base of NRC licensees as described in the response to Comment A.1.

9. Fee Deferral Policy for Standard Plant and Early Site Reviews

Comment. One commenter urged the NRC to reestablish the NRC's previous fee deferral policy for standard plant and early site reviews in order to encourage the development of standardized designs and in light of the NRC decision to issue designs to be certified through rulemaking rather than by granting a license for the certified design.

Response. The Commission decided in its FY 1991 final fee rule that the costs for standardized reactor design reviews, whether for domestic or foreign applicants, should be assessed under 10 CFR part 170 to those filing an application with the NRC for approval or certification of a standardized design (56 FR 31478; July 10, 1991). Recently, the Commission revisited this issue as part of its review of fee policy required by EPA–92 and reconfirmed its FY 1991 decision. The NRC continues to believe that the costs of these reviews should be assessed to advanced reactor applicants. The NRC finds no compelling justification for singling out these types of applications for special treatment and shifting additional costs to operating power reactors or other NRC licensees, and does not believe the points made by the commenter are sufficient to change current policy.

10. Assessing Fees to Design Certification Applicants for Costs Following the Final Design Approval

Comment. Two commenters stated that the Commission should revisit its policy decision to charge fees to design certification applicants following the issuance by the NRC staff of a Final Design Approval (FDA).

Response. The statement of considerations accompanying the proposed rule said that the NRC would charge a vendor 10 CFR Part 170 fees for a design certification to recover all the costs of certification except the costs of any hearing that might be held under 10 CFR 52.51(b) before an Atomic Safety and Licensing Board (60 FR 14673; March 20, 1995). These charges are required by existing rules. The only reason the NRC mentioned these fees in the statement of considerations was to reflect in a widely-read document a policy that NRC had articulated fully only in letters to the vendor applicants in December 1994. The letters were in response to inquiries from three vendors last summer. The vendors, particularly ABB-Combustion Engineering Nuclear Systems (ABB–CE), had argued that all the costs of certification should be recovered through annual fees charged to the NRC's current power reactor licensees. ABB–CE, which received an FDA last year for the System 80+ and has applied for certification of the same design, wrote extensive comments on what NRC said about certification fees in the statement of considerations.[2]

Having considered ABB–CE's arguments, which were largely those ABB–CE had made last summer, the NRC has decided not to change the existing rules and policy on this issue. Although this whole topic is, strictly speaking, not part of this rulemaking, the NRC considers this rulemaking notice to be a useful vehicle for informing a larger public in some detail of ABB–CE's arguments and our responses. NRC's statements here are largely a repetition of arguments NRC made in the letters to the vendors and in a February 24, 1995, letter to the Senate Committee on Appropriations.

Comment. ABB–CE charges that ''NRC is proposing to change its fee rules in the middle of the process to the detriment of certification applicants. * * * '' (Comments at 10)

Response. Section 170.21 of the Commission's regulations has long explicitly listed standard design ''certifications'' among the regulatory actions for which ''full cost'' will be recovered through fees charged to applicants. See 10 CFR 170.21 (1994), Schedule of Facility Fees, heading B, ''Standard Reference Design Review''. This policy has been the law since Part 52 was first promulgated. (See 54 FR 15372, 15399; April 18, 1989.) Even when, in the past, 10 CFR part 170 called for deferring payment of fees until a utility referenced the certified design, 10 CFR part 170 clearly said that the vendor would have to pay the ''full cost of review for a standardized design approval or *certification*.'' 10 CFR 170.12(e)(2)(1) (emphasis added).

Comment. ABB–CE's most important argument for changing long-standing policy is that, according to ABB–CE, there is no benefit to ABB–CE in certification, except perhaps an ''indirect'' benefit of making the certified design attractive to U.S. utilities. (Comments at 4) ABB–CE says, ''With the issuance of NRC's FDA in July 1994, * * * System 80+ constitutes a complete and approved standardized design which, without design certification rulemaking, has been accepted for bidding in the global marketplace.'' (Comments at 2) ABB–CE also argues that the nuclear utilities and their ratepayers and stockholders are the ''direct'' beneficiaries of certification, because it provides them with greatly reduced licensing risk, and because it contributes to the ''continued viability * * * of an important energy option'' and to the maintenance of the nuclear servicing-supply sector infrastructure. (Comments at 4)

Response. While the utilities may benefit from certifications, the vendor is more likely to benefit than is any given utility. The NRC knows neither whether, nor how many, applicants for combined construction permits and operating licenses (COLs) will benefit from a given certification. Certainly, not all current power reactor licensees will reference every certified design, and so current licensees will not benefit from every certification. If the design is referenced, the vendor will benefit directly, but most utilities will not. The NRC believes that had ABB–CE not had a reasonable expectation of deriving benefits from the certification, ABB–CE would not have applied for it.

Comment. ABB–CE points out that the vendor applicant does not become a ''holder'' of the design certification. In fact, a vendor other than the one that applied for certification can, as a matter of law, supply the certified design to a COL applicant. ABB–CE believes that this situation is incompatible with the notion that the original vendor is the primary beneficiary of the certification.

Response. The NRC agrees that the design certification applicant does not become a ''holder'' of the design certification. However, several things will make it difficult for a vendor other than the certification applicant to supply the design to a utility. First, proprietary information is protected during the certification proceeding (see 10 CFR 52.51(c)). Second, any vendor that supplies a design to an applicant for a COL must be prepared to provide the NRC with a large amount of design information not contained in the rule certifying the design. This information includes the detailed design of site-specific portions of the plant, and ''information normally contained in certain procurement specifications and construction and installation specifications'' (see 10 CFR 52.63(c)). Third, any vendor supplying a COL applicant a certified design which another vendor brought to certification must pay part of any deferred fees the original vendor owes (see 10 CFR 170.12(e)(2)(i)). Fourth and last, the original vendor's superior knowledge of the design will give that vendor a great advantage over competitors.

Comment. ABB–CE also argues that 10 CFR Part 170 fees should not be charged for a certification rulemaking because such a rulemaking is ''generic.'' ABB–CE points out that the Commission has said that it will not charge 10 CFR part 170 fees for ''generic rulemaking and guidance (e.g., 10 CFR part 52 and Regulatory Guides) for standard plants. * * *'' (56 FR 31478; July 10, 1991.) ''* * * NRC has used the certification,'' ABB–CE says, ''* * * to resolve broadbased policy issues that otherwise would have required independent public rulemaking proceedings.'' (Comments at 7) ABB–CE goes so far as to say that ''nearly all of the procedural and substantive provisions in the proposed rule for System 80+ are similar or identical to those for the ABWR.'' (Comments at 6)

Response. The proposed rules which would certify the System 80+ and the ABWR are no more generic than licenses certifying the same designs would have been.[3] The resolutions of policy issues in the proposed rules are resolutions specific to those two designs. Moreover, the two proposed rules are quite different. It is important to understand that the few pages of the

[2] Stone & Webster Engineering Corporation submitted brief comments on this issue. Those comments match some of ABB–CE's.

[3] It might have been difficult, if not impossible, for the System 80+ to be certified by license. Section 103d of the Atomic Energy Act says in part, ''No license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.''

proposed rules which appeared in the **Federal Register** are only small parts of the rules. Both will incorporate by reference ''Tiers'' 1 and 2 of the complete designs. Thus the proposed rules are substantively as different as the designs themselves. Even the portions published in the **Federal Register** have no legal force with respect to other designs.

The NRC did state that 10 CFR part 170 fees would not be charged for ''generic rulemakings (e.g., 10 CFR part 52) on standard plants.'' However, as the parenthetical reference to 10 CFR part 52 shows, the NRC was using the phrase ''generic rulemaking'' to refer to rulemaking which, like 10 CFR part 52 itself, applies to all, or at least many, designs.

Comment. ABB–CE asserts that the whole of a design certification rulemaking should be regarded as a ''contested hearing'' and thus have no 10 CFR part 170 fees charged in connection with it. ABB–CE's argument is, first, that under the Administrative Procedure Act (APA), notice and comment rulemaking constitutes a ''hearing'', and second, that the rulemaking surely will be ''contested'', because there will, in all likelihood, be filed ''material comments reasonably opposing aspects of the proposed rule.'' (Comments at 9)

Response. It has long been the policy of the NRC not to charge 10 CFR part 170 fees for ''contested'' hearings, namely those adjudicatory hearings which are not mandated by law. The costs of such hearings are recovered through annual fees imposed under 10 CFR part 171. The NRC agrees that applicants for design certification should not be charged 10 CFR part 170 fees for any hearings held before an Atomic Safety and Licensing Board under 10 CFR 52.51(b), which offers an opportunity for a hearing on a proposed certification.

However, ABB–CE's position that the whole rulemaking is a ''contested hearing'' is neither required by law nor consistent with the meaning usually attributed to the phrase ''contested hearing'' in discussions of NRC matters. The phrase refers to those hearings, or parts of hearings, which are held under subpart G or subpart L of 10 CFR part 2, but which would not take place unless some party outside the agency asked for them. The Supreme Court case cited by ABB–CE for the proposition that every rulemaking is a ''contested hearing'', *US* v. *Florida East Coast Railway,* 410 US 224 (1973), says only that notice and comment rulemaking will, in certain circumstances, satisfy a statute's requirement for a rulemaking hearing. The Court's decision does not say that every rulemaking is a hearing.

Comment. ABB–CE argues that charging vendors for the costs of certification is inconsistent with the NRC's recent decision to recover the costs of confirmatory research ''related to the design'' from the utilities, under 10 CFR part 171. If NRC recovers those costs from the utilities, then, argues ABB–CE, NRC should recover all the costs of certification from the utilities, because those costs too are ''related to the design.''

Response. ABB–CE misconstrues the policy. Its aim is to charge vendors applying for FDAs and certifications of standard designs for only the research which is necessary to support the issuance of the FDA or certification. Research initiated to address generic issues, such as human factors or code development, would be charged to the utilities under 10 CFR part 171, even if it had a bearing on the review of a standard design. (See 60 FR 14673; March 20, 1995.) There is in this nothing inconsistent with the existing regulations on certification fees. In both cases, the NRC is charging the vendors for what must be done before issuance of the FDA or certification.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1995 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF. For FY 1995, the NRC's budget authority is $525.6 million of which approximately $22.0 million has been appropriated from the NWF. Therefore, OBRA–90 requires that the NRC collect approximately $503.6 million in FY 1995 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees. This amount to be recovered for FY 1995 is about $9.4 million less than the total amount to be recovered for FY 1994 and $15.3 million less when compared to the amount to be recovered for FY 1993. The NRC estimates that approximately $141.1 million will be recovered in FY 1995 from the fees assessed under 10 CFR part 170. The remaining $362.5 million will be recovered through the 10 CFR part 171 annual fees established for FY 1995.

Recognizing that OBRA–90 may have resulted in certain fees that were unfair or inequitable, Congress in Section 2903(c), of the Energy Policy Act of 1992 (EPA–92), directed the NRC to review its annual fee policy, solicit public comment on the need for changes to this policy, and recommend to the Congress any changes to existing law needed to prevent placing unfair burdens on NRC licensees. The NRC reviewed more than 500 public comments submitted in response to the request for comment published in the **Federal Register** on April 19, 1993 (58 FR 21116), and sent its report to Congress on February 23, 1994. A copy of this report has been placed in the Public Document Room. This report concluded that modifications to existing statutes governing NRC fees are necessary to alleviate licensees' major concerns about fairness and equity and to reduce the NRC administrative burden resulting from assessing fees. The report recommended enactment of legislation that would reduce the amount to be recovered from fees from 100 percent of the NRC budget to approximately 90 percent of the budget and eliminate the requirement that NRC assess 10 CFR part 170 fees.

In view of the fact that legislation has not been enacted to address licensees' fairness and equity concerns and the concern about the additional workload generated by 100 percent fee recovery, the Commission has reexamined its existing fee policies to determine whether they can be made more equitable. This reexamination was undertaken with the goal of addressing, within the limitations of the existing laws governing NRC fees, the concerns identified in the report to Congress and improving other features of the NRC fee program. Based on this reexamination, the NRC is amending 10 CFR parts 170 and 171 to partially alleviate the identified concerns and improve the process of collecting NRC fees.

These final changes are summarized as follows and detailed in the following sections.

1. The method for allocating the budgeted costs that cause fairness and equity concerns is changed. Approximately $56 million of NRC costs either do not directly benefit NRC licensees or provide benefits to non-NRC licensees. These costs will be treated similar to overhead and distributed to the broadest base of NRC licensees based on the percent of the budget for each class. As a result, power reactors will pay a greater percentage of these costs.

2. The selected materials inspection fees (i.e., flat fees and others with reasonable averages), hereinafter referred to as ''flat'' inspection fees in 10 CFR 170.31, are eliminated and the inspection costs are included with the annual materials fees in 10 CFR 171.16(d). These actions will streamline

the license fee process and provide more predictable fees.

3. The methodology for calculating the professional hourly rate is changed to better align the budgeted costs with the major classes of licensees. Two professional staff-hour rates are established instead of a single rate.

4. The methodology for calculating annual fees for power reactors, fuel facilities and uranium recovery licensees is changed to make annual fees more closely reflect the cost of providing regulatory services to the classes and subclasses of licensees and to improve efficiency.

5. NRC small entity and lower-tier size standards are modified for annual fee purposes.

6. The proration provision in 10 CFR 171 has been amended to allow proration of annual fees when materials licenses are downgraded during the year.

As a result of the reduced budget amount to be recovered for FY 1995, increased 10 CFR part 170 fee collections from power reactors, and these final changes, the annual fees for a large majority of the licensees have been reduced. The following provides illustrative examples of the changes in the annual fees.

Class of licensees	Annual fee	
	FY 1994	FY 1995
Power Reactors	$3,078,000	$2,936,000
Nonpower Reactors	62,200	56,500
High Enriched Fuel Facility	3,231,770	2,569,000
Low Enriched Fuel Facility	1,484,770	1,261,000
UF_6 Conversion	1,179,770	639,200
Uranium Mills	74,670	60,900
Typical materials licenses		
Radiographers	19,170	13,900
Well Loggers	12,870	8,100
Gauge Users	2,470	1,700
Broad Scope Medical	32,570	23,200

To help stabilize fees, beginning in FY 1996, the NRC will adjust the annual fees only by the percent change in NRC's total budget. The annual fees in this final FY 1995 rule will be used as a base, and the percentage change (plus or minus) in the NRC total FY 1995 budget will be applied to all annual fees for the next four years (FY 1996–FY 1998 and FY 1999 if OBRA–90 is extended) unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished. The decision on whether to establish a new baseline will be made each year during budget formulation. For example, if the total NRC budget is reduced by 3 percent and the number of licenses and the amount estimated to be recovered under 10 CFR part 170 remains constant in a given fiscal year, then all annual fees would be reduced by approximately 3 percent.

The NRC contemplates that any fees to be collected as a result of this final rule will be assessed on an expedited basis to ensure collection of the required fees by September 30, 1995, as stipulated in OBRA–90. Therefore, as in FYs 1991–1994 the fees will become effective 30 days after publication of the final rule in the **Federal Register**. The NRC will send a bill for the amount of the annual fee to the licensee or certificate, registration, or approval holder upon publication of the final rule. Payment will be due on the effective date of the FY 1995 rule.

The NRC will continue the proration of annual fees, established in FY 1994, in accordance with the provisions of § 171.17 for new licensees and requests for termination. The annual fees for both reactor and material licensees are prorated based on (1) The date applications are filed during the FY to terminate a license or obtain a possession-only license (POL) and (2) the date new licenses are issued during the FY.

A. Amendments to 10 CFR part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services

Four amendments have been made to part 170. These amendments do not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The amendments also comply with the guidance in the Conference Committee Report on OBRA–90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of identifiable regulatory services each applicant or licensee receives.

First, § 170.11 is amended to conform it to section 161w. of the Atomic Energy Act of 1954, as amended (AEA). That section of the AEA currently allows the Commission to charge part 170 fees to power reactors operated by the Tennessee Valley Authority or other Federal government entities and to uranium enrichment facilities operated by the United States Enrichment Corporation, as these reactors and facilities are licensed or certified by the NRC. In all other cases, the NRC is prevented from charging part 170 fees to Federal agencies for services rendered, due to a prohibition on such charges contained in the Independent Offices Appropriation Act, 31 U.S.C. 9701.

Second, the current method of calculating the 10 CFR part 170 professional hourly rate is revised. Currently, there is one professional hourly rate established in § 170.20, which is used to determine the fees assessed by the NRC. This professional hourly rate was $133 per hour for FY 1994. The NRC has established two professional hourly rates for FY 1995, which will be used to determine the part 170 fees. The NRC has established a rate of $123 per hour ($214,765 per direct FTE) for the reactor program. This rate is applicable to those activities covered by 10 CFR 170.21 of the fee regulations. A second rate of $116 per hour ($203,096 per direct FTE) is established for the nuclear materials and nuclear waste program. This rate is applicable to those activities covered by 10 CFR 170.31 of the fee regulations. These rates are based on the FY 1995 direct FTEs and that portion of the FY 1995 budget that does not constitute direct program support (contractual services costs) and is not recovered through the appropriation from the NWF.

The two rates are based on cost center concepts that are now being used for NRC budgeting purposes. In implementing cost center concepts, all budgeted resources for each cost center are assigned to that center for analysis and license fee purposes to the extent they can be separately distinguished. These costs include all salaries and benefits, contract support, and travel that are required for each cost center activity. Additionally, all resources for the Advisory Committee on Reactor Safeguards (ACRS), the Advisory Committee on Nuclear Waste (ACNW), the Office of Investigation (OI), the Office of Enforcement (OE), and all program direct resources for the Office of the General Counsel (OGC) are assigned to cost centers. The NRC took a first step in this direction in FY 1994 when it directly assigned additional effort to the reactor and materials programs for OI, OE, ACRS and ACNW. Commenters supported this change in FY 1994 indicating that such assignment better defines the beneficiaries of certain regulatory activities and more equitably allocates the fees for services provided (59 FR 36897; July 20, 1994). The cost center concept is discussed more fully in

Section IV—Section-by-Section Analysis.

Third, the current part 170 licensing and inspection fees in §§ 170.21 and 170.31 for applicants and licensees are revised to reflect both the revised hourly rates and the results of the review required by the Chief Financial Officers (CFO) Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a licensing action (new license, renewal, and amendment) for those materials licensees whose fees are based on the average cost method (flat fees).

Based on evaluation of the historical data related to the average number of professional staff hours needed to complete materials licensing actions, the NRC has increased the fees in some categories and decreased the fees in others to reflect the costs incurred in completing the licensing actions. Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1993. The revised licensing fees are based on the new average professional staff hours needed to process the licensing actions multiplied by the nuclear materials professional hourly rate for FY 1995 of $116 per hour. The data for the average number of professional staff hours needed to complete licensing actions were last updated in FY 1993 (58 FR 38666; July 20, 1993). For new licenses and amendments, the licensing fees for FY 1995 are reduced in approximately 50 percent of the cases, while the fees for renewals increase in over 70 percent of the cases.

Fourth, the NRC is streamlining the fee program and improving the predictability of fees by eliminating the materials ''flat'' inspection fees in § 170.31 and including the cost of the inspections in 10 CFR part 171. Eliminating the 10 CFR part 170 materials ''flat'' fees recognizes that the ''regulatory service'' to licensees, referred to in OBRA–90, comprises the total regulatory activities that NRC determines are needed to regulate a class of licensees. These regulatory services include not only inspections, but also research, rulemaking, orders, enforcement actions, responses to allegations, incident investigations, and other activities necessary to regulate classes of licensees. This action does not result in any net fee increases for affected licensees and will provide those licensees with greater fee predictability, a frequent request made in licensees' comments on past fee rules. The materials annual fees, which include the cost of inspections, become effective for FY 1995, and those materials licensees who paid a ''flat'' 10 CFR part 170 fee for inspections conducted in FY 1995 will receive a credit for those payments towards the FY 1995 annual fee assessed under 10 CFR part 171. Because there is no annual fee for licensees operating under reciprocity in non-Agreement States, the reciprocity inspection fee has been combined with the application fee.

In summary, the NRC is (1) establishing two 10 CFR part 170 hourly rates; (2) revising the licensing fees assessed under 10 CFR part 170 in order to comply with the CFO Act's requirement that fees be revised to reflect the cost to the agency of providing the service; and (3) eliminating the materials ''flat'' inspection fees in § 170.31 and including the costs of inspections with the materials annual fees in § 171.16(d), or with the reciprocity application fee in § 170.31, fee Category 16.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC

Ten amendments have been made to 10 CFR part 171. First, the NRC is modifying its method for recovering certain budgeted costs. The NRC's February 23, 1994, report to Congress in response to EPA–92 identified fairness and equity concerns regarding the fees charged to recover the cost of certain NRC activities. Many licensees believed it was unfair to charge them fees for activities and policies undertaken by the NRC that did not benefit them and were not requested by them. The NRC is modifying its current policies for allocating the budgeted costs for these and other activities that cause fairness and equity concerns, including international activities, the nonprofit educational exemption, the 10 CFR part 170 statutory exemption for Federal agencies, the small entity annual fee reduction resulting from implementing the Regulatory Flexibility Act, certain Site Decommissioning Management Program (SDMP), generic decommissioning and reclamation activities, and regulatory activities that support both NRC and Agreement State licensees. The budgeted costs of approximately $56 million for these activities have been allocated to the broadest base of NRC licensees because the activities are necessary for the NRC to carry out its responsibilities but, in most instances, go beyond the regulation of those licensees or applicants that pay fees. Thus, the NRC is allocating the approximately $56 million in fees for activities that raise fairness and equity concerns to the broadest base of NRC licensees, based on the budgeted dollars for the class of licensees. By allocating the costs in this way, the entire population of NRC licensees pay the costs. The allocation is based on the amount of the budget directly attributable to a class of licensees. This results in operating power reactors paying approximately 89 percent of the costs of the activities in question with other classes of licensees paying their respective share of these costs as follows: 3 percent to fuel facilities, 5 percent to materials licensees, and 1 percent to each of the spent fuel, uranium recovery and transportation classes of licensees.

Second, 10 CFR 171.13 is amended to provide that the NRC will publish the proposed rule in the **Federal Register** as early as is practicable but no later than the third quarter of the fiscal year. Currently, the regulations provide for issuance of the proposed rule during the first quarter of the fiscal year.

Third, §§ 171.15 and 171.16 are amended to revise the annual fees for FY 1995 to recover approximately 100 percent of the FY 1995 budget authority, less fees collected under 10 CFR part 170 and funds appropriated from the NWF.

Fourth, the annual fees for operating power reactors in § 171.15(d) are revised to reflect a single uniform annual fee. The NRC is streamlining the fee program by assessing one uniform annual fee for all operating power reactors.

Fifth, as discussed earlier, the annual fees for materials licenses in § 171.16(d) include the budgeted costs for certain materials inspections which were previously recovered under 10 CFR 170.31.

Sixth, the NRC is refining the method for calculating the annual fees for fuel facilities and uranium recovery facilities. The NRC indicated in its final FY 1994 fee rule that given the questions raised at that time by B&W Fuel Company, General Atomics, and other fuel facilities, it would reexamine the fuel facility subclass categorizations, and include any restructuring resulting from this reexamination in the FY 1995 proposed rule for notice and comment (59 FR 36901; July 20, 1994). The NRC's revised methodologies for determining annual fees for fuel facility and uranium recovery licensees, described in the proposed rule, are based on this reexamination. These revised methodologies have been used to

determine the FY 1995 annual fees for both fuel facility and uranium recovery licensees. The use of the revised methodologies results in an annual fee that more accurately reflects the cost of providing regulatory services to each fuel facility and uranium recovery licensee. The revised methodologies are explained in more detail in Section IV—Section-by-Section Analysis.

Seventh, the NRC is modifying the lower-tier size standard for those licensees that qualify as a small entity under the NRC's size standards. On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standard levels to mitigate the effects of inflation from 1984 to 1994. On April 11, 1995 (60 FR 18344), the NRC published a final rule amending the NRC's size standards. The NRC adjusted its receipts-based size standards from $3.5 million to $5 million to accommodate inflation and to conform to the SBA final rule. The NRC also eliminated the separate $1 million size standard for private practice physicians and applied the receipts-based size standard of $5 million to this class of licensees. This mirrors the revised SBA standard of $5 million for medical practitioners. The NRC also established a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and applies to the types of manufacturing industries that hold an NRC license.

The NRC has used the revised standards in the final FY 1995 fee rule. The small entity fee categories in § 171.16(c) of this final fee rule have been modified to reflect the changes in the NRC's size standards. The existing maximum small entity annual fee of $1800 is continued for all small entities except those defined as lower-tier small entities in this rule. The existing lower-tier small entity fee of $400 will be assessed for those manufacturing industries and educational institutions not State or publicly supported with less than 35 employees, small governmental jurisdictions with a population of less than 20,000, and non-manufacturing entities with gross receipts of less than $350,000, a higher threshold than the current lower-tier level of $250,000 in gross receipts.

Eighth, Footnote 1 of 10 CFR 171.16(d) is amended to provide for a waiver of the FY 1995 annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1994, and permanently ceased licensed activities entirely by September 30, 1994. All other licensees and approval holders who held a license or approval on October 1, 1994, are subject to FY 1995 annual fees. This change is in recognition of the fact that since the final FY 1994 rule was published in July 1994, licensees have continued to file requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1994 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all of the requests before the end of the fiscal year on September 30, 1994. Similar situations existed after the FY 1991, FY 1992, and FY 1993 rules were published, and in those cases, NRC provided an exemption from the requirement that the annual fee is waived only when a license is terminated before October 1 of each fiscal year.

Ninth, § 171.17 is amended to add a proration provision for materials licenses that are downgraded during the year to a lower fee category. This provision would permit those materials licensees who filed applications to downgrade their licenses to a lower fee category during the period October 1 through March 31 of a fiscal year to pay reduced annual fees.

Tenth, § 171.19 is amended to credit the quarterly partial annual fee payments and ''flat'' inspection fee payments for FY 1995 inspections already made by certain licensees in FY 1995 either toward their total annual fee to be assessed or to make refunds, if necessary.

The amounts to be collected through annual fees in the amendments to 10 CFR part 171 are based on the two revised professional hourly rates discussed previously in the summary of the changes to 10 CFR part 170. The amendments to 10 CFR part 171 do not change the underlying basis for 10 CFR part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report on OBRA–90, which states that the ''conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensees to such class'' and the ''conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee'' (136 Cong. Rec. at H12692–93). For those NRC costs not attributable to a class of licensees, the amendments to 10 CFR part 171 follow the conferees' guidance which states that ''the Commission should assess the charges for these costs as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees * * *'' (136 Cong. Rec. at H12692–3).

C. FY 1995 Budgeted Costs

The FY 1995 budgeted costs, by major activity, that will be recovered through 10 CFR parts 170 and 171 fees are shown in Table I.

TABLE I.—RECOVERY OF NRC'S FY 1995 BUDGET AUTHORITY

[Dollars in millions]

Recovery method	Estimated amount
Nuclear waste fund	$22.0
Part 170 (license and inspection fees)	141.1
Other receipts	.1
Part 171 (annual fees):	
Power Reactors	262.2
Nonpower Reactors	.3
Fuel Facilities	10.1
Spent Fuel Storage	1.6
Uranium Recovery	1.8
Transportation	4.2
Material Users	[1] 24.7
Rare Earth Facilities	.1
Subtotal Part 171	$305.0
Costs remaining to be recovered not identified above	57.4
Total	$525.6

[1] Includes $5.8 million that will not be recovered from small materials licensees because of the reduced small entity fees.

In addition to the $57.4 million remaining to be recovered in Table I, approximately $5.8 million must be collected as a result of continuing the $1,800 maximum fee for small entities and the lower-tier small entity fee of $400 for certain licensees. The composition of the $63.2 million is as follows:

TABLE II.—ACTIVITIES TO BE RECOVERED THROUGH ASSESSMENT OF A SURCHARGE

Activities	Dollars in millions
Federal Agency Exemption	$1.6
Nonprofit Educational Exemption	6.1
International Activities	10.5
Small Entity Subsidy	5.8

TABLE II.—ACTIVITIES TO BE RECOVERED THROUGH ASSESSMENT OF A SURCHARGE—Continued

Activities	Dollars in millions
Agreement State Oversight	6.2
Regulatory Support to Agreement States	14.2
Site Decommissioning Management Plan	6.2
Generic Decommissioning and Reclamation	5.6
Generic Low Level Waste (LLW)	7.0
Total	$63.2

The NRC is continuing the existing policy for recovering the $7 million for generic LLW activities from licensees that generate significant LLW. The revised method of allocation, described in detail in the FY 1993 final rule (58 FR 38669; July 20, 1994) allocates the LLW costs between two groups: large generators (power reactors and large fuel facilities) and small generators (all other LLW-producing licensees). The remaining $56.2 million is distributed to virtually all classes of licensees based on the percentage of the total budget directly allocated to each class. The resulting allocations of the $63.2 million are as follows:

$55.2 million to operating power reactors;
$2.2 million to fuel facilities;
$.6 million to spent fuel storage licensees;
$.6 million to transportation licensees;
$.6 million to uranium recovery facilities; and
$4.0 million to other materials licensees.

IV. Section-by-Section Analysis

The following analysis of those sections that are amended by this final rule provides additional explanatory information. All references are to Title 10, Chapter I, U.S. Code of Federal Regulations.

Part 170

Section 170.11 Exemptions

This section is amended to conform the fee regulations to section 161 w. of the Atomic Energy Act of 1954, as amended (AEA). That section of the AEA currently allows the Commission to charge part 170 fees to power reactors operated by the Tennessee Valley Authority or other Federal government entities and to uranium enrichment facilities operated by the United States Enrichment Corporation (USEC), as these reactors and facilities are licensed or certified by the NRC. The NRC has been assessing the USEC 10 CFR part 170 fees under the authority provided in section 161w. of the AEA. In this final rule, the NRC is now amending § 170.11 to conform its regulations to this statutory provision. In all other cases, the NRC is prevented from charging 10 CFR part 170 fees to Federal agencies for services rendered, due to a prohibition on such charges contained in the Independent Offices Appropriation Act, 31 U.S.C. 9701.

Section 170.20 Average Cost Per Professional Staff Hour

This section is amended to establish two professional staff-hour rates based on FY 1995 budgeted costs—one for the reactor program and one for the nuclear material and nuclear waste program. Accordingly, the NRC reactor professional staff-hour rate for FY 1995 for all activities that are based on full cost under § 170.21 is $123 per hour, or $214,765 per direct FTE. The NRC nuclear material and nuclear waste professional staff-hour rate for all materials activities that are based on full cost under § 170.31 is $116 per hour, or $203,096 per direct FTE. The rates are based on the FY 1995 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. The NRC has used cost center concepts in reallocating certain costs to the reactor and materials programs in order to more closely align the budgeted costs with specific classes of licensees. The method used to determine the two professional hourly rates is as follows:

1. The direct program FTE levels are identified for both the reactor program and the nuclear material and waste program.

2. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rate because these support costs are charged directly through the various categories of fees.

3. All other direct program costs (i.e., Salaries and Benefits, Travel) represent ''in-house'' costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, Salary and Benefits plus contracts for General and Administrative Support are allocated to each program based on that program's salary and benefits. This method results in the following costs, to be included in the hourly rates.

TABLE III.—FY 1995 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

[Dollars in millions]

Salary and benefits	Reactor program	Materials program
Program	$148.5	$43.5
Allocated Agency Management and Support	39.9	11.7
Subtotal	188.4	55.2
General and Administrative Support (G&A):		
Program Travel and Other Support	13.3	2.7
Allocated Agency Management and Support	73.6	21.6
Subtotal	86.9	24.3
Less offsetting receipts	.1	.....
Total Budget Included in Hourly Rate	275.2	79.5
Program Direct FTEs	1,281.6	391.6
Rate per Direct FTE	214,765	203,096
Professional Hourly Rate	123	116

Dividing the $275.2 million budget for the reactor program by the number of reactor program direct FTEs (1281.6) results in a rate for the reactor program of $214,765 per FTE for FY 1995. Dividing the $79.5 million budget for the nuclear materials and nuclear waste program by the number of program direct FTEs (391.6) results in a rate of $203,096 per FTE for FY 1995. The Direct FTE Hourly Rate for the reactor program is $123 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTEs ($214,765) by the number of productive hours in one year (1744 hours) as indicated in OMB Circular A–76, ''Performance of Commercial Activities.'' The Direct FTE Hourly Rate for the materials program is $116 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTEs ($203,096) by the number of productive hours in one year (1744 hours). The two professional rates of $123 per hour and $116 per hour are lower than the FY 1994 rate of $133 per hour because the budget has been reduced and cost center concepts have been implemented with the effect that more direct FTEs have been charged to the programs.

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses

The licensing and inspection fees in this section, which are based on full-cost recovery, are revised to reflect the FY 1995 budgeted costs and to recover costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate, as shown in § 170.20, for the reactor program and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of this final rule will be assessed at the FY 1995 hourly rate for the reactor program as shown in § 170.20. Although the average amounts of time to review import and export licensing applications have not changed, the fees in § 170.21, facility Category K, have decreased from FY 1994 as a result of the decrease in the hourly rate.

For those applications currently on file and pending completion, footnote 2 of § 170.21 is revised to provide that the professional hours expended up to the effective date of the final rule will be assessed at the professional rates in effect at the time the service was rendered. For topical report applications currently on file which are still pending completion of the review and for which review costs have reached the applicable fee ceiling established by the July 2, 1990 rule, the costs incurred after any applicable ceiling was reached through August 8, 1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions, or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by § 170.20.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections and Import and Export Licenses

The licensing and inspection fees in this section, which are based on full-cost recovery, are modified to recover the FY 1995 costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule will be based on both the professional hourly rate as shown in § 170.20 for the materials program and any direct program support (contractual services) costs expended by the NRC. Those licensing fees, which are based on the average time to review an application (''flat'' fees), are adjusted to reflect both the revised average professional staff hours needed to process a licensing action (new license, renewal, and amendment) and the decrease in the professional hourly rate from $133 per hour in FY 1994 to $116 per hour in FY 1995. The ''flat'' materials inspection fees in § 170.31 are eliminated and combined with the materials annual fees in § 171.16(d). Because there is no annual fee for licensees operating under reciprocity in non-Agreement States, the application fee includes the costs of inspections.

As previously indicated, the CFO Act requires that the NRC conduct a review, on a biennial basis, of fees and other charges imposed by the agency for its services and revise those charges to reflect the costs incurred in providing the services. Consistent with the CFO Act requirement, the NRC has completed its most recent review of license and inspection fees assessed by the agency. The review focused on the flat fees that are charged to nuclear materials users for licensing actions (new licenses, renewals, and amendments). The full cost license and inspection fees (e.g., for fuel facilities) and annual fees were not included in this biennial review because the hourly rate for full cost fees and the annual fees are reviewed and updated annually in order to recover 100 percent of the NRC budget authority.

To determine the licensing flat fees for materials licensees and applicants, the NRC uses historical data to determine the average number of professional hours required to perform a licensing action for each license category. These average hours are multiplied by the revised materials program professional hourly rate of $116 per hour for FY 1995. Because the professional hourly rate is updated annually and the NRC is eliminating materials ''flat'' inspection fees, the FY 1995 biennial review examined only the average number of hours per licensing action with regard to the 10 CFR Part 170 fees. The review indicated that the NRC needed to modify the average number of hours on which the current licensing flat fees are based in order to recover the cost of providing licensing services. The average number of hours required for licensing actions was last reviewed and modified in 1993 (58 FR 38666; July 20, 1993). Thus the revised hours used to determine the fees for FY 1995 reflect the changes in the licensing program that have occurred since that time. For example, new initiatives underway for certain types of licenses and management guidance that reviewers conduct more detailed reviews of certain renewal applications based on historical enforcement actions in order to insure public health and safety have been incorporated into the revised fees. For new licenses and amendments, the licensing fees for FY 1995 are reduced in approximately 50 percent of the cases, while the fees for renewals have increased in over 70 percent of the cases.

The amounts of the licensing flat fees were rounded by applying standard rules of arithmetic so that the amounts rounded would be de minimis and convenient to the user. Fees that are greater than $1,000 are rounded to the nearest $100. Fees under $1,000 are rounded to the nearest $10.

The licensing flat fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15A through 15E and 16. Applications filed on or after the effective date of the final rule are subject to the revised fees in this final rule. Although the average amounts of time to review import and export licensing applications have not changed, the fees in Category 15 have decreased from FY 1994 as a result of the decrease in the hourly rate.

For those licensing, inspection, and review fees assessed that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the materials program hourly rate of $116, as shown in § 170.20, applies to those professional staff hours expended on or after the effective date of the final rule.

Part 171

Section 171.13 Notice

The language in this section is revised to reflect more accurately when the NRC expects to publish its annual proposed fee rules. The NRC's experience indicates that the agency has been unable to publish the proposed rule during the first quarter of the fiscal year as indicated in the current FY 1994 rule. Therefore, this section is revised to indicate that the NRC will publish the proposed rule in the **Federal Register** as early as is practicable but no later than the third quarter of the fiscal year.

Section 171.15 Annual Fee: Reactor Operating Licenses

The annual fees in this section are revised to reflect FY 1995 budgeted costs. Paragraphs (a), (b)(3), (c)(1), (c)(2), (d), and (e) are revised to comply with the requirement of OBRA–90 to recover approximately 100 percent of the NRC budget for FY 1995. Table IV shows the

budgeted costs that are allocated directly to operating power reactors as part of the base annual fee. They have been expressed in terms of the NRC's FY 1995 programs and cost centers. The resulting total base annual fee amount for power reactors is shown, as well as the one uniform base annual fee that will be assessed to all operating reactors.

The NRC is streamlining the fee program by assessing one uniform base annual fee for all operating power reactors. During the past four years, the NRC has followed a somewhat lengthy and time consuming process in calculating the amount of the power reactor annual fees. The annual fees were determined in three ways. First, within the operating power reactor class, a distinction was made between the four vendor groups, that is, Babcock & Wilcox, Combustion Engineering, General Electric and Westinghouse. Second, within each vendor group, a distinction was made using the type of containment, for example, General Electric Mark I, II or III. Third, a distinction was made based on the location of the reactor: whether or not it is located east or west of the Rocky Mountains. The NRC indicated in the FY 1991 rule (56 FR 31479; July 10, 1991) and again in its request for public comment on NRC fee policy (58 FR 21119; April 19, 1993) that it would be reexamining this approach with a view toward simplifying the method for determining annual fees and streamlining the fee process without causing an unfair burden. The NRC Office of the Inspector General (OIG), in its report dated October 26, 1993, on license fees, described the fee process as very detailed and labor intensive and stated that substantial effort is expended in attempting to make the process equitable and the costs reasonable. The OIG stated that the determination of the Part 171 fees could be simplified by eliminating and streamlining much of the detailed analyses performed as part of the process. This detailed breakdown of the reactor annual fees was implemented when there were significant differences in the NRC research funding for the various types of reactors. This is no longer the case. For example, in FY 1991, the difference between the highest and lowest power reactor annual fee was $229,000 and in FY 1993 the difference was $96,000. The NRC, for FY 1995, calculated the reactor annual fees using both the current method (different fees for different types of reactors) and the uniform method. The uniform annual fee of $2,936,000 is $23,000 higher than the lowest fee under the current method, which is less than 1 percent of the $2.9 million annual fee for an operating power reactor and $11,000 lower than the highest fee under the current method. Because of this extremely small difference, the NRC is establishing a single uniform annual fee for each operating power reactor. Not only will this not cause an unfair burden, but it will allow the NRC to streamline the fee program and simplify the fee process.

TABLE IV.—ALLOCATION OF NRC FY 1995 BUDGET TO POWER REACTORS' BASE FEES[1]

	Program total		Allocated to power reactors	
	Program support ($,K)	Direct FTE	Program support ($,K)	Direct FTE
Reactor Program				
Cost Center: Reactor Regulation:				
Inspections	$4,350	471.4	$4,350	471.4
Reactor Oversight	11,615	357.0	11,615	357.0
Reactor and Site Licensing	1,660	26.3	1,660	26.3
Reactor Aging and Renewal	19,973	54.7	19,973	54.7
Safety Assessment and Regulatory Development	33,687	69.5	33,687	69.5
Independent Analysis of Operational Experience	7,939	47.0	7,939	47.0
Technical Training and Qualification	4,728	19.0	4,728	19.0
Investigations, Enforcement and Legal Advice	11	59.0	11	59.0
Independent Review	536	42.0	536	42.0
Cost Center Total	.....	.....	$84,499	1,145.9
Cost Center: Standard Reactor Designs:				
Design Certification	$6,873	91.6	$6,873	91.6
Safety Assessment	14,885	19.7	14,885	19.7
Legal Advice	.....	3.0	.....	3.0
Independent Review	86	10.0	86	10.0
Cost Center Total	.....	.....	$21,844	124.3
Nuclear Materials and Nuclear Waste Program				
Cost Center: Fuel Facilities:				
Licensing and Inspection	1,304	28.5	.....	.1
Cost Center: LLW and Decommissioning:				
Licensing and Inspection	50	2.6	.....	.9
Reactor Decommissioning	100	6.7	100	6.7
Radiological Surveys	1,653	.....	331	.....
Cost Center Total	.....	.....	$431	7.6
Management and Support Programs				
Cost Center: Special Technical Programs:				
Educational Grants	$1,050	.....	$1,050	.....
Small Business Innovation Research	1,844	.....	1,844	.....

TABLE IV.—ALLOCATION OF NRC FY 1995 BUDGET TO POWER REACTORS' BASE FEES[1]—Continued

	Program total		Allocated to power reactors	
	Program support ($,K)	Direct FTE	Program support ($,K)	Direct FTE
Nuclear Materials Mgt. and Safeguards System	1,165	1.0	850	.7
Cost Center Total			$3,744	.7
Reactor Program Total			$110,518	1,278.6
Total base fee amount allocated to power reactors				[2] $385.0 million
Less estimated part 170 power reactor fees				$122.9 million
Part 171 amount for operating power reactors				$262.1 million
Part 171 base fee for each operating reactor				$262.1 million
				([3])

[1] Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactors for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE ($214,765) and adding the program support funds.
[3] 108 reactors=$2,427,000 per reactor.

Paragraph (b)(3) is revised to establish the base uniform annual fee for each operating power reactor and to change the fiscal year references from FY 1994 to FY 1995.

Paragraphs (c)(1) and (c)(2) are amended to show the amount of the budget allocated for policy reasons (surcharge) to operating reactors for FY 1995. This surcharge is added to the base annual fee for each operating power reactor. The purpose of this surcharge is to recover those NRC budgeted costs that are not directly or solely attributable to operating power reactors but nevertheless must be recovered to comply with the requirements of OBRA–90.

The FY 1995 budgeted costs that are to be recovered in the surcharge from all licensees are as follows:

TABLE V

[In millions of dollars]

Category of costs	FY 1995 budgeted costs ($ in millions)
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International cooperative safety program and international safeguards activities	10.5
b. Agreement State oversight	6.2
c. Low-level waste disposal generic activities; and	7.0
d. Site decommissioning management plan activities not recoverable under 10 CFR Part 170	5.6
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on existing law or Commission policy:	
a. Fee Exemption of nonprofit educational institutions;	6.1
b. Licensing and inspection activities associated with other Federal agencies;	1.6
c. Costs not recovered from Part 171 for small entities	5.8
3. Activities supporting NRC operating licensees and Others.	
a. Regulatory support to Agreement States	14.2
b. Decommissioning-Reclamation	6.2
Total budgeted costs	63.2

Excluding low-level waste costs totalling $7 million, the current policy allocates the remaining $56.2 million based on three different methods. First, 100 percent of costs for certain activities (e.g., international activities and the nonprofit educational institution exemption) are allocated to operating power reactors, based on the guidance in the Conference Committee report accompanying OBRA–90 which stated that these types of costs may be recovered from such licensees as the Commission determines can fairly, equitably and practicably contribute to their payment. The second method prorates the costs of some activities (e.g., small entity subsidy and Agreement State oversight) to all licensees under the implicit assumption that no one class of licensees should have to bear the full cost. Under the third method, 100 percent of the costs of some activities (e.g., SDMP and regulatory support to Agreement States) are allocated to the class of licensees to which the activities relate, independent of whether the activities are needed for current licensees/applicants or support non-NRC licensees. In addition to being based on three different principles, the current policy creates significant annual fee problems for classes of licensees with a small or declining number of licensees. For example, as more states become Agreement States, the relatively fixed costs for generic regulatory activities (e.g., rulemaking, research, evaluation of operational data and policy development) that support both NRC and Agreement State licensees will be allocated to a smaller number of

materials licensees, causing the NRC materials licensees' annual fees to increase substantially. For example, if the four States who have expressed interest in becoming Agreement States do so within the next few years, then the remaining NRC materials licensees' annual fees would increase by about 30 percent from current levels.

Therefore, the NRC is changing the current policy for allocating the costs for activities which have raised fairness and equity concerns among many NRC licensees. The changes are based on the premise that these costs should be borne by all NRC licensees, because while the activities are necessary for the NRC to carry out its responsibilities, in most instances, they go beyond the regulation of those licensees or applicants that pay fees. Thus, the NRC has allocated the costs in question to the broadest base of NRC licensees that pay annual fees. The allocation is based on the amount of the budget directly attributable to a class of licensees and results in, for instance, operating power reactors paying 89 percent of the cost of these activities, compared to approximately 50 percent of these costs in the FY 1994 rule.

This change is consistent with the guidance in the Conference Committee Report that accompanied OBRA–90. First, by allocating these costs to the broadest base of NRC licensees, this change is consistent with the Conference Report guidance that: ''The Commission should assess the charge for these activities as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees so as to establish as fair and equitable a system as is feasible.'' Second, allocating a higher percentage of these costs to operating power reactors as opposed to other classes of licensees is also consistent with the Conference Report guidance that: ''These expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitable and practicably contribute to their payment.'' Allocating these costs to the universe of NRC licenses will minimize the impact of the declining numbers of licenses in any specific class, because the costs will be allocated over the maximum number of licensees. It will also put in place both a policy that will help mitigate future fee concerns associated with declining number of licenses, and a single methodology for allocating these types of costs, something that has been requested in comments submitted on previous proposed fee rules.

The annual additional charge for each operating power reactor is determined as follows:

Generic LLW Cost Allocated $=.74\times\$6{,}972K = \$5{,}159K$	
Other Activities Allocated $=.89\times\$56{,}229K = \$50{,}044K$	
Subtotal Budgeted Costs	\$55,203K
Less Amount to be Assessed to Small Older Reactors	– 206K
Total Budgeted Costs	\$54,997K

$$\frac{\text{Total budgeted costs allocated}}{\text{Total number of operating reactors}} = \frac{\$54{,}997K}{108} = \$509{,}000 \text{ per operating power reactor}$$

With respect to Big Rock Point, a smaller older reactor, the NRC hereby grants a partial exemption from the FY 1995 annual fees similar to FY 1994 based on a request filed with the NRC in accordance with § 171.11. The total amount of $0.2 million to be paid by Big Rock Point has been subtracted from the total amount assessed operating reactors as a surcharge.

Based on the information in Tables IV and V, each operating power reactor, except Big Rock Point, will pay a base annual fee of $2,427,000 and an additional charge of $509,000 for a total FY 1995 annual fee of $2,936,000. The annual fee in this final rule is less than the annual fee shown in the proposed rule because of higher estimated collections anticipated in FY 1995 from 10 CFR Part 170 fees.

Paragraph (d) is revised to show the amount of the total FY 1995 uniform annual fee, including the surcharge, to be assessed to each operating power reactor.

Paragraph (e) is revised to show the amount of the FY 1995 annual fee for nonpower (test and research) reactors. In FY 1995, $339,000 in costs are attributable to those commercial and non-exempt Federal government organizations that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors subject to fees results in an annual fee of $56,500 per operating license. The Energy Policy Act of 1992 established an exemption for certain Federally-owned research reactors that are used primarily for educational training and academic research purposes, where the design of the reactor satisfies certain technical specifications set forth in the legislation. Consistent with this legislative requirement, the NRC granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center in Omaha, Nebraska, the U.S. Geological Survey for its reactor in Denver, Colorado, and the Armed Forces Radiobiological Institute in Bethesda, Maryland, for its research reactor. This exemption was initially codified in the July 20, 1993 (58 FR 38695) final fee rule at § 171.11(a) and more recently in the March 17, 1994 (59 FR 12543) final rule at § 171.11(a)(2). The NRC amended § 171.11(a)(2) on July 20, 1994 (59 FR 36895) to exempt from annual fees the research reactor owned by the Rhode Island Atomic Energy Commission. The NRC will continue to grant exemptions from the annual fee to those Federally-owned and State owned research and test reactors who meet the exemption criteria specified in § 171.11.

Section 171.16 Annual fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule

changing its size standards. The SBA adjusted its receipts-based size standard levels to mitigate the effects of inflation from 1984 to 1994. On April 11, 1995 (60 FR 18344), the NRC published a final rule amending its size standards. The size standards are as follows:

(a) A small business is a for-profit concern and is a—

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last three completed fiscal years; or

(2) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(b) A small organization is a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less.

(c) A small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

(d) A small educational institution is one that is—

(1) Supported by a qualifying small governmental jurisdiction; or

(2) Not state or publicly supported and has 500 or fewer employees.

(e) For purposes of this section, the NRC shall use the Small Business Administration definition of receipts. (13 CFR 402(b)(2)). A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

Therefore, the small entity categories in § 171.16(c) of this final fee rule have been modified to reflect the changes in the NRC's size standards. Consistent with the establishment of an employee size standard for manufacturers, the NRC is establishing a new maximum small entity fee for manufacturing industries with 35 to 500 employees at $1,800 and a lower-tier small entity fee of $400 is established for those manufacturing industries and educational institutions not State or publicly supported with less than 35 employees. The lower-tier receipts-based threshold of $250,000 is raised to $350,000 to reflect approximately the same percentage adjustment as that made by the SBA when they adjusted the receipts-based standard from $3.5 million to $5 million.

Section 171.16(d) is revised to reflect the FY 1995 budgeted costs for materials licensees, including Government agencies, licensed by the NRC. These fees are necessary to recover the FY 1995 generic and other regulatory costs totalling $42.5 million that apply to fuel facilities, uranium recovery facilities, rare earth facilities, spent fuel facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations.

Tables VI and VII show the NRC programs, cost centers, and resources that are attributable to fuel facilities and materials users, respectively. The costs attributable to the uranium recovery and rare earth classes of licensees are those associated with uranium recovery and rare earth licensing, inspection, and generic activities. For transportation, the costs are those budgeted for transportation licensing, inspection, and generic activities. Similarly, the budgeted costs for spent fuel storage are those for spent fuel storage licensing, inspection and generic activities.

TABLE VI.—ALLOCATION OF NRC FY 1995 BUDGET TO FUEL FACILITY BASE FEES[1]

	Total program element		Allocated to fuel facility	
	Program support $,K	FTE	Program support $,K	FTE
Cost Center: Fuel Facilities:				
Fuel Fabricators Oversight and Inspections	$1,698	59.0	$1,486	56.1
Cost Center: LLW and Decommissioning:				
Decommissioning	4,447	50.0	325	1.7
Cost Center: Other Nuclear Materials and Waste:				
Independent Analysis of Operating Experience	346	8.0	69	1.6
Technical Training and Qualification	692	2.0	138	.4
Adjudicatory Reviews	-	1.0	-	.5
Investigations, Enforcement, Legal Advice	11	39.0	1	1.6
Cost Center: Special Technical Program:				
Nuclear Materials Mgt. and Safeguards System	1,165	1.0	47	-
Total			$2,066	61.9
Total Base Fee Amount Allocated to Fuel Facilities				[2] $14.6 million
Less Part 170 Fuel Facility Fees				4.5 million
Part 171 Base Fees for Fuel Facilities				$10.1 million

[1] Base annual fee includes all costs attributable to the fuel facility class of licensees. The base fee does not include costs allocated to fuel facilities for policy reasons.

[2] Amount is obtained by multiplying the direct FTE times the rate per FTE ($203,096) and adding the program support funds.

TABLE VII.—ALLOCATION OF FY 1995 BUDGET TO MATERIAL USERS' BASE FEES [1]

	Total program element		Allocated to materials users	
	Program support $,K	FTE	Program support $,K	FTE
Nuclear Materials & Nuclear Waste Program				
Cost Center: Materials Users:				
Licensing/Inspection of Materials Users	2,436	113.0	721	82.3
Materials Licensee Performance	700	1.8	189	.5
Materials Regulatory Standards	1,494	12.8	403	3.5
Radiation Protection Health Effects	1,621	5.3	438	1.4
Cost Center Total			1,751	87.7
Cost Center: LLW & Decommissioning:				
Licensing & Inspections	50	2.6		.2
Decommissioning	214	32.8	69	3.5
Radiological Surveys	1,653		372	
Cost Center Total			441	3.7
Cost Center: Other Nuclear Materials:				
Analysis of Operational Experience	346	8.0	184	1.7
Technical Training	692	2.0	498	1.4
Adjudicatory Reviews		1.0		.5
Investigations/Enforcement	11	39.0	9	24.4
Event Evaluation		16.0		4.4
Cost Center Total			691	32.4
Total Program			2,883	123.8
Management & Support Program				
Cost Center: Special Technical Programs:				
Nuclear Material Management & Safeguard Systems	1,165	1.0	74	.1
Total All Programs			2,957	123.9
Base Amount Allocated to Materials Users				[2] 28.1 million
Less Part 170 Materials Users Fees				3.4 million
Part 171 Base Fees For Materials Users				24.7 million

[1] Base annual fee includes all costs attributable to the materials class of licensees. The base fee does not include costs allocated to materials licensees for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE ($203,096) and adding the program support funds.

Major Fuel Facilities

The allocation of the NRC's $10.1 million in budgeted costs to the individual fuel facilities is based on the revised methodologies indicated earlier. The NRC indicated in its final FY 1994 fee rule that given the questions raised at that time by B&W Fuel Company, General Atomics, and other fuel facilities it would reexamine the fuel facility subclass categorizations and that any restructuring resulting from this reexamination would be included in the FY 1995 proposed rule for notice and comment (59 FR 36901; July 20, 1994). The NRC is therefore establishing a revised methodology for determining annual fees for fuel facilities. The revised methodology has been used to determine the FY 1995 annual fees. The objective of revising the methodology is to reflect more precisely agency generic costs attributable to fuel facility licensees. This new methodology results in the creation of five fuel facility license fee categories. Licenses are grouped into these categories according to their license (nuclear material type, enrichment, form, quantity, and use/associated activity) and according to the scope, depth of coverage and rigor of generic regulatory programmatic effort applicable to each category. This methodology can be applied to determine fees for new licenses, current licenses and for licensees in unique license situations. In each case, the existing license was used to determine values for licensed nuclear material and its use without regard for current or planned licensee activities, which are at the discretion of the licensee.

The methodology is amenable to changes in the number of licenses, licensed material/activities, and total programmatic resources to be recovered through annual fees. When a license is modified, given that NRC recovers approximately 100 percent of its generic regulatory program costs through fee recovery, this revised fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees. For example, if a fuel facility licensee amended its license so as to avoid part 171 fees for fuel facilities, the budget for the safety component would be spread only among those remaining licensees, resulting in a higher annual fee for those licensees.

Therefore, the methodology is applied as follows. First, a fee category is assigned based on certain criteria and the licensed nuclear material and use/associated activity. Although a licensee may choose not to fully utilize a license, the license is still used as the source for determining authorized nuclear material and use/associated activity. Next, the category/license information is used to

determine where the license will fit into the matrix. The matrix depicts the categorization of licenses by authorized material and use/activity and the relative programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety or safeguards significance associated with the authorized nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor). The relative weighted factors per facility for the various subclasses are as follows:

	Number of facilities	Relative weight per facility	
		Safety	Safeguards
High Enriched Fuel	2	1.00	1.00
Low Enriched Fuel	4	.52	.34
Limited Operations Facility	1	.20	.11
UF_6 Conversion	1	.30	.....
Others	3	.12	.09

The above weighted factors for the safety and safeguards portion are applied to the $10.1 million base fee. To this base fee, the LLW and other surcharges are added. The resulting annual fee for each fuel facility, including the additional charge (surcharge) is shown below.

Type of facility	Annual fee
High Enriched Fuel:	
Babcock & Wilcox	$2,569,000
Nuclear Fuel Services	2,569,000
Low Enriched Fuel:	
Combustion Engineering (Hematite)	1,261,000
General Electric	1,261,000
Siemens Nuclear Power	1,261,000
Westinghouse	1,261,000
Limited Operation Facilities:	
B&W Fuel Company	501,700
UF_6 Conversion:	
AlliedSignal Corp	639,200
Other Fuel Facilities:	
Babcock & Wilcox	340,700
General Atomics	340,700
General Electric	340,700

Uranium Recovery

Of the $2.3 million ($1.8 million in base budget plus $0.5 million in surcharge) attributable to the uranium recovery class of licensees, approximately $1.9 million will be assessed to the Department of Energy (DOE) to recover the costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). In September 1993, DOE became a general licensee of the NRC because post-reclamation closure of the Spook, Wyoming site had been achieved. There are two additional UMTRCA sites now under the general license: Burrell, Pennsylvania and Loman, Idaho.

As indicated earlier, the NRC has refined its methodology for establishing part 171 annual fees for non-DOE uranium recovery licenses. The methodology identifies three categories of licenses: (1) Conventional uranium mills; (2) solution mining uranium mills; and (3) mill tailings disposal facilities, each of which benefits from the generic uranium recovery program. In order to determine the benefits to each uranium recovery category, a matrix was established to relate the category and the level of benefit, by program element and subelement. The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure. Each of these elements was further divided into three subelements. The three major subelements of generic activities related to uranium facility operations are activities related to: (1) The operation of the mill; (2) the handling and disposal of waste; and (3) prevention of groundwater contamination. The three major subelements of generic activities related to uranium facility closure are activities related to: (1) decommissioning of facilities and cleanup of land; (2) reclamation and closure of the tailings impoundment; and (3) cleanup of contaminated groundwater. Weighted factors were assigned to each program element and subelement.

The two existing categories of mills, those that perform conventional milling and those that perform solution mining and milling, are continued. The existing category for licenses whose purpose is to dispose of Section 11e.(2) byproduct material is also continued. The matrix also contains a category for conventional mills with Possession Only Licenses that are also authorized to dispose of more than 5,000 cubic yards of byproduct material, as defined in section 11e.(2) of the Atomic Energy Act of 1954, as amended, from other facilities. Currently, there are three mills authorized for such waste disposal. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The resulting relative weighted factor per facility for the various subclasses is as follows:

	Number of facilities	Relative weight per facility
Class I facilities	3	1.00
Class II facilities	6	.57
11e.(2) disposal	1	.73
11e.(2) disposal incidental to existing tailings sites	3	.13

Using this refined approach, the remaining $0.4 million not recovered from DOE results in annual fees for each class of licensees as follows:

2.A.(2)—Class I facilities: $60,900
2.A.(2)—Class II facilities: $34,400
2.A.(2)—Other facilities: $22,000
2.A.(3)—11e(2) disposal: $44,700
2.A.(4)—11e(2) disposal incidental to existing tailings site: $7,900

Rare Earth Facilities

Because rare earth facilities are now budgeted for separately, a separate class has been established for these licensees in this final rule. For rare earth facilities, the generic and other regulatory costs of $66,000 have been spread uniformly among licensees who have a specific license for receipt and processing of source material. This results in an annual fee of $22,000 for each facility.

Spent Fuel Storage Facilities

For spent fuel storage licenses, the costs of $2.2 million ($1.6 million in base budget plus $0.6 million in surcharge) have been spread uniformly among those licensees who hold specific or general licenses for receipt and storage of spent fuel at an ISFSI. This results in an annual fee of $279,000 for each facility. This represents a fee decrease compared to FY 1994 because there are now more licensees in this

class. It also represents a fee decrease compared to the proposed rule because of higher estimated collections anticipated in FY 1995 from 10 CFR part 170 fees.

Materials Licenses

To equitably and fairly allocate the $24.7 million directly attributable to the approximately 6,200 diverse material users and registrants plus the materials share ($2.8 million) of the surcharge, the NRC has continued to base the annual fee on the 10 CFR Part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency, which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for these categories of licenses is developed as follows:

Annual Fee=(Application Fee+Average Inspection Cost/Inspection Priority)×Constant+(Unique Category Costs).

The constant is the multiple necessary to recover $24.7 million and is 1.7 for FY 1995. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1995, unique costs of approximately $1.0 million were identified for the medical improvement program which is attributable to medical licensees.

For the first time, the NRC is combining the ''flat'' material inspection fees in 10 CFR part 170 with the annual fees in 10 CFR part 171. This is being done to recognize that the ''regulatory service'' to licensees referred to in OBRA–90, comprises the total regulatory activities that NRC determines are needed to regulate a class of licensees. These regulatory services include not only ''flat'' fee inspections but also research, rulemaking, orders, enforcement actions, responses to allegations, incident investigations and other activities necessary to regulate classes of licensees. In addition to being consistent with the regulatory service concept in OBRA–90, the NRC believes that materials licensees' ''flat'' inspection fees can be combined with their annual fees without creating any significant questions of fairness. This is because the concept of the annual fee, including the inspection fee, has, in effect, already been implemented for most materials licensees. First, materials licensees currently pay a ''flat fee'' per inspection based on the average cost of an inspection for their fee category, and second, the routine inspection frequency is identical for most licensees in the same fee category. Furthermore, past experience suggests that less than 10 percent of the materials inspections for these licensees are nonroutine. Thus, licensees in the same materials license fee category currently pay essentially the same average annual cost for inspections. Therefore, combining inspection and annual fees results in essentially the same average cost per license over time. Additionally, this approach will provide materials licensees with simpler and more predictable NRC fee charges as there will be no additional fees paid for periodic inspections. Because certain materials FY 1995 annual fees include inspection costs, those materials licensees who paid a ''flat'' 10 CFR part 170 inspection fee for inspections conducted in FY 1995 will receive a credit for those payments towards their FY 1995 annual fee assessed under 10 CFR part 171. Those Agreement state licensees who paid an inspection fee for inspections conducted in FY 1995 will not receive a credit-refund because they pay no annual fee.

Materials annual fees for FY 1995 have decreased compared to the FY 1994 annual fees. There are two basic reasons for this. First, the FY 1995 budgeted amount attributable to materials licensees is about 35 percent lower than the comparable FY 1994 amount, based on the reallocation of certain materials budgeted costs to the broadest base of NRC licensees rather than to materials licensees as discussed earlier. Second, the professional hourly rate for the materials program has decreased from $133 per hour to $116 per hour, due to the use of cost center concepts in allocating NRC budgeted costs. These decreases are partially offset by a decrease in the number of licensees to be assessed annual fees in FY 1995 (from about 6,500 to about 6,200) and the inclusion of the average annual inspection costs with the annual fee. The annual fees for some categories in this final rule have decreased compared to the proposed rule because of higher estimated collections anticipated in FY 1995 from 10 CFR part 170 fees.

A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526.

Transportation

To recover the $4.7 million attributable to the transportation class of licensees, $1.2 will be assessed to the Department of Energy (DOE) to cover all of its transportation casks under Category 18. The remaining transportation costs for generic activities ($3.5 million) are allocated to holders of approved QA plans. The annual fee for approved QA plans is $77,800 for users and fabricators and $1,000 for users only.

The amount or range of the FY 1995 annual fees for all materials licensees is summarized as follows:

MATERIALS LICENSES—ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel.	$2,569,000.
Part 70—Low enriched fuel.	1,261,000.
Part 40—UF_6 conversion.	639,200.
Part 40—Uranium recovery.	22,000 to 60,900.
Part 30—Byproduct Material.	480 to 23,200.[1]
Part 71—Transportation of Radioactive Material.	1,000 to 77,800.
Part 72—Independent Storage of Spent Nuclear Fuel.	279,000.

[1] Excludes the annual fee for a few military ''master'' materials licenses of broad-scope issued to Government agencies, which is $415,300.

Surcharge

Section 171.16(e) is amended to establish the additional charge which is included in the annual fees shown in § 171.16(d) of this final rule. The Commission is continuing the approach established in FY 1993 to assess the budgeted low-level waste (LLW) costs to two broad categories of licensees (large LLW generators and small LLW generators) based on historical disposal data. This surcharge is included in the annual fees for the applicable categories in § 171.16(d). Although these NRC LLW disposal regulatory activities are not directly attributable to regulation of NRC materials licensees, the costs nevertheless must be recovered in order to comply with the requirements of OBRA–90. For FY 1995, the additional charge recovers approximately 18 percent of the NRC budgeted costs of $7.0 million relating to LLW disposal generic activities from small generators, which are comprised of materials licensees that dispose of LLW. The percentage distribution reflects the

deletion of costs for LLW disposed of by Agreement State licensees. Of the $7.0 million in budgeted costs shown above for LLW activities, 82 percent of the amount ($5.7 million) is allocated to the 119 large waste generators (reactors and fuel facilities) included in 10 CFR part 171. This results in an additional charge of $48,000 per facility. Thus, the LLW charge will be $48,000 per HEU, LEU, UF_6 facility, and each of the other three fuel facilities. The remaining $1.3 million is allocated to the materials licensees in categories that generate low-level waste (895 licensees) as follows: $1,400 per materials license except for those in Category 17. Those licensees that generate a significant amount of low-level waste for purposes of the calculation of the $1,400 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.A, 4.B, 4.C, 4.D, 5.B, 6.A, and 7.B. The surcharge for licenses in fee Category 17, which also generate and/or dispose of low-level waste, is $21,000.

Certain costs that caused fairness and equity concerns are allocated to materials licensees based on the percent of the budget that each class comprises. This allocation approach was explained in the previous explanation of changes to § 171.15 of this section.

Footnote 1 of 10 CFR 171.16(d) is amended to provide for a waiver of the annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals, or filed for possession only/storage only licenses before October 1, 1994, and permanently ceased licensed activities entirely by September 30, 1994. All other licensees and approval holders who held a license or approval on October 1, 1994 are subject to the FY 1995 annual fees.

Section 171.17 Proration

10 CFR 171.17 is amended to add a proration provision to allow for proration of the annual fee for a downgraded materials license upon request of the licensee. A proration request must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded materials license filed beyond that date will not be considered.

Annual fees for materials licenses downgraded after October 1 of a fiscal year will be prorated on the basis of when the applications for downgrade are received by the NRC, provided the licensee permanently ceased the stated activities during the specified period. Annual fees for materials licenses for which applications to downgrade are filed during the period October 1 through March 31 of the fiscal year will be prorated as follows: (1) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category(ies) and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not affected by the downgrade; and (2) licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories. Materials licenses for which applications for downgrade are filed on or after April 1 of the FY are assessed the full fee for that fiscal year.

Section 171.19 Payment

This section is revised to give credit for partial payments made by certain licensees in FY 1995 toward their FY 1995 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1995 will have been made by operating power reactor licensees and some materials licensees before the final rule is effective. Therefore, the NRC will credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee, or to make refunds, as necessary. The NRC also expects that certain materials licensees will have paid inspection fees for inspections that were performed in FY 1995, whereas this final rule includes such costs in the annual fee. The FY 1995 annual fee bills will reflect a credit for these inspection fee payments. As in FY 1994, payment of the annual fee is due on the effective date of the rule and interest accrues from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

During the past four years many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC issued minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38700).

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the final regulation.

VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

With respect to 10 CFR part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States,* 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company,* 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the ''value to the recipient'' of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, *National Cable Television Association* v. *Federal Communications Commission,* 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission,* 554 F.2d 1118 (D.C. Cir. 1976); *Electronic*

Industries Association v. *Federal Communications Commission,* 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission,* 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission,* 601 F.2d 223 (5th Cir. 1979), *cert. denied,* 444 U.S. 1102 (1980). The Court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through 1998. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the final amount of the FY 1995 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1995 budget of $525.6 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

The NRC is establishing a uniform annual fee rather than an annual fee that considers the various vendors, the types of containment, and the location of the operating power reactors. The NRC believes the difference in annual fees of about $20,000 between the highest and lowest annual fee assessed under the current method is small enough relative to the size of the $2.9 million annual fees, to justify moving to a uniform annual fee particularly in light of the administrative savings that will follow. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States,* 846 F.2d 765 (D.C. Cir. 1988), *cert. denied,* 490 U.S. 1045 (1989).

10 CFR parts 170 and 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in *Skinner* v. *Mid-American Pipeline Co.,* 109 S. Ct. 1726 (1989), and the denial of certiorari in *Florida Power and Light,* all of the lawsuits were withdrawn.

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC,* 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1995. The final rule results in a decrease in the annual fees charged to most licensees, and holders of certificates, registrations, and approvals, including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these final amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source Material, Special Nuclear Material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101–576, 104 Stat. 2842, (31 U.S.C. 901).

2. In § 170.11, paragraph (a)(5) is revised to read as follows:

§ 170.11 Exemptions.

(a) * * *

(5) A construction permit, license, certificate of compliance, or other

approval applied for by, or issued to, a Government agency, except where the Commission is authorized by statute to charge such fees.

* * * * *

3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using the following applicable professional staff-hour rates:

Reactor Program (§ 170.21 Activities).	$123 per hour.
Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities).	$116 per hour.

4. In § 170.21, the introductory text, Category K, and footnotes 1 and 2 to the table are revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
* * * * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the import and export only of components for production and utilization facilities issued pursuant to 10 CFR part 110:	
1. Application for import or export of reactors and other facilities and components which must be reviewed by the Commission and the Executive Branch, for example, actions under 10 CFR 110.40(b):	
Application—New license	$7,500
Amendment	$7,500
2. Application for import or export of reactor components and initial exports of other equipment requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8):	
Application—New license	$4,600
Amendment	$4,600
3. Application for export of components requiring foreign government assurances only:	
Application—New license	$2,900
Amendment	$2,900
4. Application for export or import of other facility components and equipment not requiring Commission review, Executive Branch review, or foreign government assurances:	
Application—New license	$1,200
Amendment	$1,200
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require analysis or review:	
Amendment	$120

[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g. §§ 50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

* * * * *

5. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4]	
Application—New license	$530.
Renewal	$720.
Amendment	$290.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4]	
Application—New license	$580.
Renewal	$650.
Amendment	$280.
E. Licenses for construction and operation of a uranium enrichment facility:	
Application	$125,000.
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
2. Source material:	
A. (1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
(2) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e(2) of the Atomic Energy Act for possession and disposal except those licenses subject to fees in Category 2.A.(1).	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
(3) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e(2) of the Atomic Energy Act for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1).	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses which authorize the possession, use and/or installation of source material for shielding:	
Application—New license	$150.
Renewal	$170.
Amendment	$230.
C. All other source material licenses:	
Application—New license	$2,700.
Renewal	$1,500.
Amendment	$400.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$2,900.
Renewal	$1,900.
Amendment	$530.
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$1,200.
Renewal	$2,400.
Amendment	$560.
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New license	$3,900.
Renewal	$3,100.
Amendment	$500.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	$1,500.
Renewal	$480.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
Amendment	$420.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	$1,200.
Renewal	$820.
Amendment	$350.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes:	
Application—New license	$1,500.
Renewal	$1,100.
Amendment	$360.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes:	
Application—New license	$5,800.
Renewal	$5,200.
Amendment	$750.
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$2,300.
Renewal	$2,700.
Amendment	$990.
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$4,300.
Renewal	$2,600.
Amendment	$840.
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$1,500.
Renewal	$1,500.
Amendment	$280.
K. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$1,300.
Renewal	$1,300.
Amendment	$300.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$4,100.
Renewal	$3,300.
Amendment	$640.
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$1,500.
Renewal	$1,700.
Amendment	$590.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D:	
Application—New license	$1,800.
Renewal	$1,900.
Amendment	$570.
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations:	
Application—New license	$3,700.
Renewal	$3,000.
Amendment	$700.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$530.
Renewal	$720.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
Amendment	$290.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$3,200.
Renewal	$2,300.
Amendment	$390.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$1,700.
Renewal	$1,200.
Amendment	$280.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$3,100.
Renewal	$4,000.
Amendment	$610.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	$4,900.
Renewal	$1,900.
Amendment	$770.
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$2,700.
Renewal	$1,400.
Amendment	$450.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$2,900.
Renewal	$5,700.
Amendment	$560.
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$1,300.
Renewal	$1,400.
Amendment	$430.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	$730.
Renewal	$630.
Amendment	$340.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$3,200.
Amendment—each device	$1,200.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$1,600.
Amendment—each device	$580.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$700.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
Amendment—each source	$230.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$350.
Amendment—each source	$120.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Evaluation of 10 CFR part 71 quality assurance programs:	
Application—Approval	$320.
Renewal	$340.
Amendment	$240.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
12. Special projects: [5]	
Approvals and preapplication/licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Approvals	Full Cost.
Amendments, revisions, and supplements	Full Cost.
Reapproval	Full Cost.
B. Inspections related to spent fuel storage cask:	
Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72 of this chapter:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
15. Import and Export licenses:	
Licenses issued pursuant to 10 CFR part 110 of this chapter for the import and export only of special nuclear material, source material, byproduct material, heavy water, tritium, or nuclear grade graphite:	
A. Application for import or export of HEU and other materials which must be reviewed by the Commission and the Executive Branch, for example, those actions under 10 CFR 110.40(b):	
Application—new license	$7,500.
Amendment	$7,500.
B. Application for import or export of special nuclear material, heavy water, nuclear grade graphite, tritium, and source material, and initial exports of materials requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(2)–(8):	
Application—new license	$4,600.
Amendment	$4,600.
C. Application for export of routine reloads of LEU reactor fuel and exports of source material requiring foreign government assurances only:	
Application—new license	$2,900.
Amendment	$2,900.
D. Application for export or import of other materials not requiring Commission review, Executive Branch review or foreign government assurances:	
Application—new license	$1,200.
Amendment	$1,200.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information or make other revisions which do not require analysis or review:	
Amendment	$120.
16. Reciprocity:	
Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20:	
Application (initial filing of Form 241)	$1,100.
Renewal	N/A.
Revisions	$200.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) *Application fees*—Applications for new materials licenses and approvals; applications to reinstate expired, terminated or inactive licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that:

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category; and

(2) Applications for licenses under Category 1E must be accompanied by an application fee of $125,000.

(b) *License-approval-review fees*—Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b), (e), and (f).

(c) *Renewal-reapproval fees*—Applications for renewal of licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment-Revision Fees*—

(1) Applications for amendments to licenses and approvals and revisions to reciprocity initial applications, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment-revision fee for each license-revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) *Inspection fees*—Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 plus any applicable contractual support services costs incurred. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g).

[2] Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. The minimum total review cost is twice the hourly rate shown in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

[5] Fees will not be assessed for requests-reports submitted to the NRC:

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(c) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

6. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102–486, 106 Stat. 3125, (42 U.S.C. 2214 note).

7. Section 171.13 is revised to read as follows:

§ 171.13 Notice.

The annual fees applicable to an operating reactor and to a materials licensee, including a Government agency licensed by the NRC, subject to this part and calculated in accordance with §§ 171.15 and 171.16, will be published as a notice in the **Federal Register** as soon as is practicable but no later than the third quarter of FY 1996 through 1998. The annual fees will become due and payable to the NRC in accordance with § 171.19 except as provided in § 171.17. Quarterly payments of the annual fees of $100,000 or more will continue during the fiscal year and be based on the applicable annual fees as shown in §§ 171.15 and 171.16 of the regulations until a notice concerning the revised amount of the fees for the fiscal year is published by Commission.

8. In § 171.15, paragraphs (a), (b)(3), (c)(1), (c)(2), (d), and (e) are revised to read as follows:

§ 171.15 Annual Fees: Reactor operating licenses.

(a) Each person licensed to operate a power, test, or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the Federal FY in which the fee is due, except for those test and research reactors exempted in § 171.11(a)(1) and (a)(2).

(b) * * *

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 50 of this chapter, or operating the Incident Response Center. The base FY 1995 annual fee for each operating power reactor subject to fees under this section and which must be collected before September 30, 1995, is $2,427,000. The total annual fee to be assessed to each operating power reactor which would include the surcharge for each reactor is shown in paragraph (d) of this section.

(c)(1) An additional charge will be established and added to the base

annual fee for each operating power reactor to recover the budgeted costs for the following:

(i) Activities not attributable to an existing NRC licensee or classes of licensees; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities and low-level waste disposal generic activities, and

(ii) Activities not currently assessed under 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and Federal agencies; activities related to decommissioning and reclamation and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

(2) The FY 1995 surcharge for each operating power reactor is $509,000. This amount is calculated by dividing the total cost for these activities ($55.0 million) by the number of operating power reactors (108).

* * * * *

(d) The FY 1995 part 171 annual fee for each operating power reactor, which includes the surcharge in paragraph (c)(2) of this section, is $2,936,000. Thereafter, annual fees will be assessed in accordance with § 171.13.

(e) The annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under part 50 of this chapter, except for those reactors exempted from fees under § 171.11(a), are as follows:

Research reactor	$56,500
Test reactor	$56,500

* * * * *

9. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(1), (c)(4), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government agencies licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1995 as follows:

	Maximum Annual fee per licensed category
Small businesses not engaged maximum annual fee in manufacturing and small per licensed category not-for-profit organizations (gross annual receipts):	
$350,000 to $5 million	$1,800
Less than $350,000	400
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (population)	
20,000 to 50,000	1,800
Less than 20,000	400
Educational institutions that are not State or publicly supported, and have 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees	400

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

* * * * *

(4) For FY 1995, the maximum annual fee (base annual fee plus surcharge) a small entity is required to pay is $1,800 for each category applicable to the license(s).

(d) The FY 1995 annual fees, including the surcharges shown in paragraph (e) of this section, for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are as follows:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses		Annual fees [1 2 3]
1. Special nuclear material:		
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.		
(a) Strategic Special Nuclear Material:		
Babcock & Wilcox	SNM–42	$2,569,000
Nuclear Fuel Services	SNM–124	2,569,000
(b) Low Enriched Uranium in Dispersable Form Used for Fabrication of Power Reactor Fuel:		
Combustion Engineering (Hematite)	SNM–33	1,261,000
General Electric Company	SNM–1097	1,261,000
Siemens Nuclear Power	SNM–1227	1,261,000
Westinghouse Electric Company	SNM–1107	1,261,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.		
(a) Facilities with limited operations:		
B&W Fuel Company	SNM–1168	501,700
(b) All Others:		
Babcock & Wilcox	SNM–414	340,700
General Atomics	SNM–696	340,700
General Electric	SNM–960	340,700
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)		279,000
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers		1,300

D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	3,000
E. Licenses for the operation of a uranium enrichment facility	[11] N/A
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	639,200
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities [4]	60,900
Class II facilities [4]	34,400
Other facilities [4]	22,000
(3) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) .	44,700
(4) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e(2) of the Atomic Energy Act for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)	7,900
B. Licenses which authorize only the possession, use and/or installation of source material for shielding	480
C. All other source material licenses	8,600
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	16,400
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	5,500
C. Licenses issued pursuant to §§ 32.72, 32.73, and-or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license	11,100
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribu tion or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license	4,400
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,100
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	3,800
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	19,400
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	5,000
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	8,800
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	3,700
K. Licenses issued pursuant to subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	3,200
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	12,100
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution	5,400
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D	6,000
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when authorized on the same license	13,900
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	1,700

4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] 100,900
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	14,300
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,600
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	8,100
B. Licenses for possession and use of byproduct material for field flooding tracer studies	13,000
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	14,500
7. Human use of byproduct, source, or special nuclear material.	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	10,200
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9]	23,200
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9]	4,600
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,800
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	7,100
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	3,700
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	1,500
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	770
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Approvals issued of 10 CFR part 71 quality assurance programs.	
Users and Fabricators	77,800
Users	1,000
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	279,000
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	415,300
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,200,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	1,937,000

[1] Annual fees will be assessed based on whether a licensee held, during the fiscal year, a valid license with the NRC authorizing possession and use of radioactive material. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1994 and permanently ceased licensed activities entirely by September 30, 1994. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a POL during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1). are not subject to the annual fees of Category 1.C and 1.D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, or 72 of this chapter.

[3] For FYs 1996 through 1998, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An ''other'' license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, part 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

[11] No annual fee has been established because there are currently no licensees in this particular fee category.

(e) A surcharge is added for each category for which a base annual fee is required. The surcharge consists of the following:

(1) To recover costs relating to LLW disposal generic activities, an additional charge of $48,000 has been added to fee Categories 1.A.(1), 1.A.(2) and 2.A.(1); an additional charge of $1,400 has been added to fee Categories 1.B., 1.D., 2.C., 3.A., 3.B., 3.C., 3.L., 3.M., 3.N., 4.A., 4.B., 4.C., 4.D., 5.B., 6.A., and 7.B.; and an additional charge of $21,000 has been added to fee Category 17.

(2) To recover those budgeted costs that are not directly or solely attributable to materials licensees and holders of certificates, registrations or approvals, a surcharge has been added for the following:

(i) Activities not attributable to an existing NRC licensee or classes of licensees; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities and

(ii) Activities not currently assessed under 10 CFR Part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and Federal agencies; activities related to decommissioning and reclamation and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

* * * * *

10. In § 171.17, paragraph (b) is revised to read as follows:

§ 171.17 Proration.

* * * * *

(b) Materials licenses (including fuel cycle licenses). (1) *New licenses and terminations.* The annual fee for a materials license that is subject to fees under this part and issued on or after October 1 of the FY is prorated on the basis of when the NRC issues the new license. New licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after April 1 of the FY will not be assessed an annual fee for that FY. Thereafter, the full fee is due and payable each subsequent FY. The annual fee will be prorated for licenses for which a termination request or a request for a POL has been received on or after October 1 of a FY on the basis of when the application for termination or POL is received by the NRC provided the licensee permanently ceased licensed activities during the specified period. Licenses for which applications for termination or POL are filed during the period October 1 through March 31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY. Licenses for which applications for termination or POL are filed on or after April 1 of the FY are assessed the full annual fee for that FY.

(2) *Downgraded licenses.* (i) The annual fee for a materials license that is subject to fees under this part and downgraded on or after October 1 of a FY is prorated upon request by the licensee on the basis of when the application for downgrade is received by the NRC provided the licensee permanently ceased the stated activities during the specified period. Requests for proration must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded license filed beyond that date will not be considered.

(ii) Annual fees for licenses for which applications to downgrade are filed during the period October 1 through March 31 of the FY will be prorated as follows:

(A) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category(ies) and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not affected by the downgrade; and

(B) Licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories.

(iii) Licenses for which applications for downgrade are filed on or after April 1 of the FY are assessed the full fee for that FY.

11. In § 171.19, paragraphs (b) and (c) are revised to read as follows:

§ 171.19 Payment.

* * * * *

(b) For FY 1995 through FY 1998, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. The NRC will also adjust the FY 1995 annual fee bills to reflect a credit for any payments received for those FY 1995 inspection costs that are included in the FY 1995 annual fee. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee upon publication of the final rule. Payment is due on the effective date of the final rule and interest accrues from the effective date of the final rule. However, interest will be waived if payment is received within 30 days from the effective date of the final rule.

(c) For FYs 1995 through 1998, annual fees in the amount of $100,000 or more and described in the **Federal Register** notice pursuant to § 171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. Annual fees of less than $100,000 must be paid once a year as billed by the NRC.

Dated at Rockville, Maryland, this 12th day of June, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Appendix A to this Final Rule Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act (RFA), first the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241; December 9, 1985). These size standards were clarified November 6, 1991 (56 FR 56672). On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standards levels to mitigate the effects of inflation from 1984 to 1994. On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend its size standards. The NRC proposed to adjust its receipts-based size standards from $3.5 million to $5 million to accommodate inflation and to conform to the SBA final rule. The NRC also proposed to eliminate the separate $1 million size standard for private practice physicians and to apply a receipts-based size standard of $5 million to this class of licensees. This mirrors the revised SBA standard of $5 million for medical practitioners. The NRC also proposed to establish a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and would be the standard applicable to the types of manufacturing industries that hold an NRC license. After evaluating the two comments received, a final rule that would revise the NRC's size standards as proposed was developed and approved by the SBA on March 24, 1995. The NRC published the final rule revising its size standards on April 11, 1995 (60 FR 18344). The revised standards became effective May 11, 1995. The NRC has used the revised standards in the final FY 1995 fee rule. The small entity fee categories in § 171.16(c) of the final rule reflect the changes in the NRC's size standards. A new maximum small entity fee for manufacturing industries with 35 to 500 employees has been established at $1,800 and a lower-tier small entity fee of $400 established for those manufacturing industries with less than 35 employees. The lower-tier receipts-based threshold of $250,000 has been raised to $350,000 to reflect approximately the same percentage adjustment as that made by the SBA when they adjusted the receipts-based standard from $3.5 million to $5 million. The NRC believes that these actions will reduce the impact of annual fees on small businesses. The NRC size standards are codified at 10 CFR 2.810.

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. OBRA–90 was amended in 1993 to extend the 100 percent recovery requirement for NRC through 1998. For FY 1991, the amount for collection was approximately $445.3 million; for FY 1992, approximately $492.5 million; for FY 1993 about $518.9 million; for FY 1994 about $513 million and the amount to be collected in FY 1995 is approximately $503.6 million.

To comply with OBRA–90, the Commission amended its fee regulations in 10 CFR parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991) in FY 1992, (57 FR 32691; July 23, 1992) in FY 1993 (58 FR 38666; July 20, 1993) and in FY 1994 (59 FR 36895; July 20, 1994) based on a careful evaluation of over 1,000 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FY 1991, FY 1992, FY 1993 and FY 1994. The NRC has used the same methodology established in the FY 1991, FY 1992, FY 1993, and FY 1994 rulemakings to establish the fees to be assessed for FY 1995 with the following exceptions: (1) The Commission has reinstated the annual fee exemption for nonprofit educational institutions; (2) in the FY 1994 final rule, the NRC directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste; and (3) for FY 1995, the NRC is using cost center concepts, now being used for budgeting purposes, to develop the fees. The NRC is also (1) changing the method for allocating the budgeted costs (about $56 million) that cause fairness and equity concerns; (2) eliminating the materials ''flat'' inspection fees in 10 CFR 170.31 and including the inspections with the annual fees in 10 CFR 171.16(d); and (3) establishing two professional hourly rates to better align the budgeted costs with the major classes of licensees. The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 based on the U.S. Court of Appeals decision dated March 16, 1993 (988 F.2d 146 (D.C. Cir. 1993)). The FY 1993 LLW allocation method has been continued in the FY 1995 final rule.

II. Impact on Small Entities.

The comments received on the proposed FY 1991, FY 1992, FY 1993, and FY 1994 fee rule revisions and the small entity certifications received in response to the final FY 1991, FY 1992, FY 1993, and FY 1994 fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these materials licensees, about 18 percent (approximately 1,300 licensees) have requested small entity certification in the past. In FY 1993, the NRC conducted a survey of its materials licensees. The results of this survey indicated that about 25 percent of these licensees could qualify as small entities under the current NRC size standards.

The commenters on the FY 1991, FY 1992, FY 1993, and FY 1994 proposed fee rules indicated the following results if the proposed annual fees were not modified:

—Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a ''Mom and Pop'' type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

—Some firms would be forced to cancel their licenses. One commenter, with receipts of less than $500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

—Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

—Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Over the past four years, approximately 2,900 license, approval, and registration terminations have been requested. Although

some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These commenters previously indicated that the $3.5 million threshold for small entities was not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these ''Mom and Pop'' type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472; July 10, 1991) in the FY 1992 rule (57 FR 32691; July 23, 1992), in the FY 1993 rule (58 FR 38666; July 20, 1993) and in the FY 1994 rule (59 FR 36895; July 20, 1994). The alternatives considered by the NRC can be summarized as follows:

—Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

—Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

—Base fees on the NRC size standards for small entities.

The NRC has reexamined the FY 1991, FY 1992, FY 1993, and FY 1994 evaluation of the these alternatives. Based on that reexamination, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and is continuing for FY 1995, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1995, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of cost that must be recovered from other NRC licensees as a result of establishing the maximum annual fees. The NRC continues to believe that license fees, or any adjustments to these fees during the past year, do not have a significant impact on small entities. In issuing this final rule for FY 1995, the NRC concludes that the materials license fees do not have a significant impact on a substantial number of small entities and that the maximum annual small entity fee of $1,800 be continued.

By maintaining the maximum annual fee for small entities at $1,800, the annual fee for many small entities is reduced while at the same time materials licensees, including small entities, pay for most of the FY 1995 costs ($27 million of the total $33 million) attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to operating power reactors. However, the amount that must be recovered from other licensees as a result of maintaining the maximum annual fee is not expected to increase. Therefore, the NRC is continuing, for FY 1995, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity.

While reducing the impact on many small entities, the Commission agrees that the maximum annual fee of $1,800 for small entities, when added to the Part 170 license fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in FY 1992, FY 1993, and FY 1994, the NRC is continuing the lower-tier small entity annual fee of $400 for small entities with relatively low gross annual receipts. The lower-tier small entity fee of $400 also applies to manufacturing concerns and educational institutions not State or publicly supported with less than 35 employees. This lower-tier small entity fee was first established in the final rule published in the **Federal Register** on April 17, 1992 (57 FR 13625) and would now include manufacturing companies with a relatively small number of employees.

In establishing the annual fee for lower-tier small entities, the NRC continues to retain a balance between the objectives of the RFA and OBRA–90. This balance can be measured by: (1) The amount of costs attributable to small entities that is transferred to larger entities (the small entity subsidy); (2) the total annual fee small entities pay, relative to this subsidy; and (3) how much the annual fee is for a lower-tier small entity. Based on this final rule, the amount of the FY 1995 small entity subsidy is lower than that for FY 1994. Thus, no change is being made.

III. Summary

The NRC has determined the annual fee significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of $1,800 for small entities and a lower-tier small entity annual fee of $400 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the revised fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. The NRC has used the methodology and procedures developed for the FY 1991, FY 1992, FY 1993, and FY 1994 fee rules in this final rule except those noted in Section III, in establishing the FY 1995 fees. Therefore, the analysis and conclusions established in the FY 1991, FY 1992, FY 1993, and FY 1994 rules remain valid for this final rule for FY 1995.

[FR Doc. 95–14879 Filed 6–19–95; 8:45 am]

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federal register

Tuesday
June 20, 1995

Part III

Department of Education

34 CFR Parts 75, 76, and 81

General Education Provisions Act; Equitable Offsets: Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 75, 76, and 81

RIN 1880–AA56

General Education Provisions Act—Enforcement: Equitable Offsets

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend Part 81 of Title 34 of the Code of Federal Regulations, containing regulations regarding enforcement under the General Education Provisions Act (GEPA). The amendment would include regulations clarifying the circumstances under which equitable offset is taken into account in determining harm to an identifiable Federal interest under section 453(a)(1) of the GEPA. The proposed regulations would enhance grantee flexibility and reduce burden by contributing to the early resolution of audit disputes and the avoidance of protracted litigation.

The proposed regulations in this notice do not apply to programs under the Higher Education Act of 1965 or the Impact Aid statutes (Pub. L. 81–874, Pub. L. 81–815, and Title VIII of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by Pub. L. 103–382).

DATES: Comments must be received on or before August 4, 1995.

ADDRESSEES: All comments concerning these proposed regulations should be addressed to Ted Sky, Senior Counsel, U.S. Department of Education, 600 Independence Avenue SW., Washington, DC 20202–2121.

FOR FURTHER INFORMATION CONTACT: Ted Sky. Telephone: (202) 401–6000. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Recognition of Offset Costs

Section 453(a)(1) of the GEPA, 20 U.S.C. 1234b(a)(1), provides that a recipient determined to have made an unallowable expenditure, or to have otherwise failed to discharge its responsibility to account properly for funds, shall be required to return funds in an amount that is proportionate to the extent of the harm its violation caused to an identifiable Federal interest associated with the program under which the recipient received the award.

The proposed regulations (in § 81.32 (c) and (d)) would state the circumstances under which the Secretary or an authorized Department official, in determining the extent of harm to an identifiable Federal interest caused by a violation, may take into account costs that the recipient could have charged to the Federal grant or cooperative agreement in question but in fact did not. These costs are ''offset costs.'' Issues pertaining to those so-called offset costs have arisen in connection with administrative litigation before the Office of Administrative Law Judges (OALJ).

The Secretary believes that regulatory guidance regarding these issues would be helpful to the field, would enhance grantee flexibility, would increase the possibilities for early resolution of disputes, and would reduce the need for protracted litigation arising from expenditure disallowance and other audit claims under Department programs, while maintaining proper accountability. The Secretary solicits additional public comments and suggestions as to how this balance may best be achieved.

Equitable offset is not a new concept initially proposed in these regulations. The concept has evolved over time, through case-by-case adjudication, both in decisions of the Secretary and the courts, arising from disputes under programs administered by the Secretary. The proposed regulations are consistent with this precedent.

If finally adopted, it is anticipated that the provisions of proposed § 81.32 (c) and (d) would apply to existing cases before the OALJ, but without regard to § 81.32(c)(5) (relating to early identification of offset costs).

The proposed regulations are based upon the conclusion that the recognition of offset costs, under appropriate circumstances and subject to appropriate limitations, is consistent with section 453(a)(1) of the GEPA. The proposed regulations would provide for the recognition of offset costs under the following circumstances:

—The offset costs must meet all the requirements of the grant or cooperative agreement, including any applicable recordkeeping requirements;

—The recipient must demonstrate that the offset costs could have been charged to the grant or cooperative agreement during the same Federal fiscal year as the original violation;

—The charging of offset costs to the grant or cooperative agreement must not result in other violations of applicable requirements, such as maintenance of effort, matching or non-supplanting requirements;

—The practices and policies that resulted in the original violation must have been corrected and must not be likely to recur;

—The original violation must not have been intentional or willful.

Under the proposed rule, the Secretary would have the burden of initially establishing a prima facie case that a violation was willful or intentional so as to preclude an offset. It is not anticipated that these cases will be frequent. However, on occasion, circumstances may suggest the existence of this situation. For example, where a recipient continues to incur costs or carry out program activities that the Department has advised the recipient are beyond the purview of the grant, the issue of whether a violation was willful or intentional might be presented.

Federal financial assistance under a program subject to a statutory non-supplanting requirement must supplement and be additional to any State assistance for the project in question. A recipient of assistance under this type of program generally must use all Federal funds awarded for project purposes, irrespective of the use of State or local funds.[1] To permit a recipient to offset disallowed costs under the federally funded project with State or local-funded costs would normally be contrary to the non-supplanting requirement and would result in the diminution of the project to the detriment of the beneficiaries to be served and contrary to the purposes of the program.

In the case of a program with a non-supplanting requirement, therefore, a recipient has a particularly heavy burden in showing that use of State or local funds as offset costs is consistent with the requirement. The Department has identified a limited number of situations in which this burden could be met.

(1) *State administrative expenses.* Where a disallowance involves State administrative expenditures, and the recipient proposes to offset other State administrative expenditures that could have been charged to the grant but were not, the non-supplanting requirement should not present a bar to the offset. Presumably the State administrative expenditures would not have been made in the absence of the program.

[1] One exception to this principle is the non-supplanting requirement in section 614 of the Individuals with Disabilities Education Act which requires a local educational agency to supplement what it has expended on special education in the past. This approach is more similar to a maintenance of effort requirement than it is to the non-supplanting requirements in other statutes. (*See* 34 CFR 300.230.)

(2) *Other cases where the offset expenditures would not have been incurred in the absence of the Federal program.* In exceptional circumstances a recipient may be able to establish that the State or local expenditures sought to be used as an offset would not have been incurred in the absence of the program and thus do not give rise to a question under the non-supplanting requirement. For example, the recipient might be able to show that a particular cost was so related to the Federal grant that it would not have been incurred in the absence of that grant.

(3) *Statutorily excluded funds.* Under the statute governing the program in question, there may be categories of expenditures that may be specifically excluded from the reach of the non-supplanting requirement. For example, under section 1120A(b)(1)(B) of the Title I (ESEA) statute, 20 U.S.C. 6322(b)(1)(B), certain State and local funds may be excluded for purposes of determining compliance with the Title I non-supplanting requirement. These funds would be available for offset purposes, despite the non-supplanting requirement, assuming that other requirements of the proposed rule would be met.

In proposing these rules, the Secretary does not intend to encourage recipients to incur unallowable costs or engage in activities that will give rise to accountability issues. On the contrary, the Secretary believes that the proposed regulations will enable the Department to more readily focus time on those areas where the most serious accountability problems occur.

II. Early Identification of Issue

The proposed regulations provide that, if the recipient is apprised of the violation in a draft audit report or other written communication issued prior to the final audit report, the offset costs must be presented to the auditor within a 60-day period. This provision is designed to ensure that offset claims are raised sufficiently early in the audit process to permit the auditor to verify the claimed offset costs and make recommendations regarding those costs, within the overall context of the auditor's responsibility, prior to the issuance of the final audit report. Even if an oral rather than a written communication regarding the violation is made during the audit process, recipients are encouraged to present offset cost claims to the auditor so that these matters may be taken into account in the audit report in an orderly fashion.

If the recipient is first apprised of the violation in the final audit report, the offset costs must, under the proposed regulations, be presented to the authorized Department official within a 60-day period after the issuance of the final audit report. If the recipient is first apprised of the violation after the issuance of the final audit report, then the 60-day period runs from this first written notice. In either event, offset cost ''claims'' must be presented in the form of facts verified by an independent auditor.

Early notice of these issues is intended to encourage and contribute to early resolution of disallowance cases (through alternative means of dispute resolution or otherwise) and reduction of litigation expense for recipients as well as for the Department.

The early notice provision in § 81.32(c)(5) is also designed to avoid introduction of offset cost issues late in the audit appeal process. The introduction of offset cost issues at the litigation stage in prior and currently pending cases before the OALJ has caused administrative problems, requiring more audit work long after the original audit is over, thus delaying resolution of these cases. However, as indicated above, these advance notice requirements would not apply to pending cases.

In addition to adding the proposed provisions to 34 CFR Part 81, a cross-reference is proposed to be added to Subpart G of 34 CFR Part 75 and Subpart H of 34 CFR Part 76.

Executive Order 12866

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently as discussed in those sections of the preamble that relate to specific sections of the regulations. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. States and State agencies are not considered to be small entities under the Regulatory Flexibility Act. Small local educational agencies could be affected by these regulations. However, these proposed regulations are intended to implement statutory provisions and are designed to provide greater flexibility and reduce litigation in the administration of the programs in question. They should not have a significant economic impact on any small entities affected.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 5400, 600 Independence Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of the Executive Order and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects

34 CFR Part 75

Education Department, Grant programs—education, Grant administration, Incorporation by reference.

34 CFR Part 76

Education Department, Grant programs—education, Grant administration, Intergovernmental relations, State-administered programs.

34 CFR Part 81

Enforcement, General Education Provisions Act, Offset costs.

Dated: March 16, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary proposes to amend Parts 75, 76, and 81 of Title 34 of the Code of Federal Regulations as follows:

PART 81—GENERAL EDUCATION PROVISIONS ACT—ENFORCEMENT

1. The authority citation for Part 81 continues to read as follows:

Authority: 20 U.S.C. 1221e–3, 1234–1234i, 3474, unless otherwise noted.

2. Section 81.32 is amended by revising the heading and by adding new paragraphs (c), (d) and (e) to read as follows:

§ 81.32 Proportionality; equitable offset.

* * * * *

(c) In determining the extent to which a violation that is not intentional or willful caused harm to an identifiable Federal interest, the Secretary or an authorized Department official, as appropriate, may take into account costs that could have been charged to the Federal grant or cooperative agreement but in fact were not (offset costs), only if the recipient has demonstrated that—

(1) The offset costs would have met all the requirements of the grant or cooperative agreement, including any applicable recordkeeping requirements;

(2) The offset costs could have been charged to the grant or cooperative agreement during the same Federal fiscal year as the original violation;

(3) The charging of offset costs to the grant or cooperative agreement would not result in other violations of applicable requirements, such as maintenance of effort, matching, or non-supplanting;

(4) The practices and policies that resulted in the original violation have been corrected and are not likely to recur; and

(5) (i) If the recipient was apprised of the violation in a draft audit report or other written communication from the cognizant auditor that was issued prior to the final audit report—

(A) The offset costs were presented to the auditor within 60 days after the issuance of the draft audit report or other written communication; and

(B) The auditor verified that the costs met the conditions in paragraph (c) of this section;

(ii) If the recipient was first apprised in writing of the violation in the final audit report or the costs were timely presented to but not verified by the auditor, the offset costs were presented to the authorized Department official, in the form of facts demonstrating compliance with this paragraph and verified by an independent auditor, within 60 days of the issuance of the final audit report; or

(iii) If the recipient was first apprised of the violation in writing after the issuance of the final audit report, the offset costs were presented to the authorized Department official, in the form of facts demonstrating compliance with this paragraph and verified by an independent auditor, within 60 days of the first written notice of the violation;

(d) In making a verification under paragraph (c)(5) of this section, the independent auditor may be the auditor that initially conducted the audit and may base the verification on the original audit as long as the offset costs were examined as part of that audit and were not disallowed.

(e) For the purposes of § 81.32(c)(1), in the case of a discretionary program under which awards are made by the Secretary, ''grant'' or ''cooperative agreement'' means the grant or cooperative agreement awarded to the recipient.

3. Section 81.40 is amended by redesignating paragraphs (d) and (e) as (e) and (f), respectively, and by adding a new paragraph (d) to read as follows:

§ 81.40 Burden of proof.

* * * * *

(d) An offset cost should be taken into account in accordance with § 81.32 (c) and (d), except that the Secretary has the burden of initially establishing a prima facie case that a violation was willful or intentional so as to preclude an offset.

* * * * *

4. The Appendix to Part 81 is amended by adding new Examples 14, 15, 16, 17, and 18 to read as follows:

Appendix to Part 81—Illustrations of Proportionality

* * * * *

Equitable Offset Allowed

(14) Administrative costs of a State educational agency (SEA) are disallowed by the auditor under a program subject to a non-supplanting requirement because the SEA did not maintain adequate time distribution records for employees charged to the grant. The SEA demonstrates that other employees, whose salaries are paid for out of State funds, performed administrative functions allowable under the Federal grant during the relevant fiscal period. Adequate records, including any necessary time distribution records, were maintained for these employees. Charging these costs to the grant would not violate other requirements. The non-supplanting requirement does not bar the offset because it is presumed that the State funds would not have been spent in the absence of the program. The SEA presents a corrective action plan to ensure that future recordkeeping violations will not arise. There is no evidence that the SEA intentionally failed to keep the required records. The Secretary recognizes the offset costs under the principles stated in § 81.32 (c) and (d) and reduces the required recovery by the amount of the offset costs.

Equitable Offset Not Allowed—Violation of Program Requirement

(15) Under the Title I program, a LEA provides remedial reading services to children residing in ineligible attendance areas. The LEA proposes to offset the disallowed costs with funds expended for eligible Title I children under a State compensatory education program similar to Title I but not excluded from the operation of the non-supplanting requirement in Title I under section 1120A(b) of the Title I statute. Even though the costs of the State program would otherwise have been allowable under Title I, an offset is not allowed because the use of the State funds would violate the non-supplanting requirement.

Equitable Offset Not Allowed

(16) Under a Federal vocational education program with a maintenance of effort requirement, the SEA fails to maintain required time distribution records for employees working on more than one program. The State proposes to use as offset costs the salaries of other employees, charged to State funds, who worked exclusively on the Federal program. If all those costs are not included as State expenditures, however, the SEA would not have sufficient State expenditures to satisfy the maintenance of effort requirement under the Federal program. An offset is not allowed, because the charging of the offset costs to the Federal grant would have resulted in another violation of an applicable program requirement (maintenance of effort).

Equitable Offset Partially Allowed

(17) In this example the State needs some but not all of its proposed offset costs to satisfy the matching requirement applicable to the program. The State may use the remaining offset costs (i.e., those not needed to meet the matching requirement) to reduce its liability. For example, under a program with a 1:1 matching requirement ($1 of State funds must be spent for every $1 of Federal funds), the State has spent $100,000 of Federal funds and $100,000 of State funds. However, the auditors have determined that $20,000 of the Federal funds were not supported by required time distribution records. The State could not fully extinguish its liability through an offset, because the State would not meet the matching requirement. (If $20,000 of State funds were used as an offset, the State would have left only $80,000 of allowable matching costs which would not

support Federal expenditures of $100,000 under the 1:1 match requirement.)

Nevertheless, the State liability could be partially reduced by an offset. The amount of the partial offset is computed by combining the *allowable* Federal and State expenditures ($80,000 Federal plus $100,000 State = $180,000), and computing the allowable Federal expenditure that would be supported by the required State match. The allowable Federal expenditure would be $90,000 ($180,000×50%) which would be supported under the 1:1 match by $90,000 of State expenditures. Rather than repaying the full amount of the Federal disallowance ($20,000), the State would be required to repay $10,000 (the difference between the amount actually charged to the Federal grant ($100,000) and the allowable Federal expenditure considering the allowable State matching costs ($90,000)). The State therefore is credited with a partial offset of $10,000.

Equitable Offset Not Allowed—Intentional or Willful Violation

(18) Under the Title I program, the State seeks written advice from the Secretary regarding the allowability of certain expenditures. The Secretary informs the State that the expenditures are unallowable under the Title I statute. Nevertheless, the State proceeds to spend its Title I funds in this manner. An offset is not allowed, even though other expenditures could have been properly charged to the Title I program, because the Secretary determines that the State's violation is intentional and willful.

PART 75—DIRECT GRANT PROGRAMS

5. The authority citation for Part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

6. Part 75 is amended by adding the following cross-reference to the existing cross-reference in Subpart G immediately following the heading:

''See 34 CFR 81.32, Proportionality; equitable offset.''

PART 76—STATE-ADMINISTERED PROGRAMS

7. The authority citation for Part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e–3, 3474, and 6511(a), unless otherwise noted.

8. Part 76 is amended by adding the following cross-reference immediately following the heading for Subpart H:

''Cross-Reference. See 34 CFR 81.32, Proportionality; equitable offset.''

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